

*Extract from:*

# UNITED NATIONS JURIDICAL YEARBOOK

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Part Two. Legal activities of the United Nations and related intergovernmental organizations

Chapter IV. Treaties concerning international law concluded under the auspices of the United Nations and related intergovernmental organizations



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## Chapter IV

### TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

#### A. Treaties concerning international law concluded under the auspices of the United Nations and the International Maritime Organization

##### INTERNATIONAL CONVENTION ON MARITIME LIENS AND MORTGAGES<sup>1</sup>

The States Parties to this Convention,

*Conscious* of the need to improve conditions for ship financing and the development of national merchant fleets,

*Recognizing* the desirability of international uniformity in the field of maritime liens and mortgages, and therefore

*Convinced* of the necessity for an international legal instrument governing maritime liens and mortgages,

*Have decided* to conclude a Convention for this purpose and have therefore agreed as follows:

##### *Article 1*

##### *Recognition and enforcement of mortgages, "hypothèques" and charges*

Mortgages, "hypothèques" and registrable charges of the same nature, which registrable charges of the same nature will be referred to hereinafter as "charges", effected on seagoing vessels shall be recognized and enforceable in States Parties provided that:

(a) Such mortgages, "hypothèques" and charges have been effected and registered in accordance with the law of the State in which the vessel is registered;

(b) The register and any instruments required to be deposited with the registrar in accordance with the law of the State in which the vessel is registered are open to public inspection, and that extracts from the register and copies of such instruments are obtainable from the registrar; and

(c) Either the register or any instruments referred to in subparagraph (b) specifies at least the name and address of the person in whose favour the mortgage, "hypothèque" or charge has been effected or that it has been issued to

bearer, the maximum amount secured, if that is a requirement of the law of the State of registration or if that amount is specified in the instrument creating the mortgage, "hypothèque" or charge, and the date and other particulars which, according to the law of the State of registration, determine the ranking in relation to other registered mortgages, "hypothèques" and charges.

## *Article 2*

### *Ranking and effects of mortgages, "hypothèques" and charges*

The ranking of registered mortgages, "hypothèques" or charges as between themselves and, without prejudice to the provisions of this Convention, their effect in regard to third parties shall be determined by the law of the State of registration; however, without prejudice to the provisions of this Convention, all matters relating to the procedure of enforcement shall be regulated by the law of the State where enforcement takes place.

## *Article 3*

### *Change of ownership or registration*

1. With the exception of the cases provided for in articles 11 and 12, in all other cases that entail the deregistration of the vessel from the register of a State Party, such State Party shall not permit the owner to deregister the vessel unless all registered mortgages, "hypothèques" or charges are previously deleted or the written consent of all holders of such mortgages, "hypothèques" or charges is obtained. However, where the deregistration of the vessel is obligatory in accordance with the law of a State Party, otherwise than as a result of a voluntary sale, the holders of registered mortgages, "hypothèques" or charges shall be notified of the pending deregistration in order to enable such holders to take appropriate action to protect their interests; unless the holders consent, the deregistration shall not be implemented earlier than after a lapse of a reasonable period of time which shall be not less than three months after the relevant notification to such holders.

2. Without prejudice to article 12, paragraph 5, a vessel which is or has been registered in a State Party shall not be eligible for registration in another State Party unless either:

(a) A certificate has been issued by the former State to the effect that the vessel has been deregistered; or

(b) A certificate has been issued by the former State to the effect that the vessel will be deregistered with immediate effect, at such time as the new registration is effected. The date of deregistration shall be the date of the new registration of the vessel.

## *Article 4*

### *Maritime liens*

1. Each of the following claims against the owner, demise charterer, manager or operator of the vessel shall be secured by a maritime lien on the vessel:

(a) Claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;

(b) Claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(c) Claims for reward for the salvage of the vessel;

(d) Claims for port, canal, and other waterway dues and pilotage dues;

(e) Claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.

2. No maritime lien shall attach to a vessel to secure claims as set out in subparagraphs (b) and (e) of paragraph 1 which arise out of or result from:

(a) Damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to international conventions or national law providing for strict liability and compulsory insurance or other means of securing the claims; or

(b) The radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste.

## Article 5

### *Priority of maritime liens*

1. The maritime liens set out in article 4 shall take priority over registered mortgages, "hypothèques" and charges, and no other claim shall take priority over such maritime liens or over such mortgages, "hypothèques" or charges which comply with the requirements of article 1, except as provided in paragraphs 3 and 4 of article 12.

2. The maritime liens set out in article 4 shall rank in the order listed, provided however that maritime liens securing claims for reward for the salvage of the vessel shall take priority over all other maritime liens which have attached to the vessel prior to the time when the operations giving rise to the said liens were performed.

3. The maritime liens set out in each of subparagraphs (a), (b), (d) and (e) of paragraph 1 of article 4 shall rank *pari passu* as between themselves.

4. The maritime liens securing claims for reward for the salvage of the vessel shall rank in the inverse order of the time when the claims secured thereby accrued. Such claims shall be deemed to have accrued on the date on which each salvage operation was terminated.

## Article 6

### *Other maritime liens*

Each State Party may, under its law, grant other maritime liens on a vessel to secure claims, other than those referred to in article 4, against the owner, demise charterer, manager or operator of the vessel, provided that such liens:

- (a) Shall be subject to the provisions of articles 8, 10 and 12;
- (b) Shall be extinguished
  - (i) after a period of 6 months, from the time when the claims secured thereby arose unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale; or
  - (ii) at the end of a period of 60 days following a sale to a *bona fide* purchaser of the vessel, such period to commence on the date on which the sale is registered in accordance with the law of the State in which the vessel is registered following the sale;

whichever period expires first; and

(c) Shall rank after the maritime liens set out in article 4 and also after registered mortgages, "hypothèques" or charges which comply with the provisions of article 1.

### *Article 7*

#### *Rights of retention*

1. Each State Party may grant under its law a right of retention in respect of a vessel in the possession of either:

- (a) A shipbuilder, to secure claims for the building of the vessel; or
- (b) A shiprepairer, to secure claims for repair, including reconstruction of the vessel, effected during such possession.

2. Such right of retention shall be extinguished when the vessel ceases to be in the possession of the shipbuilder or shiprepairer, otherwise than in consequence of an arrest or seizure.

### *Article 8*

#### *Characteristics of maritime liens*

Subject to the provisions of article 12, the maritime liens follow the vessel, notwithstanding any change of ownership or of registration or of flag.

### *Article 9*

#### *Extinction of maritime liens by lapse of time*

1. The maritime liens set out in article 4 shall be extinguished after a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale.

2. The one-year period referred to in paragraph 1 shall commence:

- (a) With respect to the maritime lien set out in article 4, paragraph 1 (a), upon the claimant's discharge from the vessel;
- (b) With respect to the maritime liens set out in article 4, paragraph 1 (b) to (e), when the claims secured thereby arise;

and shall not be subject to suspension or interruption, provided, however, that time shall not run during the period that the arrest or seizure of the vessel is not permitted by law.

## Article 10

### *Assignment and subrogation*

1. The assignment of or subrogation to a claim secured by a maritime lien entails the simultaneous assignment of or subrogation to such a maritime lien.

2. Claimants holding maritime liens may not be subrogated to the compensation payable to the owner of the vessel under an insurance contract.

## Article 11

### *Notice of forced sale*

1. Prior to the forced sale of a vessel in a State Party, the competent authority in such State Party shall ensure that notice in accordance with this article is provided to:

(a) The authority in charge of the register in the State of registration;

(b) All holders of registered mortgages, "hypothèques" or charges which have not been issued to bearer;

(c) All holders of registered mortgages, "hypothèques" or charges issued to bearer and all holders of the maritime liens set out in article 4, provided that the competent authority conducting the forced sale receives notice of their respective claims; and

(d) The registered owner of the vessel.

2. Such notice shall be provided at least 30 days prior to the forced sale and shall contain either:

(a) The time and place of the forced sale and such particulars concerning the forced sale or the proceedings leading to the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice; or

(b) If the time and place of the forced sale cannot be determined with certainty, the approximate time and anticipated place of the forced sale and such particulars concerning the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice.

If notice is provided in accordance with subparagraph (b), additional notice of the actual time and place of the forced sale shall be provided when known but, in any event, not less than seven days prior to the forced sale.

3. The notice specified in paragraph 2 of this article shall be in writing and either given by registered mail, or given by any electronic or other appropriate means which provide confirmation of receipt, to the persons interested as specified in paragraph 1, if known. In addition, the notice shall be given by press announcement in the State where the forced sale is conducted and, if deemed appropriate by the authority conducting the forced sale, in other publications.

## Article 12

### *Effects of forced sale*

1. In the event of the forced sale of the vessel in a State Party, all registered mortgages, "hypothèques" or charges, except those assumed by the purchaser with the consent of the holders and all liens and other encumbrances of whatsoever nature, shall cease to attach to the vessel, provided that:

(a) At the time of the sale, the vessel is in the area of the jurisdiction of such State; and

(b) The sale has been effected in accordance with the law of the said State and the provisions of article 11 and this article.

2. The costs and expenses arising out of the arrest or seizure and subsequent sale of the vessel shall be paid first out of the proceeds of sale. Such costs and expenses include, *inter alia*, the costs for the upkeep of the vessel and the crew as well as wages, other sums and costs referred to in article 4, paragraph 1 (a), incurred from the time of arrest or seizure. The balance of the proceeds shall be distributed in accordance with the provisions of this Convention, to the extent necessary to satisfy the respective claims. Upon satisfaction of all claimants, the residue of the proceeds, if any, shall be paid to the owner and it shall be freely transferable.

3. A State Party may provide in its law that, in the event of the forced sale of a stranded or sunken vessel following its removal by a public authority in the interest of safe navigation or the protection of the marine environment, the costs of such removal shall be paid out of the proceeds of the sale, before all other claims secured by a maritime lien on the vessel.

4. If at the time of the forced sale the vessel is in the possession of a shipbuilder or of a shiprepairer who under the law of the State Party in which the sale takes place enjoys a right of retention, such shipbuilder or shiprepairer must surrender possession of the vessel to the purchaser but is entitled to obtain satisfaction of his claim out of the proceeds of sale after the satisfaction of the claims of holders of maritime liens mentioned in article 4.

5. When a vessel registered in a State Party has been the object of a forced sale in any State Party, the competent authority shall, at the request of the purchaser, issue a certificate to the effect that the vessel is sold free of all registered mortgages, "hypothèques" or charges, except those assumed by the purchaser, and of all liens and other encumbrances, provided that the requirements set out in paragraph 1 (a) and (b) have been complied with. Upon production of such certificate, the registrar shall be bound to delete all registered mortgagees, "hypothèques" or charges except those assumed by the purchaser, and to register the vessel in the name of the purchaser or to issue a certificate of deregistration for the purpose of new registration, as the case may be.

6. States Parties shall ensure that any proceeds of a forced sale are actually available and freely transferable.

## Article 13

### *Scope of application*

1. Unless otherwise provided in this Convention, its provisions shall apply to all seagoing vessels registered in a State Party or in a State which is



not a State Party, provided that the latter's vessels are subject to the jurisdiction of the State Party.

2. Nothing in this Convention shall create any rights in, or enable any rights to be enforced against, any vessel owned or operated by a State and used only on Government non-commercial service.

#### *Article 14*

##### *Communication between States Parties*

For the purpose of articles 3, 11 and 12, the competent authorities of the States Parties shall be authorized to correspond directly between themselves.

#### *Article 15*

##### *Conflict of conventions*

Nothing in this Convention shall affect the application of any international convention providing the limitation of liability or of national legislation giving effect thereto.

#### *Article 16*

##### *Temporary change of flag*

If a seagoing vessel registered in one State is permitted to fly temporarily the flag of another State, the following shall apply:

(a) For the purposes of this article, references in this Convention to the "State in which the vessel is registered" or to the "State of registration" shall be deemed to be references to the State in which the vessel was registered immediately prior to the change of flag, and references to "the authority in charge of the register" shall be deemed to be references to the authority in charge of the register in that State.

(b) The law of the State of registration shall be determinative for the purpose of recognition of registered mortgages, "hypothèques" and charges.

(c) The State of registration shall require a cross-reference entry in its register specifying the State whose flag the vessel is permitted to fly temporarily; likewise, the State whose flag the vessel is permitted to fly temporarily shall require that the authority in charge of the vessel's record specifies by a cross-reference in the record the State of registration.

(d) No State Party shall permit a vessel registered in that State to fly temporarily the flag of another State unless all registered mortgages, "hypothèques" or charges on that vessel have been previously satisfied or the written consent of the holders of all such mortgages, "hypothèques" or charges has been obtained.

(e) The notice referred to in article 11 shall be given also to the competent authority in charge of the vessel's record in the State whose flag the vessel is permitted to fly temporarily.

(f) Upon production of the certificate of deregistration referred to in article 12, paragraph 5, the competent authority in charge of the vessel's record

in the State whose flag the vessel is permitted to fly temporarily shall, at the request of the purchaser, issue a certificate to the effect that the right to fly the flag of that State is revoked.

(g) Nothing in this Convention is to be understood to impose any obligation on States Parties to permit foreign vessels to fly temporarily their flag or national vessels to fly temporarily a foreign flag.

#### *Article 17*

##### *Depositary*

This Convention shall be deposited with the Secretary-General of the United Nations.

#### *Article 18*

##### *Signature, ratification, acceptance, approval and accession*

1. This Convention shall be open for signature by any State at the Headquarters of the United Nations, New York, from 1 September 1993 to 31 August 1994 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

(a) Signature without reservation as to ratification, acceptance or approval; or

(b) Signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) Accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the depositary.

#### *Article 19*

##### *Entry into force*

1. This Convention shall enter into force 6 months following the date on which 10 States have expressed their consent to be bound by it.

2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect 3 months after the date of expression of such consent.

#### *Article 20*

##### *Revision and amendment*

1. A conference of States Parties for the purpose of revising or amending this Convention shall be convened by the Secretary-General of the United Nations at the request of one third of the States Parties.

2. Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to the Convention, as amended.

## Article 21

### Denunciation

1. This Convention may be denounced by any State Party at any time after the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the depositary.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the depositary.

## Article 22

### Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

## **B. Treaties concerning international law concluded under the auspices of the Food and Agriculture Organization of the United Nations**

### AGREEMENT TO PROMOTE COMPLIANCE WITH INTERNATIONAL CONSERVATION AND MANAGEMENT MEASURES BY FISHING VESSELS ON THE HIGH SEAS<sup>2</sup>

#### *Preamble*

*The Parties to this Agreement,*

*Recognizing* that all States have the right for their nationals to engage in fishing on the high seas, subject to the relevant rules of international law, as reflected in the United Nations Convention on the Law of the Sea,<sup>3</sup>

*Further recognizing* that, under international law as reflected in the United Nations Convention on the Law of the Sea, all States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas,

*Acknowledging* the right and interest of all States to develop their fishing sectors in accordance with their national policies, and the need to promote co-operation with developing countries to enhance their capabilities to fulfil their obligations under this Agreement,

*Recalling* that Agenda 21, adopted by the United Nations Conference on Environment and Development,<sup>4</sup> calls upon States to take effective action, consistent with international law, to deter reflagging of vessels by their nationals as a means of avoiding compliance with applicable conservation and management rules for fishing activities on the high seas,

*Further recalling* that the Declaration of Cancun, adopted by the International Conference on Responsible Fishing,<sup>5</sup> also calls on States to take action in this respect,

*Bearing in mind* that, under Agenda 21, States commit themselves to the conservation and sustainable use of marine living resources on the high seas,

*Calling upon* States which do not participate in global, regional or sub-regional fisheries organizations or arrangements to join or, as appropriate, to enter into understandings with such organizations or with parties to such organizations or arrangements with a view to achieving compliance with international conservation and management measures,

*Conscious* of the duties of every State to exercise effectively its jurisdiction and control over vessels flying its flag, including fishing vessels and vessels engaged in the transshipment of fish,

*Mindful* that the practice of flagging or reflagging fishing vessels as a means of avoiding compliance with international conservation and management measures for living marine resources, and the failure of flag States to fulfil their responsibilities with respect to fishing vessels entitled to fly their flag, are among the factors that seriously undermine the effectiveness of such measures,

*Realizing* that the objective of this Agreement can be achieved through specifying flag States' responsibility in respect of fishing vessels entitled to fly their flags and operating on the high seas, including the authorization by the flag State of such operations, as well as through strengthened international cooperation and increased transparency through the exchange of information on high seas fishing,

*Noting* that this Agreement will form an integral part of the International Code of Conduct for Responsible Fishing called for in the Declaration of Cancun,

*Desiring* to conclude an international agreement within the framework of the Food and Agriculture Organization of the United Nations, hereinafter referred to as FAO, under article XIV of the FAO Constitution,<sup>6</sup>

Have agreed as follows:

### *Article I*

#### DEFINITIONS

For the purposes of this Agreement:

(a) "fishing vessel" means any vessel used or intended for use for the purposes of the commercial exploitation of living marine resources, including mother ships and any other vessels directly engaged in such fishing operations;

(b) "international conservation and management measures" means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law as reflected in the 1982 United Nations Convention on the Law of the Sea. Such measures may be adopted either by global, regional or subregional fisheries organizations, subject to the rights and obligations of their members, or by treaties or other international agreements;

(c) "length" means

- (i) for any fishing vessel built after 18 July 1982, 96 per cent of the total length on a waterline at 85 per cent of the least moulded depth measured from the top of the keel, or the length from the foreside of the stem to the axis of the rudder stock on that

waterline, if that be greater. In ships designed with a rake of keel, the waterline on which this length is measured shall be parallel to the designed waterline;

(ii) for any fishing vessel built before 18 July 1982, registered length as entered on the national register or other record of vessels;

(d) "record of fishing vessels" means a record of fishing vessels in which are recorded pertinent details of the fishing vessel. It may constitute a separate record for fishing vessels or form part of a general record of vessels;

(e) "regional economic integration organization" means a regional economic integration organization to which its member States have transferred competence over matters covered by this Agreement, including the authority to make decisions binding on its member States in respect of those matters;

(f) "vessels entitled to fly its flag" and "vessels entitled to fly the flag of a State" includes vessels entitled to fly the flag of a member State of a regional economic integration organization.

## *Article II*

### APPLICATION

1. Subject to the following paragraphs of this article, this Agreement shall apply to all fishing vessels that are used or intended for fishing on the high seas.

2. A Party may exempt fishing vessels of less than 24 metres in length entitled to fly its flag from the application of this Agreement unless the Party determines that such an exemption would undermine the object and purpose of this Agreement, provided that such exemptions:

(a) shall not be granted in respect of fishing vessels operating in fishing regions referred to in paragraph 3 below, other than fishing vessels that are entitled to fly the flag of a coastal State of that fishing region; and

(b) shall not apply to the obligations undertaken by a Party under paragraph 1 of article III, or paragraph 7 of article VI of this Agreement.

3. Without prejudice to the provisions of paragraph 2 above, in any fishing region where bordering coastal States have not yet declared exclusive economic zones, or equivalent zones of national jurisdiction over fisheries, such coastal States as are Parties to this Agreement may agree, either directly or through appropriate regional fisheries organizations, to establish a minimum length of fishing vessels below which this Agreement shall not apply in respect of fishing vessels flying the flag of any such coastal State and operating exclusively in such fishing region.

## *Article III*

### FLAG STATE RESPONSIBILITY

1. (a) Each Party shall take such measures as may be necessary to ensure that fishing vessels entitled to fly its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures;

(b) In the event that a Party has, pursuant to paragraph 2 of article II, granted an exemption for fishing vessels of less than 24 metres in length en-

titled to fly its flag from the application of other provisions of this Agreement, such Party shall nevertheless take effective measures in respect of any such fishing vessel that undermines the effectiveness of international conservation and management measures. These measures shall be such as to ensure that the fishing vessel ceases to engage in activities that undermine the effectiveness of the international conservation and management measures.

2. In particular, no Party shall allow any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless it has been authorized to be so used by the appropriate authority or authorities of that Party. A fishing vessel so authorized shall fish in accordance with the conditions of the authorization.

3. No Party shall authorize any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless the Party is satisfied that it is able, taking into account the links that exist between it and the fishing vessel concerned, to exercise effectively its responsibilities under this Agreement in respect of that fishing vessel.

4. Where a fishing vessel that has been authorized to be used for fishing on the high seas by a Party ceases to be entitled to fly the flag of that Party, the authorization to fish on the high seas shall be deemed to have been cancelled.

5. (a) No Party shall authorize any fishing vessel previously registered in the territory of another Party that has undermined the effectiveness of international conservation and management measures to be used for fishing on the high seas, unless it is satisfied that:

- (i) any period of suspension by another Party of an authorization for such fishing vessel to be used for fishing on the high seas has expired; and
- (ii) no authorization for such fishing vessel to be used for fishing on the high seas has been withdrawn by another Party within the last three years;

(b) The provisions of subparagraph (a) above shall also apply in respect of fishing vessels previously registered in the territory of a State which is not a Party to this Agreement, provided that sufficient information is available to the Party concerned on the circumstances in which the authorization to fish was suspended or withdrawn;

(c) The provisions of subparagraphs (a) and (b) shall not apply where the ownership of the fishing vessel has subsequently changed, and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the fishing vessel;

(d) Notwithstanding the provisions of subparagraphs (a) and (b) above, a Party may authorize a fishing vessel, to which those subparagraphs would otherwise apply, to be used for fishing on the high seas, where the Party concerned, after having taken into account all relevant facts, including the circumstances in which the fishing authorization has been withdrawn by the other Party or State, has determined that to grant an authorization to use the vessel for fishing on the high seas would not undermine the object and purpose of this Agreement.

6. Each Party shall ensure that all fishing vessels entitled to fly its flag that it has entered in the record maintained under article IV are marked in such

a way that they can be readily identified in accordance with generally accepted standards, such as the FAO Standard Specifications for the Marking and Identification of Fishing Vessels.

7. Each Party shall ensure that each fishing vessel entitled to fly its flag shall provide it with such information on its operations as may be necessary to enable the Party to fulfil its obligations under this Agreement, including in particular information pertaining to the area of its fishing operations and to its catches and landings.

8. Each Party shall take enforcement measures in respect of fishing vessels entitled to fly its flag which act in contravention of the provisions of this Agreement, including, where appropriate, making the contravention of such provisions an offence under national legislation. Sanctions applicable in respect of such contraventions shall be of sufficient gravity as to be effective in securing compliance with the requirements of this Agreement and to deprive offenders of the benefits accruing from their illegal activities. Such sanctions shall, for serious offences, include refusal, suspension or withdrawal of the authorization to fish on the high seas.

#### *Article IV*

##### RECORDS OF FISHING VESSELS

Each Party shall, for the purposes of this Agreement, maintain a record of fishing vessels entitled to fly its flag and authorized to be used for fishing on the high seas, and shall take such measures as may be necessary to ensure that all such fishing vessels are entered in that record.

#### *Article V*

##### INTERNATIONAL COOPERATION

1. The Parties shall cooperate as appropriate in the implementation of this Agreement, and shall, in particular, exchange information, including evidentiary material, relating to activities of fishing vessels in order to assist the flag State in identifying those fishing vessels flying its flag reported to have engaged in activities undermining international conservation and management measures, so as to fulfil its obligations under article III.

2. When a fishing vessel is voluntarily in the port of a Party other than its flag State, that Party, where it has reasonable grounds for believing that the fishing vessel has been used for an activity that undermines the effectiveness of international conservation and management measures, shall promptly notify the flag State accordingly. Parties may make arrangements regarding the undertaking by port States of such investigatory measures as may be considered necessary to establish whether the fishing vessel has indeed been used contrary to the provisions of this Agreement.

3. The Parties shall, when and as appropriate, enter into cooperative agreements or arrangements of mutual assistance on a global, regional, sub-regional or bilateral basis so as to promote the achievement of the objectives of this Agreement.

## Article VI

### EXCHANGE OF INFORMATION

1. Each Party shall make readily available to FAO the following information with respect to each fishing vessel entered in the record required to be maintained under article IV:

- (a) name of fishing vessel, registration number, previous names (if known), and port of registry;
- (b) previous flag (if any);
- (c) International Radio Call Sign (if any);
- (d) name and address of owner or owners;
- (e) where and when built;
- (f) type of vessel;
- (g) length.

2. Each Party shall, to the extent practicable, make available to FAO the following additional information with respect to each fishing vessel entered in the record required to be maintained under article IV:

- (a) name and address of operator (manager) or operators (managers) (if any);
- (b) type of fishing method or methods;
- (c) moulded depth;
- (d) beam;
- (e) gross register tonnage;
- (f) power of main engine or engines.

3. Each Party shall promptly notify to FAO any modifications to the information listed in paragraphs 1 and 2 of this article.

4. FAO shall circulate periodically the information provided under paragraphs 1, 2, and 3 of this article to all Parties, and, on request, individually to any Party. FAO shall also, subject to any restrictions imposed by the Party concerned regarding the distribution of information, provide such information on request individually to any global, regional or subregional fisheries organization.

5. Each Party shall also promptly inform FAO of:

- (a) any additions to the record;
- (b) any deletions from the record by reason of:
  - (i) the voluntary relinquishment or non-renewal of the fishing authorization by the fishing vessel owner or operator;
  - (ii) the withdrawal of the fishing authorization issued in respect of the fishing vessel under paragraph 8 of article III;
  - (iii) the fact that the fishing vessel concerned is no longer entitled to fly its flag;
  - (iv) the scrapping, decommissioning or loss of the fishing vessel concerned; or
  - (v) any other reason.



6. Where information is given to FAO under paragraph 5(b) above, the Party concerned shall specify which of the reasons listed in that paragraph is applicable.

7. Each Party shall inform FAO of:

(a) any exemption it has granted under paragraph 2 of article II, the number and type of fishing vessel involved and the geographical areas in which such fishing vessels operate; and

(b) any agreement reached under paragraph 3 of article II.

8. (a) Each Party shall report promptly to FAO all relevant information regarding any activities of fishing vessels flying its flag that undermine the effectiveness of international conservation and management measures, including the identity of the fishing vessel or vessels involved and measures imposed by the Party in respect of such activities. Reports on measures imposed by a Party may be subject to such limitations as may be required by national legislation with respect to confidentiality, including, in particular, confidentiality regarding measures that are not yet final;

(b) Each Party, where it has reasonable grounds to believe that a fishing vessel not entitled to fly its flag has engaged in any activity that undermines the effectiveness of international conservation and management measures, shall draw this to the attention of the flag State concerned and may, as appropriate, draw it to the attention of FAO. It shall provide the flag State with full supporting evidence and may provide FAO with a summary of such evidence. FAO shall not circulate such information until such time as the flag State has had an opportunity to comment on the allegation and evidence submitted, or to object as the case may be.

9. Each Party shall inform FAO of any cases where the Party, pursuant to paragraph 5 (d) of article III, has granted an authorization notwithstanding the provisions of paragraph 5 (a) or 5 (b) of article III. The information shall include pertinent data permitting the identification of the fishing vessel and the owner or operator and, as appropriate, any other information relevant to the Party's decision.

10. FAO shall circulate promptly the information provided under paragraphs 5, 6, 7, 8 and 9 of this article to all Parties, and, on request, individually to any Party. FAO shall also, subject to any restrictions imposed by the Party concerned regarding the distribution of information, provide such information promptly on request individually to any global, regional or subregional fisheries organization.

11. The Parties shall exchange information relating to the implementation of this Agreement, including through FAO and other appropriate global, regional and subregional fisheries organizations.

## *Article VII*

### COOPERATION WITH DEVELOPING COUNTRIES

The Parties shall cooperate, at a global, regional, subregional or bilateral level, and, as appropriate, with the support of FAO and other international or regional organizations, to provide assistance, including technical assistance, to Parties that are developing countries in order to assist them in fulfilling their obligations under this Agreement.

## *Article VIII*

### NON-PARTIES

1. The Parties shall encourage any State not party to this Agreement to accept this Agreement and shall encourage any non-Party to adopt laws and regulations consistent with the provisions of this Agreement.

2. The Parties shall cooperate in a manner consistent with this Agreement and with international law to the end that fishing vessels entitled to fly the flags of non-Parties do not engage in activities that undermine the effectiveness of international conservation and management measures.

3. The Parties shall exchange information amongst themselves, either directly or through FAO, with respect to activities of fishing vessels flying the flags of non-Parties that undermine the effectiveness of international conservation and management measures.

## *Article IX*

### SETTLEMENT OF DISPUTES

1. Any Party may seek consultations with any other Party or Parties on any dispute with regard to the interpretation or application of the provisions of this Agreement with a view to reaching a mutually satisfactory solution as soon as possible.

2. In the event that the dispute is not resolved through these consultations within a reasonable period of time, the Parties in question shall consult among themselves as soon as possible with a view to having the dispute settled by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

3. Any dispute of this character not so resolved shall, with the consent of all Parties to the dispute, be referred for settlement to the International Court of Justice, to the International Tribunal for the Law of the Sea upon entry into force of the 1982 United Nations Convention on the Law of the Sea or to arbitration. In the case of failure to reach agreement on referral to the International Court of Justice, to the International Tribunal for the Law of the Sea or to arbitration, the Parties shall continue to consult and cooperate with a view to reaching settlement of the dispute in accordance with the rules of international law relating to the conservation of living marine resources.

## *Article X*

### ACCEPTANCE

1. This Agreement shall be open to acceptance by any Member or Associate Member of FAO, and to any non-member State that is a member of the United Nations, or of any of the specialized agencies of the United Nations or of the International Atomic Energy Agency.

2. Acceptance of this Agreement shall be effected by the deposit of an instrument of acceptance with the Director-General of FAO, hereinafter referred to as the Director-General.

3. The Director-General shall inform all Parties, all Members and Associate Members of FAO and the Secretary-General of the United Nations of all instruments of acceptance received.

4. When a regional economic integration organization becomes a Party to this Agreement, such regional economic integration organization shall, in accordance with the provisions of article II.7 of the FAO Constitution, as appropriate, notify such modifications or clarifications to its declaration of competence submitted under article II.5 of the FAO Constitution as may be necessary in light of its acceptance of this Agreement. Any Party to this Agreement may, at any time, request a regional economic integration organization that is a Party to this Agreement to provide information as to which, as between the regional economic integration organization and its Member States, is responsible for the implementation of any particular matter covered by this Agreement. The regional economic integration organization shall provide this information within a reasonable time.

### *Article XI*

#### ENTRY INTO FORCE

1. This Agreement shall enter into force as from the date of receipt by the Director-General of the twenty-fifth instrument of acceptance.

2. For the purpose of this article, an instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such an organization.

### *Article XII*

#### RESERVATIONS

Acceptance of this Agreement may be made subject to reservations which shall become effective only upon unanimous acceptance by all Parties to this Agreement. The Director-General shall notify forthwith all Parties of any reservation. Parties not having replied within three months from the date of the notification shall be deemed to have accepted the reservation. Failing such acceptance, the State or regional economic integration organization making the reservation shall not become a Party to this Agreement.

### *Article XIII*

#### AMENDMENTS

1. Any proposal by a Party for the amendment of this Agreement shall be communicated to the Director-General.

2. Any proposed amendment of this Agreement received by the Director-General from a Party shall be presented to a regular or special session of the Conference for approval and, if the amendment involves important technical changes or imposes additional obligations on the Parties, it shall be considered an advisory committee of specialists convened by FAO prior to the Conference.

3. Notice of any proposed amendment of this Agreement shall be transmitted to the Parties by the Director-General not later than the time when the

agenda of the session of the Conference at which the matter is to be considered is dispatched.

4. Any such proposed amendment of this Agreement shall require the approval of the Conference and shall come into force as from the thirtieth day after acceptance by two-thirds of the Parties. Amendments involving new obligations for Parties, however, shall come into force in respect of each Party only on acceptance by it and as from the thirtieth day after such acceptance. Any amendment shall be deemed to involve new obligations for Parties unless the Conference, in approving the amendment, decides otherwise by consensus.

5. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director-General, who shall inform all Parties of the receipt of acceptance and the entry into force of amendments.

6. For the purpose of this article, an instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such an organization.

#### *Article XIV*

##### WITHDRAWAL

Any Party may withdraw from this Agreement at any time after the expiry of two years from the date upon which the Agreement entered into force with respect to that Party, by giving written notice of such withdrawal to the Director-General, who shall immediately inform all the Parties and the Members and Associate Members of FAO of such withdrawal. Withdrawal shall become effective at the end of the calendar year following that in which the notice of withdrawal has been received by the Director-General.

#### *Article XV*

##### DUTIES OF THE DEPOSITARY

The Director-General shall be the depositary of this Agreement. The depositary shall:

(a) send certified copies of this Agreement to each Member and Associate Member of FAO and to such non-member States as may become party to this Agreement;

(b) arrange for the registration of this Agreement, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;

(c) inform each Member and Associate Member of FAO and any non-member States as may become Party to this Agreement of:

- (i) instruments of acceptance deposited in accordance with article X;
- (ii) the date of entry into force of this Agreement in accordance with article XI;
- (iii) proposals for and the entry into force of amendments to this Agreement in accordance with article XIII;
- (iv) withdrawals from this Agreement pursuant to article XIV.

## Article XVI

### AUTHENTIC TEXTS

The Arabic, Chinese, English, French, and Spanish texts of this Agreement are equally authentic.

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### NOTES

<sup>1</sup>The Convention was adopted on 6 May 1993 by a joint United Nations/International Maritime Organization Conference held at the Geneva Headquarters of the United Nations Conference on Trade and Development (UNCTAD). As of 31 December 1993, two parties had signed the Convention: Guinea on 18 November 1993 and Tunisia on 24 November 1993. It will enter into force six months following the date on which 10 States have expressed their consent to be bound by it. *International Legal Materials*, vol. XXXIII, p. 353 (1994).

<sup>2</sup>The Agreement was approved by the FAO Conference at its twenty-seventh session on 24 November 1993. The Agreement provides only for the procedure of acceptance, rather than signature and ratification. As of 31 December 1993, no instrument of acceptance had been deposited. *International Legal Materials*, vol. XXXIII, p. 968 (1994).

<sup>3</sup>*Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/122; see also *The Law of the Sea: United Nations Convention on the Law of the Sea with Index and Final Act of the Third United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.83.V.5).

<sup>4</sup>*Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1)) (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: *Resolutions adopted by the Conference, resolution 1, annex 1*.

<sup>5</sup>A/CONF.164/INF/2, annex II.

<sup>6</sup>*Basic Texts of the Food and Agriculture Organization of the United Nations*, vols. I and II, 1992 editions (FAO, 1992), p. 3.