

Extract from:

UNITED NATIONS JURIDICAL YEARBOOK

1995

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 RE- LATED INTERGOVERNMENTAL ORGANIZATIONS

A. Treaties concerning international law concluded under the auspices of the United Nations

1. FINAL DOCUMENT OF THE 1995 REVIEW AND EXTENSION CONFERENCE OF THE PARTIES TO THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS.¹ DONE AT NEW YORK ON 11 MAY 1995 OF THE 1995.²

1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

FINAL DOCUMENT

PART I

Organization and work of the Conference³ New York, 1995

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Introduction

1. At its forty-seventh session, the General Assembly of the United Nations, in its resolution 47/52 A of 9 December 1992, took note of the decision of the parties to the Treaty on the Non-Proliferation of Nuclear Weapons, following appropriate consultations, to form a preparatory committee for a conference to review the operation of the Treaty and to decide on its extension, as called for in article X, paragraph 2, and also as provided for in article VIII, paragraph 3, of the Treaty.

2. The preparatory Committee held four sessions: the first in New York from 10 to 14 May 1993, the second in New York from 17 to 21 January 1994,

the third in Geneva from 12 to 16 September 1994 and the fourth in New York from 23 to 27 January 1995. Progress reports on the first three sessions of the Committee were issued as documents NPT/CONF. 1995/PC.I/2, NPT/CONF.1995/PC.II/3 and NPT/CONF.1995/PC.III/15, respectively.

3. Pursuant to the request of the Preparatory Committee, the United Nations Secretariat, the International Atomic Energy Agency, the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean and the South Pacific Forum prepared a number of background papers, which were submitted to the Conference as background documents as follows:

(a) By the United Nations Secretariat:

Developments since the Fourth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons towards the realization of the purposes of the tenth preambular paragraph of the Treaty (NPT/Conf.1995/2)

Implementation of articles I and II of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT/CONF.1995/3)

Developments since the Fourth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons relating to article VI of the Treaty (NPT/CONF.1995/4)

Implementation of article VII of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT/CONF.1995/5 and Corr.1)

Developments with regard to effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons (NPT/CONF.1995/6)

Other activities relevant to article III (NPT/CONF.1995/7/Part II)

(b) By the International Atomic Energy Agency:

Activities of the International Atomic Energy Agency relevant to article III of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT/CONF.1995/7/Part I)

Activities of the International Atomic Energy Agency relevant to article IV of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT/CONF.1995/8)

Activities of the International Atomic Energy Agency relevant to article V of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT/CONF.1995/9)

(c) By the Agency for the Prohibition of Nuclear Weapons—in Latin America and the Caribbean:

Memorandum from the General Secretariat of the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean prepared for the 1995 Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT/CONF.1995/10 and Add.1)

(d) By the South Pacific Forum secretariat:

South Pacific Nuclear-Free-Zone Treaty (NPT/CONF.1995/11)

4. The final report of the Preparatory Committee for the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation

of Nuclear Weapons (NPT/Conf.1995/1 and Corr.1) was issued as a document of the Conference prior to its Conference, a proposed allocation of items to the Main Committees of the Conference, the draft rules of procedure and a schedule for the division of costs of the Conference.

Organization of the Conference

5. In accordance with the decision of the Preparatory Committee, the Conference was convened on 17 April 1995 at United Nations Headquarters in New York. After the opening of the Conference by Mr. Pasi Patokallio (Finland), Chairman of the fourth session of the Preparatory Committee, the Conference elected by acclamation as its President Mr. Jayantha Dhanapala (Sri Lanka). The Conference also unanimously confirmed the nomination of Mr. Prvoslav Davinic, Director of the United Nations Centre for Disarmament Affairs, as Secretary-General of the Conference.

6. At the same meeting, Mr. Boutros Boutros-Ghali, Secretary-General of the United Nations, and Mr. Hans Blix, Director-General of the International Atomic Energy Agency, addressed the Conference. Mr. Warren Christopher, Secretary of State of the United States of America, welcomed the participants on behalf of the host country.

7. At the opening meeting, the Conference adopted its agenda and the allocation of items to the Main Committees of the Conference as proposed by the Preparatory Committee (NPT/CONF.1995/1 and Corr.1).

8. At its 16th plenary meeting, on 10 May 1995, the Conference adopted the rules of procedure (NPT/CONF.1995/28).

9. The rules of procedure provided for the establishment of three Main Committees, a General Committee, a Drafting Committee and a Credentials Committee.

10. The Conference unanimously elected the Chairmen and Vice-Chairmen of the three Main Committees, the Drafting Committee and the Credentials Committee, as follows:

Main Committee I	Chairman	Mr. Isaac E. Ayewah (Nigeria)
	Vice-Chairman	Mr. Richard Starr (Australia)
	Vice-Chairman	Mr. Anatolia M. Zlenko (Ukraine)
Main Committee II	Chairman	Mr. Andre Erdos (Hungary)
	Vice-Chairman	Mr. Enrique de la Torre (Argentina)
	Vice-Chairman	Mr. Rajab Sukayri (Jordan)
Main Committee III	Chairman	Mr. Jaap Ramaker (Netherlands)
	Vice-Chairman	Mr. Yanko Yanes (Bulgaria)
	Vice-Chairman	Mr. Gustavo Alvarez Goyoaga (Uruguay)
Drafting Committee	Chairman	Mr. Tadeusz Strulak (Poland)
	Vice-Chairman	Mr. Nabil Fahmy (Egypt)
	Vice-Chairman	Mr. Pasi Patokallio (Finland)
Credentials Committee	Chairman	Mr. Andelfo Garcia (Colombia)
	Vice-Chairman	Mr. Alyksandr Sychou (Belarus)
	Vice-Chairman	Ms. Mary Elizabeth Hoinkes (United States of America)

11. The Conference also unanimously elected 33 Vice-Presidents from the following States parties: Algeria, Australia, Austria, Bangladesh, Belarus, Bulgaria, Cameroon, Canada, China, Congo, Czech Republic, Finland, France, Indonesia, Iran (Islamic Republic of), Japan, Malaysia, Mali, Mexico, Norway, Peru, Romania, Russian Federation, Slovakia, South Africa, Sweden, Trinidad and Tobago, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and Venezuela.

12. The Conference appointed representatives from the following states parties as members of the Credentials Committee: Armenia, Germany, Italy, Lesotho, Lithuania and Myanmar.

Participation in the Conference

13. One hundred and seventy-five States parties to the Treaty on the Non-Proliferation of Nuclear Weapons participated in the Conference as follows: Albania, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Barbados, Belarus, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Holy See, Honduras, Hungary, Iceland, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Zaire, Zambia and Zimbabwe.

14. In accordance with subparagraph 1(a) of rule 44, 10 States not parties to the Treaty, namely Angola, Brazil, Chile, Cuba, Djibouti, Israel, Oman, Pakistan, the United Arab Emirates and Vanuatu, attended the Conference as observers.

15. In accordance with subparagraph 1(b) of rule 44, Palestine was granted observer status.

16. The United Nations and the International Atomic Energy Agency participated in the Conference in accordance with paragraph 2 of rule 44.

17. In accordance with paragraph 3 of rule 44, the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, the European Union, the League of Arab States, the South Pacific Forum, the International Committee of the Red Cross, the Nuclear Energy Agency of the Organization for Economic Cooperation and Development, the North Atlantic Assembly, the Organization of African Unity and the Organization of the Islamic Conference were granted observer agency status.

18. One hundred and ninety-five research institutes and non-governmental organizations attended the Conference in accordance with paragraph 4 of rule 44.

19. A list of all delegations to the Conference, including States parties, observers, the United Nations and the International Atomic Energy Agency, observer agencies and research institutes and non-governmental organizations, is contained in part II of the present document.

20. The Credentials Committee held four meetings and, on 9 May 1995, adopted its report to the Conference on the credentials of States parties (NPT/CONF.1995/CC/1). At its 16th plenary meeting, on 10 May, the Conference took note of the report.

Financial arrangements

21. At its 16th Plenary meeting, the Conference decided to adopt the cost-sharing formula proposed by the Preparatory Committee in the appendix to rule 12 of the rules of Procedure (NPT/CONF. 1995/28). The final schedule of costs as contained in document NPT/Conf.1995/29 was based on the actual participation of States parties in the Conference.

Work of the Conference

22. The Conference held 19 plenary meetings between 17 April and 12 May 1995, when it concluded its work.

23. The general debate in plenary, in which 116 States parties took part, was held from 18 to 25 April.

24. Main Committee I held 12 meetings between 19 April and 6 May 1995. Its report (NPT/CONF.1995/MC.I/1) was submitted to the Conference at the 15th plenary meeting, on 8 May 1995. Main Committee II held 10 meetings between 19 April and 5 May 1995. Its report (NPT/CONF.1995/MC.II/1) was submitted to the Conference at the 14th plenary meeting, on 5 May 1995. Main Committee III held 6 meetings between 20 April and 5 May 1995. Its report (NPT/CONF. 1995/MC.III/1) was submitted to the Conference at the 14th plenary meeting, on 5 May 1995. The reports of the three Main Committees as submitted to the Conference constitute part of the Final Document.

25. The Drafting Committee met during the period 28 April 12 May 1995. Its report (NPT/CONF.1995/DC/1) was submitted to the Conference at the 19th Plenary meeting on 12 May 1995. At that meeting, the Conference took note of the report.

Documentation

26. A list of the documents of the Conference is contained in part II of the present document.

Conclusions of the Conference

27. At its 19th plenary meeting, on 12 May 1995, the Conference, notwithstanding extensive consultations and considerable effort, was unable to adopt a final declaration on the review of the operation of the Treaty.

28. In connection with agenda item 19, entitled “Decision on the extension of the Treaty as provided for in article X, paragraph 2”, the Conference had before it the following proposals:

(a) A draft resolution (NPT/CONF.1995/L.1/Rev.1) submitted by Mexico;

(b) A draft resolution (NPT/CONF.1995/L.2) submitted by Canada, on behalf of Albania, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Barbados, Belarus, Belgium, Benin, Bolivia, Bulgaria, Cambodia, Cameroon, Canada, Central African Republic, Chad, Costa Rica, Côte d’Ivoire, Croatia, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Georgia, Germany, Greece, Grenada, Guatemala, Honduras, Hungary, Iceland, Ireland, Italy, Jamaica, Japan, Kazakhstan, Kyrgyzstan, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malta, Marshall Islands, Micronesia (Federated States of), Monaco, Mongolia, Netherlands, New Zealand, Nicaragua, Norway, Palau, Panama, Paraguay, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Senegal, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Spain, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Togo, Tonga, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, and Uzbekistan. Subsequently, Guyana, Haiti, Nauru, Nepal, the Philippines, Suriname, Venezuela and Zaire joined in sponsoring the draft decision;

(c) A draft decision (NPT/CONF.1995/L.3) submitted by Indonesia, on behalf of the Democratic People’s Republic of Korea, Indonesia, the Islamic Republic of Iran, Jordan, Malaysia, Mali, Myanmar, Nigeria, Papua New Guinea, Thailand and Zimbabwe. Subsequently, Ghana, the United Republic of Tanzania and Zambia joined in sponsoring the draft decision.

29. The Conference also had before it the following draft decisions proposed by the President:

(a) A draft decision (NPT/CONF.1995/L.4) entitled “Strengthening the review process for the Treaty;”

(b) A draft decision (NPT/CONF.1995/L.5) entitled “Principles on objectives for nuclear non-proliferation and disarmament;”

(c) A draft decision (NPT/CONF.1995/L.6) entitled “Decision on the extension of the Treaty on the Non-Proliferation of Nuclear Weapons”.

30. At its 17th plenary meeting, on 11 May 1995, the Conference decided to take action on the three draft decisions proposed by the President as follows:

- (a) NPT/CONF.1995/L.4 was adopted without a vote as decision 1;
- (b) NPT/CONF.1995/L.5 was adopted without a vote as decision 2;
- (c) NPT/CONF.1995/L.6 was adopted without a vote as decision 3;

The text of these decisions is contained in the annex to the present document.

31. Consequently, the sponsors of draft resolution NPT/CONF.1995/L.1/Rev.1 and of draft decisions NPT/CONF.1995/L.2 and NPT/CONF.1995/L.3 did not pursue action with regard to their specific proposals.

32. In connection with rule 24 of the rules of procedure, that is, submission of other proposals, the Conference had before it a draft resolution (NPT/CONF.1995/L.7) sponsored by Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, the Libyan Arab Jamahiriya, Mauritania, Morocco, Qatar, Saudi Arabia, the Sudan, Tunisia and Yemen and a draft resolution (NPT/CONF.1995/L.8) sponsored by the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

33. At its 17th plenary meeting, the Conference adopted draft resolution NPT/CONF.1995/L.8, as orally amended, without a vote, as resolution 1. The text of the resolution is contained in the annex to the present document. The sponsors of draft resolution NPT/CONF.1995/L.7 did not pursue action with regard to their proposal.

ANNEX

Decisions and resolution adopted by the Conference

Decision 1 -----	Strengthening the review process for the Treaty
Decision 2 -----	Principles and objectives for nuclear non-proliferation and disarmament
Decision 3 -----	Extension of the Treaty on the Non- Proliferation of Nuclear Weapons
Resolution on the Middle East	

Decision 1

STRENGTHENING THE REVIEW PROCESS FOR THE TREATY

1. The Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons examined the implementation of article VIII, paragraph 3, of the Treaty and agreed to strengthen the review process for the operation of the Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized.

2. The States party to the Treaty participating in the Conference decided, in accordance with article VIII, paragraph 3, that Review Conferences should continue to be held every five years and that, accordingly, the next Review Conference should be held in the year 2000.

3. The Conference decided that, beginning in 1997, the Preparatory Committee should hold, normally for a duration of 10 working days, a meeting in each of the three years prior to the Review Conference. If necessary, a fourth preparatory meeting may be held in the year of the Conference.

4. The purpose of the Preparatory Committee meetings would be to consider principles, objectives and ways in order to promote the full implementation of the Treaty, as well as its universality, and to make recommendations thereon to the Review Conference. These include those identified in the decision on the principles and objectives for nuclear non-proliferation and disarmament, adopted on 11 May 1995. These meetings should also make the procedural preparations for the next Review Conference.

5. The Conference also concluded that the present structure of three Main Committees should continue and the question of an overlap of issues being discussed in more than one Committee should be resolved in the General Committee, which would coordinate the work of the Committee so that the substantive responsibility for the preparation of the report with respect to each specific issue is undertaken in only one Committee.

6. It was also agreed that subsidiary bodies could be established within the respective Main Committees for specific issues relevant to the Treaty, so as to provide for a focused consideration of such issues. The establishment of such subsidiary bodies would be recommended by the Preparatory Committee for each Review Conference in relation to the specific objectives of the Review Conference.

7. The Conference further agreed that Review Conferences should look forward as well as back. They should evaluate the results of the period they are reviewing, including the implementation of undertakings of the States parties under the Treaty, and identify the areas in which, and the means through which, further progress should be sought in the future. Review Conferences should also address specifically what might be done to strengthen the implementation of the Treaty and to achieve its universality.

Decision 2

PRINCIPLES AND OBJECTIVES FOR NUCLEAR NON-PROLIFERATION AND DISARMAMENT

The Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons,

Reaffirming the preamble and articles of the Treaty on the Non-Proliferation of Nuclear Weapons,

Welcoming the end of the cold war, the ensuing easing of international tension and the strengthening of trust between States,

Desiring a set of principles and objectives in accordance with which nuclear non-proliferation, nuclear disarmament and international cooperation in the peaceful uses of nuclear energy should be vigorously pursued and progress, achievements and shortcomings evaluated periodically within the review process provided for in article VIII, paragraph 3, of the Treaty, the enhancement and strengthening of which is welcomed,

Reiterating the ultimate goals of the complete elimination of nuclear weapons and a treaty on general and complete disarmament under strict and effective international control.

The Conference affirms the need to continue to move with determination towards the full

Realization and effective implementations of the provisions of the Treaty, and accordingly adopts the following principles and objectives:

Universality

1. Universal adherence to the Treaty on the Non-Proliferation of Nuclear Weapons is an urgent priority. All States not yet party to the Treaty are called upon to accede to the Treaty at the earliest date, particularly those States that operate unsafeguarded nuclear facilities. Every effort should be made by all States parties to achieve this objective.

Non-proliferation

2. The proliferation of nuclear weapons would seriously increase the danger of nuclear war. The treaty on the Non-Proliferation of Nuclear Weapons has a vital role to play in preventing the proliferation of nuclear weapons. Every effort should be made to implement the Treaty in all its aspects to prevent the proliferation of nuclear weapons and other nuclear explosive devices, without hampering the peaceful uses of nuclear energy by States parties to the Treaty.

Nuclear disarmament

3. Nuclear disarmament is substantially facilitated by the easing of international tension and the strengthening of trust between States which have prevailed following the end of the cold war. The undertakings with regard to nuclear disarmament as set out in the Treaty on the Non-Proliferation of Nuclear Weapons should thus be fulfilled with determination. In this regard, the nuclear-weapon States reaffirm their commitment, as stated in article VI, to pursue in good faith negotiations on effective measures relating to nuclear disarmament.

4. The achievement of the following measures is important in the full realization and effective implementation of article VI, including the programme of action as reflected below:

(a) The completion by the Conference on Disarmament of the negotiations on a universal and internationally and effectively verifiable Comprehensive Nuclear-Test-Ban Treaty no later than 1996. Pending the entry into force of a Comprehensive Test-Ban Treaty, the nuclear-weapon States should exercise utmost restraint;

(b) The immediate commencement and early conclusion of negotiations on a non-discriminatory and universally applicable convention banning the production of fissile material for nuclear weapons or other nuclear explosive devices, in accordance with the statement of the Special Coordinator of the Conference on Disarmament and the mandate contained therein;

(c) The determined pursuit by the nuclear-weapon States of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goals of eliminating those weapons, and by all States of general and complete disarmament under strict and effective international control.

Nuclear-weapon-free zones

5. The conviction that the establishment of internationally recognized nuclear-weapon free zones, on the basis of arrangements freely arrived at among the States of the region concerned, enhances global and regional peace and security is reaffirmed.

6. The development of nuclear-weapon-free zones, especially in regions of tension, such as in the Middle East, as well as the establishment of zones free of all weapons of mass destruction, should be encouraged as a matter of priority, taking into account the specific characteristics of each region. The establishment of additional nuclear-weapon-free zones by the time of the Review Conference in the year 2000 would be welcome.

7. The cooperation of all the nuclear-weapon States and their respect and support for the relevant protocols is necessary for the maximum effectiveness of such nuclear-weapon-free zones and the relevant protocols.

Security assurances

8. Noting United Nations Security Council resolution 984 (1995), which was adopted unanimously on 11 April 1995, as well as the declarations of the nuclear-weapon States concerning both negative and positive security assurances, further steps should be considered to assure non-nuclear-weapon states party to the Treaty against the use or threat of use of nuclear weapons. These steps could take the form of an internationally legally binding instrument.

Safeguards

9. The International Atomic Energy Agency is the competent authority responsible to verify and assure, in accordance with the statute of the Agency and the Agency's safeguards system, compliance with its safeguards agreements with States parties undertaken in fulfilment of their obligations under article III, paragraph 1, of the Treaty, with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Nothing should be done to undermine the authority of the International Atomic Energy Agency in this regard. States parties that have concerns regarding non-compliance with the safeguards agreements of the Treaty by the States parties should direct such concerns along with supporting evidence and information, to the Agency to consider, investigate, draw conclusions and decide on necessary actions in accordance with its mandate.

10. All States parties required by article III of the Treaty to sign and bring into force comprehensive safeguards agreements and which have not yet done so should do so without delay.

11. International Atomic Energy Agency safeguards should be regularly assessed and evaluated. Decisions adopted by its Board of Governors aimed at further strengthening the effectiveness of Agency safeguards should be supported and implemented and the Agency's capability to detect undeclared nuclear activities should be increased. Also, States not party to the Treaty on the Non-Proliferation of Nuclear Weapons should be urged to enter into comprehensive safeguards agreements with the Agency.

12. New Supply arrangements for the transfer of source or special fissionable material or equipment or material especially designed or prepared for the processing, used or production of special fissionable material to non-nuclear-weapon States should require, as a necessary precondition, acceptance of the Agency's full-scope safeguards and internationally legally binding commitments not to acquire nuclear weapons or other nuclear explosive devices.

13. Nuclear fissile material transferred from military use to peaceful nuclear activities should, as soon as practicable, be placed under Agency safeguards in the framework of the voluntary safeguards agreements in place with the nuclear-weapon States. Safeguards should be universally applied once the complete elimination of nuclear weapons had been achieved.

Peaceful uses of nuclear energy

14. Particular importance should be attached to ensuring the exercise of the inalienable right of all the parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with articles I, II as well as III of the Treaty.

15. Undertakings to facilitate participation in the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy should be fully implemented.

16. In all activities designed to promote the peaceful uses of nuclear energy, preferential treatment should be given to the non-nuclear-weapon States party to the Treaty, taking the needs of developing countries particularly into account.

17. Transparency in nuclear-related export controls should be promoted within the framework of dialogue and cooperation among all interested States party to the Treaty.

18. All States should, through rigorous national measures and international cooperation, maintain the highest practicable levels of nuclear safety, including in waste management, and observe standards and guidelines in nuclear materials accounting, physical protection and transport of nuclear materials.

19. Every effort should be made to ensure that the International Atomic Energy Agency has the financial and human resources necessary to meet effectively its responsibilities in the areas of technical cooperation, safeguards and nuclear safety. The Agency should also be encouraged to intensify its efforts aimed at finding ways and means for funding technical assistance through predictable and assured resources.

20. Attacks or threats of attack on nuclear facilities devoted to peaceful purposes jeopardize nuclear safety and raise serious concerns regarding the application of international law on the use of force in such cases, which could warrant appropriate action in accordance with the provisions of the Charter of the United Nations.

The Conference requests that the President of the Conference bring the present decision, the decision on strengthening the review process for the Treaty and the decision on the extension of the treaty on the Non-proliferation of Nuclear Weapons, to the attention of the heads of State or Government of all States and seek their full cooperation on these documents and in the furtherance of the goals of the Treaty.

Decision 3

EXTENSION OF THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS

The Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons,

Having convened in New York from 17 April to 12 May 1995, in accordance with article VIII, paragraph 3, and article X, paragraph 2, of the Treaty on the Non-Proliferation of Nuclear Weapons,

Having reviewed the operation of the Treaty and affirming that there is a need for full compliance with the Treaty, its extension and its universal adherence, which are essential to international peace and security and the attainment of the ultimate goals of the complete elimination of nuclear weapons and a treaty on general and complete disarmament under strict and effective international control,

Having reaffirmed article VIII, paragraph 3, of the Treaty and the need for its continued implementation in a strengthened manner and, to this end, emphasizing the decision on strengthening the review process for the treaty and the decision on principles and objectives for nuclear non-proliferation and disarmament, also adopted by the Conference,

Having established that the Conference is quorate in accordance with article X, paragraph 2, of the Treaty,

Decides that, as a majority exists among States party to the Treaty for its indefinite extension, in accordance with article X, paragraph 2, the Treaty shall continue in force indefinitely.

Resolution on the Middle East

The Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons,

Reaffirming the purpose and provisions of the Treaty on the Non-Proliferation of Nuclear Weapons,

Recognizing that, pursuant to article VII of the Treaty, the establishment of nuclear-weapon-free zones contributes to strengthening the international non-proliferation regime,

Recalling that the Security Council, in its statement of 31 January 1992 (S/23500), affirmed that the proliferation of nuclear and all other weapons of mass destruction constituted a threat to international peace and security,

Recalling also General Assembly resolutions adopted by consensus supporting the establishment of a nuclear-weapon-free zone in the Middle East, the latest of which is resolution 49/71 of 15 December 1994,

Recalling further the relevant resolutions adopted by the General Conference of the International Atomic Energy Agency concerning the application of Agency safeguards in the Middle East, the latest of which is GC(XXXVIII)/RES/21 of 23 September 1994, and noting the danger of nuclear proliferation, especially in areas of tension,

Bearing in mind Security Council resolution 687 (1991) and in particular paragraph 14 thereof,

Noting Security Council resolution 984 (1995) and paragraph 8 of the decision on principles and objectives for nuclear non-proliferation and disarmament adopted by the Conference on 11 May 1995,

Bearing in mind the other decisions adopted by the Conference on 11 May 1995,

1. *Endorses* the aims and objectives of the Middle East peace process and recognizes that efforts in this regard, as well as other efforts, contribute to *inter alia*, a Middle East zone free of nuclear weapons as well as other weapons of mass destruction;

2. *Notes with satisfaction* that, in its report (NPT/CONF.1995/MC.III/1), Main Committee III of the Conference recommended that the Conference “call on those remaining States not parties to the Treaty to accede to it, thereby accepting an international legally binding commitment not to acquire nuclear weapons or nuclear explosive devices and to accept International Atomic Energy Agency safeguards on all their nuclear activities”;

3. *Notes with concern* the continued existence in the Middle East of unsafeguarded nuclear facilities, and reaffirms in this connection the recommendation contained in section VI, paragraph 3, of the report of Main Committee III urging those non-parties to the Treaty on the Non-Proliferation of Nuclear Weapons that operate unsafeguarded nuclear facilities to accept full-scope International Atomic Energy Agency safeguards;

4. *Reaffirms* the importance of the early realization of universal adherence to the Treaty, and calls upon all States of the Middle East that have not yet done so, without exception, to accede to the Treaty as soon as possible and to place their nuclear facilities under full-scope International Atomic Energy Agency safeguards;

5. *Calls upon* all States in the Middle East to take practical steps in appropriate forums aimed at making progress towards, *inter alia*, the establishment of an effectively verifiable Middle East zone free of weapons of mass destruction, nuclear, chemical and biological, and their delivery systems, and to refrain from taking any measures that preclude the achievement of this objective;

6. *Calls upon* all States party to the Treaty on the Non-Proliferation of Nuclear Weapons, and in particular the nuclear-weapon States, to extend their cooperation and to exert their utmost efforts with a view to ensuring the early establishment by regional parties of a Middle East zone free of nuclear and all other weapons of mass destruction and their delivery systems.

2. UNITED NATIONS CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS: AGREEMENT FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982, RELATING TO THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS. ADOPTED AT NEW YORK ON 4 AUGUST 1995⁴

Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks⁵

The States Parties to this Agreement,

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982,⁶

Determined to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks,

Resolved to improve cooperation between States to that end,

Calling for more effective enforcement by flag States, port States and coastal States of the conservation and management measures adopted for such stocks,

Seeking to address in particular the problems identified in chapter 17, programme area C, of Agenda 21⁷ adopted by the United Nations Conference on Environment and Development, namely, that the management of high seas fisheries is inadequate in many areas and that some resources are overutilized, and noting that there are problems of unregulated fishing, overcapitalization, excessive fleet size, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases and lack of sufficient cooperation between States,

Committing themselves to responsible fisheries,

Conscious of the need to avoid adverse impacts on the marine environment, preserve biodiversity, maintain the integrity of marine ecosystems and minimize the risk of long-term or irreversible effects of fishing operations,

Recognizing the need for specific assistance, including financial, scientific and technological assistance, in order that developing States can participate effectively in the conservation, management and sustainable use of straddling fish stocks and highly migratory fish stocks,

Convinced that an agreement for the implementation of the relevant provisions of the Convention would best serve these purposes and contribute to the maintenance of international peace and security,

Affirming that matters not regulated by the Convention or by this Agreement continue to be governed by the rules and principles of general international law,

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

USE OF TERMS AND SCOPE

1. For the purposes of this Agreement:

(a) "Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982;

(b) "conservation and management measures" means measures to conserve and manage one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law as reflected in the Convention and this Agreement;

(c) "fish" includes mollusks and crustaceans except those belonging to sedentary species as defined in article 77 of the Convention; and

(d) "arrangement" means a cooperative mechanism established in accordance with the Convention and this Agreement by two or more States for the purpose, *inter alia*, of establishing conservation and management measures in a subregion or region for one or more straddling fish stocks or highly migratory fish stocks.

2. (a) "States Parties" means States which have consented to be bound by this Agreement and for which the Agreement is in force.

(b) This Agreement applies, *mutatis mutandis*:

(i) to any entity referred to in article 305, paragraph 1(c), (d) and (e), of the Convention and

(ii) subject to article 47, to any entity referred to as an "international organization" in Annex IX, article 1, of the Convention

which becomes a Party to this Agreement, and to that extent "States Parties" refers to those entities.

3. This Agreement applies *mutatis mutandis* to other fishing entities whose vessels fish on the high seas.

Article 2

OBJECTIVE

The objective of this Agreement is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention

Article 3

APPLICATION

1. Unless otherwise provided, this Agreement applies to the conservation and management of straddling fish stocks and highly migratory fish stocks beyond areas under national jurisdiction, except that articles 6 and 7 apply also to the conservation and management of such stocks within areas under national

jurisdiction, subject to the different legal regimes that apply within areas under national jurisdiction and in areas beyond national jurisdiction as provided for in the Convention.

2. In the exercise of its sovereign rights for the purpose of exploring and exploiting, conserving and managing straddling fish stocks and highly migratory fish stocks within areas under national jurisdiction, the coastal State shall apply *mutatis mutandis* the general principles enumerated in article 5.

3. States shall give due consideration to the respective capacities of developing States to apply articles 5, 6, and 7 within areas under national jurisdiction and their need for assistance as provided for in this Agreement. To this end, Part VII applies, *mutatis mutandis*, in respect of areas under national jurisdiction.

Article 4

RELATIONSHIP BETWEEN THIS AGREEMENT AND THE CONVENTION

Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention.

PART II

CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Article 5

GENERAL PRINCIPLES

In order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention:

(a) adopt measures to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization

(b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(c) apply the precautionary approach in accordance with article 6;

(d) assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;

(e) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;

(f) minimize pollution, waste, discard, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species (hereinafter referred to as non-target species) and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;

(g) protect biodiversity in the marine environment;

(h) take measures to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort to do not exceed those commensurate with sustainable use of fishery resources;

(i) take into account the interests of artisanal and subsistence fishers;

(j) collect and share, in a timely manner, complete and accurate data concerning fishing activities on inter alia, vessel position, catch of target and non-target species and fishing effort, as set out in annex I, as well as information from national and international research programmes;

(k) promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and

(l) implement and enforce conservation and management measures through effective monitoring, control and surveillance.

Article 6

APPLICATION OF THE PRECAUTIONARY APPROACH

1. States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment.

2. States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.

3. In implementing the precautionary approach, States shall:

(a) improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty;

(b) apply the guidelines set out in annex II and determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded;

(c) take into account, inter alia, uncertainties relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and distribution of fishing mortality and the impact of fishing activities on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socio-economic conditions; and

(d) develop data collection and research programmes to assess the impact of fishing on non-target and associated or dependent species and their environment, and adopt plans which are necessary to ensure the conservation of such species and to protect habitats of special concern.

4. States shall take measure to ensure that, when reference points are approached, they will not be exceeded. In the event that they are exceeded, States shall, without delay, take the action determined under paragraph 3(b) to restore the stocks.

5. Where the status of target stocks or non-target or associated or dependent species is of concern, States shall subject such stocks and species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures. They shall revise those measures regularly in the light of new information.

6. For new or exploratory fisheries, States shall adopt as soon as possible cautious conservation and management measures, including, inter alia, catch limit and effort limit. Such measures shall remain in force until there are sufficient data to allow assessment of the impact of the fisheries on the long-term sustainability of the stocks, whereupon conservation and management measures based on that assessment shall be implemented. The latter measures shall, if appropriate, allow for the gradual development of the fisheries.

7. If a natural phenomenon has a significant adverse impact on the status of straddling fish stocks or highly migratory fish stocks, States shall adopt conservation and management measures on an emergency basis to ensure that fishing activity does not exacerbate such adverse impact. States shall also adopt such measures on an emergency basis where fishing activity presents a serious threat to the sustainability of such stocks. Measures taken on an emergency basis shall be temporary and shall be based on the best scientific evidence available.

Article 7

COMPATIBILITY OF CONSERVATION AND MANAGEMENT MEASURES

1. Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in the Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention:

(a) with respect to straddling fish stocks, the relevant coastal States and the States whose nationals fish for such stocks in the adjacent high seas area shall seek, either directly or through the appropriate mechanisms for cooperation provided for in Part III, to agree upon the measures necessary for the conservation of these stocks in the adjacent high seas area;

(b) with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region shall cooperate, either directly or through the appropriate mechanisms for cooperation provided for in part III, with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the areas under national jurisdiction.

2. Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety. To this end, coastal States and

States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks. In determining compatible conservation and management measures, States shall:

(a) take into account the conservation and management measures adopted and applied in accordance with article 61 of the Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;

(b) take into account previously agreed measures established and applied for the high seas in accordance with the Convention in respect of the same stocks by relevant coastal States and States fishing on the high seas;

(c) take into account previously agreed measures established and applied in accordance with the Convention in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;

(d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;

(e) take into account the respective dependence of the coastal States and the States fishing on the high seas on the stocks concerned; and

(f) ensure that such measures do not result in harmful impact on the living marine resources as a whole.

3. In giving effect to their duty to cooperate, States shall make every effort to agree on compatible conservation and management measures within a reasonable period of time.

4. If no agreement can be reached within a reasonable period of time, any of the States concerned may invoke the procedures for the settlement of disputes provided for in Part VIII.

5. Pending agreement on compatible conservation and management measures, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature. In the event that they are unable to agree on such arrangements, any of the States concerned may, for the purpose of obtaining provisional measures, submit the dispute to a court or tribunal in accordance with the procedures for the settlement of disputes provided for in Part VIII.

6. Provisional arrangements or measures entered into or prescribed pursuant to paragraph 5 shall take into account the provisions of this Part, shall have due regard the rights and obligations of all States concerned, shall not jeopardize or hamper the reaching of final agreement on compatible conservation and management measures and shall be without prejudice to the final outcome of any dispute settlement procedure.

7. Coastal States shall regularly inform States fishing on the high seas in the subregion or region, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for straddling fish stocks and highly migratory fish stocks within areas under their national jurisdiction.

8. States fishing on the high seas shall regularly inform other interested States, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for regulating the activities of vessels flying their flag which fish for such stocks on the high seas.

PART III

MECHANISMS FOR INTERNATIONAL COOPERATION CONCERNING STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Article 8

COOPERATION FOR CONSERVATION AND MANAGEMENT

1. Coastal States and States fishing on the high seas shall, in accordance with the Convention, pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks either directly or through appropriate subregional or regional fisheries management organizations or arrangements, taking into account the specific characteristics of the subregion or region, to ensure effective conservation and management of such stocks.

2. States shall enter into consultations in good faith and without delay, particularly where there is evidence that the straddling fish stocks and highly migratory fish stocks concerned may be under threat of over-exploitation or where a new fishery is being developed for such stocks. To this end, consultations may be initiated at the request of any interested State with a view to establishing appropriate arrangements to ensure conservation and management of the stocks. Pending agreement on such arrangements, States shall observe the provisions of this Agreement and shall act in good faith and with due regard to the rights, interests and duties of other States.

3. Where a subregional or regional fisheries management organization or arrangement has the competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, States fishing for the stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by becoming members of such organization or participants in such arrangement, or by agreeing to apply the conservation and management measures established by such organization or arrangement. States having a real interest in the fisheries concerned may become members of such organization or participants in such arrangement. The terms for participation in such organization or arrangement shall not preclude such States from membership or participation; nor shall they be applied in a manner which discriminates against any State or group of States having a real interest in the fisheries concerned.

4. Only those States which are members of such an organization or participants in such an arrangement, or which agree to apply the conservation and management measures established by such organization or arrangement, shall have access to the fishery resources to which those measures apply.

5. Where there is no subregional or regional fisheries management organization or arrangement to establish conservation and management measures for a particular straddling fish stock or highly migratory fish stock, relevant

coastal States and States fishing on the high seas for such stock in the subregion or region shall cooperate to establish such an organization or enter into other appropriate arrangements to ensure conservation and management of such stock and shall participate in the work of the organization or arrangement.

6. Any State intending to propose that action be taken by an intergovernmental organization having competence with respect to living resources should, where such action would have a significant effect on conservation and management measures already established by a competent subregional or regional fisheries management organization or arrangement, consult through that organization or arrangement with its members or participants. To the extent practicable, such consultation should take place prior to the submission of the proposal to the intergovernmental organization.

Article 9

SUBREGIONAL AND REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS AND ARRANGEMENTS

1. In establishing subregional or regional fisheries management organizations or in entering into subregional or regional fisheries management arrangements for straddling fish stocks and highly migratory fish stocks, States shall agree, *inter alia*, on:

(a) the stocks to which conservation and management measures apply, taking into account the biological characteristics of the stocks concerned and the nature of the fisheries involved;

(b) the area of application, taking into account article 7, paragraph 1, and the characteristics of the subregion or region, including socio-economic, geographical and environmental factors;

(c) the relationship between the work of the new organization or arrangement and the role, objectives and operations of any relevant existing fisheries management organizations or arrangements; and

(d) the mechanisms by which the organization or arrangement will obtain scientific advice and review the status of the stocks, including, where appropriate, the establishment of a scientific advisory body.

2. States cooperating in the formation of a subregional or regional fisheries management organization or arrangement shall inform other States which they are aware have a real interest in the work of the proposed organization or arrangement of such cooperation.

Article 10

FUNCTIONS OF SUBREGIONAL AND REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS AND ARRANGEMENTS

In fulfilling their obligation to cooperate through subregional or regional fisheries management organizations or arrangements, States shall:

(a) agree on and comply with conservation and management measures to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks;

- (b) agree, as appropriate, on participatory rights such as allocations of allowable catch or levels of fishing efforts;
- (c) adopt and apply any generally recommended international minimum standards for the responsible conduct of fishing operations;
- (d) obtain and evaluate scientific advice, review the status of the stocks and assess the impact of fishing on non-target and associated or dependent species;
- (e) agree on standards for collection, reporting, verification and exchange of data on fisheries for the stocks;
- (f) compile and disseminate accurate and complete statistical data, as described in annex I, to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;
- (g) promote and conduct scientific assessments of the stocks and relevant research and disseminate the results thereof;
- (h) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement;
- (i) agree on means by which the fishing interests of new members of the organization or new participants in the arrangement will be accommodated;
- (j) agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner;
- (k) promote the peaceful settlement of disputes in accordance with Part VIII;
- (l) ensure the full cooperation of their relevant national agencies and industries in implementing the recommendations and decisions of the organization or arrangement; and
- (m) give due publicity to the conservation and management measures established by the organization or arrangement.

Article 11

NEW MEMBERS OR PARTICIPANTS

In determining the nature and extent of participatory rights for new members of a subregional or regional fisheries management organization, or for new participants in a subregional or regional fisheries management arrangement, States shall take into account, *inter alia*:

- (a) the status of the straddling fish stocks and highly migratory fish stocks and the existing level of fishing effort in the fishery;
- (b) the respective interests, fishing patterns and fishing practices of new and existing members or participants;
- (c) the respective contributions of new and existing members or participants to conservation and management of the stocks, to the collection and provision of accurate data and to the conduct of scientific research on the stocks;
- (d) the needs of coastal fishing communities which are dependent mainly on fishing for the stocks;

(e) the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources; and

(f) the interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur.

Article 12

TRANSPARENCY IN ACTIVITIES OF SUBREGIONAL AND REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS AND ARRANGEMENTS

1. States shall provide for transparency in the decision-making process and other activities of subregional and regional fisheries management organizations and arrangements.

2. Representatives from other intergovernmental organizations and representatives from non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks shall be afforded the opportunity to take part in meetings of subregional and regional fisheries management organizations and arrangements as observers or otherwise, as appropriate, in accordance with the procedures of the organization or arrangement concerned. Such procedures shall not be unduly restrictive in this respect. Such intergovernmental organizations and non-governmental organizations shall have timely access to the records and reports of such organizations and arrangements, subject to the procedural rules on access to them.

Article 13

STRENGTHENING OF EXISTING ORGANIZATIONS AND ARRANGEMENTS

States shall cooperate to strengthen existing subregional and regional fisheries management organizations and arrangements in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks.

Article 14

COLLECTION AND PROVISION OF INFORMATION AND COOPERATION IN SCIENTIFIC RESEARCH

1. States shall ensure that fishing vessels flying their flag provided such information as may be necessary in order to fulfil their obligations under this Agreement. To this end, States shall in accordance with annex I:

(a) collect and exchange scientific, technical and statistical data with respect to fisheries for straddling fish stocks and highly migratory fish stocks;

(b) ensure that data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements of subregional or regional fisheries management organizations or arrangements; and

(c) take appropriate measures to verify the accuracy of such data.

2. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements:

(a) to agree on the specification of data and the format in which they are to be provided to such organizations or arrangements, taking into account the nature of the stocks and the fisheries for those stocks; and

(b) to develop and share analytical techniques and stock assessment methodologies to improve measures for the conservation and management of straddling fish stocks and highly migratory fish stocks.

3. Consistent with Part XIII of the Convention, States shall cooperate, either directly or through competent international organizations, to strengthen scientific research capacity in the field of fisheries and promote scientific research related to the conservation and management of straddling fish stocks and highly migratory fish stocks for the benefit of all. To this end, a State or the competent international organization conducting such research beyond areas under national jurisdiction shall actively promote the publication and dissemination to any interested States of the results of that research and information relating to its objectives and methods and, to the extent practicable, shall facilitate the participation of scientists from those States in such research.

Article 15

ENCLOSED AND SEMI-ENCLOSED SEAS

In implementing this Agreement in an enclosed or semi-enclosed sea area, States shall take into account the natural characteristics of that sea and shall also act in a manner consistent with Part IX of the Convention and other relevant provisions thereof.

Article 16

AREAS OF HIGH SEAS SURROUNDED ENTIRELY BY AN AREA UNDER THE NATIONAL JURISDICTION OF A SINGLE STATE

1. States fishing for straddling fish stocks and highly migratory fish stocks in an area of the high seas surrounded entirely by an area under the national jurisdiction of a single State and the latter State shall cooperate to establish conservation and management measures in respect of those stocks in the high seas area. Having regard to the natural characteristics of the area, States shall pay special attention to the establishment of compatible conservation and management measures for such stocks pursuant to article 7. Measures taken in respect of the high seas shall take into account the rights, duties and interests of coastal State under the Convention, shall be based on the best scientific evidence available and shall also take into account any conservation and management measures adopted and applied in respect of the same stocks in accordance with article 61 of the Convention by the coastal State in the area under national jurisdiction. States shall also agree on measures for monitoring, control, surveillance and enforcement to ensure compliance with the conservation and management measures in respect of the high seas.

2. Pursuant to article 8, States shall act in good faith and make every effort to agree without delay on conservation and management measures to be applied in the carrying out of fishing operations in the area referred to in paragraph 1. If, within a reasonable period of time, the fishing States concerned and

the coastal State are unable to agree on such measures, they shall, having regard to paragraph 1, apply article 7, paragraph 4, 5, and 6, relating to provisional arrangements or measures. Pending the establishment of such provisional arrangements or measures, the States concerned shall take measures in respect of vessels flying their flag in order that they do not engage in fisheries which could undermine the stocks concerned.

PART IV

NON-MEMBERS AND NON-PARTICIPANTS

Article 17

NON-MEMBERS OF ORGANIZATIONS AND NON-PARTICIPANTS IN ARRANGEMENTS

1. A State which is not a member of a subregional or regional fisheries management organization or is not a participant in a subregional or regional fisheries management arrangement, and which does not otherwise agree to apply the conservation and management measures established by such organization or arrangement, is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks.

2. Such State shall not authorize vessels flying its flag to engage in fishing operations for the straddling fish stocks or highly migratory fish stocks which are subject to the conservation and management measures established by such organization or arrangement.

3. States which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement shall, individually or jointly, request the fishing entities referred to in article 1, paragraph 3, which have fishing vessels in the relevant area to cooperate fully with such organization or arrangement in implementing the conservation and management measures it has established, with a view to having such measures applied de facto as extensively as possible to fishing activities in the relevant area. Such fishing entities shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks.

4. States which are members of such organization or participants in such arrangement shall exchange information with respect to the activities of fishing vessels flying the flags of States which are neither members of the organization nor participants in the arrangement and which are engaged in fishing operations for the relevant stocks. They shall take measures consistent with this Agreement and international law to deter activities of such vessels which undermine the effectiveness of subregional or regional conservation and management measures.

PART V

DUTIES OF THE FLAG STATE

Article 18

DUTIES OF THE FLAG STATE

1. A State whose vessels fish on the high seas shall take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures.

2. A State shall authorize the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and this Agreement.

3. Measures to be taken by a State in respect of vessels flying its flag shall include:

(a) control of such vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level;

(b) establishment of regulations:

(i) to apply terms and conditions to the licence, authorization or permit sufficient to fulfil any subregional, regional or global obligations of the flag State;

(ii) to prohibit fishing on the high seas by vessels which are not duly licenced or authorized to fish, or fishing on the high seas by vessels otherwise than in accordance with the terms and conditions of a licence, authorization nor permit;

(iii) to require vessels fishing on the high seas to carry the licence, authorization or permit on board at all times and to produce it on demand for inspection by a duly authorized person; and

(iv) to ensure that vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States;

(c) establishment of a national record of fishing vessels authorized to fish on the high seas and provisions of access to the information contained in that record on request by directly interested States, taking into account any national laws of the flag State regarding the release of such information;

(d) requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems, such as the Food and Agriculture Organization of the United Nations Standard Specifications for the Marking and Identification of Fishing Vessels;

(e) requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data;

(f) requirements for verifying the catch of target and non-target species through such means as observer programmes, inspection schemes, unloading reports, supervision of transshipment and monitoring of landed catches and market statistics;

(g) monitoring, control and surveillance of such vessels, their fishing operations and related activities through, inter alia:

(i) the implementation of national inspection schemes and subregional and regional schemes for cooperation in enforcement pursuant to articles 21 and 22, including requirements for such vessels to permit access by duly authorized inspectors from other States;

(ii) the implementation of national observer programmes and subregional and regional observer programmes in which the flag State is a participant, including requirements for such vessels to permit access by observers from other States to carry out the functions agreed under the programmes; and from other States to carry out the functions agreed under the programmes; and

(iii) the development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programmes and those which have been subregionally, regionally or globally agreed among the States concerned;

(h) regulation of transshipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined; and

(i) regulation of fishing activities to ensure compliance with subregional, regional or global measures, including those aimed at minimizing catches of non-target species.

4. Where there is a subregionally, regionally or globally agreed system of monitoring, control and surveillance in effect, States shall ensure that the measures they impose on vessels flying their flag are compatible with that system.

PART VI

COMPLIANCE AND ENFORCEMENT

Article 19

COMPLIANCE AND ENFORCEMENT BY THE FLAG STATE

1. A State shall ensure compliance by vessels flying its flag with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To this end, that State shall:

(a) enforce such measures irrespective of where violations occur;

(b) investigate immediately and fully any alleged violation of subregional or regional conservation and management measures, which may include the physical inspection of the vessels concerned, and report promptly to the State alleging the violation and the relevant subregional or regional organization or arrangement on the progress and outcome of the investigation;

(c) require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation;

(d) if satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting proceedings, without delay, in accordance with its laws and, where appropriate, detain the vessel concerned; and

(e) ensure that, where it has been established, in accordance with its laws, a vessel has been involved in the commission of a serious violation of such measures, the vessel does not engage in fishing operations on the high seas until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.

2. All investigations and judicial proceedings shall be carried out expeditiously. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of masters and other officers of fishing vessels shall include provisions which may permit, *inter alia*, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels.

Article 20

INTERNATIONAL COOPERATION IN ENFORCEMENT

1. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements, to ensure compliance with and enforcement of subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks.

2. A flag State conducting an investigation of an alleged violation of conservation and management measures for straddling fish stocks or highly fish migratory stocks may request the assistance of any other State whose cooperation may be useful in the conduct of that investigation. All States shall endeavour to meet reasonable requests made by a flag State in connection with such investigations.

3. A flag State may undertake such investigation directly, in cooperation with other interested States or through the relevant subregional or regional fisheries management organization or arrangement. Information on the progress and outcome of the investigations shall be provided to all States having an interest in, or affected by, the alleged violation.

4. States shall assist each other in identifying vessels reported to have engaged in activities undermining the effectiveness of subregional, regional or global conservation and management measures.

5. States shall, to the extent permitted by national laws and regulations, establish arrangements for making available to prosecuting authorities in other States evidence relating to alleged violations of such measures.

6. Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorized fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases and may authorize the relevant authorities of the coastal State to board and inspect the vessel on the high seas. This paragraph is without prejudice to article 111 of the Convention.

7. States Parties which are members of subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement may take action in accordance with internal law, including through recourse to subregional or regional procedures established for this purpose, to deter vessels which have engaged in activities that undermine the effectiveness of or otherwise violate the conservation and management measures established by that organization or arrangement from fishing on the high seas in the subregion or region until such time as appropriate action is taken by the flag State.

Article 21

SUBREGIONAL AND REGIONAL COOPERATION IN ENFORCEMENT

1. In any high seas area covered by a subregional or regional fisheries management organization or arrangement, a State Party which is a member of such organization or a participant in such arrangement may, through its duly authorized inspectors, board and inspect, in accordance with paragraph 2, fishing vessels flying the flag of another State Party to this Agreement, whether or not such State Party is also a member of the organization or a participant in the arrangement, for the purpose of ensuring compliance with conservation and management measures for straddling fish stocks and highly migratory fish stocks established by that organization or arrangement.

2. States shall establish, through subregional or regional fisheries management organizations or arrangements, procedures for boarding and inspection pursuant to paragraph 1, as well as procedures to implement other provisions of this article, such procedures shall be consistent with this article and the basic procedures set out in article 22 and shall not discriminate against non-members of the organization or non-participants in the arrangement. Boarding and inspection as well as any subsequent enforcement action shall be conducted in accordance with such procedures. States shall give due publicity to procedures established pursuant to this paragraph.

3. If, within two years of the adoption of this Agreement, any organization or arrangement has not established such procedures, boarding and inspection pursuant to paragraph 1, as well as any subsequent enforcement action, shall, pending the establishment of such procedures, be conducted in accordance with this article and the basic procedures set out in article 22.

4. Prior to taking action under this article, inspecting States shall, either directly or through the relevant subregional or regional fisheries management

organization or arrangement, inform all States whose vessels fish on the high seas in the subregion or region of the form of identification issued to their duly authorized inspectors. The vessels used for boarding the inspection shall be clearly marked and identifiable as being on government service. At the time of becoming a Party to this Agreement, a State shall designate an appropriate authority to receive notifications pursuant to this article and shall give due publicity of such designation through the relevant subregional or regional fisheries management organization or arrangement.

5. Where, following boarding and inspection, there are clear grounds for believing that a vessel has engaged in any activity contrary to the conservation and management measures referred to in paragraph 1, the inspecting State shall, where appropriate, secure evidence and shall promptly notify the flag State of the alleged violation.

6. The flag State shall respond to the notification referred to in paragraph 5 within three working days of its receipt, or such other period as may be prescribed in procedures established in accordance with paragraph 2, and shall either:

(a) fulfil, without delay, its obligations under article 19 investigate and, if evidence so warrants, take enforcement action with respect to the vessel, in which case it shall promptly inform the inspecting State of the results of the investigations and of any enforcement action taken; or

(b) authorize the inspecting State to investigate.

7. Where the flag State authorizes the inspecting State to investigate an alleged violation, the inspecting State shall, without delay, communicate the results of that investigation to the flag State. The flag State shall, if evidence so warrants, fulfil its obligations to take enforcement action with respect to the vessel. Alternatively, the flag State may authorize the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel, consistent with the rights and obligations of the flag State under this Agreement.

8. Where, following boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation, and the flag State has either failed to respond or failed to take action as required under paragraphs 6 or 7, the inspectors may remain on board and secure evidence and may require the master to assist in further investigation including, where appropriate, by bringing the vessel without delay to the nearest appropriate port, or to such other port as may be specified in procedures established in accordance with paragraph 2. The inspecting State shall immediately inform the flag State of the name of the port to which the vessel is to proceed. The inspecting State and the flag State and, as appropriate, the port State shall take all necessary steps to ensure the well-being of the crew regardless of their nationality.

9. The inspecting State shall inform the flag State and the relevant organization or the participants in the relevant arrangement of the results of any further investigation.

10. The inspecting State shall require its inspectors to observe generally accepted international regulations, procedures and practices relating to the safety of the vessel and the crew, minimize interference with fishing operations and, to the extent practicable, avoid action which would adversely affect the quality of

the catch on board. The inspecting State shall ensure that boarding and inspection is not conducted in a manner that would constitute harassment of any fishing vessel.

11. For the purposes of this article, a serious violation means:

(a) fishing without a valid licence, authorization or permit issued by the flag State in accordance with article 18, paragraph 3(a);

(b) failing to maintain accurate records of catch and catch-related data, as required by the relevant subregional or regional fisheries management organization or arrangement, or serious misreporting of catch, contrary to the catch reporting requirements of such organization or arrangement;

(c) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established by the relevant subregional or regional fisheries management organization or arrangement;

(d) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;

(e) using prohibited fishing gear;

(f) falsifying or concealing the markings, identity or registration of a fishing vessel;

(g) concealing, tampering with or disposing of evidence relating to an investigation;

(h) multiple violations which together constitute a serious disregard of conservation and management measures; or

(i) such other violations as may be specified in procedures established by the relevant subregional or regional fisheries management organization or arrangement.

12. Notwithstanding the other provisions of this article, the flag State may, at any time, take action to fulfil its obligations under article 19 with respect to an alleged violation. Where the vessel is under the direction of the inspecting State, the inspecting State shall, at the request of the flag State, release the vessel to the flag State along with full information on the progress and outcome of its investigation.

13. This article is without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws.

14. This article applies, *mutatis mutandis*, to boarding and inspection by a State party which is a member of a subregional or regional fisheries management organization or a participant in a subregional or regional fisheries management arrangement and which has clear grounds for believing that a fishing vessel flying the flag of another State party has engaged in any activity contrary to relevant conservation and management measures referred to in paragraph 1 in the high seas area covered by such organization or arrangement, and such vessel has subsequently, during the same fishing trip, entered into an area under the national jurisdiction of the inspecting State.

15. Where a subregional or regional fisheries management organization or arrangement has established an alternative mechanism which effectively discharges the obligation under this Agreement of its members or participants to ensure compliance with the conservation and management measures established

by the organization or arrangement, members of such organization or participants in such arrangement may agree to limit the application of paragraph 1 as between themselves in respect of the conservation and management measures which have been established in the relevant high seas area.

16. Action taken by States other than the flag State in respect of vessels having engaged in activities contrary to subregional or regional conservation and management measures shall be proportionate to the seriousness of violation.

17. Where there are reasonable grounds for suspecting that a fishing vessel on the high seas is without nationality, a State may board and inspect the vessel. Where evidence so warrants, the State may take such action as may be appropriate in accordance with international law.

18. States shall be liable for damage or loss attributable to them arising from action taken pursuant to this article when such action is unlawful or exceeds that reasonably required in the light of available information to implement the provisions of this article.

Article 22

BASIC PROCEDURES FOR BOARDING AND INSPECTION PURSUANT TO ARTICLE 21

1. The inspecting State shall ensure that its duly authorized inspectors:

(a) present credentials to the master of the vessel and produce a copy of the text of the relevant conservation and management measures or rules and regulations in force in the high seas area in question pursuant to those measures;

(b) initiate notice to the flag State at the time of the boarding and inspection;

(c) do not interfere with the master's ability to communicate with the authorities of the flag State during the boarding and inspection;

(d) provide a copy of a report on the boarding and inspection to the master and to the authorities of the flag State, noting therein any objection or statement which the master wishes to have included in the report;

(e) promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation; and

(f) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.

2. The duly authorized inspectors of an inspecting State shall have the authority to inspect the vessel, its licence, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures.

3. The flag State shall ensure that vessel masters:

(a) accept and facilitate prompt and safe boarding by the inspectors;

(b) cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures;

(c) do not obstruct, intimidate or interfere with the inspectors in the performance of their duties;

(d) allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection;

(e) provide reasonable facilities, including, where appropriate, food and accommodation, to the inspectors; and

(f) facilitate safe disembarkation by the inspectors.

4. In the event that the master of a vessel refuses to accept boarding and inspection in accordance with this article and article 21, the flag State shall, except in circumstances where, in accordance with generally accepted international regulations, procedures and practices relating to safety at sea, it is necessary to delay the boarding and inspection, direct the master of the vessel to submit immediately to boarding and inspection and, if the master does not comply with such direction, shall suspend the vessel's authorization to fish and order the vessel to return immediately to port. The flag State shall advise the inspecting State of the action it has taken when the circumstances referred to in this paragraph arise.

Article 23

MEASURES TAKEN BY A PORT STATE

1. A port State has the right and the duty to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures. When taking such measures a port State shall not discriminate in form or in fact against the vessels of any State.

2. A port State may, inter alia, inspect documents, fishing gear and catch on boarding fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.

3. States may adopt regulations empowering the relevant national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas.

4. Nothing in this article affects the exercise by States of their sovereignty over ports in their territory in accordance with international law.

PART VII

REQUIREMENTS OF DEVELOPING STATES

Article 24

RECOGNITION OF THE SPECIAL REQUIREMENTS OF DEVELOPING STATES

1. States shall give full recognition to the special requirements of developing States in relation to conservation and management of straddling fish stocks and highly migratory fish stocks and development of fisheries for such stocks.

To this end, States shall, either directly or through the United Nations Development Programme, the Food and Agriculture Organization of the United Nations and other specialized agencies, the Global Environment Facility, the Commission on Sustainable Development and other appropriate international and regional organizations and bodies, provide assistance to developing States.

2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for straddling fish stocks and highly migratory fish stocks, States shall take into account the special requirements of developing States, in particular:

(a) the vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof;

(b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, particularly small island developing States; and

(c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States.

Article 25

FORMS OF COOPERATION WITH DEVELOPING STATES

1. States shall cooperate, either directly or through subregional, regional or global organizations:

(a) to enhance the ability of developing States, in particular the least-developed among them and small island developing States, to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks;

(b) to assist developing States, in particular the least-developed among them and small island developing States, to enable them to participate in high seas fisheries for such stocks, including facilitating access to such fisheries subject to articles 5 to 11; and

(c) to facilitate the participation of developing States in subregional and regional fisheries management organization and arrangements.

2. Cooperation with developing States for the purposes set out in this article shall include the provision of financial assistance, assistance relating to human resource development, technical assistance, transfer of technology, including through joint venture arrangements, and advisory and consultative services.

3. Such assistance shall, inter alia, be directed specifically towards:

(a) improved conservation and management of straddling fish stocks and highly migratory fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information;

(b) stock assessment and scientific research; and

(c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.

Article 26

SPECIAL ASSISTANCE IN THE IMPLEMENTATION OF THIS AGREEMENT

1. States shall cooperate to establish special funds to assist developing States in the implementation of this Agreement, including assisting developing States to meet the costs involved in any proceedings for the settlement of disputes to which they may be parties.

2. States and international organizations should assist developing States in establishing new subregional or regional fisheries management organizations or arrangements, or in strengthening existing organizations or arrangements, for the conservation and management of straddling fish stocks and highly migratory fish stocks.

PART VIII

PEACEFUL SETTLEMENT OF DISPUTES

Article 27

OBLIGATION TO SETTLE DISPUTES BY PEACEFUL MEANS

States have the obligation to settle their disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Article 28

PREVENTION OF DISPUTES

States shall cooperate in order to prevent disputes. To this end, States shall agree on efficient and expeditious decision-making procedures within subregional and regional fisheries management organizations and arrangements and shall strengthen existing decision-making procedures as necessary.

Article 29

DISPUTES OF A TECHNICAL NATURE

Where a dispute concerns a matter of a technical nature, the States concerned may refer to the dispute to an ad hoc expert panel established by them. The panel shall confer with the States concerned and shall endeavour to resolve the dispute expeditiously, without recourse to binding procedures for the settlement of disputes.

Articles 30

PROCEDURES FOR THE SETTLEMENT OF DISPUTES

1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply *mutatis mutandis* to any dispute between States Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.

2. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply, *mutatis mutandis*, to any dispute between States Parties to this Agreement concerning the interpretation or application of a sub-regional, regional or global fisheries agreement relating to straddling fish stocks or highly migratory fish stocks to which they are parties, including any disputes concerning the conservation and management of such stocks, whether or not they are also Parties to the Convention.

3. Any procedure accepted by a State party to this Agreement and the Convention pursuant to article 287 of the Convention shall apply to the settlement of disputes under this Part, unless that State Party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to article 287 for the settlement of disputes under this Part.

4. A State Party to this Agreement which is not a party to the Convention, when signing, ratifying or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the means set out in article 287, paragraph 1, of the Convention for the settlement of disputes under this Part. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is a party which is not covered by a declaration in force. For the purposes of conciliation and arbitration in accordance with Annexes V, VII, and VIII to the Convention, such State shall be entitled to nominate conciliators, arbitrators and experts to be included in the lists referred to in Annex V, article 2, Annex VII, article 2, and Annex VIII, article 2, for the settlement of disputes under this Part.

5. Any court or tribunal to which a dispute has been submitted under this Part shall apply the relevant provisions of the Convention, of this Agreement and of any relevant subregional, regional or global fisheries agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with the Convention, with a view to ensuring the conservation of the straddling fish stocks and highly migratory fish stocks concerned.

Article 31

PROVISIONAL MEASURES

1. Pending the settlement of a dispute in accordance with this Part, the parties to the dispute shall make every effort to enter into provisional arrangements of a practical nature.

2. Without prejudice to article 290 of the Convention, the court or tribunal to which the dispute has been submitted under this Part may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent damage to the stocks in question, as well as in the circumstances referred to in article 7, paragraph 5, and article 16, paragraph 2.

3. A State Party to this Agreement which is not a party to the Convention may declare that, notwithstanding article 290, paragraph 5, of the Convention, the International Tribunal for the Law of the Sea shall not be entitled to prescribe, modify or revoke provisional measures without the agreement of such State.

Article 32

LIMITATIONS ON APPLICABILITY OF PROCEDURES FOR THE SETTLEMENT OF DISPUTES

Article 297, paragraph 3, of the Convention applies also to this Agreement.

PART IX

NON-PARTIES TO THIS AGREEMENT

Article 33

NON-PARTIES TO THIS AGREEMENT

1. States Parties shall encourage non-parties to this Agreement to become parties thereto and to adopt laws and regulations consistent with its provisions.

2. States Parties shall take measures consistent with this Agreement and international law to deter the activities of vessels flying the flag of non-parties which undermine the effective implementation of this Agreement.

PART X

GOOD FAITH AND ABUSE OF RIGHTS

Article 34

GOOD FAITH AND ABUSE OF RIGHTS

States Parties shall fulfil in good faith the obligations assumed under this Agreement and shall exercise the rights recognized in this Agreement in a manner which would not constitute an abuse of right.

PART XI

RESPONSIBILITY AND LIABILITY

Article 35

RESPONSIBILITY AND LIABILITY

States Parties are liable in accordance with international law for damage or loss attributable to them in regard to this Agreement.

PART XII

REVIEW CONFERENCE

Article 36

Review conference

1. Four years after the date of entry into force of this Agreement, the Secretary-General of the United Nations shall convene a conference with a view to assessing the effectiveness of this Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks. The Secretary-General shall invite to the conference all States Parties and those States and entities which are entitled to become parties to this Agreement as well as those intergovernmental and non-governmental organizations entitled to participate as observers.

2. The conference shall review and assess the adequacy of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of straddling fish stocks highly migratory fish stocks.

PART XIII

FINAL PROVISIONS

Article 37

SIGNATURE

This Agreement shall be open for signature by all States and the other entities referred to in article 1, paragraph 2(b), and shall remain open for signature at United Nations Headquarters for twelve months from the fourth of December 1995.

Article 38

RATIFICATION

This Agreement is subject to ratification by States and the other entities referred to in article 1, paragraph 2(b). The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 39

ACCESSION

This Agreement shall remain open for accession by States and the other entities referred to in article 1, paragraph 2(b). The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 40

ENTRY INTO FORCE

1. This Agreement shall enter into force 30 days after the date of deposit of the thirtieth instrument of ratification or accession.

2. For each State or entity which ratifies the Agreement or accedes thereto after the deposit of the thirtieth instrument of ratification or accession, this Agreement shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

Article 41

PROVISIONAL APPLICATION

1. This Agreement shall be applied provisionally by a State or entity which consents to its provisional application by so notifying the depositary in writing. Such provisional application shall become effective from the date of the receipt of the notification.

2. Provisional application by a State or entity shall terminate upon the entry into force of this Agreement for that State or entity to the depositary in writing of its intention to terminate provisional application.

Article 42

RESERVATION AND EXCEPTIONS

No reservations or exceptions may be made to this Agreement.

Article 43

DECLARATIONS AND STATEMENTS

Article 42 does not preclude a State or entity, when signing, ratifying or acceding to this Agreement, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Agreement, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that State or entity.

Article 44

RELATION TO OTHER AGREEMENTS

1. This Agreement shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Agreement and which do not affect the enjoyment by other States parties of their rights or the performance of their obligations under this Agreement.

2. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Agreement, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogating from which is incompatible with the effective execution of the object and purpose of this Agreement, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.

3. States Parties intending to conclude an agreement referred to in paragraph 2 shall notify the other States Parties through the depositary of this Agreement of their intention to conclude the agreement and of the modification or suspension for which it provides.

Article 45

AMENDMENT

1. A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose amendments to this Agreement and request the convening of a conference to consider such proposed amendments. The Secretary-General shall convene the conference.

2. The decision-making procedure applicable at the amendment conference convened pursuant to paragraph 1 shall be the same as the applicable at the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, unless otherwise decided by the conference. The conference should make every effort to reach agreement on any amendments by way of consensus and there should be no voting on them until all efforts at consensus have been exhausted.

3. Once adopted, amendments to this Agreement shall be open for signature by States Parties for twelve months from the date of adoption at United Nations Headquarters, unless otherwise provided in the amendment itself.

4. Articles 35, 39, 47 and 50 apply to all amendments to this Agreement.

5. Amendments to this Agreement shall enter into force for the States Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by two thirds of the States Parties. Thereafter, for each State Party ratifying or acceding to an amendment after the deposit of the required number of such instruments, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

6. An amendment may provide that a smaller or larger number of ratifications or accessions shall be required for its entry into force than are required by this article.

7. A State which becomes a party to this Agreement after the entry into force of amendments to accordance with paragraph 5 shall, failing an expression of a different intention by that State:

(a) be considered as a party to this Agreement as so amended; and

(b) be considered as a Party to the unamended Agreement in relation to any State party not bound by the amendment.

Article 46

DENUNCIATION

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Agreement and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Agreement to which it would be subject under international law independently of this Agreement.

Article 47

PARTICIPATION BY INTERNATIONAL ORGANIZATIONS

1. In cases where an international organization referred to in Annex IX, article 1, of the Convention does not have competence over all the matters governed by this Agreement, Annex IX to the Convention shall apply *mutatis mutandis* to participation by such international organization in this Agreement, except that the following provisions of that Annex shall not apply:

(a) article 2, first sentence; and

(b) article 3, paragraph 1.

2. In cases where an international organization referred to in Annex IX, article 1, of the Convention has competence over all the matters governed by this Agreement, the following provisions shall apply to participation by such international organization in this Agreement:

(a) at the time of signature or accession, such international organization shall make a declaration stating:

(i) that it has competence over all the matters governed by this Agreement;

(ii) that, for this reason, its member States shall not become States Parties, except in respect of their territories for which the international organization has no responsibility; and

(iii) that it accepts the rights and obligations of States under this Agreement;

(b) participation of such an international organization shall in no case confer any rights under this Agreement on member States of the international organization;

(c) in the event of a conflict between the obligations of an international organization under this Agreement and its obligations under the agreement establishing the international organization or any acts relating to it, the obligations under this Agreement shall prevail.

Article 48

ANNEXES

1. The Annexes form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement or to one of its Parts includes a reference to the Annexes relating thereto.

2. The Annexes may be revised from time to time by States Parties. Such revisions shall be based on scientific and technical considerations. Notwithstanding the provisions of article 45, if a revision to an Annex is adopted by consensus at a meeting of States Parties, it shall be incorporated in this Agreement and shall take effect from the date of its adoption or from such other date as may be specified in the revision. If a revision to an Annex is not adopted by consensus at such a meeting, the amendment procedures set out in article 45 shall apply.

Article 49

DEPOSITARY

The Secretary General of the United Nations shall be the depositary of this Agreement and any amendments or revisions thereto.

Article 50

AUTHENTIC TEXTS

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

In witness whereof, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Agreement.

Opened for signature AT New York, this fourth day of December, one thousand nine hundred and ninety-five, in a single original, in the Arabic, Chinese, English, French, Russian and Spanish languages.

ANNEX I

Standard requirements for the collection and sharing of data

Article 1

GENERAL PRINCIPLES

1. The timely collection, compilation and analysis of data are fundamental to the effective conservation and management of straddling fish stocks and highly migratory fish stocks. To this end, data from fisheries for these stocks on the high seas and those in areas under national jurisdiction are required and should be collected and compiled in such a way as to enable statistically meaningful analysis for the purposes of fishery resource conservation and management. These data include catch and fishing effort statistics and other fishery-related information, such as vessel-related and other data for standardizing fishing effort. Data collected should also include information on non-target and associated or dependent species. All data should be verified to ensure accuracy. Confidentiality of non-aggregated data shall be maintained. The dissemination of such data shall be subject to the terms on which they have been provided.

2. Assistance, including training as well as financial and technical assistance, shall be provided to developing States in order to build capacity in the field of conservation and management of living marine resources. Assistance should focus on enhancing capacity to implement data collection and verification, observer programmes, data analysis and research projects supporting stock assessments. The fullest possible involvement of developing State scientists and managers in conservation and management of straddling fish stocks and highly migratory fish stocks should be promoted.

Article 2

PRINCIPLES OF DATA COLLECTION, COMPILATION AND EXCHANGE

The following general principles should be considered in defining the parameters for collection, compilation and exchange of data from fishing operations for straddling fish stocks and highly migratory fish stocks:

(a) States should ensure that data are collected from vessels flying their flag on fishing activities according to the operational characteristics of each fishing method (e.g., each individual tow for trawl, each set for long-line and purse-seine, each school fished for pole-and-line and each day fished for troll) and in sufficient detail to facilitate effective stock assessment;

(b) States should ensure that fishery data are verified through an appropriate system;

(c) States should compile fishery-related and other supporting scientific data and provide them in an agreed format and in a timely manner to the relevant subregional or regional fisheries management organization or arrangement where one exists. Otherwise, States should cooperate to exchange data either directly or through such other cooperative mechanisms as may be agreed among them;

(d) States should agree, within the framework of subregional or regional fisheries management organizations or arrangements, or otherwise, on the specification of data and the format in which they are to be provided, in accordance with this Annex and taking into account the nature of the stocks and the fisheries for those stocks in the region. Such organizations or arrangements should request non-members or non-participants to provide data concerning relevant fishing activities by vessels flying their flag;

(e) such organizations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organizations or arrangements; and

(f) scientists of the flag State and from the relevant subregional or regional fisheries management organization or arrangement should analyse the data separately or jointly, as appropriate.

Article 3

BASIC FISHERY DATA

1. States shall collect and make available to the relevant subregional or regional fisheries management organization or arrangement the following types of data in sufficient detail to facilitate effective stock assessment in accordance with agreed procedures:

- (a) time series of catch and effort statistics by fishery and fleet;
- (b) total catch in number, nominal weight or both by species (both target and non-target) as is appropriate to each fishery. [Nominal weight is defined by the Food and Agriculture Organization of the United Nations as the live-weight equivalent of the landings];
- (c) discard statistics, including estimates where necessary, reported as number nominal weight by species, as is appropriate to each fishery;
- (d) effort statistics appropriate to each fishing method; and
- (e) fishing location, date and time fished and other statistics on fishing operations as appropriate.

2. States shall also collect where appropriate and provide to the relevant subregional or regional fisheries management organization or arrangement information to support stock assessment, including:

- (a) composition of the catch according to length, weight and sex;
- (b) other biological information supporting stock assessments, such as information on age, growth, recruitment, distribution and stock identity; and
- (c) other relevant research, including surveys of abundance, biomass surveys, hydro-acoustic surveys, research on environmental factors affecting stock abundance, and oceanographic and ecological studies

Article 4

VESSEL DATA AND INFORMATION

1. States should collect the following types of vessel-related data for standardizing fleet composition and vessel fishing power and for converting between different measures of effort in the analysis of catch and effort data:

- (a) vessel identification, flag and port of registry;
- (b) vessel type;
- (c) vessel specifications (e.g. material of construction, date built, registered length, gross registered tonnage, power of main engines, hold capacity and catch storage methods); and
- (d) fishing gear description (e.g., types gear specifications and quantity).

2. The flag State will collect the following information:

- (a) navigation and position fishing aids;
- (b) communication equipment and international radio call sign; and
- (c) crew size.

Article 5

REPORTING

A State shall ensure that vessels flying its flag and send to its national fisheries administration and, where agreed, to the relevant subregional or regional fisheries organization or arrangement, logbook requirements and regional and international obligations. Such data shall be transmitted, where necessary by radio, telex, facsimile or satellite transmission or by other means.

Article 6

DATA VERIFICATION

States or, as appropriate, subregional or regional fisheries management organizations or arrangements should establish mechanisms for verifying fishery data, such as:

- (a) position verification through vessel monitoring systems;
- (b) scientific observer programmes to monitor catch, effort, catch composition (target and non-target) and other details of fishing operations;
- (c) vessel trip, landing and transshipment reports; and
- (d) port sampling

Article 7

DATA EXCHANGE

1. Data collected by flag States must be shared with other flag States and relevant coastal States through appropriate subregional or regional fisheries management organizations or arrangements. Such organizations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organizations or arrangements, while maintaining confidentiality of non-aggregated data, and should, to the extent feasible, develop database systems which provide efficient access to data.

2. At the global level, collection and dissemination of data should be effected through the Food And Agriculture Organization of the United Nations. Where a subregional or regional fisheries management organization or arrangement does not exist, that organization may also do the same at the subregional or regional level by arrangement with the States concerned.

ANNEX II

Guidelines for the application of precautionary reference points in conservation and management of straddling fish stocks and highly migratory fish stocks

1. A precautionary reference point is an estimated value derived through an agreed scientific procedure, which corresponds to the state of the resource and of the fishery, and which can be used as a guide for fisheries management.

2. Two types of precautionary reference points should be used: conservation, or limit, reference points and management, or target, reference points. Limit reference points set boundaries which are intended to constrain harvesting within safe biological limits within which the stocks can produce maximum sustainable yield. Target reference points are intended to meet management objectives.

3. Precautionary reference points should be stock-specific to account, inter alia, for the reproductive capacity, the resilience of each stock and the characteristics of fisheries exploiting the stock, as well as other sources of mortality and major sources of uncertainty.

4. Management strategies shall seek to maintain or restore populations of harvests stocks, and where necessary associated or dependent species, at levels consistent with previously agreed precautionary reference points. Such reference points shall be used to trigger pre-agreed conservation and management action. Management strategies shall include measures which can be implemented when precautionary reference points are approached.

5. Fishery management strategies shall ensure that the risk of exceeding limit reference points is very low. If a stock falls below a limit reference point or is at risk of falling below such a reference point, conservation and management strategies shall ensure that target reference points are not exceeded on average.

6. When information for determining reference points for a fishery is poor or absent, provisional reference points shall be set. Provisional reference points may be established by analogy to similar and better-known stocks. In such situations, the fishery shall be subject to enhanced monitoring so as to enable revision of provisional reference points as improved information becomes available.

7. The fishing mortality rate which generates maximum sustainable yield should be regarded as a minimum standard for limit reference points. For stocks which are not overfished, fishery management strategies shall ensure that fishing mortality does not exceed that which correspond to maximum sustainable yield, and that the biomass does not fall below predefined threshold. For overfished stocks, the biomass which would produce maximum sustainable yield can serve as a rebuilding target.

3. CROATIA-LOCAL SERBIAN COMMUNITY: BASIC AGREEMENT ON THE REGION OF EASTERN SLOVENIA, BARANJA AND WESTERN SIRMIIUM,⁸ INCLUDING SECURITY COUNCIL RESOLUTIONS 1023 (1995) AND 1037 (1996) WELCOMING AND IMPLEMENTING THE BASIC AGREEMENT. DONE AT CROATIA ON 12 NOVEMBER 1995.⁹

Basic Agreement on the Region of Eastern Slovenia, Baranja and Western Sirmium

The Parties agree as follows:

1. There will be a transitional period of 12 months which may be extended at most to another period of the same duration if so requested by one of the parties.

2. The United Nations Security Council is requested to establish a Transitional Administration, which shall govern the region during the transitional period in the interest of all persons resident in or returning to the region.

3. The United Nations Security Council is requested to authorize an international force to deploy during the transitional period to maintain peace and security in the region and otherwise to assist in implementation of this Agreement. The region shall be demilitarized according to the schedule and procedures determined by the international force. This demilitarization shall be completed not later than thirty days after deployment of the international force and shall include all military forces, weapons and police, except for the international force and for police operating under the supervision of, or with the consent of, the Transitional Administration.

4. The Transitional Administration shall ensure the possibility for the return of refugees and displaced persons to their homes of origin. All persons who have left the region or have come to the region with previous permanent residence in Croatia shall enjoy the same rights as all other residents of the region. The Transitional Administration shall also take the steps necessary to re-establish the normal functioning of all public services in the region without delay.

5. The Transitional Administration shall help to establish and train temporary police forces, to build professionalism among the police and confidence among all ethnic communities.

6. The highest levels of internationally recognized human rights and fundamental freedoms shall be respected in the region.

7. All persons have the right to return freely to their place of residence in the region and to live there in conditions of security. All persons who have left the region or who have come to the region with previous permanent residence in Croatia have the right to live in the region.

8. All persons shall have the right to have restored to them any property that was taken from them by unlawful acts or that they were forced to abandon and to just compensation for property that cannot be restored to them.

9. The right to recover property, to receive compensation for property that cannot be returned and to receive assistance in reconstruction of damaged property shall be equally available to all persons without regard to ethnicity.

10. Interested countries and organizations are requested to take appropriate steps to promote the accomplishment of the Commitments in this Agreement. After the expiration of the transitional period and consistent with established practice, the international community shall monitor and report on respect for human rights in the region on a long-term basis.

11. In addition, interested countries and organizations are requested to establish a commission, which will be authorized to monitor the implementation investigate all allegations of violations of this Agreement, and to make appropriate recommendations.

12. Not later than thirty days before the end of the transitional period, selections for all local government bodies, including for municipalities, districts and counties, as well as the right of the Serbian community to appoint a joint council of municipalities, shall be organized by the Transitional Administration. International organizations and institutions (e.g., the Organization for Security and Cooperation in Europe, the United Nations) and interested States are requested to oversee the elections.

13. The Government of the Republic of Croatia shall cooperate fully with the Transitional Administration and the international boarder of the region in order to facilitate the free movement of persons across existing border crossings.

14. This Agreement shall enter into force upon the adoption by the United Nations Security Council of a resolution responding affirmatively to the requests made in this Agreement.

Done this twelfth day of November 1995.

RESOLUTION 1023 (1995)

ADOPTED BY THE SECURITY COUNCIL AT ITS 3596TH MEETING,
ON 22 NOVEMBER 1995

The Security Council,

Recalling all its earlier relevant resolutions,

Reaffirming its commitment to the search for an overall negotiated settlement of the conflicts in the former Yugoslavia, ensuring the sovereignty and territorial integrity of all the States there within their internationally recognized borders, and stressing the importance it attaches to the mutual recognition thereof,

Reaffirming once again its commitment to the independence, sovereignty and territorial integrity of the Republic of Croatia, and emphasizing in this regard that the territories of Eastern Slovenia, Baranja and Western Sirmium, known as Sector East, are integral parts of the Republic of Croatia,

Affirming the importance it attaches to full respect for human rights and fundamental freedoms of all those territories,

Commending the continuing efforts of the representatives of the United Nations, the European Union, the Russian Federation and the United States of America to facilitate a negotiated solution to the conflict in the Republic of Croatia,

1. *Welcomes* the Basic Agreement on the Region of Eastern Slovenia, Baranja and Western Sirmium (S/1995/951, annex), signed on 12 November 1995 between the Government of the Republic of Croatia and the local Serb representatives in the presence of the United Nations mediator and the United States Ambassador to the Republic of Croatia;

2. *Recognizes* the request to it contained in the Basic Agreement to establish a Transitional Administration and authorize an appropriate international force, stands ready to consider the above request expeditiously in order to facilitate the implementation of the Agreement, and invites the Secretary-General to maintain the closest possible contact with all those concerned in order to assist with its work on the matter;

3. *Stresses* the need for the Governments of the Republic of Croatia and the local Serb party to cooperate fully on the basis of the Agreement and refrain from any military activity or any measure that might hinder the implementation of the transitional arrangements set out in it and reminds them of their obligation to cooperate fully with the United Nations Confidence Restoration Operation in Croatia and to ensure its safety and freedom of movement;

4. *Decides* to remain actively seized of the matter.

RESOLUTION 1037 (1996)

ADOPTED BY THE SECURITY COUNCIL AT ITS 3619TH MEETING,
ON 15 JANUARY 1996

The Security Council,

Recalling its earlier relevant resolutions, and in particular its resolutions 1023 (1995) of 22 November 1995 and 1025 (1995) of 30 November 1995,

Reaffirming once again its commitment to the independence, sovereignty and territorial integrity of the Republic of Croatia, and emphasizing in this regard that the territories of eastern Slovenia, Baranja and Western Sirmium are integral parts of the Republic of Croatia,

Stressing the importance it attaches to full respect for human rights and fundamental freedom of all in those territories,

Expressing its support for the Basic Agreement on the Region of Eastern Slovenia, Baranja and Western Sirmium (S/1995/951, annex), signed on 12 November 1995 between the Government of the Republic of Croatia and the local Serbian community (the Basic Agreement),

Having considered the report of the Secretary—General of 13 December 1995 (S/1995/1028),

Stressing the importance it places on mutual recognition among the successor States to the former Socialist Federal Republic of Yugoslavia, within their internationally recognized borders,

Desiring to support the parties in their effort to provide for a peaceful settlement of their disputes, and thus to contribute to achievement of peace in the region as a whole,

Stressing the obligations of Member States to meet all their commitments to the United Nations in relations to the United Nations peacekeeping operations in the former Yugoslavia,

Determining that the situation in Croatia continues to constitute a threat to international peace and security,

Determined to ensure the security and freedom of movement of the personnel of the United Nations peacekeeping operation in the Republic of Croatia, and to these ends, acting under Chapter VII of the Charter of the United Nations,

1. *Decides* to establish for an initial period of 12 months a United Nations peacekeeping operations for the Region referred to in the Basic Agreement, with both military and civilian components, under the name “United Nations Transitional Administration for Eastern Slovenia, Baranja and Western Sirmium”;

2. *Requests* the Secretary-General to appoint, in consultation with the parties and with the Security Council, a Transitional Administrator, who will have overall authority over the civilian and military components of the Transitional Authority, and who will exercise the authority given to the Transitional Administration in the Basic Agreement;

3. *Decides* that the demilitarization of the Region, as provided in the Basic Agreement, shall be completed within 30 days from the date the Secretary-General informs the Council, based on the assessment of the Transitional Administrator, that the military component of the Transitional Authority has been deployed and is ready to undertake its mission;

4. *Requests* the Secretary-General to report monthly to the Security Council, the first such report to be submitted within one week after the date on which the demilitarization is scheduled to be completed pursuant to paragraph 3 above, regarding the activities of the Transitional Authority and the implementation of the Basic Agreement by the parties;

5. *Strongly urges* the parties to refrain from any unilateral actions which could hinder the handover from the United Nations Confidence Restoration Operation in Croatia to the Transitional Authority or the implementation of the Basic Agreement, and encourages them to continue to adopt confidence-building measures to promote an environment of mutual trust;

6. *Decides* that, no later than fourteen days after the date on which demilitarization is scheduled to be completed pursuant to paragraph 3 above, it will review whether the parties have shown a willingness to implement the Basic Agreement, taking into consideration the parties' actions and information provided the Security Council by the Secretary-General

7. *Calls upon* the parties to comply strictly with their obligations under the Basic Agreement and to cooperate fully with the Transitional Authority;

8. *Decides* to reconsider the mandate of the Transitional Authority if at any time it receives a report from the Secretary-General that the parties have significantly failed to comply with their obligations under the Basic Agreement;

9. *Requests* the Secretary-General to report to the Security Council no later than 15 December 1996 on the Transitional Authority and the implementation of the Basic Agreement, and expresses its readiness to review the situation in the light of that report and to take appropriate action;

10. *Decides* the military component of the Transitional Authority shall consist of a force with an initial deployment of up to 5,000 troops which will have the following mandate:

(a) To supervise and facilitate the demilitarization as undertaken by the parties to the Basic Agreement, according to the schedule and procedures to be established by the Transitional Authority;

(b) To monitor the voluntary and safe return of refugees and displaced persons to their home of origin in cooperation with the United Nations High Commissioner for Refugees, as provided for in the Basic Agreement;

(c) To contribute, by its presence, to the maintenance of peace and security in the region;

(d) Otherwise to assist in implementation of the Basic Agreement;

11. *Decides* that, consistent with the objectives and functions set out in paragraphs 12 to 17 of the Secretary-General's report of 13 December 1995, the civilian component of the Transitional Authority shall have the following mandate:

(a) To establish a temporary police force, define its structure and size, develop a training programme and oversee its implementation, and monitor treatment of offenders and the prison system, as quickly as possible, as set out in paragraph 16(b) of the Secretary-General's report;

(b) To undertake tasks relating to civil administration as set out in paragraph 16(b) of the Secretary-General's report;

(c) To undertake tasks relating to the functioning of public services as set out in paragraph 16(c) of the Secretary-General's report;

(d) To facilitate the return of refugees as set out in paragraph 16(e) of the Secretary-General's report;

(e) To organize elections, to assist in their conduct and to certify the results as set out in paragraph 16(g) of the Secretary-General's report and in

(f) To undertake the other activities described in the Secretary-General's report, including assistance in the coordination of plans for the development and economic reconstruction of the region, and those described in paragraph 12 below;

12. *Decides* that the Transitional Authority shall also monitor the parties' compliance with the commitment, as specified in the Basic Agreement, to respect the highest standards of human rights and fundamental freedoms, promote an atmosphere of confidence among all local residents irrespective of their ethnic origin, monitor and facilitate the deeming of territory within the region and maintain an active public affairs element;

13. *Calls upon* the Governments of the Republic of Croatia to include the Transitional Authority and the United Nations Liaison Office in Zagreb in the definition of "United Nations Peace Forces and Operations in Croatia" in the present Status of Forces Agreement with the United Nations, and requests the Secretary-General to confirm urgently, and no later than the date referred to in paragraph 3 above, on whether this has been done;

14. *Decides* that Member States, acting nationally or through regional organizations or arrangements, may at the request of the Transitional Authority and on the basis of procedures communicated to the United Nations, take all necessary measures, including close air support, in defence of the Transitional Authority and, as appropriate, to assist in the withdrawal of the Transitional Authority;

15. *Requests* that the Transitional Authority and the multinational implementation force authorized by the Security Council in resolution 1031 (1995) of 15 December 1995 cooperate, as appropriate, with each other, as well as with the High Representative;

16. *Calls upon* the parties to the Basic Agreement to cooperate with all agencies and organizations assisting in the activities related to implementation of the Basic Agreement, consistent with the mandate of the Transitional Authority;

17. *Requests* all international organizations and agencies active in the Region to coordinate closely with the Transitional Authority;

18. *Calls upon* States and international financial institutions to support and cooperate with efforts to promote the development and economic reconstruction of the Region;

19. *Underlines* the relationship between the fulfilment by the parties of their commitments in the Basic Agreement and the readiness of the international community to commit financial resources for reconstruction and development;

20. *Reaffirms* that all States shall cooperate fully with the International Tribunal for the Former Yugoslavia and its organs in accordance with the provisions of resolution 827 (1993) of May 1993 and the Statute of the International Tribunal and shall comply with requests for assistance or orders issued by a Trial Chamber under article 29 of the Statute;

21. *Stresses* that the Transitional Authority shall cooperate with the International Tribunal in the performance of its mandate, including with regard to the protection of the sites identified by the Prosecutor and persons conducting investigations for the International Tribunal;

22. *Requests* the Secretary-General to submit for consideration by the Security Council at the earliest possible date a report on the possibilities for contributions from the host country offsetting the costs of the operations;

23. *Decides* to remain actively seized of the matter.

4. UNITED NATIONS: UNITED NATIONS CONVENTION ON INDEPENDENT GUARANTEES AND STAND-BY LETTERS OF CREDIT. ADOPTED BY THE GENERAL ASSEMBLY AT NEW YORK ON 11 DECEMBER 1995.¹⁰

United Nations Convention on Independent Guarantees
and Stand-by Letters of Credit¹¹

CHAPTER I. SCOPE OF APPLICATION

Article 1

SCOPE OF APPLICATION

1. This Convention applies to an international undertaking referred to in article 2:

(a) If the place of business of the guarantor/issuer at which the undertaking is issued is in a Contracting State, or

(b) If the rules of private international law lead to the application of the law of a Contracting State,

unless the undertaking excludes the application of the Convention.

2. This Convention applies also to an international letter of credit not falling within article 2 if it expressly states that it is subject to this Convention.

3. The provisions of articles 21 and 22 apply to international undertakings referred to in article 2 independently of paragraph 1 of this article.

Article 2

UNDERTAKING

1. For the purposes of this Convention, an undertaking is an independent commitment, known in international practice as an independent guarantee or as a stand-by letter of credit, given by a bank or other institution or person (“guarantor/issuer”) to pay to the beneficiary a certain or determinable amount upon simple demand or upon demand accompanied by other documents, in conformity with the terms and any documentary conditions of the undertaking, indicating, or from which it is to be inferred, that payment is due because of a default in the performance of an obligation, or because of another constituency, or for money borrowed or advanced, or on account of any mature indebtedness undertaken by the principal/applicant or another person.

2. The undertaking may be given:

(a) At the request or on the instruction of the customer (“principal/applicant”) of the guarantor/issuer;

(b) On the instruction of another bank, institution or person (“instructing party”) that acts at the request of the customer (“principal/applicant”) of that instructing party; or

(c) On behalf of the guarantor/issuer itself.

3. Payment may be stipulated in the undertaking to be made in any form, including:

(a) Payment in a specified currency or unit of account;

(b) Acceptance of a bill of exchange (draft);

(c) Payment on a deferred basis;

(d) Supply of a specified item of value.

4. The undertaking may stipulate that the guarantor/issuer itself is the beneficiary when acting in favour of another person.

Article 3

INDEPENDENCE OF UNDERTAKING

For the purposes of this convention, an undertaking is independent where the guarantor/issuer’s obligation to the beneficiary is not:

(a) Dependent upon the existence or validity of any underlying transaction, or upon any other undertaking (including stand-by letters of credit or independent guarantees to which confirmations or counter-guarantees relate); or

(b) Subject to any term or condition not appearing in the undertaking, or to any future, uncertain act or event except presentation of documents or another such act or event within a guarantor/issuer’s sphere of operations.

Article 4

INTERNATIONALITY OF UNDERTAKING

1. An undertaking is international if the places of business, as specified in the undertaking, of any two of the following persons are in different States: guarantor/issuer, beneficiary, principal/applicant, instructing party, confirmer.

2. For the purposes of the preceding paragraph:

(a) If the undertaking lists more than one place of business for a given person, the relevant place of business is that which has the closest relationship to the undertaking;

(b) If the undertaking does not specify a place of business for a given person but specifies its habitual residence, that residence is relevant for determining the international character of the undertaking.

CHAPTER II. INTERPRETATION

Article 5

PRINCIPLES OF INTERPRETATION

In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in the international practice of independent guarantees and stand-by letters of credit.

Article 6

DEFINITIONS

For the purposes of this Convention and unless otherwise indicated in a provision of this Convention or required by the context:

(a) "Undertaking" includes "counter-guarantee" and "confirmation of an undertaking";

(b) "Guarantor/issuer" includes "counter-guarantor" and "confirmer";

(c) "Counter-guarantee" means an undertaking given to the guarantor/issuer of another undertaking by its instructing party and providing for payment upon simple demand or upon demand accompanied by other documents, in conformity with the terms and any documentary conditions of the undertaking, indicating, or from which it is to be inferred, that payment under that other undertaking has been demanded from, or made by, the person issuing that other undertaking;

(d) "Counter-guarantor" means the person issuing a counter-guarantee;

(e) "Confirmation" of an undertaking means an undertaking added to that of the guarantor/issuer, and authorized by the guarantor/issuer, providing the beneficiary with the option of demanding payment from the confirmer instead of from the guarantor/issuer, upon simple demand or upon demand accompanied by other documents, in conformity with the terms and any documentary conditions of the confirmed undertaking, without prejudice to the beneficiary's right to demand payment from the guarantor/issuer;

(f) "Confirmer" means the person adding a confirmation to an undertaking;

(g) "Document" means a communication made in a form that provides a complete record thereof.

CHAPTER III. FORM AND CONTENT OF UNDERTAKING

Article 7

ISSUANCE, FORM AND IRREVOCABILITY OF UNDERTAKING

1. Issuance of an undertaking occurs when and where the undertaking leaves the sphere of control of the guarantor/issuer concerned.
2. An undertaking may be issued in any form which preserves a complete record of the text of the undertaking and provides authentication of its source by generally accepted means or by a procedure agreed upon by the guarantor/issuer and the beneficiary.
3. From the time of issuance of an undertaking, a demand for payment may be made in accordance with the terms and conditions of the undertaking, unless the undertaking stipulates a different time.
4. An undertaking is irrevocable upon issuance, unless it stipulates that it is revocable.

Article 8

AMENDMENT

1. An undertaking may not be amended except in the form stipulated in the undertaking or, failing such stipulation, in a form referred to in paragraph 2 of article 7.
2. Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, an undertaking is amended upon issuance of the amendment if the amendment has previously been authorized by the beneficiary.
3. Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, where any amendment has not previously been authorized by the beneficiary, the undertaking is amended only when the guarantor/issuer receives a notice of acceptance of the amendment by the beneficiary in a form referred to in paragraph 2 of article 7.
4. An amendment of an undertaking has no effect on the rights and obligations of the principal/applicant (or an instructing party) or of a confirmer of the undertaking unless such person consents to the amendment.

Article 9

TRANSFER OF BENEFICIARY'S RIGHT TO DEMAND PAYMENT

1. The beneficiary's right to demand payment may be transferred only if authorized in the undertaking, and only to the extent and in the manner authorized in the undertaking.
2. If an undertaking is designated as transferable without specifying whether or not the consent of the guarantor/issuer or another authorized person is required for the actual transfer, neither the guarantor/issuer nor any other authorized person is obligated to effect the transfer except to the extent and in the manner expressly consented to by it.

Article 10

ASSIGNMENT OF PROCEEDS

1. Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, the beneficiary may assign to another person any proceeds to which it may be, or may become, entitled under the undertaking.

2. If the guarantor/issuer or another person obliged to effect payment has received a notice originating from the beneficiary, in a form referred to in paragraph 2 of article 7, of the beneficiary's irrevocable assignment, payment to the assignee discharges the obligor, to the extent of its payment, from its liability under the undertaking.

Article 11

CESSATION OF RIGHT TO DEMAND PAYMENT

1. The right of the beneficiary to demand payment under the undertaking ceases when:

(a) The guarantor/issuer has received a statement by the beneficiary of release from liability in a form referred to in paragraph 2 of article 7;

(b) The beneficiary and the guarantor/issuer have agreed on the termination of the undertaking in the form stipulated in the undertaking or failing such stipulation, in a form referred to in paragraph 2 of article 7;

(c) The amount available under the undertaking has been paid, unless the undertaking provides for the automatic renewal or for an automatic increase of the amount available or otherwise provides for continuation of the undertaking;

(d) The validity period of the undertaking expires in accordance with the provisions of article 12.

2. The undertaking may stipulate, or the guarantor/issuer and the beneficiary may agree elsewhere, that return of the document embodying the undertaking to the guarantor/issuer, or a procedure functionally equivalent to the return of the document in the case of the issuance of the undertaking in non-paper form, is required for the cessation of the right to demand payment, either alone or in conjunction with one of the events referred to in subparagraphs (a) and (b) of paragraph 1 of this article. However, in no case shall retention of any such document by the beneficiary after the right to demand payment ceases in accordance with subparagraph (c) or (d) of paragraph 1 of this article preserve any rights of the beneficiary under the undertaking.

Article 12

EXPIRY

The validity period of the undertaking expires:

(a) At the expiry date, which may be a specified calendar date or the last day of a fixed period of time stipulated in the undertaking, provided that, if the expiry date is not a business day at the place of business of the guarantor/issuer at which the undertaking is issued, or of another person or at another place

stipulated in the undertaking for presentation of the demand of repayment, expiry occurs on the first business day which follows;

(b) If expiry depends according to the undertaking on the occurrence of an act or event not within the guarantor/issuer's sphere of operations, when the guarantor/issuer is advised that the act or event has occurred by presentation of the document specified for that purpose in the undertaking or, if no such document is specified, of a certification by the beneficiary of the occurrence of the act or event:

(c) If the undertaking does not state an expiry date, or if the act or event on which expiry is stated to depend has not yet been established by presentation of the required document and an expiry date has not been stated in addition, when six years have elapsed from the date of issuance of the undertaking.

CHAPTER IV. RIGHTS, OBLIGATIONS AND DEFENCES

Article 13

DETERMINATION OF RIGHTS AND OBLIGATIONS

1. The rights and obligations of the guarantor/issuer and the beneficiary arising from the undertaking are determined by the terms and conditions set forth in the undertaking, including any rules, general conditions or usages specifically referred to therein, and by the provisions of this Convention.

2. In interpreting terms and conditions of the undertaking and in settling questions that are not addressed by the terms and conditions of the undertaking or by the provisions of this Convention, regard shall be had to generally accepted international rules and usages of independent guarantee or stand-by letter of credit practice.

Article 14

STANDARD OF CONDUCT AND LIABILITY OF GUARANTOR/ISSUER

1. In discharging its obligations under the undertaking and this Convention, the guarantor/issuer shall act in good faith and exercise reasonable care having due regard to generally accepted standards of international practice of independent guarantees or stand-by letters of credit.

2. A guarantor/issuer may not be exempted from liability for its failure to act in good faith or for any grossly negligent conduct.

Article 15

DEMAND

1. Any demand for payment under the undertaking shall be made in a form referred to in paragraph 2 of the article 7 and in conformity with the terms and conditions of the undertaking.

2. Unless otherwise stipulated in the undertaking, the demand and any certification or other document required by the undertaking shall be presented,

within the time that a demand for payment may be made, to the guarantor/issuer at the place where the undertaking was issued.

3. The beneficiary, when demanding payment, is deemed to certify that the demand is not in bad faith and that none of the elements referred to in subparagraphs (a), (b) and (c) of paragraph 1 of article 19 are present.

Article 16

EXAMINATION OF DEMAND AND ACCOMPANYING DOCUMENTS

1. The guarantor/issuer shall examine the demand and any accompanying documents in accordance with the standard conduct referred to in paragraph 1 of article 14. In determining whether documents are in facial conformity with the terms and conditions of the undertaking, and are consistent with one another, the guarantor/issuer shall have due regard to the applicable international standard of independent guarantee or stand-by letter of credit.

2. Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, the guarantor/issuer shall have reasonable time, but not more than seven business days following the day of receipt of the demand and any accompanying documents, in which to:

- (a) Examine the demand and any accompanying documents;
- (b) Decide whether or not to pay;
- (c) If the decision is not to pay, issue notice thereof to the beneficiary.

The notice referred to in subparagraph (c) above shall, unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, be made by teletransmission or, if that is not possible, by other expeditious means and indicate the reason for the decision not to pay.

Article 17

PAYMENT

1. Subject to article 19, the guarantor/issuer shall pay against a demand made in accordance with the provisions of article 15. Following a determination that a demand for payment so conforms, payment shall be made promptly, unless the undertaking stipulates payment on a deferred basis, in which case payment shall be made at the stipulated time.

2. Any payment against a demand that is not in accordance with the provisions of article 15 does not prejudice the rights of the principal/applicant.

Article 18

SET-OFF

Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, the guarantor/issuer may discharge the payment obligation under the undertaking by availing itself of a right of set-off, except with any claims assigned to it by the principal/applicant or the instructing party.

Article 19

EXCEPTION TO PAYMENT OBLIGATION

1. If it is manifest and clear that:
 - (a) Any document is not genuine or has been falsified;
 - (b) No payment is due on the basis asserted in the demand and the supporting documents; or
 - (c) Judging by the type and purpose of the undertaking, the demand has no conceivable basis,
the guarantor/issuer, acting in good faith, has a right as against the beneficiary, to withhold payment.
2. For the purposes of subparagraph (c) of paragraph 1 of this article, the following area are types of situations in which a demand has no conceivable basis:
 - (a) The contingency or risk against which the undertaking was designed to secure the beneficiary has undoubtedly not materialized;
 - (b) The underlying obligation of the principal/applicant has been declared invalid by a court or arbitral tribunal, unless the undertaking indicates that such contingency falls within the risk to be covered by the undertaking;
 - (c) The underlying obligation has undoubtedly been fulfilled to the satisfaction of the beneficiary;
 - (d) Fulfilment of the underlying obligation has clearly been prevented by wilful misconduct of the beneficiary;
 - (e) In the case of a demand under a counter-guarantee, the beneficiary of the counter-guarantee has made payment in bad faith as guarantor/issuer of the undertaking to which the counter-guarantee relates.
3. In the circumstances set out in subparagraphs (a), (b) and (c) of paragraph 1 of this article, the principal/applicant is entitled to provisional court measures in accordance with article 20.

CHAPTER V. PROVISIONAL COURT MEASURES

Article 20

PROVISIONAL COURT MEASURES

1. Where, on an application by the principal/applicant or the instructing party, it is shown that there is a high probability that, with regard to a demand made, or expected to be made, by the beneficiary, one of the circumstances referred in subparagraphs (a), (b) and (c) of paragraph 1 of article 19 is present, the court, on the basis of immediately available strong evidence, may:
 - (a) Issue a provisional order to the effect that the beneficiary does not receive payment, including an order that the guarantor/issuer hold the amount of the undertaking, or
 - (b) Issue a provisional order to the effect that the proceeds of the undertaking paid to the beneficiary are blocked, taking into account whether the absence of such an order the principal/applicant would be likely to suffer serious harm.

2. The court, when issuing a provisional order referred to in paragraph 1 of this article, may require the person applying therefore to furnish such form of security as the court deems appropriate.

3. The court may not issue a provisional order of the kind referred to in paragraph 1 of this article based on any objection to payment other than those referred to in subparagraphs (a), (b) and (c) of paragraph 1 of article 19, or use of the undertaking for a criminal purpose.

CHAPTER VI. CONFLICT OF LAWS

Article 21

CHOICE OF APPLICABLE LAW

The undertaking is governed by the law the choice of which is:

- (a) Stipulated in the undertaking or demonstrated by the terms and conditions of the undertaking; or
- (b) Agreed elsewhere by the guarantor/issuer and the beneficiary.

Article 22

DETERMINATION OF APPLICABLE LAW

Failing a choice of law in accordance with article e21, the undertaking is governed by the law of the State where the guarantor/issuer has that place of business at which the undertaking was issued.

CHAPTER VII. FINAL CLAUSES

Article 23

DEPOSITARY

The Secretary-General of the United Nations is the depositary of this Convention.

Article 24

SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL, ACCESSION

1. This Convention is open for signature by all States at the Headquarters of the United Nations, New York, until 11 December 1997.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. This Convention is open to accession by all States which are not signatory States as from the date it is open for signature.
4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 25

APPLICATION TO TERRITORIAL UNITS.

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declared that this Convention is to extend to all its territorial units or only one or more of them, and may at any time substitute another declaration for its earlier declaration.

2. These declarations are to state expressly the territorial units to which the Convention extends.

3. If, by virtue of a declaration under this article, this Convention does not extend, this place of business is considered not to be in a Contracting State.

4. If a State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 26

EFFECT OF DECLARATION

1. Declarations made under article 25 at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

4. Any State which makes a declaration under article 25 may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal takes effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

Article 27

RESERVATIONS

No reservations may be made to this Convention.

Article 28

ENTRY INTO FORCE

1. This Convention enters into force on the first day of the month following the expiration of one year from the date of the deposit of the fifth instrument ratification, acceptance, approval or accession.

2. For each State which becomes a Contracting State to this Convention after the date of the deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the date of the deposit of the appropriate instrument on behalf of that State.

3. This Convention applies only to undertakings issued on or after the date when the Convention enters into force in respect of the Contracting State referred to in subparagraph (a) or the Contracting State referred to in subparagraph (b) of paragraph 1 of article 1.

Article 29

DENUNCIATION

1. A Contracting State may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Done at New York, this eleventh day of December one thousand nine hundred and ninety-five, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

In witness thereof the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.

B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations

1. FAO-ILO-OECD-UNEP-UNIDO-WHO: MEMORANDUM OF UNDERSTANDING CONCERNING ESTABLISHMENT OF THE INTER-ORGANIZATION PROGRAMME FOR THE SOUND MANAGEMENT OF CHEMICALS. SIGNED AT STOCKHOLM ON 11,17, 31 JANUARY AND 13 MARCH 1995.¹²

Memorandum of Understanding concerning Establishment of the Inter-Organization Programme for the Sound Management of Chemicals

The parties to this Memorandum,

Noting the endorsement by the United Nations General Assembly, in resolution 47/190 of 22 December 1992, of Agenda 21 as adopted by the United Nations Conference on Environment and Development in Rio de Janeiro on 14 June 1992, and in particular its chapter 19, and

Taking into account the resolutions adopted at the International Conference on Chemical Safety in Stockholm on 29 April 1994,

Have agreed as follows:

1. *Parties*

1.1 This Memorandum of Understanding shall be open to signature by the following Organizations:

the United Nations Environment Programme
the International Labour Organization
the Food and Agriculture Organization of the United Nations
the World Health Organization
the United Nations Industrial Development Organization and
the Organization for Economic Cooperation and Development

1.2 The organizations listed in paragraph 1.1 which have become parties to this Memorandum of Understanding shall be known as Participating Organizations.

1.3 Other intergovernmental organizations may also become Participating Organizations upon the unanimous consent of the Participating Organizations and after fulfilment of the provisions of paragraph 10.2.

2. *Establishment and purpose of Programme*

2.1 The Inter-Organization Programme for the Sound Management of Chemicals is hereby established.

2.2 The purpose of the Programme is to promote coordination of the policies and activities pursued by the Participating Organizations, jointly and separately, to achieve the sound management of chemicals in relation to human health and the environment.

2.3 The areas in which coordination shall be sought are the following:

- (a) International assessment of chemical risks;
- (b) Harmonization of classification and labeling of chemicals;
- (c) Information exchange on chemicals and chemical risks;
- (d) Establishment of risk reduction programmes;
- (e) Strengthening of national capabilities and capacities for management of chemicals;
- (f) Prevention of illegal international traffic in toxic and dangerous products;
- (g) Other areas as agreed by the all Participating Organizations.

3. *Inter-Organization Coordinating Committee (IOCC)*

3.1 There shall be an Inter-Organization Coordinating Committee (IOCC), composed of one representative of each Participating Organization, which shall perform the functions identified in paragraph 5 below.

3.2 These representatives may be assisted by advisors, as appropriate.

3.3 The IOCC may agree to invite observers to attend its meetings.

3.4 The IOCC may agree to set up advisory bodies, if necessary.

3.5 The IOCC shall adopt its rules of procedure.

3.6 The IOCC shall elect its Chairperson, and, as necessary, Vice-Chairpersons, serving on a rotational basis unless otherwise agreed by the IOCC.

4. *Meetings*

4.1 The IOCC shall normally hold two regular sessions every year. The IOCC shall determine the date, time and place of each regular session.

4.2 An extraordinary session of the IOCC may be called at the request of at least two of the Participating Organizations. The date, time and place of an extraordinary session shall be determined by the Chairperson in consultation with the Secretariat and the Participating Organizations.

4.3 Each Participating Organization shall make its own arrangements for bearing the cost of attending meetings of the IOCC.

4.4 The IOCC may agree to meet from time to time with the representatives of other organizations, programmes and intergovernmental meetings and arrangements.

5. *Functions*

5.1 The Functions of the IOCC shall be the following:

(a) To consult on the planning, programming, funding, implementation and monitoring of activities undertaken jointly or individually by the Participating Organizations with regard to the sound management of chemicals;

(b) To identify gaps and areas of overlap in such activities and recommend ways to reduce or eliminate them;

(c) To make recommendations on the distribution of work among the Participating Organizations with regard to the sound management of chemicals;

(d) To recommend common policies to be pursued by the Participating Organizations;

(e) To encourage the Participating Organizations to undertake joint programmes for the sound management of chemicals;

(f) To endorse specific activities planned or undertaken by one or more of the Participating Organizations as being within the framework of the Programme;

(g) To exchange information about the activities undertaken and planned to be undertaken, jointly or separately, by the Participating Organizations with regard to the sound management of chemicals;

(h) To review actions taken, and to consider recommendations made, by other organizations, programmes and intergovernmental meetings and arrangements (such as the Intergovernmental Forum on Chemical Safety) concerning matters within the scope of the Programme, as well as to consider possible follow-up which might be given by the Participating Organizations;

(i) To make recommendations to such organizations, programmes and intergovernmental meetings and arrangements;

(j) To consider and approve the budget of the Secretariat;

(k) To determine the work to be carried out by the Secretariat.

5.2 The IOCC may be given additional functions as agreed by all the Participating Organizations.

6. *Recommendations and Decision-making*

Except as otherwise provided in this Memorandum of Understanding, and subject to advance notice of the provisional agenda of the meeting, recommendations and decisions of the IOCC shall be taken by consensus among the representatives of the Participating Organizations who are present at a meeting of the IOCC.

7. *Secretariat*

7.1 There shall be a secretariat providing the IOCC with services, including the following:

- (a) Organizing meetings of the IOCC;
- (b) Collecting and analyzing information for the preparation of documents for such meetings;
- (c) Preparing and circulating the minutes of each meeting and the report referred to in paragraph 9.1;
- (d) Performing other intersessional work as necessary for such meetings;
- (e) Drawing up a draft budget of the Secretariat for consideration by the IOCC.

7.2 The Secretariat shall carry out its work in accordance with the guidance of the IOCC.

7.3 To the extent that corresponding resources are made available, the Secretariat of the Programme may also provide secretariat services for other intergovernmental meetings and arrangements if so decided by the IOCC. For this purpose, that part of the Secretariat providing such services shall be functionally distinct from that part of the Secretariat under the direction of the IOCC.

7.4 The Secretariat shall be located at the administering organization.

7.5 Until agreed otherwise by the Participating Organizations, the administering organization for the Secretariat shall be the World Health Organization.

7.6 The Participating Organizations shall review the designation of the administering organization five years after the date on which this Memorandum of Understanding entered into force and periodically thereafter.

7.7 To the extent that resources are made available to so provide, the Secretariat shall be composed of such staff as deemed necessary by the IOCC.

7.8 The loan or secondment of a staff member to perform work for the Secretariat shall be subject to agreement between the organization releasing the staff member and the administering organization of the Secretariat.

7.9 The Executive Head of the administering organization shall designate the head of the Secretariat upon the consensus recommendation of the IOCC attended by all the Participating Organizations.

8. *Budget*

8.1 The Participating Organizations shall share the costs of the Secretariat, taking into account resources provided under paragraphs 8.3 and 8.4.

8.2 The budget of the Secretariat shall state the amount of its budgetary needs and the resources envisaged to meet them.

8.3 The resources of the Secretariat, as approved by the IOCC, may be provided as follows:

(a) Voluntary monetary and in-kind contributions from the Participating Organizations and Governments;

(b) Voluntary monetary and in-kind contributions from other inter-governmental sources;

(c) Secondment or loan of staff members from the Participating Organizations as a contribution in kind.

8.4 Contributions from other sources may also be approved by the IOCC attended by all the Participating Organizations.

8.5 No Participating Organization shall be required to provide financial support for the Secretariat beyond what that Organization has pledged.

9. *Reporting*

9.1 The Secretariat shall submit a report of activities and the use of budgetary resources to the IOCC for its adoption at least once a year.

9.2 The adopted report shall be sent to the executive heads of the Participating Organizations and be forwarded through the appropriate channel to the Inter-Agency Committee on Sustainable Development and to any other bodies the IOCC may deem appropriate.

10. *Entry into force*

10.1 This Memorandum of Understanding shall enter into force upon signature by four of the organizations mentioned in paragraph 1.1 above.

10.2 It shall enter into force for any other intergovernmental organization mentioned in paragraph 1.3 upon the date of the written acceptance by that organization of the Memorandum of Understanding, including any amendments thereto.

11. *Amendments*

This Memorandum of Understanding may be amended by consensus of all Participating Organizations. An amendment shall enter into force upon written acceptance by all the participating organizations

12. *Withdrawal*

12.1 Any participating Organization may withdraw from this Memorandum of Understanding by written notification to the head of the Secretariat of the IOCC, who shall immediately inform the Participating Organization of such notification.

12.2 The withdrawal shall take effect upon the expiration of six months from the date on which the written notification has been received by the head of the Secretariat of the IOCC or at any later date indicated in the notification.

13. *Duration and Termination*

This Memorandum of Understanding may be terminated only by consensus of all Participating Organizations or whenever the number of the Participating Organizations is less than four, unless the remaining Participating Organizations agree otherwise.

2. WORLD INTELLECTUAL PROPERTY ORGANIZATION/
WORLD TRADE ORGANIZATION: AGREEMENT BETWEEN
WIPO AND WTO. DONE AT GENEVA ON 22 DECEMBER
1995.¹³

Agreement between the World Intellectual Property Organization and
the World Trade Organization

PREAMBLE

The World Intellectual Property Organization and the World Trade Organization,

Desiring to establish a mutually supportive relationship between them, and with a view to establishing appropriate arrangements for cooperation between them,

Agree as follows:

Article 1

ABBREVIATED EXPRESSIONS

For the purposes of this Agreement:

- (i) “WIPO” means the World Intellectual Property Organization;
- (ii) “WTO” means the World Trade Organization;
- (iii) “International Bureau” means the International Bureau of WIPO;
- (iv) “WTO Member” means a party to the Agreement Establishing the World Trade Organization;
- (v) “the TRIPS Agreement” means the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C to the Agreement Establishing the World Trade Organization;
- (vi) “Paris Convention” means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised;
- (vii) “emblem” means, in the case of a WTO Member, any armorial bearing, flag and other State emblem of that WTO Member, or any official sign or hallmark indicating control and warranty adopted by it, and in the case of international intergovernmental organization, any armorial bearing, flag, other emblem, abbreviation or name of that organization.

Article 2

LAWS AND REGULATIONS

(1) [*Accessibility of laws and regulations in the WIPO Collection by WTO Members and their nationals*] The International Bureau shall, on request, furnish to WTO Members and to nationals of WTO Members copies of laws and

regulations, and copies of translations thereof, that exist in its collection, on the same terms as apply to the Members of WIPO and to nationals of the States Member of WIPO, respectively.

(2) [*Accessibility of the computerized database*] WTO Members and nationals of WTO Members shall have access, on the same terms as apply to the States Members of WIPO and to nationals of the States Members of WIPO, respectively, to any computerized database of the International Bureau containing laws and regulations. The WTO Secretariat shall have access, free of any charge by WIPO, to any such database.

(3) [*Accessibility of laws and regulations in the WIPO Collection by the WTO Secretariat and the Council for TRIPS*] (a) Where, on the date of its initial notification of a law or regulation under article 63.2 of the TRIPS Agreement, a WTO Member has already communicated that law or regulation, or a translation thereof, to the International Bureau and that WTO Member has sent to the WTO Secretariat a statement to that effect, and that law, regulation or translation actually exists in the collection of the International Bureau, the International Bureau shall, on request of the WTO Secretariat, give free of charge, a copy of the said law, regulation or translation to the WTO Secretariat.

(b) Furthermore, if for the purposes of carrying out its obligations under article 68 of the TRIPS Agreement, such as monitoring the operation of the TRIPS Council for TRIPS of the WTO requires a copy of a law or regulation, or a copy of a translation thereof, which had not previously been given to the WTO Secretariat under subparagraph (a), and which exists in the collection of the International Bureau, the International Bureau shall, upon request of either the Council for TRIPS or the WTO Secretariat, give to the WTO Secretariat, free of charge, the requested copy.

(c) The International Bureau shall, on request, furnish to the WTO Secretariat on the same terms as apply to States Members of WIPO any additional copies of the laws, regulations and translations given under subparagraph (a) or (b), as well as copies of any other laws and regulations, and copies of translations thereof, which exist in the collection of the International Bureau.

(d) The International Bureau shall not put any restriction on the use that the WTO Secretariat may make of the copies of laws, regulations and translations transmitted under subparagraph (a), (b) or (c).

(4) [*Laws and regulations received by the WTO Secretariat from WTO Members*] (a) The WTO Secretariat shall transmit to the International Bureau, free of charge, a copy of the laws and regulations received by the WTO Secretariat from WTO Members under article 63.2 of the TRIPS Agreement in the language or languages and in the form or forms in which they were received, and the International Bureau shall place such copies in its collection.

(b) The WTO Secretariat shall not put any restriction on the further use that the International Bureau may make of the copies of the laws and regulations transmitted under subparagraph (a).

(5) [*Translation of laws and regulations*] The International Bureau shall make available to developing country WTO Members which are not States members of WIPO the same assistance for translation of laws and regulations for the purposes of article 63.2 of the TRIPS Agreement as it makes available to Members of WIPO which are developing countries.

Article 3

IMPLEMENTATION OF ARTICLE 6 OF THE PARIS CONVENTION FOR THE PURPOSES OF THE TRIPS AGREEMENT

(1) [*General*] (a) The procedures relating to communication of emblems and transmittal of objections under the TRIPS Agreement shall be administered by the International Bureau in accordance with the procedures applicable under article 6 of the Paris Convention (1967).

(b) The International Bureau shall not recommunicate to a State party to the Paris Convention which is a WTO Member an emblem which had already been communicated to it by the International Bureau under article 6 of the Paris Convention prior to 1 January 1996, or, where that State became a WTO Member after 1 January 1996, prior to the date on which it became a WTO Member, and the International Bureau shall not transmit any objection received from the said WTO Member concerning the said emblem if the objection is received by the International Bureau more than 12 months after receipt of the communication of the said emblem under Article 6 of the Paris Convention by the said State.

(2) [*Objections*] Notwithstanding paragraph (1)(a), any objection received by the International Bureau from a WTO Member which concerns an emblem that had been communicated to the International Bureau by another WTO Member where at least one of the said WTO Members is not party to the Paris Convention, and any objections which concerns an emblem of an international intergovernmental organization and which is received by the International Bureau from a WTO Member not party to the Paris Convention or not bound under the Paris Convention to protect emblems of international intergovernmental organizations, shall be transmitted by the International Bureau to the WTO Member or international intergovernmental organization concerned regardless of the date on which the objection had been received by the International Bureau. The provisions of the preceding sentence shall not affect the time limit of 12 months for the lodging of an objection.

(3) [*Information to be provided to the WTO Secretariat*] The International Bureau shall provide to the WTO Secretariat information relating to any emblem communicated by a WTO Member to the International Bureau or communicated by the International Bureau to a WTO Member.

Article 4

LEGAL-TECHNICAL ASSISTANCE AND TECHNICAL COOPERATION

(1) [*Availability of legal-technical assistance and technical cooperation*] The International Bureau shall make available to developing country WTO Members such as are not States Members of WIPO the same legal-technical assistance relating to the TRIPS Agreement as it makes available to States members of WIPO which are developing countries. The WTO Secretariat shall make available to States Members of WIPO which are developing countries and are not WTO Members the same technical cooperation relating to the TRIPS Agreement as it makes available to developing country WTO Members.

(2) [*Cooperation between the International Bureau and the WTO Secretariat*] The International Bureau and the WTO Secretariat shall enhance cooperation in their legal-technical assistance and technical cooperation activities relating to the TRIPS Agreement for developing countries, so as to maximize the usefulness of those activities and ensure their mutually supportive nature.

(3) [*Exchange of information*] For the purposes of paragraphs (1) and (2), the International Bureau and the WTO Secretariat shall keep in regular contact and exchange confidential information.

Article 5

FINAL CLAUSES

(1) [*Entry into force of this Agreement*] This Agreement shall enter into force on 1 January 1996

(2) [*Amendment of this Agreement*] This Agreement may be amended by common agreement of the parties to this Agreement.

(3) [*Termination of this Agreement*] If one of the parties to this Agreement gives the other party written notice to terminate this Agreement, this Agreement shall terminate one year after receipt of the notice by the other party, unless a longer period is specified in the notice or unless both parties agree on a longer or a shorter period.

NOTES

¹United Nations, *Treaty Series*, vol. 729, p.161.

²Entered into force 5 March 1970.

³Document NPT/CONF. 1995/32 (Part I).

⁴Not yet entered into force.

⁵A/CONF. 164/37; see also A/50/550, annex I.

⁶*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.

⁷*Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex II.

⁸United Nations document S/1995/951, annex.

⁹Entered into force on 15 January 1996.

¹⁰To enter into force on 1 January 2000.

¹¹General Assembly resolution 50/48 annex; also available as a United Nations sales publication, Sales. No. E.97.V.12.

¹²Entered into force on 13 March 1995.

¹³Entered into force on 1 January 1996.