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UNITED NATIONS JURIDICAL YEARBOOK

1997

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

CONTENTS (*continued*)

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Chapter IV

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

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

1. CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES.[1] DONE AT NEW YORK, 21 MAY 1997[2]

The Parties to the present Convention,

Conscious of the importance of international watercourses and the non-navigational uses thereof in many regions of the world,

Having in mind Article 13, paragraph 1 (*a*), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Considering that successful codification and progressive development of rules of international law regarding non-navigational uses of international watercourses would assist in promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

Taking into account the problems affecting many international watercourses resulting from, among other things, increasing demands and pollution,

Expressing the conviction that a framework convention will ensure the utilization, development, conservation, management and protection of international watercourses and the promotion of the optimal and sustainable utilization thereof for present and future generations,

Affirming the importance of international cooperation and good-neighbourliness in this field,

Aware of the special situation and needs of developing countries,

Recalling the principles and recommendations adopted by the United Nations Conference on Environment and Development of 1992 in the Rio Declaration and Agenda 21,

Recalling also the existing bilateral and multilateral agreements regarding the non-navigational uses of international watercourses,

Mindful of the valuable contribution of international organizations, both governmental and non-governmental, to the codification and progressive development of international law in this field,

Appreciative of the work carried out by the International Law Commission on the law of the non-navigational uses of international watercourses,

Bearing in mind United Nations General Assembly resolution 49/52 of 9 December 1994,

Have agreed as follows:

PART I. INTRODUCTION

Article 1

SCOPE OF THE PRESENT CONVENTION

1. The present Convention applies to uses of international watercourses and of their waters for purposes other than navigation and to measures of protection, preservation and management related to the uses of those watercourses and their waters.

2. The uses of international watercourses for navigation is not within the scope of the present Convention except insofar as other uses affect navigation or are affected by navigation.

Article 2

USE OF TERMS

For the purposes of the present Convention:

(*a*) "Watercourse" means a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus;

(*b*) "International watercourse" means a watercourse, parts of which are situated in different States;

(*c*) "Watercourse State" means a State Party to the present Convention in whose territory part of an international watercourse is situated, or a Party that is a regional economic integration organization, in the territory of one or more of whose member States part of an international watercourse is situated;

(*d*) "Regional economic integration organization" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

Article 3

WATERCOURSE AGREEMENTS

1. In the absence of an agreement to the contrary, nothing in the present Convention shall affect the rights or obligations of a watercourse State arising from agreements in force for it on the date on which it became a party to the present Convention.

2. Notwithstanding the provisions of paragraph 1, parties to agreements referred to in paragraph 1 may, where necessary, consider harmonizing such agreements with the basic principles of the present Convention.

3. Watercourse States may enter into one or more agreements, hereinafter referred to as "watercourse agreements", which apply and adjust the provisions of the present Convention to the characteristics and uses of a particular international watercourse or part thereof.

4. Where a watercourse agreement is concluded between two or more watercourse States, it shall define the waters to which it applies. Such an agreement may be entered into with respect to an entire international watercourse or any part thereof or a particular project, programme or use except insofar as the agreement adversely affects, to a significant extent, the use by one or more other watercourse States of the waters of the watercourse, without their express consent.

5. Where a watercourse State considers that adjustment and application of the provisions of the present Convention is required because of the characteristics and uses of a particular international watercourse, watercourse States shall consult with a view to negotiating in good faith for the purpose of concluding a watercourse agreement or agreements.

6. Where some but not all watercourse States to a particular international watercourse are parties to an agreement, nothing in such agreement shall affect the rights or obligations under the present Convention of watercourse States that are not parties to such an agreement.

Article 4

PARTIES TO WATERCOURSE AGREEMENTS

1. Every watercourse State is entitled to participate in the negotiation of and to become a party to any watercourse agreement that applies to the entire international watercourse, as well as to participate in any relevant consultations.

2. A watercourse State whose use of an international watercourse may be affected to a significant extent by the implementation of a proposed watercourse agreement that applies only to a part of the watercourse or to a particular project, programme or use is entitled to participate in consultations on such an agreement and, where appropriate, in the negotiation thereof in good faith with a view to becoming a party thereto, to the extent that its use is thereby affected.

PART II. GENERAL PRINCIPLES

Article 5

EQUITABLE AND REASONABLE UTILIZATION AND PARTICIPATION

1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.

2. Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present Convention.

Article 6

FACTORS RELEVANT TO EQUITABLE AND REASONABLE UTILIZATION

1. Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including:

(*a*) Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;

(*b*) The social and economic needs of the watercourse States concerned;

(*c*) The population dependent on the watercourse in each watercourse State;

(*d*) The effects of the use or uses of the watercourses in one watercourse State on other watercourse States;

(*e*) Existing and potential uses of the watercourse;

(*f*) Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;

(*g*) The availability of alternatives, of comparable value, to a particular planned or existing use.

2. In the application of article 5 or paragraph 1 of this article, watercourse States concerned shall, when the need arises, enter into consultations in a spirit of cooperation.

3. The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is a reasonable and equitable use, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.

Article 7

OBLIGATION NOT TO CAUSE SIGNIFICANT HARM

1. Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States.

2. Where significant harm nevertheless is caused to another watercourse State, the States whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard for the provisions of articles 5 and 6, in consultation with the affected State, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.

Article 8

GENERAL OBLIGATION TO COOPERATE

1. Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse.

2. In determining the manner of such cooperation, watercourse States may consider the establishment of joint mechanisms or commissions, as deemed necessary by them, to facilitate cooperation on relevant measures and procedures in the light of experience gained through cooperation in existing joint mechanisms and commissions in various regions.

Article 9

REGULAR EXCHANGE OF DATA AND INFORMATION

1. Pursuant to article 8, watercourse States shall on a regular basis exchange readily available data and information on the condition of the watercourse, in particular that of a hydrological, meteorological, hydrogeological and ecological nature and related to the water quality as well as related forecasts.

2. If a watercourse State is requested by another watercourse State to provide data or information that is not readily available, it shall employ its best efforts to comply with the request but may condition its compliance upon payment by the requesting State of the reasonable costs of collecting and, where appropriate, processing such data or information.

3. Watercourse States shall employ their best efforts to collect and, where appropriate, to process data and information in a manner which facilitates its utilization by the other watercourse States to which it is communicated.

Article 10

RELATIONSHIP BETWEEN DIFFERENT KINDS OF USES

1. In the absence of agreement or custom to the contrary, no use of an international watercourse enjoys inherent priority over other uses.

2. In the event of a conflict between uses of an international watercourse, it shall be resolved with reference to articles 5 to 7, with special regard being given to the requirements of vital human needs.

PART III. PLANNED MEASURES

Article 11

INFORMATION CONCERNING PLANNED MEASURES

Watercourse States shall exchange information and consult each other and, if necessary, negotiate on the possible effects of planned measures on the condition of an international watercourse.

Article 12

NOTIFICATION CONCERNING PLANNED MEASURES WITH POSSIBLE ADVERSE EFFECTS

Before a watercourse State implements or permits the implementation of planned measures which may have a significant adverse effect upon other watercourse States, it shall provide those States with timely notification thereof. Such notification shall be accompanied by available technical data and information, including the results of any environmental impact assessment, in order to enable the notified States to evaluate the possible effects of the planned measures.

Article 13

PERIOD FOR REPLY TO NOTIFICATION

Unless otherwise agreed:

(*a*) A watercourse State providing a notification under article 12 shall allow the notified States a period of six months within which to study and evaluate the possible effects of the planned measures and to communicate the findings to it;

(*b*) This period shall, at the request of a notified State for which the evaluation of the planned measures poses special difficulty, be extended for a period of six months.

Article 14

OBLIGATIONS OF THE NOTIFYING STATE DURING THE PERIOD FOR REPLY

During the period referred to in article 13, the notifying State:

(*a*) Shall cooperate with the notified States by providing them, on request, with any additional data and information that is available and necessary for an accurate evaluation; and

(*b*) Shall not implement or permit the implementation of the planned measures without the consent of the notified States.

Article 15

REPLY TO NOTIFICATION

The notified States shall communicate their findings to the notifying State as early as possible within the period applicable pursuant to article 13. If a notified State finds that implementation of the planned measures would be inconsistent with the provisions of articles 5 or 7, it shall attach to its finding a documented explanation setting forth the reasons for the finding.

Article 16

ABSENCE OF REPLY TO NOTIFICATION

1. If, within the period applicable pursuant to article 13, the notifying State receives no communication under article 15, it may, subject to its obligations under articles 5 and 7, proceed with the implementation of the planned measures, in accordance with the notification and any other data and information provided to the notified States.

2. Any claim to compensation by a notified State which has failed to reply within the period applicable pursuant to article 13 may be offset by the costs incurred by the notifying State for action undertaken after the expiration of the time for a reply which would not have been undertaken if the notified State had objected within that period.

Article 17

CONSULTATIONS AND NEGOTIATIONS CONCERNING PLANNED MEASURES

1. If a communication is made under article 15 that implementation of the planned measures would be inconsistent with the provisions of articles 5 or 7, the notifying State and the State making the communication shall enter into consultations and, if necessary, negotiations with a view to arriving at an equitable resolution of the situation.

2. The consultations and negotiations shall be conducted on the basis that each State must in good faith pay reasonable regard to the rights and legitimate interests of the other State.

3. During the course of the consultations and negotiations, the notifying State shall, if so requested by the notified State at the time it makes the communication, refrain from implementing or permitting the implementation of the planned measures for a period of six months unless otherwise agreed.

Article 18

PROCEDURES IN THE ABSENCE OF NOTIFICATION

1. If a watercourse State has reasonable grounds to believe that another watercourse State is planning measures that may have a significant adverse effect upon it, the former State may request the latter to apply the provisions of article 12. The request shall be accompanied by a documented explanation setting forth its grounds.

2. In the event that the State planning the measures nevertheless finds that it is not under an obligation to provide a notification under article 12, it shall so inform the other State, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy the other State, the two States shall, at the request of that other State, promptly enter into consultations and negotiations in the manner indicated in paragraphs 1 and 2 of article 17.

3. During the course of the consultations and negotiations, the State planning the measures shall, if so requested by the other State at the time it requests the initiation of consultations and negotiations, refrain from implementing or per-

mitting the implementation of those measures for a period of six months unless otherwise agreed.

Article 19

URGENT IMPLEMENTATION OF PLANNED MEASURES

1. In the event that the implementation of planned measures is of the utmost urgency in order to protect public health, public safety or other equally important interests, the State planning the measures may, subject to articles 5 and 7, immediately proceed to implementation, notwithstanding the provisions of article 14 and paragraph 3 of article 17.

2. In such case, a formal declaration of the urgency of the measures shall be communicated without delay to the other watercourse States referred to in article 12 together with the relevant data and information.

3. The State planning the measures shall, at the request of any of the States referred to in paragraph 2, promptly enter into consultations and negotiations with it in the manner indicated in paragraphs 1 and 2 of article 17.

PART IV. PROTECTION, PRESERVATION AND MANAGEMENT

Article 20

PROTECTION AND PRESERVATION OF ECOSYSTEMS

Watercourse States shall, individually and, where appropriate, jointly, protect and preserve the ecosystems of international watercourses.

Article 21

PREVENTION, REDUCTION AND CONTROL OF POLLUTION

1. For the purpose of this article, "pollution of an international watercourse" means any detrimental alteration in the composition or quality of the waters of an international watercourse which results directly or indirectly from human conduct.

2. Watercourse States shall, individually and, where appropriate, jointly, prevent, reduce and control the pollution of an international watercourse that may cause significant harm to other watercourse States or to their environment, including harm to human health or safety, to the use of the waters for any beneficial purpose or to the living resources of the watercourse. Watercourse States shall take steps to harmonize their policies in this connection.

3. Watercourse States shall, at the request of any of them, consult with a view to arriving at mutually agreeable measures and methods to prevent, reduce and control pollution of an international watercourse, such as:

(*a*) Setting joint water quality objectives and criteria;

(*b*) Establishing techniques and practices to address pollution from point and non-point sources;

(*c*) Establishing lists of substances the introduction of which into the waters of an international watercourse is to be prohibited, limited, investigated or monitored.

Article 22

INTRODUCTION OF ALIEN OR NEW SPECIES

Watercourse States shall take all measures necessary to prevent the introduction of species, alien or new, into an international watercourse which may have effects detrimental to the ecosystem of the watercourse resulting in significant harm to other watercourse States.

Article 23

PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

Watercourse States shall, individually and, where appropriate, in cooperation with other States, take all measures with respect to an international watercourse that are necessary to protect and preserve the marine environment, including estuaries, taking into account generally accepted international rules and standards.

Article 24

MANAGEMENT

1. Watercourse States shall, at the request of any of them, enter into consultations concerning the management of an international watercourse, which may include the establishment of a joint management mechanism.

2. For the purposes of this article, "management" refers, in particular, to:

(*a*) Planning the sustainable development of an international watercourse and providing for the implementation of any plans adopted; and

(*b*) Otherwise promoting the rational and optimal utilization, protection and control of the watercourse.

Article 25

REGULATION

1. Watercourse States shall cooperate, where appropriate, to respond to needs or opportunities for regulation of the flow of the waters of an international watercourse.

2. Unless otherwise agreed, watercourse States shall participate on an equitable basis in the construction and maintenance or defrayal of the costs of such regulation works as they may have agreed to undertake.

3. For the purposes of this article, "regulation" means the use of hydraulic works or any other continuing measure to alter, vary or otherwise control the flow of the waters of an international watercourse.

Article 26

INSTALLATIONS

1. Watercourse States shall, within their respective territories, employ their best efforts to maintain and protect installations, facilities and other works related to an international watercourse.

2. Watercourse States shall, at the request of any of them which has reasonable grounds to believe that it may suffer significant adverse effects, enter into consultations with regard to:

(*a*) The safe operation and maintenance of installations, facilities or other works related to an international watercourse; and

(*b*) The protection of installations, facilities or other works from wilful or negligent acts or the forces of nature.

PART V. HARMFUL CONDITIONS AND EMERGENCY SITUATIONS

Article 27

PREVENTION AND MITIGATION OF HARMFUL CONDITIONS

Watercourse States shall, individually and, where appropriate, jointly, take all appropriate measures to prevent or mitigate conditions related to an international watercourse that may be harmful to other watercourse States, whether resulting from natural causes or human conduct, such as flood or ice conditions, water-borne diseases, siltation, erosion, salt-water intrusion, drought or desertification.

Article 28

EMERGENCY SITUATIONS

1. For the purposes of this article, "emergency" means a situation that causes, or poses an imminent threat of causing, serious harm to watercourse States or other States and that results suddenly from natural causes, such as floods, the breaking up of ice, landslides or earthquakes, or from human conduct, such as industrial accidents.

2. A watercourse State shall, without delay and by the most expeditious means available, notify other potentially affected States and competent international organizations of any emergency originating within its territory.

3. A watercourse State within whose territory an emergency originates shall, in cooperation with potentially affected States and, where appropriate, competent international organizations, immediately take all practicable measures necessitated by the circumstances to prevent, mitigate and eliminate harmful effects of the emergency.

4. When necessary, watercourse States shall jointly develop contingency plans for responding to emergencies, in cooperation, where appropriate, with other potentially affected States and competent international organizations.

PART VI. MISCELLANEOUS PROVISIONS

Article 29

INTERNATIONAL WATERCOURSES AND INSTALLATIONS IN TIME OF ARMED CONFLICT

International watercourses and related installations, facilities and other works shall enjoy the protection accorded by the principles and rules of international law applicable in international and non-international armed conflict and shall not be used in violation of those principles and rules.

Article 30

INDIRECT PROCEDURES

In cases where there are serious obstacles to direct contacts between watercourse States, the States concerned shall fulfil their obligations of cooperation provided for in the present Convention, including exchange of data and information, notification, communication, consultations and negotiations, through any indirect procedure accepted by them.

Article 31

DATA AND INFORMATION VITAL TO NATIONAL DEFENCE OR SECURITY

Nothing in the present Convention obliges a watercourse State to provide data or information vital to its national defence or security. Nevertheless, that State shall cooperate in good faith with the other watercourse States with a view to providing as much information as possible under the circumstances.

Article 32

NON-DISCRIMINATION

Unless the watercourse States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who have suffered or are under a serious threat of suffering significant transboundary harm as a result of activities related to an international watercourse, a watercourse State shall not discriminate on the basis of nationality or residence or place where the injury occurred, in granting to such persons, in accordance with its legal system, access to judicial or other procedures, or a right to claim compensation or other relief in respect of significant harm caused by such activities carried on in its territory.

Article 33

SETTLEMENT OF DISPUTES

1. In the event of a dispute between two or more Parties concerning the interpretation or application of the present Convention, the Parties concerned shall, in the absence of an applicable agreement between them, seek a settlement of the dispute by peaceful means in accordance with the following provisions.

2. If the Parties concerned cannot reach agreement by negotiation requested by one of them, they may jointly seek the good offices of, or request mediation or conciliation by, a third party, or make use, as appropriate, of any joint watercourse institutions that may have been established by them or agree to submit the dispute to arbitration or to the International Court of Justice.

3. Subject to the operation of paragraph 10, if after six months from the time of the request for negotiations referred to in paragraph 2, the Parties concerned have not been able to settle their dispute through negotiation or any other means referred to in paragraph 2, the dispute shall be submitted, at the request of any of the parties to the dispute, to impartial fact-finding in accordance with paragraphs 4 to 9, unless the Parties otherwise agree.

4. A Fact-finding Commission shall be established, composed of one member nominated by each Party concerned and in addition a member not having the nationality of any of the Parties concerned chosen by the nominated members who shall serve as Chairman.

5. If the members nominated by the Parties are unable to agree on a Chairman within three months of the request for the establishment of the Commission, any Party concerned may request the Secretary-General of the United Nations to appoint the Chairman who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. If one of the Parties fails to nominate a member within three months of the initial request pursuant to paragraph 3, any other Party concerned may request the Secretary-General of the United Nations to appoint a person who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. The person so appointed shall constitute a single-member Commission.

6. The Commission shall determine its own procedure.

7. The Parties concerned have the obligation to provide the Commission with such information as it may require and, on request, to permit the Commission to have access to their respective territory and to inspect any facilities, plant, equipment, construction or natural feature relevant for the purpose of its inquiry.

8. The Commission shall adopt its report by a majority vote, unless it is a single-member Commission, and shall submit that report to the Parties concerned setting forth its findings and the reasons therefor and such recommendations as it deems appropriate for an equitable solution of the dispute, which the Parties concerned shall consider in good faith.

9. The expenses of the Commission shall be borne equally by the Parties concerned.

10. When ratifying, accepting, approving or acceding to the present Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute not resolved in accordance with paragraph 2, it recognizes as compulsory ipso facto and without special agreement in relation to any Party accepting the same obligation:

(*a*) Submission of the dispute to the International Court of Justice; and/or

(*b*) Arbitration by an arbitral tribunal established and operating, unless the parties to the dispute otherwise agreed, in accordance with the procedure laid down in the annex to the present Convention.

A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with subparagraph (*b*).

PART VII. FINAL CLAUSES

Article 34

SIGNATURE

The present Convention shall be open for signature by all States and by regional economic integration organizations from 21 May 1997 until 20 May 2000 at United Nations Headquarters in New York.

Article 35

RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

1. The present Convention is subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

2. Any regional economic integration organization which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Secretary-General of the United Nations of any substantial modification in the extent of their competence.

Article 36

ENTRY INTO FORCE

1. The present Convention shall enter into force on the ninetieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States.

Article 37

AUTHENTIC TEXTS

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto, have signed this Convention.

DONE at New York, this 21st day of May one thousand nine hundred and ninety-seven.

ANNEX
Arbitration

Article 1

Unless the parties to the dispute otherwise agree, the arbitration pursuant to article 33 of the Convention shall take place in accordance with articles 2 to 14 of the present annex.

Article 2

The claimant party shall notify the respondent party that it is referring a dispute to arbitration pursuant to article 33 of the Convention. The notification shall state the subject matter of arbitration and include, in particular, the articles of the Convention, the interpretation or application of which are at issue. If the parties do not agree on the subject matter of the dispute, the arbitral tribunal shall determine the subject matter.

Article 3

1. In disputes between two parties, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the Chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute or of any riparian State of the watercourse concerned, nor have his or her usual place of residence in the territory of one of these parties or such riparian State, nor have dealt with the case in any other capacity.

2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 4

1. If the Chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the President of the International Court of Justice shall, at the request of a party, designate the Chairman within a further two-month period.

2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the President of the International Court of Justice, who shall make the designation within a further two-month period.

Article 5

The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention and international law.

Article 6

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

Article 7

The arbitral tribunal may, at the request of one of the Parties, recommend essential interim measures of protection.

Article 8

1. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(*a*) Provide it with all relevant documents, information and facilities; and

(*b*) Enable it, when necessary, to call witnesses or experts and receive their evidence.

2. The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

Article 9

Unless the arbitral tribunal determines otherwise, because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

Article 10

Any Party that has an interest of a legal nature in the subject matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

Article 11

The tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

Article 12

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

Article 13

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

Article 14

1. The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time limit for a period which should not exceed five more months.

2. The final decision of the arbitral tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

3. The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

4. Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party for decision to the arbitral tribunal which rendered it.

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2. AGREEMENT ON THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA.[3] DONE AT NEW YORK, 23 MAY 1997[4]

The States Parties to the present Agreement,

Considering that the United Nations Convention on the Law of the Sea establishes the International Tribunal for the Law of the Sea,

Recognizing that the Tribunal should enjoy such legal capacity, privileges and immunities as are necessary for the exercise of its functions,

Recalling that the Statute of the Tribunal provides, in article 10, that the Members of the Tribunal, when engaged on the business of the Tribunal, shall enjoy diplomatic privileges and immunities,

Recognizing that persons participating in proceedings and officials of the Tribunal should enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Tribunal,

Have agreed as follows:

Article 1

USE OF TERMS

For the purposes of this Agreement:

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

(*b*) "Statute" means the Statute of the International Tribunal for the Law of the Sea in annex VI to the Convention;

(*c*) "States Parties" means States Parties to this Agreement;

(*d*) "Tribunal" means the International Tribunal for the Law of the Sea;

(*e*) "Member of the Tribunal" means an elected member of the Tribunal or a person chosen under article 17 of the Statute for the purpose of a particular case;

(*f*) "Registrar" means the Registrar of the Tribunal and includes any official of the Tribunal acting as Registrar;

(*g*) "officials of the Tribunal" means the Registrar and other members of the staff of the Registry;

(*h*) "Vienna Convention" means the Vienna Convention on Diplomatic Relations of 18 April 1961.

Article 2

JURIDICAL PERSONALITY OF THE TRIBUNAL

The Tribunal shall possess juridical personality. It shall have the capacity:

(*a*) to contract;

(*b*) to acquire and dispose of immovable and movable property;

(*c*) to institute legal proceedings.

Article 3

INVIOLABILITY OF THE PREMISES OF THE TRIBUNAL

The premises of the Tribunal shall be inviolable, subject to such conditions as may be agreed with the State Party concerned.

Article 4

FLAG AND EMBLEM

The Tribunal shall be entitled to display its flag and emblem at its premises and on vehicles used for official purposes.

Article 5

IMMUNITY OF THE TRIBUNAL, ITS PROPERTY, ASSETS AND FUNDS

1. The Tribunal shall enjoy immunity from legal process, except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

2. The property, assets and funds of the Tribunal, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, seizure, expropriation or any other form of interference, whether by executive, administrative, judicial or legislative action.

3. To the extent necessary to carry out its functions, the property, assets and funds of the Tribunal shall be exempt from restrictions, regulations, controls and moratoria of any nature.

4. The Tribunal shall have insurance coverage against third-party risks in respect of vehicles owned or operated by it, as required by the laws and regulations of the State in which the vehicle is operated.

Article 6

ARCHIVES

The archives of the Tribunal, and all documents belonging to it or held by it, shall be inviolable at all times and wherever they may be located. The State Party where the archives are located shall be informed of the location of such archives and documents.

Article 7

EXERCISE OF THE FUNCTIONS OF THE TRIBUNAL OUTSIDE THE HEADQUARTERS

In the event that the Tribunal considers it desirable to sit or otherwise exercise its functions elsewhere than at its headquarters, it may conclude with the State concerned an arrangement concerning the provision of the appropriate facilities for the exercise of its functions.

Article 8

COMMUNICATIONS

1. For the purposes of its official communications and correspondence, the Tribunal shall enjoy in the territory of each State Party, insofar as is compatible with the international obligations of the State concerned, treatment not less favourable than that which the State Party accords to any intergovernmental organization or diplomatic mission in the matter of priorities, rates and taxes applicable to mail and the various forms of communication and correspondence.

2. The Tribunal may use all appropriate means of communication and make use of codes or cipher for its official communications or correspondence. The official communications and correspondence of the Tribunal shall be inviolable.

3. The Tribunal shall have the right to dispatch and receive correspondence and other materials or communications by courier or in sealed bags, which shall have the same privileges, immunities and facilities as diplomatic couriers and bags.

Article 9

EXEMPTION FROM TAXES, CUSTOMS DUTIES AND IMPORT OR EXPORT RESTRICTIONS

1. The Tribunal, its assets, income and other property, and its operations and transactions shall be exempt from all direct taxes; it is understood, however, that the Tribunal shall not claim exemption from taxes which are no more than charges for public utility services.

2. The Tribunal shall be exempt from all customs duties, import turnover taxes and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Tribunal for its official use.

3. Goods imported or purchased under such an exemption shall not be sold or otherwise disposed of in the territory of a State Party, except under conditions agreed with the Government of that State Party. The Tribunal shall also be ex-

empt from all customs duties, import turnover taxes, prohibitions and restrictions on imports and exports in respect of its publications.

Article 10

REIMBURSEMENT OF DUTIES AND/OR TAXES

1. The Tribunal shall not, as a general rule, claim exemption from duties and taxes which are included in the price of movable and immovable property and taxes paid for services rendered. Nevertheless, when the Tribunal for its official use makes major purchases of property and goods or services on which duties and taxes are charged or are chargeable, States Parties shall make appropriate administrative arrangements for the exemption of such charges or reimbursement of the amount of duty and/or tax paid.

2. Goods purchased under such an exemption or reimbursement shall not be sold or otherwise disposed of, except in accordance with the conditions laid down by the State Party which granted the exemption or reimbursement. No exemption or reimbursement shall be accorded in respect of charges for public utility services provided to the Tribunal.

Article 11

TAXATION

1. The salaries, emoluments and allowances paid to Members and officials of the Tribunal shall be exempt from taxation.

2. Where the incidence of any form of taxation depends upon residence, periods during which such Members or officials are present in a State for the discharge of their functions shall not be considered as periods of residence if such Members or officials are accorded diplomatic privileges, immunities and facilities.

3. States Parties shall not be obliged to exempt from income tax pensions or annuities paid to former Members and former officials of the Tribunal.

Article 12

FUNDS AND FREEDOM FROM CURRENCY RESTRICTIONS

1. Without being restricted by financial controls, regulations or financial moratoriums of any kind, while carrying out its activities:

(*a*) the Tribunal may hold funds, currency of any kind or gold and operate accounts in any currency;

(*b*) the Tribunal shall be free to transfer its funds, gold or its currency from one country to another or within any country and to convert any currency held by it into any other currency;

(*c*) the Tribunal may receive, hold, negotiate, transfer, convert or otherwise deal with bonds and other financial securities.

2. In exercising its rights under paragraph 1, the Tribunal shall pay due regard to any representations made by any State Party insofar as it is considered that effect can be given to such representations without detriment to the interests of the Tribunal.

Article 13

MEMBERS OF THE TRIBUNAL

1. Members of the Tribunal shall, when engaged on the business of the Tribunal, enjoy the privileges, immunities, facilities and prerogatives accorded to heads of diplomatic missions in accordance with the Vienna Convention.

2. Members of the Tribunal and members of their families forming part of their households shall be accorded every facility for leaving the country where they may happen to be and for entering and leaving the country where the Tribunal is sitting. On journeys in connection with the exercise of their functions, they shall in all countries through which they may have to pass enjoy all the privileges, immunities and facilities granted by these countries to diplomatic agents in similar circumstances.

3. If Members of the Tribunal, for the purpose of holding themselves at the disposal of the Tribunal, reside in any country other than that of which they are nationals or permanent residents, they shall, together with the members of their families forming part of their households, be accorded diplomatic privileges, immunities and facilities during the period of their residence there.

4. Members of the Tribunal shall be accorded, together with members of their families forming part of their households, the same repatriation facilities in time of international crises as are accorded to diplomatic agents under the Vienna Convention.

5. Members of the Tribunal shall have insurance coverage against third-party risks in respect of vehicles owned or operated by them, as required by the laws and regulations of the State in which the vehicle is operated.

6. Paragraphs 1 to 5 of this article shall apply to Members of the Tribunal even after they have been replaced if they continue to exercise their functions in accordance with article 5, paragraph 3, of the Statute.

7. In order to secure, for Members of the Tribunal, complete freedom of speech and independence in the discharge of their functions, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their functions shall continue to be accorded, notwithstanding that the persons concerned are no longer Members of the Tribunal or performing those functions.

Article 14

OFFICIALS

1. The Registrar shall, when engaged on the business of the Tribunal, be accorded diplomatic privileges, immunities and facilities.

2. Other officials of the Tribunal shall enjoy in any country where they may be on the business of the Tribunal, or in any country through which they may pass on such business, such privileges, immunities and facilities as are necessary for the independent exercise of their functions. In particular, they shall be accorded:

(*a*) immunity from personal arrest or detention and from seizure of their personal baggage;

(*b*) the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to re-export the same free of duty to their country of permanent residence;

(*c*) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the official concerned;

(*d*) immunity from legal process in respect of words spoken or written and all acts done by them in discharging their functions, which immunity shall continue even after they have ceased to exercise their functions;

(*e*) immunity from national service obligations;

(*f*) together with members of their families forming part of their household, exemption from immigration restrictions or alien registration;

(*g*) the same privileges in respect of currency and exchange facilities as are accorded to the officials of comparable rank forming part of diplomatic missions to the Government concerned;

(*h*) together with members of their families forming part of their household, the same repatriation facilities in time of international crises as are accorded to diplomatic agents under the Vienna Convention.

3. The officials of the Tribunal shall be required to have insurance coverage against third-party risks in respect of vehicles owned or operated by them, as required by the laws and regulations of the State in which the vehicle is operated.

4. The Tribunal shall communicate to all States Parties the categories of officials to which the provisions of this article shall apply. The names of the officials included in these categories shall from time to time be communicated to all States Parties.

Article 15

EXPERTS APPOINTED UNDER ARTICLE 289 OF THE CONVENTION

Experts appointed under article 289 of the Convention shall be accorded, during the period of their missions, including the time spent on journeys in connection with their missions, such privileges, immunities and facilities as are necessary for the independent exercise of their functions. In particular, they shall be accorded:

(*a*) immunity from personal arrest or detention and from seizure of their personal baggage;

(*b*) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the expert concerned;

(*c*) immunity from legal process in respect of words spoken or written and acts done by them in discharging their functions, which immunity shall continue even after they have ceased to exercise their functions;

(*d*) inviolability of documents and papers;

(*e*) exemption from immigration restrictions or alien registration;

(*f*) the same facilities in respect of currency and exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(*g*) such experts shall be accorded the same repatriation facilities in time of international crises as are accorded to diplomatic agents under the Vienna Convention.

Article 16

AGENTS, COUNSEL AND ADVOCATES

1. Agents, counsel and advocates before the Tribunal shall be accorded, during the period of their missions, including the time spent on journeys in connection with their missions, the privileges, immunities and facilities necessary for the independent exercise of their functions. In particular, they shall be accorded:

(*a*) immunity from personal arrest or detention and from seizure of their personal baggage;

(*b*) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the agent, counsel or advocate concerned;

(*c*) immunity from legal process in respect of words spoken or written and all acts done by them in discharging their functions, which immunity shall continue even after they have ceased to exercise their functions;

(*d*) inviolability of documents and papers;

(*e*) the right to receive papers or correspondence by courier or in sealed bags;

(*f*) exemption from immigration restrictions or alien registration;

(*g*) the same facilities in respect of their personal baggage and in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(*h*) the same repatriation facilities in time of international crises as are accorded to diplomatic agents under the Vienna Convention.

2. Upon receipt of notification from parties to proceedings before the Tribunal as to the appointment of an agent, counsel or advocate, a certification of the status of such representative shall be provided under the signature of the Registrar and limited to a period reasonably required for the proceedings.

3. The competent authorities of the State concerned shall accord the privileges, immunities and facilities provided for in this article upon production of the certification referred to in paragraph 2.

4. Where the incidence of any form of taxation depends upon residence, periods during which such agents, counsel or advocates are present in a State for the discharge of their functions shall not be considered as periods of residence.

Article 17

WITNESSES, EXPERTS AND PERSONS PERFORMING MISSIONS

1. Witnesses, experts and persons performing missions by order of the Tribunal shall be accorded, during the period of their missions, including the time spent on journeys in connection with their missions, the privileges, immunities and facilities provided for in article 15, subparagraphs (*a*) to (*f*).

2. Witnesses, experts and such persons shall be accorded repatriation facilities in time of international crises.

Article 18

NATIONALS AND PERMANENT RESIDENTS

Except insofar as additional privileges and immunities may be granted by the State Party concerned, and without prejudice to article 11, a person enjoying immunities and privileges under this Agreement shall, in the territory of the State Party of which he or she is a national or permanent resident, enjoy only immunity from legal process and inviolability in respect of words spoken or written and all acts done by that person in the discharge of his or her duties, which immunity shall continue even after the person has ceased to exercise his or her functions in connection with the Tribunal.

Article 19

RESPECT FOR LAWS AND REGULATIONS

1. Privileges, immunities, facilities and prerogatives as provided for in articles 13 to 17 of this Agreement are granted not for the personal benefit of the individuals themselves but in order to safeguard the independent exercise of their functions in connection with the Tribunal.

2. Without prejudice to their privileges and immunities, it is the duty of all persons referred to in articles 13 to 17 to respect the laws and regulations of the State Party in whose territory they may be on the business of the Tribunal or through whose territory they may pass on such business. They also have a duty not to interfere in the internal affairs of that State.

Article 20

WAIVER

1. Inasmuch as the privileges and immunities provided for in this Agreement are granted in the interests of the good administration of justice and not for the personal benefit of the individuals themselves, the competent authority has the right and the duty to waive the immunity in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the administration of justice.

2. For this purpose, the competent authority in the case of agents, counsel and advocates representing or designated by a State which is a party to proceedings before the Tribunal will be the State concerned. In the case of other agents, counsel and advocates, the Registrar, experts appointed under article 289 of the

Convention and witnesses, experts and persons performing missions, the competent authority will be the Tribunal. In the case of other officials of the Tribunal, the competent authority will be the Registrar, acting with the approval of the President of the Tribunal.

Article 21

LAISSEZ-PASSER AND VISAS

1. The States Parties shall recognize and accept the United Nations laissez-passer issued to members and officials of the Tribunal or experts appointed under article 289 of the Convention as a valid travel document.

2. Applications for visas (where required) from the Members of the Tribunal and the Registrar shall be dealt with as speedily as possible. Applications for visas from all other persons holding or entitled to hold laissez-passer referred to in paragraph 1 of this article and from persons referred to in articles 16 and 17, when accompanied by a certificate that they are travelling on the business of the Tribunal, shall be dealt with as speedily as possible.

Article 22

FREEDOM OF MOVEMENT

No administrative or other restrictions shall be imposed on the free movement of Members of the Tribunal, as well as other persons mentioned in articles 13 to 17, to and from the Headquarters of the Tribunal or the place where the Tribunal is sitting or otherwise exercising its functions.

Article 23

MAINTENANCE OF SECURITY AND PUBLIC ORDER

1. If the State Party concerned considers it necessary to take, without prejudice to the independent and proper working of the Tribunal, measures necessary for the security or for the maintenance of public order of the State Party in accordance with international law, it shall approach the Tribunal as rapidly as circumstances allow in order to determine by mutual agreement the measures necessary to protect the Tribunal.

2. The Tribunal shall cooperate with the Government of such State Party to avoid any prejudice to the security or public order of the State Party resulting from its activities.

Article 24

COOPERATION WITH THE AUTHORITIES OF STATES PARTIES

The Tribunal shall cooperate at all times with the appropriate authorities of States Parties to facilitate the execution of their laws and to prevent any abuse in connection with the privileges, immunities, facilities and prerogatives referred to in this Agreement.

Article 25

RELATIONSHIP WITH SPECIAL AGREEMENTS

Insofar as the provisions of this Agreement and the provisions of any special agreement between the Tribunal and a State Party relate to the same subject matter, the two provisions shall, whenever possible, be treated as complementary, so that both provisions shall be applicable and neither provision shall narrow the effect of the other; but in case of conflict the provision of the special agreement shall prevail.

Article 26

SETTLEMENT OF DISPUTES

1. The Tribunal shall make suitable provisions for the settlement of:

(*a*) disputes arising out of contracts and other disputes of a private law character to which the Tribunal is a party;

(*b*) disputes involving any person referred to in this Agreement who by reason of his official position enjoys immunity, if such immunity has not been waived.

2. All disputes arising out of the interpretation or application of this Agreement shall be referred to an arbitral tribunal unless the parties have agreed to another mode of settlement. If a dispute arises between the Tribunal and a State Party which is not settled by consultation, negotiation or other agreed mode of settlement within three months following a request by one of the parties to the dispute, it shall at the request of either party be referred for final decision to a panel of three arbitrators: one to be chosen by the Tribunal, one to be chosen by the State Party and the third, who shall be Chairman of the panel, to be chosen by the first two arbitrators. If either party has failed to make its appointment of an arbitrator within two months of the appointment of an arbitrator by the other party, the Secretary-General of the United Nations shall make such appointment. Should the first two arbitrators fail to agree upon the appointment of the third arbitrator within three months following the appointment of the first two arbitrators the third arbitrator shall be chosen by the Secretary-General of the United Nations upon the request of the Tribunal or the State Party.

Article 27

SIGNATURE

This Agreement shall be open for signature by all States and shall remain open for signature at United Nations Headquarters for twenty-four months from 1 July 1997.

Article 28

RATIFICATION

This Agreement is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 29

ACCESSION

This Agreement shall remain open for accession by all States. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 30

ENTRY INTO FORCE

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

2. For each State which ratifies this Agreement or accedes thereto after the deposit of the tenth 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 31

PROVISIONAL APPLICATION

A State which intends to ratify or accede to this Agreement may at any time notify the depositary that it will apply this Agreement provisionally for a period not exceeding two years.

Article 32

AD HOC APPLICATION

Where a dispute has been submitted to the Tribunal in accordance with the Statute, any State not a party to this Agreement which is a party to the dispute may, ad hoc for the purposes and duration of the case relating thereto, become a party to this Agreement by the deposit of an instrument of acceptance. Instruments of acceptance shall be deposited with the Secretary-General of the United Nations and shall become effective on the date of deposit.

Article 33

DENUNCIATION

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Agreement. The denunciation shall take effect one year after the date of receipt 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 34

DEPOSITARY

The Secretary-General of the United Nations shall be the depositary of this Agreement.

Article 35

AUTHENTIC TEXTS

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

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, authorized thereto, have signed this Agreement.

OPENED FOR SIGNATURE at New York, this day of July, one thousand nine hundred and ninety-seven, in a single original, in the Arabic, Chinese, English, French, Russian and Spanish languages.

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3. CONVENTION ON THE PROHIBITION OF THE USE, STOCKPILING, PRODUCTION AND TRANSFER OF ANTI-PERSONNEL MINES AND ON THEIR DESTRUCTION.[5] DONE AT OSLO, 18 SEPTEMBER 1997[6]

PREAMBLE

The States Parties,

Determined to put an end to the suffering and casualties caused by anti-personnel mines, that kill or maim hundreds of people every week, mostly innocent and defenceless civilians and especially children, obstruct economic development and reconstruction, inhibit the repatriation of refugees and internally displaced persons, and have other severe consequences for years after emplacement,

Believing it necessary to do their utmost to contribute in an efficient and coordinated manner to face the challenge of removing anti-personnel mines placed throughout the world, and to assure their destruction,

Wishing to do their utmost in providing assistance for the care and rehabilitation, including the social and economic reintegration of mine victims,

Recognizing that a total ban of anti-personnel mines would also be an important confidence-building measure,

Welcoming the adoption of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices, as amended on 3 May 1996, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, and calling for the early ratification of this Protocol by all States which have not yet done so,

Welcoming also United Nations General Assembly resolution 51/45 S of 10 December 1996, urging all States to pursue vigorously an effective, legally bind-

ing international agreement to ban the use, stockpiling, production and transfer of anti-personnel landmines,

Welcoming furthermore the measures taken over the past years, both unilaterally and multilaterally, aiming at prohibiting, restricting or suspending the use, stockpiling, production and transfer of anti-personnel mines,

Stressing the role of public conscience in furthering the principles of humanity as evidenced by the call for a total ban of anti-personnel mines and recognizing the efforts to that end undertaken by the International Red Cross and Red Crescent Movement, the International Campaign to Ban Landmines and numerous other non-governmental organizations around the world,

Recalling the Ottawa Declaration of 5 October 1996 and the Brussels Declaration of 27 June 1997 urging the international community to negotiate an international and legally binding agreement prohibiting the use, stockpiling, production and transfer of anti-personnel mines,

Emphasizing the desirability of attracting the adherence of all States to this Convention, and determined to work strenuously towards the promotion of its universalization in all relevant forums including, inter alia, the United Nations, the Conference on Disarmament, regional organizations, and groupings, and review conferences of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects,

Basing themselves on the principle of international humanitarian law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited, on the principle that prohibits the employment in armed conflicts of weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering and on the principle that a distinction must be made between civilians and combatants,

Have agreed as follows:

Article 1

GENERAL OBLIGATIONS

1. Each State Party undertakes never under any circumstances:

(*a*) To use anti-personnel mines;

(*b*) To develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel mines;

(*c*) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.

2. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in accordance with the provisions of this Convention.

Article 2

DEFINITIONS

1. "Anti-personnel mine" means a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity

or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.

2. "Mine" means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle.

3. "Anti-handling device" means a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with or otherwise intentionally disturb the mine.

4. "Transfer" involves, in addition to the physical movement of anti-personnel mines into or from national territory, the transfer of title to and control over the mines, but does not involve the transfer of territory containing emplaced anti-personnel mines.

5. "Mined area" means an area which is dangerous due to the presence or suspected presence of mines.

Article 3

EXCEPTIONS

1. Notwithstanding the general obligations under article 1, the retention or transfer of a number of anti-personnel mines for the development of and training in mine detection, mine clearance, or mine destruction techniques is permitted. The amount of such mines shall not exceed the minimum number absolutely necessary for the above-mentioned purposes.

2. The transfer of anti-personnel mines for the purpose of destruction is permitted.

Article 4

DESTRUCTION OF STOCKPILED ANTI-PERSONNEL MINES

Except as provided for in article 3, each State Party undertakes to destroy or ensure the destruction of all stockpiled anti-personnel mines it owns or possesses, or that are under its jurisdiction or control, as soon as possible but not later than four years after the entry into force of this Convention for that State Party.

Article 5

DESTRUCTION OF ANTI-PERSONNEL MINES IN MINED AREAS

1. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in mined areas under its jurisdiction or control, as soon as possible but not later than ten years after the entry into force of this Convention for that State Party.

2. Each State Party shall make every effort to identify all areas under its jurisdiction or control in which anti-personnel mines are known or suspected to be emplaced and shall ensure as soon as possible that all anti-personnel mines in mined areas under its jurisdiction or control are perimeter-marked, monitored and

protected by fencing or other means, to ensure the effective exclusion of civilians, until all anti-personnel mines contained therein have been destroyed. The marking shall at least be to the standards set out in the Protocol on Prohibitions or Restrictions on the use of Mines, Booby Traps and Other Devices, as amended on 3 May 1996, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.

3. If a State Party believes that it will be unable to destroy or ensure the destruction of all anti-personnel mines referred to in paragraph 1 within that time period, it may submit a request to a Meeting of the States Parties or a Review Conference for an extension of the deadline for completing the destruction of such anti-personnel mines, for a period of up to ten years.

4. Each request shall contain:

(*a*) The duration of the proposed extension;

(*b*) A detailed explanation of the reasons for the proposed extension, including:

(i) The preparation and status of work conducted under national demining programmes;

(ii) The financial and technical means available to the State Party for the destruction of all the anti-personnel mines; and

(iii) Circumstances which impede the ability of the State Party to destroy all the anti-personnel mines in mined areas;

(*c*) The humanitarian, social, economic, and environmental implications of the extension; and

(*d*) Any other information relevant to the request for the proposed extension.

5. The Meeting of the States Parties or the Review Conference shall, taking into consideration the factors contained in paragraph 4, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension period.

6. Such an extension may be renewed upon the submission of a new request in accordance with paragraphs 3, 4 and 5 of this article. In requesting a further extension period a State Party shall submit relevant additional information on what has been undertaken in the previous extension period pursuant to this article.

Article 6

INTERNATIONAL COOPERATION AND ASSISTANCE

1. In fulfilling its obligations under this Convention each State Party has the right to seek and receive assistance, where feasible, from other States Parties to the extent possible.

2. Each State Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information concerning the implementation of this Convention. The States Parties shall not impose undue restrictions on the provision of mine clearance equipment and related technological information for humanitarian purposes.

3. Each State Party in a position to do so shall provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programmes. Such assistance may be provided, inter alia, through the United Nations system, international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis.

4. Each State Party in a position to do so shall provide assistance for mine clearance and related activities. Such assistance may be provided, inter alia, through the United Nations system, international or regional organizations or institutions, non-governmental organizations or institutions, or on a bilateral basis, or by contributing to the United Nations Voluntary Trust Fund for Assistance in Mine Clearance, or other regional funds that deal with demining.

5. Each State Party in a position to do so shall provide assistance for the destruction of stockpiled anti-personnel mines.

6. Each State Party undertakes to provide information to the database on mine clearance established within the United Nations system, especially information concerning various means and technologies of mine clearance, and lists of experts, expert agencies or national points of contact on mine clearance.

7. States Parties may request the United Nations, regional organizations, other States Parties or other competent intergovernmental or non-governmental forums to assist its authorities in the elaboration of a national demining programme to determine, inter alia:

(*a*) The extent and scope of the anti-personnel mine problem;

(*b*) The financial, technological and human resources that are required for the implementation of the programme;

(*c*) The estimated number of years necessary to destroy all anti-personnel mines in mined areas under the jurisdiction or control of the concerned State Party;

(*d*) Mine awareness activities to reduce the incidence of mine-related injuries or deaths;

(*e*) Assistance to mine victims;

(*f*) The relationship between the Government of the concerned State Party and the relevant governmental, intergovernmental or non-governmental entities that will work in the implementation of the programme.

8. Each State Party giving and receiving assistance under the provisions of this article shall cooperate with a view to ensuring the full and prompt implementation of agreed assistance programmes.

Article 7

TRANSPARENCY MEASURES

1. Each State Party shall report to the Secretary-General of the United Nations as soon as practicable, and in any event not later than 180 days after the entry into force of this Convention for that State Party on:

(*a*) The national implementation measures referred to in article 9;

(*b*) The total of all stockpiled anti-personnel mines owned or possessed by it, or under its jurisdiction or control, to include a breakdown of the type, quantity and, if possible, lot numbers of each type of anti-personnel mine stockpiled;

(*c*) To the extent possible, the location of all mined areas that contain, or are suspected to contain, anti-personnel mines under its jurisdiction or control, to include as much detail as possible regarding the type and quantity of each type of anti-personnel mine in each mined area and when they were emplaced;

(*d*) The types, quantities and, if possible, lot numbers of all anti-personnel mines retained or transferred for the development of and training in mine detection, mine clearance or mine destruction techniques, or transferred for the purpose of destruction, as well as the institutions authorized by a State Party to retain or transfer anti-personnel mines, in accordance with article 3;

(*e*) The status of programmes for the conversion or decommissioning of anti-personnel mine production facilities;

(*f*) The status of programmes for the destruction of anti-personnel mines in accordance with articles 4 and 5, including details of the methods which will be used in destruction, the location of all destruction sites and the applicable safety and environmental standards to be observed;

(*g*) The types and quantities of all anti-personnel mines destroyed after the entry into force of this Convention for that State Party, to include a breakdown of the quantity of each type of anti-personnel mine destroyed, in accordance with articles 4 and 5, respectively, along with, if possible, the lot numbers of each type of anti-personnel mine in the case of destruction in accordance with article 4;

(*h*) The technical characteristics of each type of anti-personnel mine produced, to the extent known, and those currently owned or possessed by a State Party, giving, where reasonably possible, such categories of information as may facilitate identification and clearance of anti-personnel mines; at a minimum, this information shall include the dimensions, fusing, explosive content, metallic content, colour photographs and other information which may facilitate mine clearance; and

(*i*) The measures taken to provide an immediate and effective warning to the population in relation to all areas identified under paragraph 2 of article 5.

2. The information provided in accordance with this article shall be updated by the States Parties annually, covering the last calendar year, and reported to the Secretary-General of the United Nations not later than 30 April of each year.

3. The Secretary-General of the United Nations shall transmit all such reports received to the States Parties.

Article 8

FACILITATION AND CLARIFICATION OF COMPLIANCE

1. The States Parties agree to consult and cooperate with each other regarding the implementation of the provisions of this Convention, and to work together in a spirit of cooperation to facilitate compliance by States Parties with their obligations under this Convention.

2. If one or more States Parties wish to clarify and seek to resolve questions relating to compliance with the provisions of this Convention by another State Party, it may submit, through the Secretary-General of the United Nations, a Request for Clarification of that matter to that State Party. Such a request shall be accompanied by all appropriate information. Each State Party shall refrain from unfounded Requests for Clarification, care being taken to avoid abuse. A State Party that receives a Request for Clarification shall provide, through the Secretary-General of the United Nations, within 28 days to the requesting State Party all information which would assist in clarifying this matter.

3. If the requesting State Party does not receive a response through the Secretary-General of the United Nations within that time period, or deems the response to the Request for Clarification to be unsatisfactory, it may submit the matter through the Secretary-General of the United Nations to the next Meeting of the States Parties. The Secretary-General of the United Nations shall transmit the submission, accompanied by all appropriate information pertaining to the Request for Clarification, to all States Parties. All such Information shall be presented to the requested State Party which shall have the right to respond.

4. Pending the convening of any meeting of the States Parties, any of the States Parties concerned may request the Secretary-General of the United Nations to exercise his or her good offices to facilitate the clarification requested.

5. The requesting State Party may propose through the Secretary-General of the United Nations the convening of a Special Meeting of the States Parties to consider the matter. The Secretary-General of the United Nations shall thereupon communicate this proposal and all information submitted by the States Parties concerned, to all States Parties with a request that they indicate whether they favour a Special Meeting of the States Parties, for the purpose of considering the matter. In the event that within 14 days from the date of such communication, at least one third of the States Parties favours such a Special Meeting, the Secretary-General of the United Nations shall convene this Special Meeting of the States Parties within a further 14 days. A quorum for this Meeting shall consist of a majority of States Parties.

6. The Meeting of the States Parties or the Special Meeting of the States Parties, as the case may be, shall first determine whether to consider the matter further, taking into account all information submitted by the States Parties concerned. The Meeting of the States Parties or the Special Meeting of the States Parties shall make every effort to reach a decision by consensus. If despite all efforts to that end no agreement has been reached, it shall take this decision by a majority of States Parties present and voting.

7. All States Parties shall cooperate fully with the Meeting of the States Parties or the Special Meeting of the States Parties in the fulfilment of its review of the matter, including any fact-finding missions that are authorized in accordance with paragraph 8.

8. If further clarification is required, the Meeting of the States Parties or the Special Meeting of the States Parties shall authorize a fact-finding mission and decide on its mandate by a majority of States Parties present and voting. At any time the requested State Party may invite a fact-finding mission to its territory. Such a mission shall take place without a decision by a Meeting of the States Parties or a Special Meeting of the States Parties to authorize such a mission. The mission, consisting of up to nine experts, designated and approved in accordance with paragraphs 9 and 10, may collect additional information on the spot or in

other places directly related to the alleged compliance issue under the jurisdiction or control of the requested State Party.

9. The Secretary-General of the United Nations shall prepare and update a list of the names, nationalities and other relevant data of qualified experts provided by States Parties and communicate it to all States Parties. Any expert included on this list shall be regarded as designated for all fact-finding missions unless a State Party declares its non-acceptance in writing. In the event of non-acceptance, the expert shall not participate in fact-finding missions on the territory or any other place under the jurisdiction or control of the objecting State Party, if the non-acceptance was declared prior to the appointment of the expert to such missions.

10. Upon receiving a request from the Meeting of the States Parties or a Special Meeting of the States Parties, the Secretary-General of the United Nations shall, after consultations with the requested State Party, appoint the members of the mission, including its leader. Nationals of States Parties requesting the fact-finding mission or directly affected by it shall not be appointed to the mission. The members of the fact-finding mission shall enjoy privileges and immunities under article VI of the Convention on the Privileges and Immunities of the United Nations, adopted on 13 February 1946.

11. Upon at least 72 hours' notice, the members of the fact-finding mission shall arrive in the territory of the requested State Party at the earliest opportunity. The requested State Party shall take the necessary administrative measures to receive, transport and accommodate the mission, and shall be responsible for ensuring the security of the mission to the maximum extent possible while they are on territory under its control.

12. Without prejudice to the sovereignty of the requested State Party, the fact-finding mission may bring into the territory of the requested State Party the necessary equipment which shall be used exclusively for gathering information on the alleged compliance issue. Prior to its arrival, the mission will advise the requested State Party of the equipment that it intends to utilize in the course of its fact-finding mission.

13. The requested State Party shall make all efforts to ensure that the fact-finding mission is given the opportunity to speak with all relevant persons who may be able to provide information related to the alleged compliance issue.

14. The requested State Party shall grant access for the fact-finding mission to all areas and installations under its control where facts relevant to the compliance issue could be expected to be collected. This shall be subject to any arrangements that the requested State Party considers necessary for:

(*a*) The protection of sensitive equipment, information and areas;

(*b*) The protection of any constitutional obligations the requested State Party may have with regard to proprietary rights, searches and seizures, or other constitutional rights; or

(*c*) The physical protection and safety of the members of the fact-finding mission.

In the event that the requested State Party makes such arrangements, it shall make every reasonable effort to demonstrate through alternative means its compliance with this Convention.

15. The fact-finding mission may remain in the territory of the State Party concerned for no more than 14 days, and at any particular site no more than seven days, unless otherwise agreed.

16. All information provided in confidence and not related to the subject matter of the fact-finding mission shall be treated on a confidential basis.

17. The fact-finding mission shall report, through the Secretary-General of the United Nations, to the Meeting of the States Parties or the Special Meeting of the States Parties the results of its findings.

18. The Meeting of the States Parties or the Special Meeting of the States Parties shall consider all relevant information, including the report submitted by the fact-finding mission, and may request the requested State Party to take measures to address the compliance issue within a specified period of time. The requested State Party shall report on all measures taken in response to this request.

19. The Meeting of the States Parties or the Special Meeting of the States Parties may suggest to the States Parties concerned ways and means to further clarify or resolve the matter under consideration, including the initiation of appropriate procedures in conformity with international law. In circumstances where the issue at hand is determined to be due to circumstances beyond the control of the requested State Party, the Meeting of the States Parties or the Special Meeting of the States Parties may recommend appropriate measures, including the use of cooperative measures referred to in article 6.

20. The Meeting of the States Parties or the Special Meeting of the States Parties shall make every effort to reach its decisions referred to in paragraphs 18 and 19 by consensus, otherwise by a two-thirds majority of States Parties present and voting.

Article 9

National implementation measures

Each State Party shall take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under this Convention undertaken by persons or on territory under its jurisdiction or control.

Article 10

Settlement of disputes

1. The States Parties shall consult and cooperate with each other to settle any dispute that may arise with regard to the application or the interpretation of this Convention. Each State Party may bring any such dispute before the Meeting of the States Parties.

2. The Meeting of the States Parties may contribute to the settlement of the dispute by whatever means it deems appropriate, including offering its good offices, calling upon the States Parties to a dispute to start the settlement procedure of their choice and recommending a time limit for any agreed procedure.

3. This article is without prejudice to the provisions of this Convention on facilitation and clarification of compliance.

Article 11

MEETINGS OF THE STATES PARTIES

1. The States Parties shall meet regularly in order to consider any matter with regard to the application or implementation of this Convention, including:

(*a*) The operation and status of this Convention;

(*b*) Matters arising from the reports submitted under the provisions of this Convention;

(*c*) International cooperation and assistance in accordance with article 6;

(*d*) The development of technologies to clear anti-personnel mines;

(*e*) Submissions of States Parties under article 8; and

(*f*) Decisions relating to submissions of States Parties as provided for in article 5.

2. The First Meeting of the States Parties shall be convened by the Secretary-General of the United Nations within one year after the entry into force of this Convention. The subsequent meetings shall be convened by the Secretary-General of the United Nations annually until the first Review Conference.

3. Under the conditions set out in article 8, the Secretary-General of the United Nations shall convene a Special Meeting of the States Parties.

4. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations, may be invited to attend these meetings as observers in accordance with the agreed Rules of Procedure.

Article 12

REVIEW CONFERENCES

1. A Review Conference shall be convened by the Secretary-General of the United Nations five years after the entry into force of this Convention. Further Review Conferences shall be convened by the Secretary-General of the United Nations if so requested by one or more States Parties, provided that the interval between Review Conferences shall in no case be less than five years. All States Parties to this Convention shall be invited to each Review Conference.

2. The purpose of the Review Conference shall be:

(*a*) To review the operation and status of this Convention;

(*b*) To consider the need for and the interval between further Meetings of the States Parties referred to in paragraph 2 of article 11;

(*c*) To take decisions on submissions of States Parties as provided for in article 5; and

(*d*) To adopt, if necessary, in its final report conclusions related to the implementation of this Convention.

3. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental

organizations, may be invited to attend each Review Conference as observers in accordance with the agreed Rules of Procedure.

Article 13

AMENDMENTS

1. At any time after the entry into force of this Convention any State Party may propose amendments to this Convention. Any proposal for an amendment shall be communicated to the depositary, who shall circulate it to all States Parties and shall seek their views on whether an Amendment Conference should be convened to consider the proposal. If a majority of the States Parties notify the depositary no later than 30 days after its circulation that they support further consideration of the proposal, the depositary shall convene an Amendment Conference to which all States Parties shall be invited.

2. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations, may be invited to attend each Amendment Conference as observers in accordance with the agreed Rules of Procedure.

3. The Amendment Conference shall be held immediately following a Meeting of the States Parties or a Review Conference unless a majority of the States Parties request that it be held earlier.

4. Any amendment to this Convention shall be adopted by a majority of two thirds of the States Parties present and voting at the Amendment Conference. The depositary shall communicate any amendment so adopted to the States Parties.

5. An amendment to this Convention shall enter into force for all States Parties to this Convention which have accepted it, upon the deposit with the depositary of instruments of acceptance by a majority of States Parties. Thereafter it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance.

Article 14

COSTS

1. The costs of the Meetings of the States Parties, the Special Meetings of the States Parties, the Review Conferences and the Amendment Conferences shall be borne by the States Parties and States not parties to this Convention participating therein, in accordance with the United Nations scale of assessment adjusted appropriately.

2. The costs incurred by the Secretary-General of the United Nations under articles 7 and 8 and the costs of any fact-finding mission shall be borne by the States Parties in accordance with the United Nations scale of assessment adjusted appropriately.

Article 15

SIGNATURE

This Convention, done at Oslo, Norway, on 18 September 1997, shall be open for signature at Ottawa, Canada, by all States from 3 December 1997 until 4 December 1997, and at the United Nations Headquarters in New York from 5 December 1997 until its entry into force.

Article 16

RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

1. This Convention is subject to ratification, acceptance or approval of the signatories.

2. It shall be open for accession by any State which has not signed the Convention.

3. The instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

Article 17

ENTRY INTO FORCE

1. This Convention shall enter into force on the first day of the sixth month after the month in which the 40th instrument of ratification, acceptance, approval or accession has been deposited.

2. For any State which deposits its instrument of ratification, acceptance, approval or accession after the date of the deposit of the 40th instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the first day of the sixth month after the date on which that State has deposited its instrument of ratification, acceptance, approval or accession.

Article 18

PROVISIONAL APPLICATION

Any State may, at the time of its ratification, acceptance, approval or accession, declare that it will apply provisionally paragraph 1 of article 1 of this Convention pending its entry into force.

Article 19

RESERVATIONS

The articles of this Convention shall not be subject to reservations.

Article 20

DURATION AND WITHDRAWAL

1. This Convention shall be of unlimited duration.

2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Convention. It shall give notice of such withdrawal to all other States Parties, to the depositary and to the United Nations Security Council. Such instrument of withdrawal shall include a full explanation of the reasons motivating this withdrawal.

3. Such withdrawal shall only take effect six months after the receipt of the instrument of withdrawal by the depositary. If, however, on the expiry of that six-month period, the withdrawing State Party is engaged in an armed conflict, the withdrawal shall not take effect before the end of the armed conflict.

4. The withdrawal of a State Party from this Convention shall not in any way affect the duty of States to continue fulfilling the obligations assumed under any relevant rules of international law.

Article 21

DEPOSITARY

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

Article 22

AUTHENTIC TEXTS

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

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4. KYOTO PROTOCOL TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE.[7] DONE AT KYOTO, JAPAN, 11 DECEMBER 1997[8]

The Parties to this Protocol,

Being parties to the United Nations Framework Convention on Climate Change, hereinafter referred to as "the Convention",

In pursuit of the ultimate objective of the Convention as stated in its article 2,

Recalling the provisions of the Convention,

Being guided by article 3 of the Convention,

Pursuant to the Berlin Mandate adopted by decision 1/CP.1 of the Conference of the Parties to the Convention at its first session,

Have agreed as follows:

Article 1

For the purposes of this Protocol, the definitions contained in article 1 of the Convention shall apply. In addition:

1. "Conference of the Parties" means the Conference of the Parties to the Convention.

2. "Convention" means the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992.

3. "Intergovernmental Panel on Climate Change" means the Intergovernmental Panel on Climate Change established in 1988 jointly by the World Meteorological Organization and the United Nations Environment Programme.

4. "Montreal Protocol" means the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted in Montreal on 16 September 1987 and as subsequently adjusted and amended.

5. "Parties present and voting" means Parties present and casting an affirmative or negative vote.

6. "Party" means, unless the context otherwise indicates, a Party to this Protocol.

7. "Party included in annex I" means a Party included in annex I to the Convention, as may be amended, or a Party which has made a notification under article 4, paragraph 2 (*g*), of the Convention.

Article 2

1. Each Party included in annex I, in achieving its quantified emission limitation and reduction commitments under article 3, in order to promote sustainable development, shall:

(*a*) Implement and/or further elaborate policies and measures in accordance with its national circumstances, such as:

(i) Enhancement of energy efficiency in relevant sectors of the national economy;

(ii) Protection and enhancement of sinks and reservoirs of greenhouse gases not controlled by the Montreal Protocol, taking into account its commitments under relevant international environmental agreements; promotion of sustainable forest management practices, afforestation and reforestation;

(iii) Promotion of sustainable forms of agriculture in light of climate change considerations;

(iv) Research on, and promotion, development and increased use of, new and renewable forms of energy, of carbon dioxide sequestration technologies and of advanced and innovative environmentally sound technologies;

(v) Progressive reduction or phasing out of market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all greenhouse gas emitting sectors that run counter to the objective of the Convention and application of market instruments;

(vi) Encouragement of appropriate reforms in relevant sectors aimed at promoting policies and measures which limit or reduce emissions of greenhouse gases not controlled by the Montreal Protocol;

(vii) Measures to limit and/or reduce emissions of greenhouse gases not controlled by the Montreal Protocol in the transport sector;

(viii) Limitation and/or reduction of methane emissions through recovery and use in waste management, as well as in the production, transport and distribution of energy;

(*b*) Cooperate with other such Parties to enhance the individual and combined effectiveness of their policies and measures adopted under this article, pursuant to article 4, paragraph 2 (*e*) (i), of the Convention. To this end, these Parties shall take steps to share their experience and exchange information on such policies and measures, including developing ways of improving their comparability, transparency and effectiveness. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, consider ways to facilitate such cooperation, taking into account all relevant information.

2. The Parties included in annex I shall pursue limitation or reduction of emissions of greenhouse gases not controlled by the Montreal Protocol from aviation and marine bunker fuels, working through the International Civil Aviation Organization and the International Maritime Organization, respectively.

3. The Parties included in annex I shall strive to implement policies and measures under this article in such a way as to minimize adverse effects, including the adverse effects of climate change, effects on international trade, and social, environmental and economic impacts on other Parties, especially developing country Parties and in particular those identified in article 4, paragraphs 8 and 9, of the Convention, taking into account article 3 of the Convention. The Conference of the Parties serving as the meeting of the Parties to this Protocol may take further action, as appropriate, to promote the implementation of the provisions of this paragraph.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol, if it decides that it would be beneficial to coordinate any of the policies and measures in paragraph 1 (*a*) above, taking into account different national circumstances and potential effects, shall consider ways and means to elaborate the coordination of such policies and measures.

Article 3

1. The Parties included in annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in annex B and in accordance with the provisions of this article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.

2. Each Party included in annex I shall, by 2005, have made demonstrable progress in achieving its commitments under this Protocol

3. The net changes in greenhouse gas emissions by sources and removals by sinks resulting from direct human-induced land-use change and forestry activities, limited to afforestation, reforestation and deforestation since 1990, measured as verifiable changes in carbon stocks in each commitment period, shall be used to meet the commitments under this article of each Party included in annex I. The greenhouse gas emissions by sources and removals by sinks associated with

those activities shall be reported in a transparent and verifiable manner and reviewed in accordance with articles 7 and 8.

4. Prior to the first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol, each Party included in annex I shall provide, for consideration by the Subsidiary Body for Scientific and Technological Advice, data to establish its level of carbon stocks in 1990 and to enable an estimate to be made of its changes in carbon stocks in subsequent years. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, decide upon modalities, rules and guidelines as to how, and which, additional human-induced activities related to changes in greenhouse gas emissions by sources and removals by sinks in the agricultural soils and the land-use change and forestry categories shall be added to, or subtracted from, the assigned amounts for Parties included in annex I, taking into account uncertainties, transparency in reporting, verifiability, the methodological work of the Intergovernmental Panel on Climate Change, the advice provided by the Subsidiary Body for Scientific and Technological Advice in accordance with article 5 and the decisions of the Conference of the Parties. Such a decision shall apply in the second and subsequent commitment periods. A Party may choose to apply such a decision on those additional human-induced activities for its first commitment period, provided that these activities have taken place since 1990.

5. The Parties included in annex I undergoing the process of transition to a market economy whose base year or period was established pursuant to decision 9/CP.2 of the Conference of the Parties at its second session shall use that base year or period for the implementation of their commitments under this article. Any other Party included in annex I undergoing the process of transition to a market economy which has not yet submitted its first national communication under article 12 of the Convention may also notify the Conference of the Parties serving as the meeting of the Parties to this Protocol that it intends to use an historical base year or period other than 1990 for the implementation of its commitments under this article. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall decide on the acceptance of such notification.

6. Taking into account article 4, paragraph 6, of the Convention, in the implementation of their commitments under this Protocol other than those under this article, a certain degree of flexibility shall be allowed by the Conference of the Parties serving as the meeting of the Parties to this Protocol to the Parties included in annex I undergoing the process of transition to a market economy.

7. In the first quantified emission limitation and reduction commitment period, from 2008 to 2012, the assigned amount for each Party included in annex I shall be equal to the percentage inscribed for it in annex B of its aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in annex A in 1990, or the base year or period determined in accordance with paragraph 5 above, multiplied by five. Those Parties included in annex I for whom land-use change and forestry constituted a net source of greenhouse gas emissions in 1990 shall include in their 1990 emissions base year or period the aggregate anthropogenic carbon dioxide equivalent emissions by sources minus removals by sinks in 1990 from land-use change for the purposes of calculating their assigned amount.

8. Any Party included in annex I may use 1995 as its base year for hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride, for the purposes of the calculation referred to in paragraph 7 above.

9. Commitments for subsequent periods for Parties included in annex I shall be established in amendments to annex B to this Protocol, which shall be adopted in accordance with the provisions of article 21, paragraph 7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall initiate the consideration of such commitments at least seven years before the end of the first commitment period referred to in paragraph 1 above.

10. Any emission reduction units, or any part of an assigned amount, which a Party acquires from another Party in accordance with the provisions of article 6 or of article 17 shall be added to the assigned amount for the acquiring Party.

11. Any emission reduction units, or any part of an assigned amount, which a Party transfers to another Party in accordance with the provisions of article 6 or of article 17 shall be subtracted from the assigned amount for the transferring Party.

12. Any certified emission reductions which a Party acquires from another Party in accordance with the provisions of article 12 shall be added to the assigned amount for the acquiring Party.

13. If the emissions of a Party included in annex I in a commitment period are less than its assigned amount under this article, this difference shall, on request of that Party, be added to the assigned amount for that Party for subsequent commitment periods.

14. Each Party included in annex I shall strive to implement the commitments mentioned in paragraph 1 above in such a way as to minimize adverse social, environmental and economic impacts on developing country Parties, particularly those identified in article 4, paragraphs 8 and 9, of the Convention. In line with relevant decisions of the Conference of the Parties on the implementation of those paragraphs, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, consider what actions are necessary to minimize the adverse effects of climate change and/or the impacts of response measures on Parties referred to in those paragraphs. Among the issues to be considered shall be the establishment of funding, insurance and transfer of technology.

Article 4

1. Any Parties included in annex I that have reached an agreement to fulfil their commitments under article 3 jointly, shall be deemed to have met those commitments provided that their total combined aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in annex A do not exceed their assigned amounts calculated pursuant to their quantified emission limitation and reduction commitments inscribed in annex B and in accordance with the provisions of article 3. The respective emission level allocated to each of the Parties to the agreement shall be set out in that agreement.

2. The Parties to any such agreement shall notify the secretariat of the terms of the agreement on the date of deposit of their instruments of ratification, acceptance or approval of this Protocol, or accession thereto. The secretariat shall

in turn inform the Parties and signatories to the Convention of the terms of the agreement.

3. Any such agreement shall remain in operation for the duration of the commitment period specified in article 3, paragraph 7.

4. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization, any alteration in the composition of the organization after adoption of this Protocol shall not affect existing commitments under this Protocol. Any alteration in the composition of the organization shall only apply for the purposes of those commitments under article 3 that are adopted subsequent to that alteration.

5. In the event of failure by the Parties to such an agreement to achieve their total combined level of emission reductions, each Party to that agreement shall be responsible for its own level of emissions set out in the agreement.

6. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization which is itself a Party to this Protocol, each member State of that regional economic integration organization individually, and together with the regional economic integration organization acting in accordance with article 24, shall, in the event of failure to achieve the total combined level of emission reductions, be responsible for its level of emissions as notified in accordance with this article.

Article 5

1. Each Party included in annex I shall have in place, no later than one year prior to the start of the first commitment period, a national system for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol. Guidelines for such national systems, which shall incorporate the methodologies specified in paragraph 2 below, shall be decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session.

2. Methodologies for estimating anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties at its third session. Where such methodologies are not used, appropriate adjustments shall be applied according to methodologies agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session. Based on the work of, inter alia, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise such methodologies and adjustments, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to methodologies or adjustments shall be used only for the purposes of ascertaining compliance with commitments under article 3 in respect of any commitment period adopted subsequent to that revision.

3. The global warming potentials used to calculate the carbon dioxide equivalence of anthropogenic emissions by sources and removals by sinks of greenhouse gases listed in annex A shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the

Parties at its third session. Based on the work of, inter alia, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise the global warming potential of each such greenhouse gas, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to a global warming potential shall apply only to commitments under article 3 in respect of any commitment period adopted subsequent to that revision.

Article 6

1. For the purpose of meeting its commitments under article 3, any Party included in annex I may transfer to, or acquire from, any other such Party emission reduction units resulting from projects aimed at reducing anthropogenic emissions by sources or enhancing anthropogenic removals by sinks of greenhouse gases in any sector of the economy, provided that:

(*a*) Any such project has the approval of the Parties involved;

(*b*) Any such project provides a reduction in emissions by sources, or an enhancement of removals by sinks, that is additional to any that would otherwise occur;

(*c*) It does not acquire any emission reduction units if it is not in compliance with its obligations under articles 5 and 7; and

(*d*) The acquisition of emission reduction units shall be supplemental to domestic actions for the purposes of meeting commitments under article 3.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol may, at its first session or as soon as practicable thereafter, further elaborate guidelines for the implementation of this article, including for verification and reporting.

3. A Party included in annex I may authorize legal entities to participate, under its responsibility, in actions leading to the generation, transfer or acquisition under this article of emission reduction units.

4. If a question of implementation by a Party included in annex I of the requirements referred to in this article is identified in accordance with the relevant provisions of article 8, transfers and acquisitions of emission reduction units may continue to be made after the question has been identified, provided that any such units may not be used by a Party to meet its commitments under article 3 until any issue of compliance is resolved.

Article 7

1. Each Party included in annex I shall incorporate in its annual inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, submitted in accordance with the relevant decisions of the Conference of the Parties, the necessary supplementary information for the purposes of ensuring compliance with article 3, to be determined in accordance with paragraph 4 below.

2. Each Party included in annex I shall incorporate in its national communication, submitted under article 12 of the Convention, the supplementary infor-

mation necessary to demonstrate compliance with its commitments under this Protocol, to be determined in accordance with paragraph 4 below.

3. Each Party included in annex I shall submit the information required under paragraph 1 above annually, beginning with the first inventory due under the Convention for the first year of the commitment period after this Protocol has entered into force for that Party. Each such Party shall submit the information required under paragraph 2 above as part of the first national communication due under the Convention after this Protocol has entered into force for it and after the adoption of guidelines as provided for in paragraph 4 below. The frequency of subsequent submission of information required under this article shall be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, taking into account any timetable for the submission of national communications decided upon by the Conference of the Parties.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the preparation of the information required under this article, taking into account guidelines for the preparation of national communications by Parties included in annex I adopted by the Conference of the Parties. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall also, prior to the first commitment period, decide upon modalities for the accounting of assigned amounts.

Article 8

1. The information submitted under article 7 by each Party included in annex I shall be reviewed by expert review teams pursuant to the relevant decisions of the Conference of the Parties and in accordance with guidelines adopted for this purpose by the Conference of the Parties serving as the meeting of the Parties to this Protocol under paragraph 4 below. The information submitted under article 7, paragraph 1, by each Party included in annex I shall be reviewed as part of the annual compilation and accounting of emissions inventories and assigned amounts. Additionally, the information submitted under article 7, paragraph 2, by each Party included in annex I shall be reviewed as part of the review of communications.

2. Expert review teams shall be coordinated by the secretariat and shall be composed of experts selected from those nominated by Parties to the Convention and, as appropriate, by intergovernmental organizations, in accordance with guidance provided for this purpose by the Conference of the Parties.

3. The review process shall provide a thorough and comprehensive technical assessment of all aspects of the implementation by a Party of this Protocol. The expert review teams shall prepare a report to the Conference of the Parties serving as the meeting of the Parties to this Protocol, assessing the implementation of the commitments of the Party and identifying any potential problems in, and factors influencing, the fulfilment of commitments. Such reports shall be circulated by the secretariat to all Parties to the Convention. The secretariat shall list those questions of implementation indicated in such reports for further consideration by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter,

guidelines for the review of implementation of this Protocol by expert review teams taking into account the relevant decisions of the Conference of the Parties.

5. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, with the assistance of the Subsidiary Body for Implementation and, as appropriate, the Subsidiary Body for Scientific and Technological Advice, consider:

(*a*) The information submitted by Parties under article 7 and the reports of the expert reviews thereon conducted under this article; and

(*b*) Those questions of implementation listed by the secretariat under paragraph 3 above, as well as any questions raised by Parties.

6. Pursuant to its consideration of the information referred to in paragraph 5 above, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall take decisions on any matter required for the implementation of this Protocol.

Article 9

1. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically review this Protocol in the light of the best available scientific information and assessments on climate change and its impacts, as well as relevant technical, social and economic information. Such reviews shall be coordinated with pertinent reviews under the Convention, in particular those required by article 4, paragraph 2 (*d*), and article 7, paragraph 2 (*a*), of the Convention. Based on these reviews, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall take appropriate action.

2. The first review shall take place at the second session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Further reviews shall take place at regular intervals and in a timely manner.

Article 10

All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, without introducing any new commitments for Parties not included in annex I, but reaffirming existing commitments under article 4, paragraph 1, of the Convention, and continuing to advance the implementation of these commitments in order to achieve sustainable development, taking into account article 4, paragraphs 3, 5 and 7, of the Convention, shall:

(*a*) Formulate, where relevant and to the extent possible, cost-effective national and, where appropriate, regional programmes to improve the quality of local emission factors, activity data and/or models which reflect the socio-economic conditions of each Party for the preparation and periodic updating of national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties, and consistent with the guidelines for the preparation of national communications adopted by the Conference of the Parties;

(*b*) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change:

(i) Such programmes would, inter alia, concern the energy, transport and industry sectors as well as agriculture, forestry and waste management. Furthermore, adaptation technologies and methods for improving spatial planning would improve adaptation to climate change; and

(ii) Parties included in annex I shall submit information on action under this Protocol, including national programmes, in accordance with article 7; and other Parties shall seek to include in their national communications, as appropriate, information on programmes which contain measures that the Party believes contribute to addressing climate change and its adverse impacts, including the abatement of increases in greenhouse gas emissions, and enhancement of and removals by sinks, capacity-building and adaptation measures;

(*c*) Cooperate in the promotion of effective modalities for the development, application and diffusion of, and take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies, know-how, practices and processes pertinent to climate change, in particular to developing countries, including the formulation of policies and programmes for the effective transfer of environmentally sound technologies that are publicly owned or in the public domain and the creation of an enabling environment for the private sector, to promote and enhance the transfer of, and access to, environmentally sound technologies;

(*d*) Cooperate in scientific and technical research and promote the maintenance and the development of systematic observation systems and development of data archives to reduce uncertainties related to the climate system, the adverse impacts of climate change and the economic and social consequences of various response strategies, and promote the development and strengthening of endogenous capacities and capabilities to participate in international and intergovernmental efforts, programmes and networks on research and systematic observation, taking into account article 5 of the Convention;

(*e*) Cooperate in and promote at the international level, and, where appropriate, using existing bodies, the development and implementation of education and training programmes, including the strengthening of national capacity-building, in particular human and institutional capacities and the exchange or secondment of personnel to train experts in this field, in particular for developing countries, and facilitate at the national level public awareness of, and public access to information on, climate change. Suitable modalities should be developed to implement these activities through the relevant bodies of the Convention, taking into account article 6 of the Convention;

(*f*) Include in their national communications information on programmes and activities undertaken pursuant to this article in accordance with relevant decisions of the Conference of the Parties; and

(*g*) Give full consideration, in implementing the commitments under this article, to article 4, paragraph 8, of the Convention.

Article 11

1. In the implementation of article 10, Parties shall take into account the provisions of article 4, paragraphs 4, 5, 7, 8 and 9, of the Convention.

2. In the context of the implementation of article 4, paragraph 1, of the Convention, in accordance with the provisions of article 4, paragraph 3, and article 11 of the Convention, and through the entity or entities entrusted with the operation of the financial mechanism of the Convention, the developed country Parties and other developed Parties included in annex II to the Convention shall:

(*a*) Provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in advancing the implementation of existing commitments under article 4, paragraph 1 (*a*), of the Convention that are covered in article 10, subparagraph (*a*); and

(*b*) Also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of advancing the implementation of existing commitments under article 4, paragraph 1, of the Convention that are covered by article 10 and that are agreed between a developing country Party and the international entity or entities referred to in article 11 of the Convention, in accordance with that article.

The implementation of these existing commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among developed country Parties. The guidance to the entity or entities entrusted with the operation of the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply mutatis mutandis to the provisions of this paragraph.

3. The developed country Parties and other developed Parties in annex II to the Convention may also provide, and developing country Parties avail themselves of, financial resources for the implementation of article 10, through bilateral, regional and other multilateral channels.

Article 12

1. A clean development mechanism is hereby defined.

2. The purpose of the clean development mechanism shall be to assist Parties not included in annex I in achieving sustainable development and in contributing to the ultimate objective of the Convention, and to assist Parties included in annex I in achieving compliance with their quantified emission limitation and reduction commitments under article 3.

3. Under the clean development mechanism:

(*a*) Parties not included in annex I will benefit from project activities resulting in certified emission reductions; and

(*b*) Parties included in annex I may use the certified emission reductions accruing from such project activities to contribute to compliance with part of their quantified emission limitation and reduction commitments under article 3, as determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

4. The clean development mechanism shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to

this Protocol and be supervised by an executive board of the clean development mechanism.

5. Emission reductions resulting from each project activity shall be certified by operational entities to be designated by the Conference of the Parties serving as the meeting of the Parties to this Protocol, on the basis of:

(*a*) Voluntary participation approved by each Party involved;

(*b*) Real, measurable, and long-term benefits related to the mitigation of climate change; and

(*c*) Reductions in emissions that are additional to any that would occur in the absence of the certified project activity.

6. The clean development mechanism shall assist in arranging funding of certified project activities as necessary.

7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, elaborate modalities and procedures with the objective of ensuring transparency, efficiency and accountability through independent auditing and verification of project activities.

8. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall ensure that a share of the proceeds from certified project activities is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.

9. Participation under the clean development mechanism, including in activities mentioned in paragraph 3 (*a*) above and in the acquisition of certified emission reductions, may involve private and/or public entities, and is to be subject to whatever guidance may be provided by the executive board of the clean development mechanism.

10. Certified emission reductions obtained during the period from the year 2000 up to the beginning of the first commitment period can be used to assist in achieving compliance in the first commitment period.

Article 13

1. The Conference of the Parties, the supreme body of the Convention, shall serve as the meeting of the Parties to this Protocol.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to this Protocol.

3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be replaced by an additional member to be elected by and from amongst the Parties to this Protocol.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effec-

tive implementation. It shall perform the functions assigned to it by this Protocol and shall:

(*a*) Assess, on the basis of all information made available to it in accordance with the provisions of this Protocol, the implementation of this Protocol by the Parties, the overall effects of the measures taken pursuant to this Protocol, in particular environmental, economic and social effects as well as their cumulative impacts, and the extent to which progress towards the objective of the Convention is being achieved;

(*b*) Periodically examine the obligations of the Parties under this Protocol, giving due consideration to any reviews required by article 4, paragraph 2 (*d*), and article 7, paragraph 2, of the Convention, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge, and in this respect consider and adopt regular reports on the implementation of this Protocol;

(*c*) Promote and facilitate the exchange of information on measures adopted by the Parties to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under this Protocol;

(*d*) Facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under this Protocol;

(*e*) Promote and guide, in accordance with the objective of the Convention and the provisions of this Protocol, and taking fully into account the relevant decisions by the Conference of the Parties, the development and periodic refinement of comparable methodologies for the effective implementation of this Protocol, to be agreed on by the Conference of the Parties serving as the meeting of the Parties to this Protocol;

(*f*) Make recommendations on any matters necessary for the implementation of this Protocol;

(*g*) Seek to mobilize additional financial resources in accordance with article 11, paragraph 2;

(*h*) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;

(*i*) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies; and

(*j*) Exercise such other functions as may be required for the implementation of this Protocol, and consider any assignment resulting from a decision by the Conference of the Parties.

5. The rules of procedure of the Conference of the Parties and financial procedures applied under the Convention shall be applied mutatis mutandis under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

6. The first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be convened by the secretariat in conjunction with the first session of the Conference of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary sessions of the

Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held every year and in conjunction with ordinary sessions of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

7. Extraordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Protocol, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.

8. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented at sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by this Protocol and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties serving as the meeting of the Parties to this Protocol as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5 above.

Article 14

1. The secretariat established by article 8 of the Convention shall serve as the secretariat of this Protocol.

2. Article 8, paragraph 2, of the Convention on the functions of the secretariat, and article 8, paragraph 3, of the Convention on arrangements made for the functioning of the secretariat, shall apply mutatis mutandis to this Protocol. The secretariat shall, in addition, exercise the functions assigned to it under this Protocol.

Article 15

1. The Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation established by articles 9 and 10 of the Convention shall serve as, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Protocol. The provisions relating to the functioning of these two bodies under the Convention shall apply mutatis mutandis to this Protocol. Sessions of the meetings of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Protocol shall be held in conjunction with the meetings of, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of the Convention.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any session of the subsidiary bodies. When the subsidiary bodies serve as the subsidiary bodies of this Protocol, decisions under this Protocol shall be taken only by those that are Parties to this Protocol.

3. When the subsidiary bodies established by articles 9 and 10 of the Convention exercise their functions with regard to matters concerning this Protocol, any member of the Bureaux of those subsidiary bodies representing a Party to the Convention but, at that time, not a party to this Protocol, shall be replaced by an additional member to be elected by and from amongst the Parties to this Protocol.

Article 16

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, as soon as practicable, consider the application to this Protocol of, and modify as appropriate, the multilateral consultative process referred to in article 13 of the Convention, in the light of any relevant decisions that may be taken by the Conference of the Parties. Any multilateral consultative process that may be applied to this Protocol shall operate without prejudice to the procedures and mechanisms established in accordance with article 18.

Article 17

The Conference of the Parties shall define the relevant principles, modalities, rules and guidelines, in particular for verification, reporting and accountability for emissions trading. The Parties included in annex B may participate in emissions trading for the purposes of fulfilling their commitments under article 3. Any such trading shall be supplemental to domestic actions for the purpose of meeting quantified emission limitation and reduction commitments under that article.

Article 18

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, approve appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of this Protocol, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance. Any procedures and mechanisms under this article entailing binding consequences shall be adopted by means of an amendment to this Protocol.

Article 19

The provisions of article 14 of the Convention on settlement of disputes shall apply mutatis mutandis to this Protocol.

Article 20

1. Any Party may propose amendments to this Protocol.

2. Amendments to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed amendment to this Protocol shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any pro-

posed amendments to the Parties and signatories to the Convention and, for information, to the depositary.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Protocol by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the secretariat to the depositary, who shall circulate it to all Parties for their acceptance.

4. Instruments of acceptance in respect of an amendment shall be deposited with the depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the depositary of an instrument of acceptance by at least three fourths of the Parties to this Protocol.

5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the depositary its instrument of acceptance of the said amendment.

Article 21

1. Annexes to this Protocol shall form an integral part thereof and, unless otherwise expressly provided, a reference to this Protocol constitutes at the same time a reference to any annexes thereto. Any annexes adopted after the entry into force of this Protocol shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.

2. Any Party may make proposals for an annex to this Protocol and may propose amendments to annexes to this Protocol.

3. Annexes to this Protocol and amendments to annexes to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed annex or amendment to an annex shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed annex or amendment to an annex to the Parties and signatories to the Convention and, for information, to the depositary.

4. The Parties shall make every effort to reach agreement on any proposed annex or amendment to an annex by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the annex or amendment to an annex shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted annex or amendment to an annex shall be communicated by the secretariat to the depositary, who shall circulate it to all Parties for their acceptance

5. An annex, or amendment to an annex other than annex A or B, that has been adopted in accordance with paragraphs 3 and 4 above shall enter into force for all Parties to this Protocol six months after the date of the communication by the depositary to such Parties of the adoption of the annex or adoption of the amendment to the annex, except for those Parties that have notified the depositary, in writing, within that period of their non-acceptance of the annex or amendment to the annex. The annex or amendment to an annex shall enter into

force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the depositary.

6. If the adoption of an annex or an amendment to an annex involves an amendment to this Protocol, that annex or amendment to an annex shall not enter into force until such time as the amendment to this Protocol enters into force.

7. Amendments to annexes A and B to this Protocol shall be adopted and enter into force in accordance with the procedure set out in article 20, provided that any amendment to annex B shall be adopted only with the written consent of the Party concerned.

Article 22

1. Each Party shall have one vote, except as provided for in paragraph 2 below.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to this Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 23

The Secretary-General of the United Nations shall be the depositary of this Protocol.

Article 24

1. This Protocol shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations which are Parties to the Convention. It shall be open for signature at United Nations Headquarters in New York from 16 March 1998 to 15 March 1999. This Protocol shall be open for accession from the day after the date on which it is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

2. Any regional economic integration organization which becomes a Party to this Protocol without any of its member States being a Party shall be bound by all the obligations under this Protocol. In the case of such organizations, one or more of whose member States is a Party to this Protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Protocol. In such cases, the organization and the member States shall not be entitled to exercise rights under this Protocol concurrently.

3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Protocol. These organizations shall also inform the depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

Article 25

1. This Protocol shall enter into force on the ninetieth day after the date on which not less than 55 Parties to the Convention, incorporating Parties included in annex I which accounted in total for at least 55 per cent of the total carbon dioxide emissions for 1990 of the Parties included in annex I, have deposited their instruments of ratification, acceptance, approval or accession.

2. For the purposes of this article, "the total carbon dioxide emissions for 1990 of the Parties included in annex I" means the amount communicated on or before the date of adoption of this Protocol by the Parties included in annex I in their first national communications submitted in accordance with article 12 of the Convention.

3. For each State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after the conditions set out in paragraph 1 above for entry into force have been fulfilled, this Protocol shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

4. For the purposes of this article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization.

Article 26

No reservations may be made to this Protocol.

Article 27

1. At any time after three years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from this Protocol by giving written notification to the depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this Protocol.

Article 28

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

DONE at Kyoto this eleventh day of December one thousand nine hundred and ninety-seven.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have affixed their signatures to this Protocol on the dates indicated.

ANNEX A

Greenhouse gases

Carbon dioxide (CO_2)
Methane (CH_4)
Nitrous oxide (N_2O)
Hydrofluorocarbons (HFCs)
Perfluorocarbons (PFCs)
Sulphur hexafluoride (SF_6)

Sectors /source categories

Energy
- Fuel combustion
  - Energy industries
  - Manufacturing industries and construction
  - Transport
  - Other sectors
  - Other
- Fugitive emissions from fuels
  - Solid fuels
  - Oil and natural gas
  - Other

Industrial processes
- Mineral products
- Chemical industry
- Metal production
- Other production
- Production of halocarbons and sulphur hexafluoride
- Consumption of halocarbons and sulphur hexafluoride
- Other

Solvent and other product use

Agriculture
- Enteric fermentation
- Manure management
- Rice cultivation
- Agricultural soils
- Prescribed burning of savannas
- Field burning of agricultural residues
- Other

Waste
- Solid waste disposal on land
- Wastewater handling
- Waste incineration
- Other

ANNEX B

Party	*Quantified emission limitation or reduction commitment* (percentage of base year or period)
Australia	108
Austria	92
Belgium	92
Bulgaria*	92
Canada	94

*Countries that are undergoing the process of transition to a market economy.

Party	*Quantified emission limitation or reduction commitment* (percentage of base year or period)
Croatia*	95
Czech Republic*	92
Denmark	92
Estonia*	92
European Community	92
Finland	92
France	92
Germany	92
Greece	92
Hungary*	94
Iceland	110
Ireland	92
Italy	92
Japan	94
Latvia*	92
Liechtenstein	92
Lithuania*	92
Luxembourg	92
Monaco	92
Netherlands	92
New Zealand	100
Norway	101
Poland*	94
Portugal	92
Romania*	92
Russian Federation*	100
Slovakia*	92
Slovenia*	92
Spain	92
Sweden	92
Switzerland	92
Ukraine*	100
United Kingdom of Great Britain and Northern Ireland	92
United States of America	93

5. INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF TERRORIST BOMBINGS.[9] DONE AT NEW YORK, 15 DECEMBER 1997[10]

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995,

Recalling also the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, "the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States",

Noting that the Declaration also encouraged States "to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter",

Recalling further General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, annexed thereto,

Noting also that terrorist attacks by means of explosives or other lethal devices have become increasingly widespread,

Noting further that existing multilateral legal provisions do not adequately address these attacks,

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism, and for the prosecution and punishment of their perpetrators,

Considering that the occurrence of such acts is a matter of grave concern to the international community as a whole,

Noting that the activities of military forces of States are governed by rules of international law outside the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "State or government facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

2. "Infrastructure facility" means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications.

3. "Explosive or other lethal device" means:

(*a*) An explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage; or

(*b*) A weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material.

4. "Military forces of a State" means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their formal command, control and responsibility.

5. "Place of public use" means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.

6. "Public transportation system" means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

(*a*) With the intent to cause death or serious bodily injury; or

(*b*) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.

3. Any person also commits an offence if that person:

(*a*) Participates as an accomplice in an offence as set forth in paragraph 1 or 2; or

(*b*) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2; or

(*c*) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 6, paragraph 1, or article 6, paragraph 2, of this Convention to exercise jurisdiction, except that the provisions of articles 10 to 15 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

(*a*) To establish as criminal offences under its domestic law the offences set forth in article 2 of this Convention;

(*b*) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

Article 5

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

Article 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(*a*) The offence is committed in the territory of that State; or

(*b*) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or

(*c*) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(*a*) The offence is committed against a national of that State; or

(*b*) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or

(*c*) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(*d*) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or

(*e*) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2 under its domestic law. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 7

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence as set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

(*a*) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(*b*) Be visited by a representative of that State;

(*c*) Be informed of that person's rights under subparagraphs (*a*) and (*b*).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 6, subparagraph 1 (*c*) or 2 (*c*), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 6, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 8

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 6 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 9

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 6, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

Article 10

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 11

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 12

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 13

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

(*a*) The person freely gives his or her informed consent; and

(*b*) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of this article:

(*a*) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(*b*) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(*c*) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(*d*) The person transferred shall receive credit for service of the sentence being served in the State from which he was transferred for time spent in the custody of the State to which he was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with this article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 14

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.

Article 15

States Parties shall cooperate in the prevention of the offences set forth in article 2, particularly:

(*a*) By taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the perpetration of offences as set forth in article 2;

(*b*) By exchanging accurate and verified information in accordance with their national law, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 2;

(*c*) Where appropriate, through research and development regarding methods of detection of explosives and other harmful substances that can cause death or bodily injury, consultations on the development of standards for marking explosives in order to identify their origin in post-blast investigations, exchange of information on preventive measures, cooperation and transfer of technology, equipment and related materials.

Article 16

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 17

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 18

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 19

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

Article 20

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 21

1. This Convention shall be open for signature by all States from 12 January 1998 until 31 December 1999 at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 22

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 23

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 24

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 12 January 1998.

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

1. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

International Plant Protection Convention. Approved by the FAO Conference at its 29th session, November 1997[11]

PREAMBLE

The contracting parties,

Recognizing the necessity for international cooperation in controlling pests of plants and plant products and in preventing their international spread, and especially their introduction into endangered areas;

Recognizing that phytosanitary measures should be technically justified, transparent and should not be applied in such a way as to constitute either a means of arbitrary or unjustified discrimination or a disguised restriction, particularly on international trade;

Desiring to ensure close coordination of measures directed to these ends;

Desiring to provide a framework for the development and application of harmonized phytosanitary measures and the elaboration of international standards to that effect;

Taking into account internationally approved principles governing the protection of plant, human and animal health, and the environment; and

Noting the agreements concluded as a result of the Uruguay Round of Multilateral Trade Negotiations, including the Agreement on the Application of Sanitary and Phytosanitary Measures;

Have agreed as follows:

Article I

PURPOSE AND RESPONSIBILITY

1. With the purpose of securing common and effective action to prevent the spread and introduction of pests of plants and plant products, and to promote appropriate measures for their control, the contracting parties undertake to adopt the legislative, technical and administrative measures specified in this Convention and in supplementary agreements pursuant to article XVI.

2. Each contracting party shall assume responsibility, without prejudice to obligations assumed under other international agreements, for the fulfilment within its territories of all requirements under this Convention.

3. The division of responsibilities for the fulfilment of the requirements of this Convention between member organizations of FAO and their member States that are contracting parties shall be in accordance with their respective competencies.

4. Where appropriate, the provisions of this Convention may be deemed by contracting parties to extend, in addition to plants and plant products, to storage places, packaging, conveyances, containers, soil and any other organism, object or material capable of harbouring or spreading plant pests, particularly where international transportation is involved.

Article II

USE OF TERMS

1. For the purpose of this Convention, the following terms shall have the meanings hereunder assigned to them:

"Area of low pest prevalence"—an area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest occurs at low levels and which is subject to effective surveillance, control or eradication measures;

"Commission"—the Commission on Phytosanitary Measures established under article XI;

"Endangered area"—an area where ecological factors favour the establishment of a pest whose presence in the area will result in economically important loss;

"Establishment"—perpetuation, for the foreseeable future, of a pest within an area after entry;

"Harmonized phytosanitary measures"—phytosanitary measures established by contracting parties based on international standards;

"International standards"—international standards established in accordance with article X, paragraphs 1 and 2;

"Introduction"—the entry of a pest resulting in its establishment;

"Pest"—any species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products;

"Pest risk analysis"—the process of evaluating biological or other scientific and economic evidence to determine whether a pest should be regulated and the strength of any phytosanitary measures to be taken against it;

"Phytosanitary measure"—any legislation, regulation or official procedure having the purpose to prevent the introduction and/or spread of pests;

"Plant products"—unmanufactured material of plant origin (including grain) and those manufactured products that, by their nature or that of their processing, may create a risk for the introduction and spread of pests;

"Plants"—living plants and parts thereof, including seeds and germ plasm;

"Quarantine pest"—a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled;

"Regional standards"—standards established by a regional plant protection organization for the guidance of the members of that organization;

"Regulated article"—any plant, plant product, storage place, packaging, conveyance, container, soil and any other organism, object or material capable of harbouring or spreading pests, deemed to require phytosanitary measures, particularly where international transportation is involved;

"Regulated non-quarantine pest"—a non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated within the territory of the importing contracting party;

"Regulated pest"—a quarantine pest or a regulated non-quarantine pest;

"Secretary"—Secretary of the Commission appointed pursuant to article XII;

"Technically justified"—justified on the basis of conclusions reached by using an appropriate pest risk analysis or, where applicable, another comparable examination and evaluation of available scientific information.

2. The definitions set forth in this article, being limited to the application of this Convention, shall not be deemed to affect definitions established under domestic laws or regulations of contracting parties.

Article III

RELATIONSHIP WITH OTHER INTERNATIONAL AGREEMENTS

Nothing in this Convention shall affect the rights and obligations of the contracting parties under relevant international agreements.

Article IV

GENERAL PROVISIONS RELATING TO THE ORGANIZATIONAL ARRANGEMENTS FOR NATIONAL PLANT PROTECTION

1. Each contracting party shall make provision, to the best of its ability, for an official national plant protection organization with the main responsibilities set out in this article.

2. The responsibilities of an official national plant protection organization shall include the following:

(*a*) The issuance of certificates relating to the phytosanitary regulations of the importing contracting party for consignments of plants, plant products and other regulated articles;

(*b*) The surveillance of growing plants, including both areas under cultivation (inter alia fields, plantations, nurseries, gardens, greenhouses and laboratories) and wild flora, and of plants and plant products in storage or in transportation, particularly with the object of reporting the occurrence, outbreak and spread of pests, and of controlling those pests, including the reporting referred to under article VIII, paragraph 1(*a*);

(*c*) The inspection of consignments of plants and plant products moving in international traffic and, where appropriate, the inspection of other regulated articles, particularly with the object of preventing the introduction and/or spread of pests;

(*d*) The disinfestation or disinfection of consignments of plants, plant products and other regulated articles moving in international traffic, to meet phytosanitary requirements;

(*e*) The protection of endangered areas and the designation, maintenance and surveillance of pest-free areas and areas of low pest prevalence;

(*f*) The conduct of pest risk analyses;

(*g*) To ensure through appropriate procedures that the phytosanitary security of consignments after certification regarding composition, substitution and reinfestation is maintained prior to export; and

(*h*) Training and development of staff.

3. Each contracting party shall make provision, to the best of its ability, for the following:

(*a*) The distribution of information within the territory of the contracting party regarding regulated pests and the means of their prevention and control;

(*b*) Research and investigation in the field of plant protection;

(*c*) The issuance of phytosanitary regulations; and

(*d*) The performance of such other functions as may be required for the implementation of this Convention.

4. Each contracting party shall submit a description of its official national plant protection organization and of changes in such organization to the Secretary. A contracting party shall provide a description of its organizational arrangements for plant protection to another contracting party, upon request.

Article V

PHYTOSANITARY CERTIFICATION

1. Each contracting party shall make arrangements for phytosanitary certification, with the objective of ensuring that exported plants, plant products and other regulated articles and consignments thereof are in conformity with the certifying statement to be made pursuant to paragraph 2(*b*) of this article.

2. Each contracting party shall make arrangements for the issuance of phytosanitary certificates in conformity with the following provisions:

(*a*) Inspection and other related activities leading to issuance of phytosanitary certificates shall be carried out only by or under the authority of the official national plant protection organization. The issuance of phytosanitary certificates shall be carried out by public officers who are technically qualified and duly authorized by the official national plant protection organization to act on its behalf and under its control with such knowledge and information available to those officers that the authorities of importing contracting parties may accept the phytosanitary certificates with confidence as dependable documents;

(*b*) Phytosanitary certificates, or their electronic equivalent where accepted by the importing contracting party concerned, shall be as worded in the models set out in the annex to this Convention. These certificates should be completed and issued taking into account relevant international standards;

(*c*) Uncertified alterations or erasures shall invalidate the certificates.

3. Each contracting party undertakes not to require consignments of plants or plant products or other regulated articles imported into its territories to be accompanied by phytosanitary certificates inconsistent with the models set out in the annex to this Convention. Any requirements for additional declarations shall be limited to those technically justified.

Article VI

REGULATED PESTS

1. Contracting parties may require phytosanitary measures for quarantine pests and regulated non-quarantine pests, provided that such measures are:

(*a*) No more stringent than measures applied to the same pests, if present within the territory of the importing contracting party; and

(*b*) Limited to what is necessary to protect plant health and/or safeguard the intended use and can be technically justified by the contracting party concerned.

2. Contracting parties shall not require phytosanitary measures for non-regulated pests.

Article VII

REQUIREMENTS IN RELATION TO IMPORTS

1. With the aim of preventing the introduction and/or spread of regulated pests into their territories, contracting parties shall have sovereign authority to regulate, in accordance with applicable international agreements, the entry of plants and plant products and other regulated articles and, to this end, may:

(*a*) Prescribe and adopt phytosanitary measures concerning the importation of plants, plant products and other regulated articles, including, for example, inspection, prohibition on importation, and treatment;

(*b*) Refuse entry or detain, or require treatment, destruction or removal from the territory of the contracting party, of plants, plant products and other regulated articles or consignments thereof that do not comply with the phytosanitary measures prescribed or adopted under subparagraph (*a*);

(*c*) Prohibit or restrict the movement of regulated pests into their territories;

(*d*) Prohibit or restrict the movement of biological control agents and other organisms of phytosanitary concern claimed to be beneficial into their territories.

2. In order to minimize interference with international trade, each contracting party, in exercising its authority under paragraph 1 of this article, undertakes to act in conformity with the following:

(*a*) Contracting parties shall not, under their phytosanitary legislation, take any of the measures specified in paragraph 1 of this article unless such measures are made necessary by phytosanitary considerations and are technically justified;

(*b*) Contracting parties shall, immediately upon their adoption, publish and transmit phytosanitary requirements, restrictions and prohibitions to any contracting party or parties that they believe may be directly affected by such measures;

(*c*) Contracting parties shall, on request, make available to any contracting party the rationale for phytosanitary requirements, restrictions and prohibitions;

(*d*) If a contracting party requires consignments of particular plants or plant products to be imported only through specified points of entry, such points shall be so selected as not to unnecessarily impede international trade. The contracting party shall publish a list of such points of entry and communicate it to the Secretary, any regional plant protection organization of which the contracting party is a member, all contracting parties which the contracting party believes to be directly affected, and other contracting parties upon request. Such restrictions on points of entry shall not be made unless the plants, plant products or other regulated articles concerned are required to be accompanied by phytosanitary certificates or to be submitted to inspection or treatment;

(*e*) Any inspection or other phytosanitary procedure required by the plant protection organization of a contracting party for a consignment of plants, plant products or other regulated articles offered for importation, shall take place as promptly as possible with due regard to their perishability;

(*f*) Importing contracting parties shall, as soon as possible, inform the exporting contracting party concerned, or, where appropriate, the re-exporting contracting party concerned, of significant instances of non-compliance with phytosanitary certification. The exporting contracting party, or, where appropriate, the re-exporting contracting party concerned, should investigate and, on request, report the result of its investigation to the importing contracting party concerned;

(*g*) Contracting parties shall institute only phytosanitary measures that are technically justified, consistent with the pest risk involved and represent the least restrictive measures available, and result in the minimum impediment to the international movement of people, commodities and conveyances;

(*h*) Contracting parties shall, as conditions change, and as new facts become available, ensure that phytosanitary measures are promptly modified or removed if found to be unnecessary;

(*i*) Contracting parties shall, to the best of their ability, establish and update lists of regulated pests, using scientific names, and make such lists available to the Secretary, to regional plant protection organizations of which they are members and, on request, to other contracting parties;

(*j*) Contracting parties shall, to the best of their ability, conduct surveillance for pests and develop and maintain adequate information on pest status in order to support categorization of pests, and for the development of appropriate phytosanitary measures. This information shall be made available to contracting parties, on request.

3. A contracting party may apply measures specified in this article to pests which may not be capable of establishment in its territories but, if they gained entry, cause economic damage. Measures taken against these pests must be technically justified.

4. Contracting parties may apply measures specified in this article to consignments in transit through their territories only where such measures are technically justified and necessary to prevent the introduction and/or spread of pests.

5. Nothing in this article shall prevent importing contracting parties from making special provision, subject to adequate safeguards, for the importation, for the purpose of scientific research, education, or other specific use, of plants and plant products and other regulated articles, and of plant pests.

6. Nothing in this article shall prevent any contracting party from taking appropriate emergency action on the detection of a pest posing a potential threat to its territories or the report of such a detection. Any such action shall be evaluated as soon as possible to ensure that its continuance is justified. The action taken shall be immediately reported to contracting parties concerned, the Secretary, and any regional plant protection organization of which the contracting party is a member.

Article VIII

INTERNATIONAL COOPERATION

1. The contracting parties shall cooperate with one another to the fullest practicable extent in achieving the aims of this Convention, and shall in particular:

(*a*) Cooperate in the exchange of information on plant pests, particularly the reporting of the occurrence, outbreak or spread of pests that may be of immediate or potential danger, in accordance with such procedures as may be established by the Commission;

(*b*) Participate, insofar as is practicable, in any special campaigns for combating pests that may seriously threaten crop production and need international action to meet the emergencies; and

(*c*) Cooperate, to the extent practicable, in providing technical and biological information necessary for pest risk analysis.

2. Each contracting party shall designate a contact point for the exchange of information connected with the implementation of this Convention.

Article IX

REGIONAL PLANT PROTECTION ORGANIZATIONS

1. The contracting parties undertake to cooperate with one another in establishing regional plant protection organizations in appropriate areas.

2. The regional plant protection organizations shall function as the coordinating bodies in the areas covered, shall participate in various activities to achieve the objectives of this Convention and, where appropriate, shall gather and disseminate information.

3. The regional plant protection organizations shall cooperate with the Secretary in achieving the objectives of the Convention and, where appropriate, cooperate with the Secretary and the Commission in developing international standards.

4. The Secretary will convene regular Technical Consultations of representatives of regional plant protection organizations to:

(*a*) Promote the development and use of relevant international standards for phytosanitary measures; and

(*b*) Encourage interregional cooperation in promoting harmonized phytosanitary measures for controlling pests and in preventing their spread and/or introduction.

Article X

STANDARDS

1. The contracting parties agree to cooperate in the development of international standards in accordance with the procedures adopted by the Commission.

2. International standards shall be adopted by the Commission.

3. Regional standards should be consistent with the principles of this Convention; such standards may be deposited with the Commission for consideration as candidates for international standards for phytosanitary measures if more broadly applicable.

4. Contracting parties should take into account, as appropriate, international standards when undertaking activities related to this Convention.

Article XI

COMMISSION ON PHYTOSANITARY MEASURES

1. Contracting parties agree to establish the Commission on Phytosanitary Measures within the framework of the Food and Agriculture Organization of the United Nations (FAO).

2. The functions of the Commission shall be to promote the full implementation of the objectives of the Convention and, in particular, to:

(*a*) Review the state of plant protection in the world and the need for action to control the international spread of pests and their introduction into endangered areas;

(*b*) Establish and keep under review the necessary institutional arrangements and procedures for the development and adoption of international standards, and to adopt international standards;

(*c*) Establish rules and procedures for the resolution of disputes in accordance with article XIII;

(*d*) Establish such subsidiary bodies of the Commission as may be necessary for the proper implementation of its functions;

(*e*) Adopt guidelines regarding the recognition of regional plant protection organizations;

(*f*) Establish cooperation with other relevant international organizations on matters covered by this Convention;

(*g*) Adopt such recommendations for the implementation of the Convention as necessary; and

(*h*) Perform such other functions as may be necessary to the fulfilment of the objectives of this Convention.

3. Membership in the Commission shall be open to all contracting parties.

4. Each contracting party may be represented at sessions of the Commission by a single delegate who may be accompanied by an alternate, and by experts and advisers. Alternates, experts and advisers may take part in the proceedings of the Commission but may not vote, except in the case of an alternate who is duly authorized to substitute for the delegate.

5. The contracting parties shall make every effort to reach agreement on all matters by consensus. If all efforts to reach consensus have been exhausted and no agreement is reached, the decision shall, as a last resort, be taken by a two-thirds majority of the contracting parties present and voting.

6. A member organization of FAO that is a contracting party and the member States of that member organization that are contracting parties shall exercise their membership rights and fulfil their membership obligations in accordance, mutatis mutandis, with the Constitution and General Rules of FAO.

7. The Commission may adopt and amend, as required, its own Rules of Procedure, which shall not be inconsistent with this Convention or with the Constitution of FAO.

8. The Chairperson of the Commission shall convene an annual regular session of the Commission.

9. Special sessions of the Commission shall be convened by the Chairperson of the Commission at the request of at least one third of its members.

10. The Commission shall elect its Chairperson and no more than two Vice-Chairpersons, each of whom shall serve for a term of two years.

Article XII

SECRETARIAT

1. The Secretary of the Commission shall be appointed by the Director-General of FAO.

2. The Secretary shall be assisted by such secretariat staff as may be required.

3. The Secretary shall be responsible for implementing the policies and activities of the Commission and carrying out such other functions as may be assigned to the Secretary by this Convention and shall report thereon to the Commission.

4. The Secretary shall disseminate:

(*a*) International standards to all contracting parties within sixty days of adoption;

(*b*) To all contracting parties, lists of points of entry under article VII, paragraph 2(*d*), communicated by contracting parties;

(*c*) Lists of regulated pests whose entry is prohibited or referred to in article VII, paragraph 2(*i*), to all contracting parties and regional plant protection organizations;

(*d*) Information received from contracting parties on phytosanitary requirements, restrictions and prohibitions referred to in article VII, paragraph 2(*b*), and descriptions of official national plant protection organizations referred to in article IV, paragraph 4.

5. The Secretary shall provide translations in the official languages of FAO of documentation for meetings of the Commission and international standards.

6. The Secretary shall cooperate with regional plant protection organizations in achieving the aims of the Convention.

Article XIII

SETTLEMENT OF DISPUTES

1. If there is any dispute regarding the interpretation or application of this Convention, or if a contracting party considers that any action by another contracting party is in conflict with the obligations of the latter under articles V and VII of this Convention, especially regarding the basis of prohibiting or restricting the imports of plants, plant products or other regulated articles coming from its territories, the contracting parties concerned shall consult among themselves as soon as possible with a view to resolving the dispute.

2. If the dispute cannot be resolved by the means referred to in paragraph 1, the contracting party or parties concerned may request the Director-General of

FAO to appoint a committee of experts to consider the question in dispute, in accordance with rules and procedures that may be established by the Commission.

3. This Committee shall include representatives designated by each contracting party concerned. The Committee shall consider the question in dispute, taking into account all documents and other forms of evidence submitted by the contracting parties concerned. The Committee shall prepare a report on the technical aspects of the dispute for the purpose of seeking its resolution. The preparation of the report and its approval shall be according to rules and procedures established by the Commission, and it shall be transmitted by the Director-General to the contracting parties concerned. The report may also be submitted, upon its request, to the competent body of the international organization responsible for resolving trade disputes.

4. The contracting parties agree that the recommendations of such a committee, while not binding in character, will become the basis for renewed consideration by the contracting parties concerned of the matter out of which the disagreement arose.

5. The contracting parties concerned shall share the expenses of the experts.

6. The provisions of this article shall be complementary to and not in derogation of the dispute settlement procedures provided for in other international agreements dealing with trade matters.

Article XIV

SUBSTITUTION OF PRIOR AGREEMENTS

This Convention shall terminate and replace, between contracting parties, the International Convention respecting measures to be taken against the *Phylloxera vastatrix* of 3 November 1881, the additional Convention signed at Berne on 15 April 1889 and the International Convention for the Protection of Plants signed at Rome on 16 April 1929.

Article XV

TERRITORIAL APPLICATION

1. Any contracting party may at the time of ratification or adherence or at any time thereafter communicate to the Director-General of FAO a declaration that this Convention shall extend to all or any of the territories for the international relations of which it is responsible, and this Convention shall be applicable to all territories specified in the declaration as from the thirtieth day after the receipt of the declaration by the Director-General.

2. Any contracting party which has communicated to the Director-General of FAO a declaration in accordance with paragraph 1 of this article may at any time communicate a further declaration modifying the scope of any former declaration or terminating the application of the provisions of the present Convention in respect of any territory. Such modification or termination shall take effect as from the thirtieth day after the receipt of the declaration by the Director-General.

3. The Director-General of FAO shall inform all contracting parties of any declaration received under this article.

Article XVI

SUPPLEMENTARY AGREEMENTS

1. The contracting parties may, for the purpose of meeting special problems of plant protection which need particular attention or action, enter into supplementary agreements. Such agreements may be applicable to specific regions, to specific pests, to specific plants and plant products, to specific methods of international transportation of plants and plant products, or otherwise supplement the provisions of this Convention.

2. Any such supplementary agreements shall come into force for each contracting party concerned after acceptance in accordance with the provisions of the supplementary agreements concerned.

3. Supplementary agreements shall promote the intent of this Convention and shall conform to the principles and provisions of this Convention, as well as to the principles of transparency, non-discrimination and the avoidance of disguised restrictions, particularly on international trade.

Article XVII

RATIFICATION AND ADHERENCE

1. This Convention shall be open for signature by all States until 1 May 1952 and shall be ratified at the earliest possible date. The instruments of ratification shall be deposited with the Director-General of FAO, who shall give notice of the date of deposit to each of the signatory States.

2. As soon as this Convention has come into force in accordance with article XXII it shall be open for adherence by non-signatory States and member organizations of FAO. Adherence shall be effected by the deposit of an instrument of adherence with the Director-General of FAO, who shall notify all contracting parties.

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

Article XVIII

NON-CONTRACTING PARTIES

The contracting parties shall encourage any State or member organization of FAO, not a party to this Convention, to accept this Convention, and shall encourage any non-contracting party to apply phytosanitary measures consistent with

the provisions of this Convention and any international standards adopted hereunder.

Article XIX

LANGUAGES

1. The authentic languages of this Convention shall be all official languages of FAO.

2. Nothing in this Convention shall be construed as requiring contracting parties to provide and to publish documents or to provide copies of them other than in the language(s) of the contracting party, except as stated in paragraph 3 below.

3. The following documents shall be in at least one of the official languages of FAO:

(*a*) Information provided according to article IV, paragraph 4;

(*b*) Cover notes giving bibliographical data on documents transmitted according to article VII, paragraph 2(*b*);

(*c*) Information provided according to article VII, paragraph 2(*b*), (*d*), (*i*) and (*j*);

(*d*) Notes giving bibliographical data and a short summary of relevant documents on information provided according to article VIII, paragraph 1(*a*);

(*e*) Requests for information from contact points as well as replies to such requests, but not including any attached documents;

(*f*) Any document made available by contracting parties for meetings of the Commission.

Article XX

TECHNICAL ASSISTANCE

The contracting parties agree to promote the provision of technical assistance to contracting parties, especially those that are developing contracting parties, either bilaterally or through the appropriate international organizations, with the objective of facilitating the implementation of this Convention.

Article XXI

AMENDMENT

1. Any proposal by a contracting party for the amendment of this Convention shall be communicated to the Director-General of FAO.

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

3. Notice of any proposed amendment of this Convention, other than amendments to the annex, shall be transmitted to the contracting parties by the Director-General of FAO not later than the time when the agenda of the session of the Commission at which the matter is to be considered is dispatched.

4. Any such proposed amendment of this Convention shall require the approval of the Commission and shall come into force as from the thirtieth day after acceptance by two thirds of the contracting parties. For the purpose of this article, an instrument deposited by a member organization of FAO shall not be counted as additional to those deposited by member States of such an organization.

5. Amendments involving new obligations for contracting parties, however, shall come into force in respect of each contracting party only on acceptance by it and as from the thirtieth day after such acceptance. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director-General of FAO, who shall inform all contracting parties of the receipt of acceptance and the entry into force of amendments.

6. Proposals for amendments to the model phytosanitary certificates set out in the annex to this Convention shall be sent to the Secretary and shall be considered for approval by the Commission. Approved amendments to the model phytosanitary certificates set out in the annex to this Convention shall become effective ninety days after their notification to the contracting parties by the Secretary.

7. For a period of not more than twelve months from an amendment to the model phytosanitary certificates set out in the annex to this Convention becoming effective, the previous version of the phytosanitary certificates shall also be legally valid for the purpose of this Convention.

Article XXII

ENTRY INTO FORCE

As soon as this Convention has been ratified by three signatory States it shall come into force among them. It shall come into force for each State or member organization of FAO ratifying or adhering thereafter from the date of deposit of its instrument of ratification or adherence.

Article XXIII

DENUNCIATION

1. Any contracting party may at any time give notice of denunciation of this Convention by notification addressed to the Director-General of FAO. The Director-General shall at once inform all contracting parties.

2. Denunciation shall take effect one year from the date of receipt of the notification by the Director-General of FAO.

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2. INTERNATIONAL MARITIME ORGANIZATION

Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto.[12] Done at London on 26 September 1997[13]

The Parties to the present Protocol,

Being Parties to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973,

Recognizing the need to prevent and control air pollution from ships,

Recalling principle 15 of the Rio Declaration on Environment and Development, which calls for the application of a precautionary approach,

Considering that this objective could best be achieved by the conclusion of a Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto,

Have agreed as follows:

Article 1

INSTRUMENT TO BE AMENDED

The instrument which the present Protocol amends is the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (hereinafter referred to as the "Convention").

Article 2

ADDITION OF ANNEX VI TO THE CONVENTION

Annex VI, entitled "Regulations for the Prevention of Air Pollution from Ships", the text of which is set out in the annex to the present Protocol, is added.

Article 3

GENERAL OBLIGATIONS

1. The Convention and the present Protocol shall, as between the Parties to the present Protocol, be read and interpreted together as one single instrument.

2. Every reference to the present Protocol constitutes at the same time a reference to the annex hereto.

Article 4

AMENDMENT PROCEDURE

In applying article 16 of the Convention to an amendment to annex VI and its appendices, the reference to "a Party to the Convention" shall be deemed to mean the reference to a Party bound by that annex.

FINAL CLAUSES

Article 5

SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. The present Protocol shall be open for signature at the headquarters of the International Maritime Organization (hereinafter referred to as the "Organization") from 1 January 1998 until 31 December 1998 and shall thereafter remain open for accession. Only Contracting States to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (hereinafter referred to as the "1978 Protocol") may become Parties to the present Protocol by:

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

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

(*c*) Accession.

2. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General of the Organization (hereinafter referred to as the "Secretary-General").

Article 6

ENTRY INTO FORCE

1. The present Protocol shall enter into force twelve months after the date on which not less than fifteen States, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant shipping, have become Parties to it in accordance with article 5 of the present Protocol.

2. Any instrument of ratification, acceptance, approval or accession deposited after the date on which the present Protocol enters into force shall take effect three months after the date of deposit.

3. After the date on which an amendment to the present Protocol is deemed to have been accepted in accordance with article 16 of the Convention, any instrument of ratification, acceptance, approval or accession deposited shall apply to the present Protocol as amended.

Article 7

DENUNCIATION

1. The present Protocol may be denounced by any Party to the present Protocol at any time after the expiry of five years from the date on which the Protocol enters into force for that Party.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect twelve months after receipt of the notification by the Secretary-General or after the expiry of any other longer period which may be indicated in the notification.

4. A denunciation of the 1978 Protocol in accordance with article VII thereof shall be deemed to include a denunciation of the present Protocol in accordance with this article. Such denunciation shall take effect on the date on which denunciation of the 1978 protocol takes effect in accordance with article VII of that Protocol.

Article 8

DEPOSITARY

1. The present Protocol shall be deposited with the Secretary-General (hereinafter referred to as the "depositary").

2. The depositary shall:

(*a*) Inform all States which have signed the present Protocol or acceded thereto of:

(i) Each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) The date of entry into force of the present Protocol; and

(iii) The deposit of any instrument of denunciation of the present Protocol, together with the date on which it was received and the date on which the denunciation takes effect; and

(*b*) Transmit certified true copies of the present Protocol to all States which have signed the present Protocol or acceded thereto.

3. As soon as the present Protocol enters into force, a certified true copy thereof shall be transmitted by the depositary to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 9

LANGUAGES

The present Protocol is established in a single copy in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed the present Protocol.

DONE AT LONDON this twenty-sixth day of September, one thousand nine hundred and ninety-seven.

ANNEX

Addition of annex VI to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto

The following new annex VI is added after the existing annex V:

Annex VI
Regulations for the Prevention of Air Pollution from Ships

CHAPTER I. GENERAL

Regulation 1

Application

The provisions of this annex shall apply to all ships, except where expressly provided otherwise in regulations 3, 5, 6, 13, 15, 18 and 19 of this annex.

Regulation 2

Definitions

For the purpose of this annex:

(1) "A similar stage of construction" means the stage at which:

(*a*) Construction identifiable with a specific ship begins; and

(*b*) Assembly of that ship has commenced comprising at least 50 tonnes or one per cent of the estimated mass of all structural material, whichever is less;

(2) "Continuous feeding" is defined as the process whereby waste is fed into a combustion chamber without human assistance while the incinerator is in normal operating conditions with the combustion chamber operative temperature between 850° C and 1200°C;

(3) "Emission" means any release of substances, subject to control by this annex from ships into the atmosphere or sea;

(4) "New installations", in relation to regulation 12 of this annex, means the installation of systems, equipment, including new portable fire-extinguishing units, insulation, or other material on a ship after the date on which this annex enters into force, but excludes repair or recharge of previously installed systems, equipment, insulation, or other material, or recharge of portable fire-extinguishing units;

(5) "NO_x Technical Code" means the Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines adopted by Conference resolution 2, as may be amended by the Organization, provided that such amendments are adopted and brought into force in accordance with the provisions of article 16 of the present Convention concerning amendment procedures applicable to an appendix to an annex;

(6) "Ozone-depleting substances" means controlled substances defined in paragraph 4 of article 1 of the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, listed in annexes A, B, C or E to the said Protocol in force at the time of application or interpretation of this annex;

"Ozone-depleting substances" that may be found on board ship include, but are not limited to:

Halon 1211	Bromochlorodifluoromethane
Halon 1301	Bromotrifluoromethane
Halon 2402	1,2-Dibromo-1,1,2,2-tetrafluoroethane (also known as Halon 114B2)
CFC-11	Trichlorofluoromethane
CFC-12	Dichlorodifluoromethane
CFC-113	1,1,2-Trichloro-1,2,2-trifluoroethane
CFC-114	1,2-Dichloro-1,1,2,2-tetrafluoroethane
CFC-115	Chloropentafluoroethane

(7) "Sludge oil" means sludge from the fuel or lubricating oil separators, waste lubricating oil from main or auxiliary machinery, or waste oil from bilge water separators, oil filtering equipment or drip trays;

(8) "Shipboard incineration" means the incineration of wastes or other matter on board a ship, if such wastes or other matter were generated during the normal operation of that ship;

(9) "Shipboard incinerator" means a shipboard facility designed for the primary purpose of incineration;

(10) "Ships constructed" means ships the keels of which are laid or which are at a similar stage of construction;

(11) "SO_x emission control area" means an area where the adoption of special mandatory measures for SO_x emissions from ships is required to prevent, reduce and control air pollution from SO_x and its attendant adverse impacts on land and sea areas. SO_x emission control areas shall include those listed in regulation 14 of this annex;

(12) "Tanker" means an oil tanker as defined in regulation 1(4) of annex I or a chemical tanker as defined in regulation 1(1) of annex II to the present Convention;

(13) "The Protocol of 1997" means the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto.

Regulation 3

General exceptions

Regulations of this annex shall not apply to:

(*a*) Any emission necessary for the purpose of securing the safety of a ship or saving life at sea; or

(*b*) Any emission resulting from damage to a ship or its equipment:

(i) Provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the emission for the purpose of preventing or minimizing the emission; and

(ii) Except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result.

Regulation 4

Equivalents

(1) The Administration may allow any fitting, material, appliance or apparatus to be fitted in a ship as an alternative to that required by this annex if such fitting, material, appliance or apparatus is at least as effective as that required by this annex.

(2) The Administration which allows a fitting, material, appliance or apparatus as an alternative to that required by this annex shall communicate to the Organization for circulation to the Parties to the present Convention particulars thereof, for their information and appropriate action, if any.

CHAPTER II. SURVEY, CERTIFICATION AND MEANS OF CONTROL

Regulation 5

Surveys and inspections

(1) Every ship of 400 gross tonnage or above and every fixed and floating drilling rig and other platforms shall be subject to the surveys specified below:

(*a*) An initial survey before the ship is put into service or before the certificate required under regulation 6 of this annex is issued for the first time. This survey shall be such as to ensure that the equipment, systems, fittings, arrangements and material fully comply with the applicable requirements of this annex;

(*b*) Periodical surveys at intervals specified by the Administration, but not exceeding five years, which shall be such as to ensure that the equipment, systems, fittings, arrangements and material fully comply with the requirements of this annex; and

(*c*) A minimum of one intermediate survey during the period of validity of the certificate which shall be such as to ensure that the equipment and arrangements fully comply with the requirements of this annex and are in good working order. In cases where only one such intermediate survey is carried out in a single certificate validity period, and where the period of the certificate exceeds 2 1/2 years, it shall be held within six months before or after the halfway date of the certificate's period of validity. Such intermediate surveys shall be endorsed on the certificate issued under regulation 6 of this annex.

(2) In the case of ships of less than 400 gross tonnage, the Administration may establish appropriate measures in order to ensure that the applicable provisions of this annex are complied with.

(3) Surveys of ships as regards the enforcement of the provisions of this annex shall be carried out by officers of the Administration. The Administration may, however, entrust the surveys either to surveyors nominated for the purpose or to organizations recognized by it. Such organizations shall comply with the guidelines adopted by the Organization.* In every case the Administration concerned shall fully guarantee the completeness and efficiency of the survey.

(4) The survey of engines and equipment for compliance with regulation 13 of this annex shall be conducted in accordance with the NO_x Technical Code.

(5) The Administration shall institute arrangements for unscheduled inspections to be carried out during the period of validity of the certificate. Such inspections shall ensure that the equipment remains in all respects satisfactory for the service for which the equipment is intended. These inspections may be carried out by their own inspection service, nominated surveyors, recognized organizations, or by other Parties upon request of the Administration. Where the Administration, under the provisions of paragraph (1) of this regulation, establishes mandatory annual surveys, the above unscheduled inspections shall not be obligatory.

(6) When a nominated surveyor or recognized organization determines that the condition of the equipment does not correspond substantially with the particulars of the certificate, they shall ensure that corrective action is taken and shall in due course notify the Administration. If such corrective action is not taken, the certificate should be withdrawn by the Administration. If the ship is in a port of another Party, the appropriate authorities of the port State shall also be notified immediately. When an officer of the Administration, a nominated surveyor or recognized organization has notified the appropriate authorities of the port State, the Government of the port State concerned shall give such officer, surveyor or organization any necessary assistance to carry out their obligations under this regulation.

(7) The equipment shall be maintained to conform with the provisions of this annex and no changes shall be made in the equipment, system, fittings, arrangements, or material covered by the survey, without the express approval of the Administration. The direct replacement of such equipment and fittings with equipment and settings that conform with the provisions of this annex is permitted.

Whenever an accident occurs to a ship or a defect is discovered, which substantially affects the efficiency or completeness of its equipment covered by this annex, the master or owner of the ship shall report at the earliest opportunity to the Administration, a nominated surveyor, or recognized organization responsible for issuing the relevant certificate.

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*Refer to the Guidelines for the authorization of organizations acting on behalf of the Administration, adopted by the Organization by resolution A.739(18), and the Specifications on the survey and certification functions of recognized organizations acting on behalf of the Administration, adopted by the Organization by resolution A.789(19).

Regulation 6

Issue of International Air Pollution Prevention Certificate

(1) An International Air Pollution Prevention Certificate shall be issued, after survey in accordance with the provisions of regulation 5 of this annex, to:

(*a*) Any ship of 400 gross tonnage or above engaged in voyages to ports or offshore terminals under the jurisdiction of other Parties; and

(*b*) Platforms and drilling rigs engaged in voyages to waters under the sovereignty or jurisdiction of other Parties to the Protocol of 1997.

(2) Ships constructed before the date of entry into force of the Protocol of 1997 shall be issued with an International Air Pollution Prevention Certificate in accordance with paragraph (1) of this regulation no later than the first scheduled drydocking after entry into force of the Protocol of 1997, but in no case later than three years after entry into force of the Protocol of 1997.

(3) Such certificate shall be issued either by the Administration or by any person or organization duly authorized by it. In every case the Administration assumes full responsibility for the certificate.

Regulation 7

Issue of a Certificate by another Government

(1) The Government of a Party to the Protocol of 1997 may, at the request of the Administration, cause a ship to be surveyed and, if satisfied that the provisions of this annex are complied with, issue or authorize the issuance of an International Air Pollution Prevention Certificate to the ship in accordance with this annex.

(2) A copy of the certificate and a copy of the survey report shall be transmitted as soon as possible to the requesting Administration.

(3) A certificate so issued shall contain a statement to the effect that it has been issued at the request of the Administration and it shall have the same force and receive the same recognition as a certificate issued under regulation 6 of this annex.

(4) No International Air Pollution Prevention Certificate shall be issued to a ship which is entitled to fly the flag of a State which is not a Party to the Protocol of 1997.

Regulation 8

Form of Certificate

The International Air Pollution Prevention Certificate shall be drawn up in an official language of the issuing country in the form corresponding to the model given in appendix I* to this annex. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages.

Regulation 9

Duration and validity of Certificate

(1) An International Air Pollution Prevention Certificate shall be issued for a period specified by the Administration, which shall not exceed five years from the date of issue.

(2) No extension of the five-year period of validity of the International Air Pollution Prevention Certificate shall be permitted, except in accordance with paragraph (3).

(3) If the ship, at the time when the International Air Pollution Prevention Certificate expires, is not in a port of the State whose flag it is entitled to fly or in which it is to be surveyed, the Administration may extend the certificate for a period of no more than five months. Such extension shall be granted only for the purpose of allowing the ship to complete its voyage to the State whose flag it is entitled to fly or in which it is to be surveyed, and then only in cases where it appears proper and reasonable to do so. After arrival in the State whose flag it is entitled to fly or in which it is to be surveyed, the ship shall not be entitled by

*Appendices I to V are not included here.

virtue of such extension to leave the port or State without having obtained a new International Air Pollution Prevention Certificate.

(4) An International Air Pollution Prevention Certificate shall cease to be valid in any of the following circumstances:

(*a*) If the inspections and surveys are not carried out within the periods specified under regulation 5 of this annex;

(*b*) If significant alterations have taken place to the equipment, systems, fittings, arrangements or material to which this annex applies without the express approval of the Administration, except the direct replacement of such equipment or fittings with equipment or fittings that conform with the requirements of this annex. For the purpose of regulation 13, significant alteration shall include any change or adjustment to the system, fittings, or arrangement of a diesel engine which results in the nitrogen oxide limits applied to that engine no longer being complied with; or

(*c*) Upon transfer of the ship to the flag of another State. A new certificate shall be issued only when the Government issuing the new certificate is fully satisfied that the ship is in full compliance with the requirements of regulation 5 of this annex. In the case of a transfer between Parties, if requested within three months after the transfer has taken place, the Government of the Party whose flag the ship was formerly entitled to fly shall, as soon as possible, transmit to the Administration of the other Party a copy of the International Air Pollution Prevention Certificate carried by the ship before the transfer and, if available, copies of the relevant survey report.

Regulation 10

Port State control on operational requirements

(1) A ship, when in a port or an offshore terminal under the jurisdiction of another Party to the Protocol of 1997, is subject to inspection by officers duly authorized by such Party concerning operational requirements under this annex, where there are clear grounds for believing that the master or crew are not familiar with essential shipboard procedures relating to the prevention of air pollution from ships.

(2) In the circumstances given in paragraph (1) of this regulation, the Party shall take such steps as will ensure that the ship shall not sail until the situation has been brought to order in accordance with the requirements of this annex.

(3) Procedures relating to the port State control prescribed in article 5 of the present Convention shall apply to this regulation.

(4) Nothing in this regulation shall be construed to limit the rights and obligations of a Party carrying out control over operational requirements specifically provided for in the present Convention.

Regulation 11

Detection of violations and enforcement

(1) Parties to this annex shall cooperate in the detection of violations and the enforcement of the provisions of this annex, using all appropriate and practicable measures of detection and environmental monitoring, adequate procedures for reporting and accumulation of evidence.

(2) A ship to which the present annex applies may, in any port or offshore terminal of a Party, be subject to inspection by officers appointed or authorized by that Party for the purpose of verifying whether the ship has emitted any of the substances covered by this annex in violation of the provision of this annex. If an inspection indicates a violation of this annex, a report shall be forwarded to the Administration for any appropriate action.

(3) Any Party shall furnish to the Administration evidence, if any, that the ship has emitted any of the substances covered by this annex in violation of the provisions of this annex. If it is practicable to do so, the competent authority of the former Party shall notify the master of the ship of the alleged violation.

(4) Upon receiving such evidence, the Administration so informed shall investigate the matter, and may request the other Party to furnish further or better evidence of the al-

leged contravention. If the Administration is satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, it shall cause such proceedings to be taken in accordance with its law as soon as possible. The Administration shall promptly inform the Party which has reported the alleged violation, as well as the Organization, of the action taken.

(5) A Party may also inspect a ship to which this annex applies when it enters the ports or offshore terminals under its jurisdiction, if a request for an investigation is received from any Party together with sufficient evidence that the ship has emitted any of the substances covered by the annex in any place in violation of this annex. The report of such investigation shall be sent to the Party requesting it and to the Administration so that the appropriate action may be taken under the present Convention.

(6) The international law concerning the prevention, reduction, and control of pollution of the marine environment from ships, including that law relating to enforcement and safeguards, in force at the time of application or interpretation of this annex, applies, mutatis mutandis, to the rules and standards set forth in this annex.

CHAPTER III. REQUIREMENTS FOR CONTROL OF EMISSIONS FROM SHIPS

Regulation 12
Ozone-depleting substances

(1) Subject to the provisions of regulation 3, any deliberate emissions of ozone-depleting substances shall be prohibited. Deliberate emissions include emissions occurring in the course of maintaining, servicing, repairing or disposing of systems or equipment, except that deliberate emissions do not include minimal releases associated with the recapture or recycling of an ozone-depleting substance. Emissions arising from leaks of an ozone-depleting substance, whether or not the leaks are deliberate, may be regulated by Parties to the Protocol of 1997.

(2) New installations which contain ozone-depleting substances shall be prohibited on all ships, except that new installations containing hydrochlorofluorocarbons (HCFCs) are permitted until 1 January 2020.

(3) The substances referred to in this regulation, and equipment containing such substances, shall be delivered to appropriate reception facilities when removed from ships.

Regulation 13
Nitrogen oxides (NO_x)

(1) (*a*) This regulation shall apply to:

(i) Each diesel engine with a power output of more than 130 kW which is installed on a ship constructed on or after 1 January 2000; and

(ii) Each diesel engine with a power output of more than 130 kW which undergoes a major conversion on or after 1 January 2000.

(*b*) This regulation does not apply to:

(i) Emergency diesel engines, engines installed in lifeboats and any device or equipment intended to be used solely in case of emergency; and

(ii) Engines installed on ships solely engaged in voyages within waters subject to the sovereignty or jurisdiction of the State the flag of which the ship is entitled to fly, provided that such engines are subject to an alternative NO_x control measure established by the Administration.

(*c*) Notwithstanding the provisions of subparagraph (*a*) of this paragraph, the Administration may allow exclusion from the application of this regulation to any diesel engine which is installed on a ship constructed, or on a ship which undergoes a major conversion, before the date of entry into force of the present Protocol, provided that the ship is solely engaged in voyages to ports or offshore terminals within the State the flag of which the ship is entitled to fly.

(2) (*a*) For the purpose of this regulation, "major conversion" means a modification of an engine where:

(i) The engine is replaced by a new engine built on or after 1 January 2000, or

(ii) Any substantial modification, as defined in the NO_x Technical Code, is made to the engine, or

(iii) The maximum continuous rating of the engine is increased by more than 10 per cent.

(*b*) The NO_x emission resulting from modifications referred to in subparagraph (*a*) of this paragraph shall be documented in accordance with the NO_x Technical Code for approval by the Administration.

(3) (*a*) Subject to the provision of regulation 3 of this annex, the operation of each diesel engine to which this regulation applies is prohibited, except when the emission of nitrogen oxides (calculated as the total weighted emission of NO_2) from the engine is within the following limits:

(i) 17.0 g/kW h when n is less than 130 rpm

(ii) $45.0 \times n^{(-0.2)}$ g/kW h when n is 130 or more but less than 2,000 rpm

(iii) 9.8 g/kW h when n is 2,000 rpm or more

where n is = rated engine speed (crankshaft revolutions per minute).

When using fuel composed of blends from hydrocarbons derived from petroleum refining, test procedure and measurement methods shall be in accordance with the NO_x Technical Code, taking into consideration the test cycles and weighting factors outlined in appendix II to this annex.

(*b*) Notwithstanding the provisions of subparagraph (*a*) of this paragraph, the operation of a diesel engine is permitted when:

(i) An exhaust gas cleaning system, approved by the Administration in accordance with the NO_x Technical Code, is applied to the engine to reduce onboard NO_x emissions at least to the limits specified in subparagraph (*a*), or

(ii) Any other equivalent method, approved by the Administration taking into account relevant guidelines to be developed by the Organization, is applied to reduce onboard NO_x emissions at least to the limit specified in subparagraph (*a*) of this paragraph.

Regulation 14

Sulphur oxides (SO_x)

General requirements

(1) The sulphur content of any fuel oil used on board ships shall not exceed 4.5 per cent m/m.

(2) The worldwide average sulphur content of residual fuel oil supplied for use on board ships shall be monitored taking into account guidelines to be developed by the Organization.

Requirements within SO_x emission control areas

(3) For the purpose of this regulation, SO_x emission control areas shall include:

(*a*) The Baltic Sea area as defined in regulation 10(1)(*b*) of annex I; and

(*b*) Any other sea area, including port areas, designated by the Organization in accordance with criteria and procedures for designation of SO_x emission control areas with respect to the prevention of air pollution from ships contained in appendix III to this annex.

(4) While ships are within SO_x emission control areas, at least one of the following conditions shall be fulfilled:

(*a*) The sulphur content of fuel oil used on board ships in a SO_x emission control area does not exceed 1.5 per cent m/m;

(*b*) An exhaust gas cleaning system, approved by the Administration taking into account guidelines to be developed by the Organization, is applied to reduce the total emission of sulphur oxides from ships, including both auxiliary and main propulsion engines, to 6.0 g SO_x/kW h or less calculated as the total weight of sulphur dioxide emission. Waste streams from the use of such equipment shall not be discharged into enclosed ports, harbours and estuaries unless it can be thoroughly documented by the ship that such waste streams have no adverse impact on the ecosystems of such enclosed ports, harbours and estuaries, based

upon criteria communicated by the authorities of the port State to the Organization. The Organization shall circulate the criteria to all Parties to the Convention; or

(*c*) any other technological method that is verifiable and enforceable to limit SO_x emissions to a level equivalent to that described in subparagraph (*b*) is applied. These methods shall be approved by the Administration taking into account guidelines to be developed by the Organization.

(5) The sulphur content of fuel oil referred to in paragraph (1) and paragraph (4)(*a*) of this regulation shall be documented by the supplier as required by regulation 18 of this annex.

(6) Those ships using separate fuel oils to comply with paragraph (4)(*a*) of this regulation shall allow sufficient time for the fuel oil service system to be fully flushed of all fuels exceeding 1.5 per cent m/m sulphur content prior to entry into an SO_x emission control area. The volume of low sulphur fuel oils (less than or equal to 1.5 per cent sulphur content) in each tank as well as the date, time and position of the ship when any fuel-changeover operation is completed, shall be recorded in such logbook as prescribed by the Administration.

(7) During the first 12 months immediately following entry into force of the present Protocol, or of an amendment to the present Protocol designating a specific SO_x emission control area under paragraph (3)(*b*) of this regulation, ships entering an SO_x emission control area referred to in paragraph (3)(*a*) of this regulation or designated under paragraph (3)(*b*) of this regulation are exempted from the requirements in paragraphs (4) and (6) of this regulation and from the requirements of paragraph (5) of this regulation insofar as they relate to paragraph (4)(*a*) of this regulation.

Regulation 15

Volatile organic compounds

(1) If the emissions of volatile organic compounds (VOCs) from tankers are to be regulated in ports or terminals under the jurisdiction of a Party to the Protocol of 1997, they shall be regulated in accordance with the provisions of this regulation.

(2) A Party to the Protocol of 1997 which designates ports or terminals under its jurisdiction in which VOCs emissions are to be regulated, shall submit a notification to the Organization. This notification shall include information on the size of tankers to be controlled, on cargoes requiring vapour emission control systems, and the effective date of such control. The notification shall be submitted at least six months before the effective date.

(3) The Government of each Party to the Protocol of 1997 which designates ports or terminals at which VOCs emissions from tankers are to be regulated shall ensure that vapour emission control systems, approved by that Government taking into account the safety standards developed by the Organization,* are provided in ports and terminals designated, and are operated safely and in a manner so as to avoid undue delay to the ship.

(4) The Organization shall circulate a list of the ports and terminals designated by the Parties to the Protocol of 1997 to other Parties to the Protocol of 1997 and member States of the Organization for their information.

(5) All tankers which are subject to vapour emission control in accordance with the provisions of paragraph (2) of this regulation shall be provided with a vapour collection system approved by the Administration taking into account the safety standards developed by the Organization,* and shall use such system during the loading of such cargoes. Terminals which have installed vapour emission control systems in accordance with this regulation may accept existing tankers which are not fitted with vapour collection systems for a period of three years after the effective date identified in paragraph (2).

(6) This regulation shall only apply to gas carriers when the type of loading and containment systems allow safe retention of non-methane VOCs on board, or their safe return ashore.

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*Refer to MSC/Circ.585, Standards for vapour emission control systems.

Regulation 16

Shipboard incineration

(1) Except as provided in paragraph (5), shipboard incineration shall be allowed only in a shipboard incinerator.

(2) (*a*) Except as provided in subparagraph (*b*) of this paragraph, each incinerator installed on board a ship on or after 1 January 2000 shall meet the requirements contained in appendix IV to this annex. Each incinerator shall be approved by the Administration taking into account the standard specifications for shipboard incinerators developed by the Organization.*

(*b*) The Administration may allow exclusion from the application of subparagraph (*a*) of this paragraph to any incinerator which is installed on board a ship before the date of entry into force of the Protocol of 1997, provided that the ship is solely engaged in voyages within waters subject to the sovereignty or jurisdiction of the State the flag of which the ship is entitled to fly.

(3) Nothing in this regulation affects the prohibition in, or other requirements of, the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, as amended, and the 1996 Protocol thereto.

(4) Shipboard incineration of the following substances shall be prohibited:

(*a*) Annex I, II and III cargo residues of the present convention and related contaminated packing materials;

(*b*) Polychlorinated biphenyls (PCBs);

(*c*) Garbage as defined in annex V of the present Convention, containing more than traces of heavy metals; and

(*d*) Refined petroleum products containing halogen compounds.

(5) Shipboard incineration of sewage sludge and sludge oil generated during the normal operation of a ship may also take place in the main or auxiliary power plant or boilers, but in those cases shall not take place inside ports, harbours and estuaries.

(6) Shipboard incineration of polyvinyl chlorides (PVCs) shall be prohibited, except in shipboard incinerators for which IMO Type Approval Certificates have been issued.

(7) All ships with incinerators subject to this regulation shall possess a manufacturer's operating manual which shall specify how to operate the incinerator within the limits described in paragraph 2 of appendix IV to this annex.

(8) Personnel responsible for operation of any incinerator shall be trained and capable of implementing the guidance provided in the manufacturer's operating manual.

(9) Monitoring of combustion flue gas outlet temperature shall be required at all times and waste shall not be fed into a continuous-feed shipboard incinerator when the temperature is below the minimum allowed temperature of 850° C. For batch-loaded shipboard incinerators, the unit shall be designed so that the temperature in the combustion chamber shall reach 600° C within five minutes after start-up.

(10) Nothing in this regulation precludes the development, installation and operation of alternative design shipboard thermal waste treatment devices that meet or exceed the requirements of this regulation.

Regulation 17

Reception facilities

(1) The Government of each Party to the Protocol of 1997 undertakes to ensure the provision of facilities adequate to meet the:

(*a*) Needs of ships using its repair ports for the reception of ozone-depleting substances and equipment containing such substances when removed from ships;

(*b*) Needs of ships using its ports, terminals or repair ports for the reception of exhaust gas cleaning residues from an approved exhaust gas cleaning system when discharge into the marine environment of these residues is not permitted under regulation 14 of this annex; without causing undue delay to ships, and

*Refer to resolution MEPC 76(40), Standard specifications for shipboard incinerators.

(*c*) Needs in ship breaking facilities for the reception of ozone-depleting substances and equipment containing such substances when removed from ships.

(2) Each Party to the Protocol of 1997 shall notify the Organization for transmission to the members of the Organization of all cases where the facilities provided under this regulation are unavailable or alleged to be inadequate.

Regulation 18

Fuel oil quality

(1) Fuel oil for combustion purposes delivered to and used on board ships to which this annex applies shall meet the following requirements:

(*a*) Except as provided in subparagraph (*b*):

(i) The fuel oil shall be blends of hydrocarbons derived from petroleum refining. This shall not preclude the incorporation of small amounts of additives intended to improve some aspects of performance;

(ii) The fuel oil shall be free from inorganic acid;

(iii) The fuel oil shall not include any added substance or chemical waste which either:

(1) Jeopardizes the safety of ships or adversely affects the performance of the machinery, or

(2) Is harmful to personnel, or

(3) Contributes overall to additional air pollution; and

(*b*) Fuel oil for combustion purposes derived by methods other than petroleum refining shall not:

(i) Exceed the sulphur content set forth in regulation 14 of this annex;

(ii) Cause an engine to exceed the NO_x emission limits set forth in regulation 13(3)(*a*) of this annex;

(iii) Contain inorganic acid; and

(iv) (1) Jeopardize the safety of ships or adversely affect the performance of the machinery, or

(2) Be harmful to personnel, or

(3) Contribute overall to additional air pollution.

(2) This regulation does not apply to coal in its solid form or nuclear fuels.

(3) For each ship subject to regulations 5 and 6 of this annex, details of fuel oil for combustion purposes delivered to and used on board shall be recorded by means of a bunker delivery note which shall contain at least the information specified in appendix V to this annex.

(4) The bunker delivery note shall be kept on board the ship in such a place as to be readily available for inspection at all reasonable times. It shall be retained for a period of three years after the fuel oil has been delivered on board.

(5) (*a*) The competent authority* of the Government of a Party to the Protocol of 1997 may inspect the bunker delivery notes on board any ship to which this annex applies while the ship is in its port or offshore terminal, may make a copy of each delivery note, and may require the master or person in charge of the ship to certify that each copy is a true copy of such bunker delivery note. The competent authority may also verify the contents of each note through consultations with the port where the note was issued.

(*b*) The inspection of the bunker delivery notes and the taking of certified copies by the competent authority under this paragraph shall be performed as expeditiously as possible without causing the ship to be unduly delayed.

(6) The bunker delivery note shall be accompanied by a representative sample of the fuel oil delivered taking into account guidelines to be developed by the Organization. The sample is to be sealed and signed by the supplier's representative and the master or officer in charge of the bunker operation on completion of bunkering operations and retained under the ship's control until the fuel oil is substantially consumed, but in any case for a period of not less than 12 months from the time of delivery.

(7) Parties to the Protocol of 1997 undertake to ensure that appropriate authorities designated by them:

*Refer to resolution A.787(19), Procedures for port State control.

(*a*) Maintain a register of local suppliers of fuel oil;

(*b*) Require local suppliers to provide the bunker delivery note and sample as required by this regulation, certified by the fuel oil supplier that the fuel oil meets the requirements of regulations 14 and 18 of this annex;

(*c*) Require local suppliers to retain a copy of the bunker delivery note for at least three years for inspection and verification by the port State as necessary;

(*d*) Take action as appropriate against fuel oil suppliers that have been found to deliver fuel oil that does not comply with that stated on the bunker delivery note;

(*e*) Inform the Administration of any ship receiving fuel oil found to be non-compliant with the requirements of regulations 14 or 18 of this annex; and

(*f*) Inform the Organization for transmission to Parties to the Protocol of 1997 of all cases where fuel oil suppliers have failed to meet the requirements specified in regulations 14 or 18 of this annex.

(8) In connection with port State inspections carried out by Parties to the Protocol of 1997, the Parties further undertake to:

(*a*) Inform the Party or non-Party under whose jurisdiction the bunker delivery note was issued of cases of delivery of non-compliant fuel oil, giving all relevant information; and

(*b*) Ensure that remedial action as appropriate is taken to bring non-compliant fuel oil discovered into compliance.

Regulation 19

Requirements for platforms and drilling rigs

(1) Subject to the provisions of paragraphs (2) and (3) of this regulation, fixed and floating platforms and drilling rigs shall comply with the requirements of this annex.

(2) Emissions directly arising from the exploration, exploitation and associated offshore processing of seabed mineral resources are, consistent with article 2(3)(*b*)(ii) of the present Convention, exempt from the provisions of this annex. Such emissions include the following:

(*a*) Emissions resulting from the incineration of substances that are solely and directly the result of exploration, exploitation and associated offshore processing of seabed mineral resources, including but not limited to the flaring of hydrocarbons and the burning of cuttings, muds, and/or stimulation fluids during well completion and testing operations, and flaring arising from upset conditions;

(*b*) The release of gases and volatile compounds entrained in drilling fluids and cuttings;

(*c*) Emissions associated solely and directly with the treatment, handling, or storage of seabed minerals; and

(*d*) Emissions from diesel engines that are solely dedicated to the exploration, exploitation and associated offshore processing of seabed mineral resources.

The requirements of regulation 18 of this annex shall not apply to the use of hydrocarbons which are produced and subsequently used on site as fuel, when approved by the Administration.

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3. INTERNATIONAL ATOMIC ENERGY AGENCY

(*a*) Protocol to amend the Vienna Convention on Civil Liability for Nuclear Damage.[14] Done at Vienna on 12 September 1997[15]

The States Parties to this Protocol

Considering that it is desirable to amend the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963, to provide for broader scope, in-

creased amount of liability of the operator of a nuclear installation and enhanced means for securing adequate and equitable compensation,

Have agreed as follows,

Article 1

The Convention which the provisions of this Protocol amend is the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963, hereinafter referred to as the "1963 Vienna Convention".

Article 2

Article I of the 1963 Vienna Convention is amended as follows:

1. Paragraph 1(*j*) is amended as follows:

(*a*) The word "and" is deleted at the end of subparagraph (ii) and is inserted at the end of subparagraph (iii).

(*b*) A new subparagraph (iv) is added as follows:

(iv) such other installations in which there are nuclear fuel or radioactive products or waste as the Board of Governors of the International Atomic Energy Agency shall from time to time determine;

2. Paragraph 1(*k*) is replaced by the following text:

(*k*) "Nuclear damage" means:

(i) Loss of life or personal injury;

(ii) Loss of or damage to property;

and each of the following to the extent determined by the law of the competent court:

(iii) Economic loss arising from loss or damage referred to in subparagraph (i) or (ii), insofar as not included in those subparagraphs, if incurred by a person entitled to claim in respect of such loss or damage;

(iv) The costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in subparagraph (ii);

(v) Loss of income deriving from an economic interest in any use or enjoyment of the environment, incurred as a result of significant impairment of that environment, and insofar as not included in subparagraph (ii);

(vi) The costs of preventive measures, and further loss or damage caused by such measures;

(vii) Any other economic loss, other than any caused by the impairment of the environment, if permitted by the general law on civil liability of the competent court,

in the case of subparagraphs (i) to (v) and (vii) above, to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any

source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.

3. Paragraph 1(*l*) is replaced by the following text:

(*l*) "Nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage or, but only with respect to preventive measures, creates a grave and imminent threat of causing such damage.

4. After paragraph 1(*l*) four new paragraphs 1(*m*), 1(*n*), 1(*o*) and 1(*p*) are added as follows:

(*m*) "Measures of reinstatement" means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. The law of the State where the damage is suffered shall determine who is entitled to take such measures.

(*n*) "Preventive measures" means any reasonable measures taken by any person after a nuclear incident has occurred to prevent or minimize damage referred to in subparagraphs (*k*)(i) to (v) or (vii), subject to any approval of the competent authorities required by the law of the State where the measures were taken.

(*o*) "Reasonable measures" means measures which are found under the law of the competent court to be appropriate and proportionate having regard to all the circumstances, for example:

(i) The nature and extent of the damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;

(ii) The extent to which, at the time they are taken, such measures are likely to be effective; and

(iii) Relevant scientific and technical expertise.

(*p*) "Special Drawing Right", hereinafter referred to as SDR, means the unit of account defined by the International Monetary Fund and used by it for its own operations and transactions.

5. Paragraph 2 is replaced by the following text:

2. An Installation State may, if the small extent of the risks involved so warrants, exclude any nuclear installation or small quantities of nuclear material from the application of this Convention, provided that:

(*a*) With respect to nuclear installations, criteria for such exclusion have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State satisfies such criteria; and

(*b*) With respect to small quantities of nuclear material, maximum limits for the exclusion of such quantities have been established by the

Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State is within such established limits.

The criteria for the exclusion of nuclear installations and the maximum limits for the exclusion of small quantities of nuclear material shall be reviewed periodically by the Board of Governors.

Article 3

After article I of the 1963 Vienna Convention, two new articles I A and I B are added as follows:

Article I A

1. This Convention shall apply to nuclear damage wherever suffered.

2. However, the legislation of the Installation State may exclude from the application of this Convention damage suffered:

(*a*) In the territory of a non-Contracting State; or

(*b*) In any maritime zones established by a non-Contracting State in accordance with the international law of the sea.

3. An exclusion pursuant to paragraph 2 of this article may apply only in respect of a non-Contracting State which at the time of the incident:

(*a*) Has a nuclear installation in its territory or in any maritime zones established by it in accordance with the international law of the sea; and

(*b*) Does not afford equivalent reciprocal benefits.

4. Any exclusion pursuant to paragraph 2 of this article shall not affect the rights referred to in subparagraph (*a*) of paragraph 2 of article IX and any exclusion pursuant to paragraph 2(*b*) of this article shall not extend to damage on board or to a ship or an aircraft.

Article I B

This Convention shall not apply to nuclear installations used for non-peaceful purposes.

Article 4

Article II of the 1963 Vienna Convention is amended as follows:

1. At the end of paragraph 3(*a*), the following text is added:

The Installation State may limit the amount of public funds made available per incident to the difference, if any, between the amounts hereby established and the amount established pursuant to paragraph 1 of article V.

2. At the end of paragraph 4, the following text is added:

The Installation State may limit the amount of public funds made available as provided for in subparagraph (*a*) of paragraph 3 of this article.

3. Paragraph 6 is replaced by the following text:

6. No person shall be liable for any loss or damage which is not nuclear damage pursuant to subparagraph (*k*) of paragraph 1 of article I but which could have been determined as such pursuant to the provisions of that subparagraph.

Article 5

After the first sentence in article III of the 1963 Vienna Convention, the following text is added:

However, the Installation State may exclude this obligation in relation to carriage which takes place wholly within its own territory.

Article 6

Article IV of the 1963 Vienna Convention is amended as follows:

1. Paragraph 3 is replaced by the following text:

3. No liability under this Convention shall attach to an operator if he proves that the nuclear damage is directly due to an act of armed conflict, hostilities, civil war or insurrection.

2. Paragraph 5 is replaced by the following text:

5. The operator shall not be liable under this Convention for nuclear damage:

(*a*) To the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and

(*b*) To any property on that same site which is used or to be used in connection with any such installation.

3. Paragraph 6 is replaced by the following text:

6. Compensation for damage caused to the means of transport upon which the nuclear material involved was at the time of the nuclear incident shall not have the effect of reducing the liability of the operator in respect of other damage to an amount less than either 150 million SDRs, or any higher amount established by the legislation of a Contracting Party, or an amount established pursuant to subparagraph (*c*) of paragraph 1 of article V.

4. Paragraph 7 is replaced by the following text:

7. Nothing in this Convention shall affect the liability of any individual for nuclear damage for which the operator, by virtue of paragraph 3 or 5 of this article, is not liable under this Convention and which that individual caused by an act or omission done with intent to cause damage.

Article 7

1. The text of article V of the 1963 Vienna Convention is replaced by the following text:

1. The liability of the operator may be limited by the Installation State for any one nuclear incident, either:

(*a*) To not less than 300 million SDRs; or

(*b*) To not less than 150 million SDRs provided that in excess of that amount and up to at least 300 million SDRs public funds shall be made available by that State to compensate nuclear damage; or

(*c*) For a maximum of 15 years from the date of entry into force of this Protocol, to a transitional amount of not less than 100 million SDRs in respect of a nuclear incident occurring within that period. An amount lower than 100 million SDRs may be established, provided that public funds shall be made available by that State to compensate nuclear damage between that lesser amount and 100 million SDRs.

2. Notwithstanding paragraph 1 of this article, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of liability of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures that public funds shall be made available up to the amount established pursuant to paragraph 1.

3. The amounts established by the Installation State of the liable operator in accordance with paragraphs 1 and 2 of this article and paragraph 6 of article IV shall apply wherever the nuclear incident occurs.

2. After article V, four new articles V A, V B, V C and V D are added, as follows:

Article V A

1. Interest and costs awarded by a court in actions for compensation of nuclear damage shall be payable in addition to the amounts referred to in article V.

2. The amounts mentioned in article V and paragraph 6 of article IV may be converted into national currency in round figures.

Article V B

Each Contracting Party shall ensure that persons suffering damage may enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds provided for such compensation.

Article V C

1. If the courts having jurisdiction are those of a Contracting Party other than the Installation State, the public funds required under subparagraphs (*b*) and (*c*) of paragraph 1 of article V and under paragraph 1 of article VII, as well as interest and costs awarded by a court, may be made available by the first-named Contracting Party. The Installation State shall reimburse to the other Contracting Party any such sums paid. These two Contracting Parties shall agree on the procedure for reimbursement.

2. If the courts having jurisdiction are those of a Contracting Party other than the Installation State, the Contracting Party whose courts have jurisdiction shall take all measures necessary to enable the Installation State to

intervene in proceedings and to participate in any settlement concerning compensation.

Article V D

1. A meeting of the Contracting Parties shall be convened by the Director General of the International Atomic Energy Agency to amend the limits of liability referred to in article V if one third of the Contracting Parties express a desire to that effect.

2. Amendments shall be adopted by a two-thirds majority of the Contracting Parties present and voting, provided that at least one half of the Contracting Parties shall be present at the time of the voting.

3. When acting on a proposal to amend the limits, the meeting of the Contracting Parties shall take into account, inter alia, the risk of damage resulting from a nuclear incident, changes in the monetary values, and the capacity of the insurance market.

4. (*a*) Any amendment adopted in accordance with paragraph 2 of this article shall be notified by the Director General of the IAEA to all Contracting Parties for acceptance. The amendment shall be considered accepted at the end of a period of 18 months after it has been notified provided that at least one third of the Contracting Parties at the time of the adoption of the amendment by the meeting have communicated to the Director General of the IAEA that they accept the amendment. An amendment accepted in accordance with this paragraph shall enter into force 12 months after its acceptance for those Contracting Parties which have accepted it.

(*b*) If, within a period of 18 months from the date of notification for acceptance, an amendment has not been accepted in accordance with subparagraph (*a*), the amendment shall be considered rejected.

5. For each Contracting Party accepting an amendment after it has been accepted but not entered into force or after its entry into force in accordance with paragraph 4 of this article, the amendment shall enter into force 12 months after its acceptance by that Contracting Party.

6. A State which becomes a Party to this Convention after the entry into force of an amendment in accordance with paragraph 4 of this article shall, failing an expression of a different intention by that State:

(*a*) Be considered as a Party to this Convention as so amended; and

(*b*) Be considered as a Party to the unamended Convention in relation to any State Party not bound by the amendment.

Article 8

Article VI of the 1963 Vienna Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

1. (*a*) Rights of compensation under this Convention shall be extinguished if an action is not brought within:

(i) With respect to loss of life and personal injury, thirty years from the date of the nuclear incident;

(ii) With respect to other damage, ten years from the date of the nuclear incident.

(*b*) If, however, under the law of the Installation State, the liability of the operator is covered by insurance or other financial security including State funds for a longer period, the law of the competent court may provide that rights of compensation against the operator shall only be extinguished after such a longer period which shall not exceed the period for which his liability is so covered under the law of the Installation State.

(*c*) Actions for compensation with respect to loss of life and personal injury or, pursuant to an extension under subparagraph (*b*) of this paragraph with respect to other damage, which are brought after a period of ten years from the date of the nuclear incident shall in no case affect the rights of compensation under this Convention of any person who has brought an action against the operator before the expiry of that period.

2. Paragraph 2 is deleted.

3. Paragraph 3 is replaced by the following text:

3. Rights of compensation under the Convention shall be subject to prescription or extinction, as provided by the law of the competent court, if an action is not brought within three years from the date on which the person suffering damage had knowledge or ought reasonably to have had knowledge of the damage and of the operator liable for the damage, provided that the periods established pursuant to subparagraphs (*a*) and (*b*) of paragraph 1 of this article shall not be exceeded.

Article 9

Article VII is amended as follows:

1. In paragraph 1, the following two sentences are added at the end of the paragraph and the paragraph so amended becomes subparagraph (*a*) of that paragraph:

Where the liability of the operator is unlimited, the Installation State may establish a limit of the financial security of the operator liable, provided that such limit is not lower than 300 million SDRs. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator to the extent that the yield of the financial security is inadequate to satisfy such claims, but not in excess of the amount of the financial security to be provided under this paragraph.

2. A new subparagraph (*b*) is added to paragraph 1 as follows:

(*b*) Notwithstanding subparagraph (*a*) of this paragraph, where the liability of the operator is unlimited, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of financial security of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures the payment of claims for compensation for nuclear damage which have been established against the operator by providing necessary funds to the extent that the yield of insurance or other fi-

nancial security is inadequate to satisfy such claims, and up to the limit provided pursuant to subparagraph (*a*) of this paragraph.

3. In paragraph 3, the words "or subparagraphs (*b*) and (*c*) of paragraph 1 of article V" are inserted after the words "of this article".

Article 10

Article VIII of the 1963 Vienna Convention is amended as follows:

1. The text of article VIII becomes paragraph 1 of that article.

2. A new paragraph 2 is added as follows:

2. Subject to application of the rule of subparagraph (*c*) of paragraph 1 of article VI, where in respect of claims brought against the operator the damage to be compensated under this Convention exceeds, or is likely to exceed, the maximum amount made available pursuant to paragraph 1 of article V, priority in the distribution of the compensation shall be given to claims in respect of loss of life or personal injury.

Article 11

In article X of the 1963 Vienna Convention, a new sentence is added at the end of the article, as follows:

The right of recourse provided for under this article may also be extended to benefit the Installation State insofar as it has provided public funds pursuant to this Convention.

Article 12

Article XI of the 1963 Vienna Convention is amended as follows:

1. A new paragraph 1bis is added, as follows:

1bis. Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone, were one to be established, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party. The preceding sentence shall apply if that Contracting Party has notified the depositary of such area prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction in a manner which is contrary of the international law of the sea, including the United Nations Convention on the Law of the Sea.

2. Paragraph 2 is replaced by the following text:

2. Where a nuclear incident does not occur within the territory of any Contracting Party, or within an area notified pursuant to paragraph 1bis, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over such actions shall lie with the courts of the Installation State of the operator liable.

3. In paragraph 3, first line, and in subparagraph (*b*), after the figure "1", insert ", 1bis".

4. A new paragraph 4 is added, as follows:

4. The Contracting Party whose courts have jurisdiction shall ensure that only one of its courts shall have jurisdiction in relation to any one nuclear incident.

Article 13

After article XI, a new article XI A is added, as follows:

Article XI A

The Contracting Party whose courts have jurisdiction shall ensure that in relation to actions for compensation of nuclear damage:

(*a*) Any State may bring an action on behalf of persons who have suffered nuclear damage, who are nationals of that State or have their domicile or residence in its territory, and who have consented thereto; and

(*b*) Any person may bring an action to enforce rights under this Convention acquired by subrogation or assignment.

Article 14

The text of article XII of the 1963 Vienna Convention is replaced by the following text:

Article XII

1. A judgement that is no longer subject to ordinary forms of review entered by a court of a Contracting Party having jurisdiction shall be recognized, except:

(*a*) Where the judgement was obtained by fraud;

(*b*) Where the party against whom the judgement was pronounced was not given a fair opportunity to present his case; or

(*c*) Where the judgement is contrary to the public policy of the Contracting Party within the territory of which recognition is sought, or is not in accord with fundamental standards of justice.

2. A judgement which is recognized under paragraph 1 of this article shall, upon being presented for enforcement in accordance with the formalities required by the law of the Contracting Party where enforcement is sought, be enforceable as if it were a judgement of a court of that Contracting Party. The merits of a claim on which the judgement has been given shall not be subject to further proceedings.

Article 15

Article XIII of the 1963 Vienna Convention is amended as follows:

1. The text of article XIII becomes paragraph 1 of that article.

2. A new paragraph 2 is added, as follows:

2. Notwithstanding paragraph 1 of this article, insofar as compensation for nuclear damage is in excess of 150 million SDRs, the legislation of the Installation State may derogate from the provisions of this Convention with respect to nuclear damage suffered in the territory, or in any maritime zone established in accordance with the international law of the sea, of another State which, at the time of the incident, has a nuclear installation in such territory, to the extent that it does not afford reciprocal benefits of an equivalent amount.

Article 16

The text of article XVIII of the 1963 Vienna Convention is replaced by the following text:

This Convention shall not affect the rights and obligations of a Contracting Party under the general rules of public international law.

Article 17

After article XX of the 1963 Vienna Convention, a new article XX A is added, as follows:

Article XX A

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to the settlement of the dispute by negotiation or by any other peaceful means of settling disputes acceptable to them.

2. If a dispute of this character referred to in paragraph 1 of this article cannot be settled within six months from the request for consultation pursuant to paragraph 1 of this article, it shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In cases of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. When ratifying, accepting, approving or acceding to this Convention, a State may declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2 of this article. The other Contracting Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2 of this article with respect to a Contracting Party for which such a declaration is in force.

4. A Contracting Party which has made a declaration in accordance with paragraph 3 of this article may at any time withdraw it by notification to the depositary.

Article 18

1. Articles XX to XXV, paragraphs 2, 3, and paragraph number "1." of article XXVI, and articles XXVII and XXIX of the 1963 Vienna Convention are deleted.

2. The 1963 Vienna Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single text that may be referred to as the 1997 Vienna Convention on Civil Liability for Nuclear Damage.

Article 19

1. A State which is a Party to this Protocol but not a Party to the 1963 Vienna Convention shall be bound by the provisions of that Convention as amended by this Protocol in relation to other States Parties hereto, and failing an expression of a different intention by that State at the time of deposit of an instrument referred to in article 20 shall be bound by the provisions of the 1963 Vienna Convention in relation to States which are only Parties thereto.

2. Nothing in this Protocol shall affect the obligations of a State which is a Party both to the 1963 Vienna Convention and to this Protocol with respect to a State which is a Party to the 1963 Vienna Convention but not a Party to this Protocol.

Article 20

1. This Protocol shall be open for signature by all States at the headquarters of the International Atomic Energy Agency in Vienna from 29 September 1997 until its entry into force.

2. This Protocol is subject to ratification, acceptance or approval by States which have signed it.

3. After its entry into force, any State which has not signed this Protocol may accede to it.

4. The instruments of ratification, acceptance, approval or accession shall be deposited with the Director General of the International Atomic Energy Agency, who shall be the depositary of this Protocol.

Article 21

1. This Protocol shall enter into force three months after the date of deposit of the fifth instrument of ratification, acceptance or approval.

2. For each State ratifying, accepting, approving or acceding to this Protocol after the deposit of the fifth instrument of ratification, acceptance or approval, this Protocol shall enter into force three months after the date of deposit by such State of the appropriate instrument.

Article 22

1. Any Contracting Party may denounce this Protocol by written notification to the depositary.

2. Denunciation shall take effect one year after the date on which the notification is received by the depositary.

3. As between the Parties to this Protocol, denunciation by any of them of the 1963 Vienna Convention in accordance with its article XXVI shall not be construed in any way as denunciation of the 1963 Vienna Convention as amended by this Protocol.

4. Notwithstanding a denunciation of this Protocol by a Contracting Party pursuant to this article, the provisions of this Protocol shall continue to apply to any nuclear damage caused by a nuclear incident occurring before such denunciation takes effect.

Article 23

The depositary shall promptly notify States Parties and all other States of:

(*a*) Each signature of this Protocol;

(*b*) Each deposit of an instrument of ratification, acceptance, approval or accession;

(*c*) The entry into force of this Protocol;

(*d*) Any notification received pursuant to paragraph 1bis of article XI;

(*e*) Requests for the convening of a revision conference pursuant to article XXVI of the 1963 Vienna Convention and for a meeting of the Contracting Parties pursuant to article V D of the 1963 Vienna Convention as amended by this Protocol;

(*f*) Notifications of denunciations received pursuant to article 22 and other pertinent notifications relating to this Protocol.

Article 24

1. The original of this Protocol, of which Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary.

2. The International Atomic Energy Agency shall establish the consolidated text of the 1963 Vienna Convention as amended by this Protocol in the Arabic, Chinese, English, French, Russian and Spanish languages as set forth in the annex to this Protocol.

3. The depositary shall communicate to all States the certified true copies of this Protocol together with the consolidated text of the 1963 Vienna Convention as amended by this Protocol.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Protocol.

DONE at Vienna, the twelfth day of September, one thousand nine hundred and ninety-seven.

(*b*) Convention on Supplementary Compensation for Nuclear Damage.[16] Done at Vienna on 12 September 1997[17]

The Contracting Parties,

Recognizing the importance of the measures provided in the Vienna Convention on Civil Liability for Nuclear Damage and the Paris Convention on Third

Party Liability in the Field of Nuclear Energy as well as in national legislation on compensation for nuclear damage consistent with the principles of these Conventions;

Desirous of establishing a worldwide liability regime to supplement and enhance these measures with a view to increasing the amount of compensation for nuclear damage;

Recognizing further that such a worldwide liability regime would encourage regional and global cooperation to promote a higher level of nuclear safety in accordance with the principles of international partnership and solidarity;

Have agreed as follows:

CHAPTER I

GENERAL PROVISIONS

Article I

DEFINITIONS

For the purposes of this Convention:

(*a*) "Vienna Convention" means the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 and any amendment thereto which is in force for a Contracting Party to this Convention;

(*b*) "Paris Convention" means the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 and any amendment thereto which is in force for a Contracting Party to this Convention;

(*c*) "Special Drawing Right", hereinafter referred to as SDR, means the unit of account defined by the International Monetary Fund and used by it for its own operations and transactions;

(*d*) "Nuclear reactor" means any structure containing nuclear fuel in such an arrangement that a self-sustaining chain process of nuclear fission can occur therein without an additional source of neutrons;

(*e*) "Installation State", in relation to a nuclear installation, means the Contracting Party within whose territory that installation is situated or, if it is not situated within the territory of any State, the Contracting Party by which or under the authority of which the nuclear installation is operated;

(*f*) "Nuclear damage" means:

(i) Loss of life or personal injury;

(ii) Loss of or damage to property;

and each of the following to the extent determined by the law of the competent court:

(iii) Economic loss arising from loss or damage referred to in subparagraph (i) or (ii), insofar as not included in those subparagraphs, if incurred by a person entitled to claim in respect of such loss or damage;

(iv) The costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in subparagraph (ii);

(v) Loss of income deriving from an economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in subparagraph (ii);

(vi) The costs of preventive measures, and further loss or damage caused by such measures;

(vii) Any other economic loss, other than any caused by the impairment of the environment, if permitted by the general law on civil liability of the competent court,

in the case of subparagraphs (i) to (v) and (vii) above, to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter;

(*g*) "Measures of reinstatement" means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. The law of the State where the damage is suffered shall determine who is entitled to take such measures;

(*h*) "Preventive measures" means any reasonable measures taken by any person after a nuclear incident has occurred to prevent or minimize damage referred to in subparagraphs (*f*)(i) to (v) or (vii), subject to any approval of the competent authorities required by the law of the State where the measures were taken;

(*i*) "Nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage or, but only with respect to preventive measures, creates a grave and imminent threat of causing such damage;

(*j*) "Installed nuclear capacity" means for each Contracting Party the total of the number of units given by the formula set out in article IV.2; and "thermal power" means the maximum thermal power authorized by the competent national authorities;

(*k*) "Law of the competent court" means the law of the court having jurisdiction under this Convention, including any rules of such law relating to conflict of laws;

(*l*) "Reasonable measures" means measures which are found under the law of the competent court to be appropriate and proportionate, having regard to all the circumstances, for example:

(i) The nature and extent of the damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;

(ii) The extent to which, at the time they are taken, such measures are likely to be effective; and

(iii) Relevant scientific and technical expertise.

Article II

PURPOSE AND APPLICATION

1. The purpose of this Convention is to supplement the system of compensation provided pursuant to national law which:

(*a*) Implements one of the instruments referred to in article I(*a*) and (*b*); or

(*b*) Complies with the provisions of the annex to this Convention.

2. The system of this Convention shall apply to nuclear damage for which an operator of a nuclear installation used for peaceful purposes situated in the territory of a Contracting Party is liable under either one of the Conventions referred to in article I or national law mentioned in paragraph 1(*b*) of this article.

3. The annex referred to in paragraph 1(*b*) shall constitute an integral part of this Convention.

CHAPTER II

COMPENSATION

Article III

UNDERTAKING

1. Compensation in respect of nuclear damage per nuclear incident shall be ensured by the following means:

(*a*) (i) The Installation State shall ensure the availability of 300 million SDRs or a greater amount that it may have specified to the depositary at any time prior to the nuclear incident, or a transitional amount pursuant to subparagraph (ii);

(ii) A Contracting Party may establish, for the maximum of 10 years from the date of the opening for signature of this Convention, a transitional amount of at least 150 million SDRs in respect of a nuclear incident occurring within that period.

(*b*) Beyond the amount made available under subparagraph (*a*), the Contracting Parties shall make available public funds according to the formula specified in article IV.

2. (*a*) Compensation for nuclear damage in accordance with paragraph 1(*a*) shall be distributed equitably without discrimination on the basis of nationality, domicile or residence, provided that the law of the Installation State may, subject to obligations of that State under other conventions on nuclear liability, exclude nuclear damage suffered in a non-Contracting State.

(*b*) Compensation for nuclear damage, in accordance with paragraph 1(*b*), shall, subject to articles V and XI.1(*b*), be distributed equitably without discrimination on the basis of nationality, domicile or residence.

3. If the nuclear damage to be compensated does not require the total amount under paragraph 1(*b*), the contributions shall be reduced proportionally.

4. The interest and costs awarded by a court in actions for compensation of nuclear damage are payable in addition to the amounts awarded pursuant to paragraphs 1(*a*) and (*b*) and shall be proportionate to the actual contributions made

pursuant to paragraphs 1(*a*) and (*b*), respectively, by the operator liable, the Contracting Party in whose territory the nuclear installation of that operator is situated, and the Contracting Parties together.

Article IV

CALCULATION OF CONTRIBUTIONS

1. The formula for contributions according to which the Contracting Parties shall make available the public funds referred to in article III.1(*b*) shall be determined as follows:

(*a*) (i) The amount which shall be the product of the installed nuclear capacity of that Contracting Party multiplied by 300 SDRs per unit of installed capacity; and

(ii) The amount determined by applying the ratio between the United Nations rate of assessment for that Contracting Party as assessed for the year preceding the year in which the nuclear incident occurs, and the total of such rates for all Contracting Parties to 10 per cent of the sum of the amounts calculated for all Contracting Parties under subparagraph (i).

(*b*) Subject to subparagraph (*c*), the contribution of each Contracting Party shall be the sum of the amounts referred to in subparagraphs (*a*)(i) and (ii), provided that States on the minimum United Nations rate of assessment with no nuclear reactors shall not be required to make contributions.

(*c*) The maximum contribution which may be charged per nuclear incident to any Contracting Party, other than the Installation State, pursuant to subparagraph (*b*) shall not exceed its specified percentage of the total of contributions of all Contracting Parties determined pursuant to subparagraph (*b*). For a particular Contracting Party, the specified percentage shall be its United Nations rate of assessment expressed as a percentage plus eight percentage points. If, at the time an incident occurs, the total installed capacity represented by the Parties to this Convention is at or above a level of 625,000 units, this percentage shall be increased by one percentage point. It shall be increased by one additional percentage point for each increment of 75,000 units by which the capacity exceeds 625,000 units.

2. The formula is for each nuclear reactor situated in the territory of the Contracting Party, one unit for each megawatt of thermal power. The formula shall be calculated on the basis of the thermal power of the nuclear reactors shown at the date of the nuclear incident in the list established and kept up to date in accordance with article VIII.

3. For the purpose of calculating the contributions, a nuclear reactor shall be taken into account from that date when nuclear fuel elements have been first loaded into the nuclear reactor. A nuclear reactor shall be excluded from the calculation when all fuel elements have been removed permanently from the reactor core and have been stored safely in accordance with approved procedures.

Article V

GEOGRAPHICAL SCOPE

1. The funds provided for under article III.1(*b*) shall apply to nuclear damage which is suffered:

(*a*) In the territory of a Contracting Party; or

(*b*) In or above maritime areas beyond the territorial sea of a Contracting Party:

(i) On board or by a ship flying the flag of a Contracting Party, or on board or by an aircraft registered in the territory of a Contracting Party, or on or by an artificial island, installation or structure under the jurisdiction of a Contracting Party; or

(ii) By a national of a Contracting Party;

excluding damage suffered in or above the territorial sea of a State not Party to this Convention; or

(*c*) In or above the exclusive economic zone of a Contracting Party or on the continental shelf of a Contracting Party in connection with the exploitation or the exploration of the natural resources of that exclusive economic zone or continental shelf;

provided that the courts of a Contracting Party have jurisdiction pursuant to article XIII.

2. Any signatory or acceding State may, at the time of signature of or accession to this Convention or on the deposit of its instrument of ratification, declare that for the purposes of the application of paragraph 1(*b*)(ii), individuals or certain categories thereof, considered under its law as having their habitual residence in its territory, are assimilated to its own nationals.

3. In this article, the expression "a national of a Contracting Party" shall include a Contracting Party or any of its constituent subdivisions, or a partnership, or any public or private body whether corporate or not established in the territory of a Contracting Party.

CHAPTER III

ORGANIZATION OF SUPPLEMENTARY FUNDING

Article VI

NOTIFICATION OF NUCLEAR DAMAGE

Without prejudice to obligations which Contracting Parties may have under other international agreements, the Contracting Party whose courts have jurisdiction shall inform the other Contracting Parties of a nuclear incident as soon as it appears that the damage caused by such incident exceeds, or is likely to exceed, the amount available under article III.1(*a*) and that contributions under article III.1(*b*) may be required. The Contracting Parties shall without delay make all the necessary arrangements to settle the procedure for their relations in this connection.

Article VII

CALL FOR FUNDS

1. Following the notification referred to in article VI, and subject to article X.3, the Contracting Party whose courts have jurisdiction shall request the other Contracting Parties to make available the public funds required under article III.1(*b*) to the extent and when they are actually required and shall have exclusive competence to disburse such funds.

2. Independently of existing or future regulations concerning currency or transfers, Contracting Parties shall authorize the transfer and payment of any contribution provided pursuant to article III.1(*b*) without any restriction.

Article VIII

LIST OF NUCLEAR INSTALLATIONS

1. Each Contracting State shall, at the time when it deposits its instrument of ratification, acceptance, approval or accession, communicate to the depositary a complete listing of all nuclear installations referred to in article IV.3. The listing shall contain the necessary particulars for the purpose of the calculation of contributions.

2. Each Contracting State shall promptly communicate to the depositary all modifications to be made to the list. Where such modifications include the addition of a nuclear installation, the communication must be made at least three months before the expected date when nuclear material will be introduced into the installation.

3. If a Contracting Party is of the opinion that the particulars, or any modification to be made to the list communicated by a Contracting State pursuant to paragraphs 1 and 2, do not comply with the provisions, it may raise objections thereto by addressing them to the depositary within three months from the date on which it has received notice pursuant to paragraph 5. The depositary shall forthwith communicate this objection to the State to whose information the objection has been raised. Any unresolved differences shall be dealt with in accordance with the dispute settlement procedure laid down in article XVI.

4. The depositary shall maintain, update and annually circulate to all Contracting States the list of nuclear installations established in accordance with this article. Such list shall consist of all the particulars and modifications referred to in this article, it being understood that objections submitted under this article shall have effect retrospective to the date on which they were raised, if they are sustained.

5. The depositary shall give notice as soon as possible to each Contracting Party of the communications and objections which it has received pursuant to this article.

Article IX

RIGHTS OF RECOURSE

1. Each Contracting Party shall enact legislation in order to enable both the Contracting Party in whose territory the nuclear installation of the operator liable

is situated and the other Contracting Parties who have paid contributions referred to in article III.1(*b*) to benefit from the operator's right of recourse to the extent that he has such a right under either one of the Conventions referred to in article I or national legislation mentioned in article II.1(*b*) and to the extent that contributions have been made by any of the Contracting Parties.

2. The legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated may provide for the recovery of public funds made available under this Convention from such operator if the damage results from fault on his part.

3. The Contracting Party whose courts have jurisdiction may exercise the rights of recourse provided for in paragraphs 1 and 2 on behalf of the other Contracting Parties which have contributed.

Article X

DISBURSEMENTS, PROCEEDINGS

1. The system of disbursements by which the funds required under article III.1 are to be made available and the system of apportionment thereof shall be that of the Contracting Party whose courts have jurisdiction.

2. Each Contracting Party shall ensure that persons suffering damage may enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds provided for such compensation and that Contracting Parties may intervene in the proceedings against the operator liable.

3. No Contracting Party shall be required to make available the public funds referred to in article III.1(*b*) if claims for compensation can be satisfied out of the funds referred to in article III.1(*a*).

Article XI

ALLOCATION OF FUNDS

The funds provided under article III.1(*b*) shall be distributed as follows:

1. (*a*) 50 per cent of the funds shall be available to compensate claims for nuclear damage suffered in or outside the Installation State;

(*b*) 50 per cent of the funds shall be available to compensate claims for nuclear damage suffered outside the territory of the Installation State to the extent that such claims are uncompensated under subparagraph (*a*).

(*c*) In the event the amount provided pursuant to article III.1(*a*) is less than 300 million SDRs:

(i) The amount in paragraph 1(*a*) shall be reduced by the same percentage as the percentage by which the amount provided pursuant to article III.1(*a*) is less than 300 million SDRs; and

(ii) The amount in paragraph 1(*b*) shall be increased by the amount of the reduction calculated pursuant to subparagraph (i).

2. If a Contracting Party, in accordance with article III.1(*a*), has ensured the availability without discrimination of an amount not less than 600 million SDRs, which has been specified to the depositary prior to the nuclear incident, all funds referred to in article III.1(*a*) and (*b*) shall, notwithstanding paragraph 1, be

made available to compensate nuclear damage suffered in and outside the Installation State.

CHAPTER IV

EXERCISE OF OPTIONS

Article XII

1. Except insofar as this Convention otherwise provides, each Contracting Party may exercise the powers vested in it by virtue of the Vienna Convention or the Paris Convention, and any provisions made thereunder may be invoked against the other Contracting Parties in order that the public funds referred to in article III.1(*b*) be made available.

2. Nothing in this Convention shall prevent any Contracting Party from making provisions outside the scope of the Vienna or the Paris Convention and of this Convention, provided that such provision shall not involve any further obligation on the part of the other Contracting Parties, and provided that damage in a Contracting Party having no nuclear installations within its territory shall not be excluded from such further compensation on any grounds of lack of reciprocity.

3. (*a*) Nothing in this Convention shall prevent Contracting Parties from entering into regional or other agreements with the purpose of implementing their obligations under article III.1(*a*) or providing additional funds for the compensation of nuclear damage, provided that this shall not involve any further obligation under this Convention for the other Contracting Parties.

(*b*) A Contracting Party intending to enter into any such agreement shall notify all other Contracting Parties of its intention. Agreements concluded shall be notified to the depositary.

CHAPTER V

JURISDICTION AND APPLICABLE LAW

Article XIII

JURISDICTION

1. Except as otherwise provided in this article, jurisdiction over actions concerning nuclear damage from a nuclear incident shall lie only with the courts of the Contracting Party within which the nuclear incident occurs.

2. Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone, were one to be established by that Party, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party. The preceding sentence shall apply if that Contracting Party has notified the depositary of such area prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction in a manner which is contrary to the international law of the sea, including the United Nations Convention on the Law of the Sea. However, if the exercise of such jurisdiction is inconsistent with the obligations of that Party under article XI of the

Vienna Convention or article 13 of the Paris Convention in relation to a State not Party to this Convention, jurisdiction shall be determined according to those provisions.

3. Where a nuclear incident does not occur within the territory of any Contracting Party or within an area notified pursuant to paragraph 2, or where the place of a nuclear incident cannot be determined with certainty, jurisdiction over actions concerning nuclear damage from the nuclear incident shall lie only with the courts of the Installation State.

4. Where jurisdiction over actions concerning nuclear damage would lie with the courts of more than one Contracting Party, these Contracting Parties shall determine by agreement which Contracting Party's courts shall have jurisdiction.

5. A judgement that is no longer subject to ordinary forms of review entered by a court of a Contracting Party having jurisdiction shall be recognized except:

(*a*) Where the judgement was obtained by fraud;

(*b*) Where the party against whom the judgement was pronounced was not given a fair opportunity to present his case; or

(*c*) Where the judgement is contrary to the public policy of the Contracting Party within the territory of which recognition is sought, or is not in accord with fundamental standards of justice.

6. A judgement which is recognized under paragraph 5 shall, upon being presented for enforcement in accordance with the formalities required by the law of the Contracting Party where enforcement is sought, be enforceable as if it were a judgement of a court of that Contracting Party. The merits of a claim on which the judgement has been given shall not be subject to further proceedings.

7. Settlements effected in respect of the payment of compensation out of the public funds referred to in article III.1(*b*) in accordance with the conditions established by national legislation shall be recognized by the other Contracting Parties.

Article XIV

APPLICABLE LAW

1. Either the Vienna Convention or the Paris Convention or the annex to this Convention, as appropriate, shall apply to a nuclear incident to the exclusion of the others.

2. Subject to the provisions of this Convention, the Vienna Convention or the Paris Convention, as appropriate, the applicable law shall be the law of the competent court.

Article XV

PUBLIC INTERNATIONAL LAW

This Convention shall not affect the rights and obligations of a Contracting Party under the general rules of public international law.

CHAPTER VI

DISPUTE SETTLEMENT

Article XVI

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to the settlement of the dispute by negotiation or by any other peaceful means of settling disputes acceptable to them.

2. If a dispute of this character referred to in paragraph 1 cannot be settled within six months from the request for consultation pursuant to paragraph 1, it shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In cases of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. When ratifying, accepting, approving or acceding to this Convention, a State may declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. The other Contracting Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2 with respect to a Contracting Party for which such a declaration is in force.

4. A Contracting Party which has made a declaration in accordance with paragraph 3 may at any time withdraw it by notification to the depositary.

CHAPTER VII

FINAL CLAUSES

Article XVII

SIGNATURE

This Convention shall be open for signature, by all States at the headquarters of the International Atomic Energy Agency in Vienna from 29 September 1997 until its entry into force.

Article XVIII

RATIFICATION, ACCEPTANCE, APPROVAL

1. This Convention shall be subject to ratification, acceptance or approval by the signatory States. An instrument of ratification, acceptance or approval shall be accepted only from a State which is a Party to either the Vienna Convention or the Paris Convention or a State which declares that its national law complies with the provisions of the annex to this Convention, provided that, in the case of a State having on its territory a nuclear installation as defined in the Con-

vention on Nuclear Safety of 17 June 1994, it is a Contracting State to that Convention.

2. The instruments of ratification, acceptance or approval shall be deposited with the Director General of the International Atomic Energy Agency, who shall act as the depositary of this Convention.

3. A Contracting Party shall provide the depositary with a copy, in one of the official languages of the United Nations, of the provisions of its national law referred to in article II.1 and amendments thereto, including any specification made pursuant to article III.1(*a*), article XI.2, or a transitional amount pursuant to article III.1(*a*)(ii). Copies of such provisions shall be circulated by the depositary to all other Contracting Parties.

Article XIX

ACCESSION

1. After its entry into force, any State which has not signed this Convention may accede to it. An instrument of accession shall be accepted only from a State which is a party to either the Vienna Convention or the Paris Convention, or a State which declares that its national law complies with the provisions of the annex to this Convention, provided that, in the case of a State having on its territory a nuclear installation as defined in the Convention on Nuclear Safety of 17 June 1994, it is a Contracting State to that Convention.

2. The instruments of accession shall be deposited with the Director General of the International Atomic Energy Agency.

3. A Contracting Party shall provide the depositary with a copy, in one of the official languages of the United Nations, of the provisions of its national law referred to in article II.1 and amendments thereto, including any specification made pursuant to article III.1(*a*), article XI.2, or a transitional amount pursuant to article III.1(*a*)(ii). Copies of such provisions shall be circulated by the depositary to all other Contracting Parties.

Article XX

ENTRY INTO FORCE

1. This Convention shall come into force on the ninetieth day following the date on which at least five States with a minimum of 400,000 units of installed nuclear capacity have deposited an instrument referred to in article XVIII.

2. For each State which subsequently ratifies, accepts, approves or accedes to this Convention, it shall enter into force on the ninetieth day after the deposit by such State of the appropriate instrument.

Article XXI

DENUNCIATION

1. Any Contracting Party may denounce this Convention by written notification to the depositary.

2. Denunciation shall take effect one year after the date on which the notification is received by the depositary.

Article XXII

CESSATION

1. Any Contracting Party which ceases to be a party to either the Vienna Convention or the Paris Convention shall notify the depositary thereof and of the date of such cessation. On that date such Contracting Party shall have ceased to be a Party to this Convention unless its national law complies with the provisions of the annex to this Convention and it has so notified the depositary and provided it with a copy of the provisions of its national law in one of the official languages of the United Nations. Such copy shall be circulated by the depositary to all other Contracting Parties.

2. Any Contracting Party whose national law ceases to comply with the provisions of the annex to this Convention and which is not a party to either the Vienna Convention or the Paris Convention shall notify the depositary thereof and of the date of such cessation. On that date such Contracting Party shall have ceased to be a Party to this Convention.

3. Any Contracting Party having on its territory a nuclear installation as defined in the Convention on Nuclear Safety which ceases to be party to that Convention shall notify the depositary thereof and of the date of such cessation. On that date, such Contracting Party shall, notwithstanding paragraphs 1 and 2, have ceased to be a Party to the present Convention.

Article XXIII

CONTINUANCE OF PRIOR RIGHTS AND OBLIGATIONS

Notwithstanding denunciation pursuant to article XXI or cessation pursuant to article XXII, the provisions of this Convention shall continue to apply to any nuclear damage caused by a nuclear incident which occurs before such denunciation or cessation.

Article XXIV

REVISION AND AMENDMENTS

1. The depositary, after consultations with the Contracting Parties, may convene a conference for the purpose of revising or amending this Convention.

2. The depositary shall convene a conference of Contracting Parties for the purpose of revising or amending this Convention at the request of not less than one third of all Contracting Parties.

Article XXV

AMENDMENT BY SIMPLIFIED PROCEDURE

1. A meeting of the Contracting Parties shall be convened by the depositary to amend the compensation amounts referred to in article III.1(*a*) and (*b*) or

categories of installations including contributions payable for them, referred to in article IV.3, if one third of the Contracting Parties express a desire to that effect.

2. Decisions to adopt a proposed amendment shall be taken by vote. Amendments shall be adopted if no negative vote is cast.

3. Any amendment adopted in accordance with paragraph 2 shall be notified by the depositary to all Contracting Parties. The amendment shall be considered accepted if within a period of 36 months after it has been notified, all Contracting Parties at the time of the adoption of the amendment have communicated their acceptance to the depositary. The amendment shall enter into force for all Contracting Parties 12 months after its acceptance.

4. If within a period of 36 months from the date of notification for acceptance the amendment has not been accepted in accordance with paragraph 3, the amendment shall be considered rejected.

5. When an amendment has been adopted in accordance with paragraph 2 but the 36-month period for its acceptance has not yet expired, a State which becomes a Party to this Convention during that period shall be bound by the amendment if it comes into force. A State which becomes a Party to this Convention after that period shall be bound by any amendment which has been accepted in accordance with paragraph 3. In the cases referred to in the present paragraph, a Contracting Party shall be bound by an amendment when that amendment enters into force, or when this Convention enters into force for that Contracting Party, whichever date is the later.

Article XXVI

FUNCTIONS OF THE DEPOSITARY

In addition to functions in other articles of this Convention, the depositary shall promptly notify Contracting Parties and all other States as well as the Secretary-General of the Organization for Economic Cooperation and Development of:

(*a*) Each signature of this Convention;

(*b*) Each deposit of an instrument of ratification, acceptance, approval or accession concerning this Convention;

(*c*) The entry into force of this Convention;

(*d*) Declarations received pursuant to article XVI;

(*e*) Any denunciation received pursuant to article XXI, or notification received pursuant to article XXII;

(*f*) Any notification under paragraph 2 of article XIII;

(*g*) Other pertinent notifications relating to this Convention.

Article XXVII

AUTHENTIC TEXTS

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with

the Director General of the International Atomic Energy Agency, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Vienna, this twelfth day of September, one thousand nine hundred ninety-seven.

ANNEX

A Contracting Party which is not party to any of the Conventions mentioned in article I(*a*) or (*b*) of this Convention shall ensure that its national legislation is consistent with the provisions laid down in this annex insofar as those provisions are not directly applicable within that Contracting Party. A Contracting Party having no nuclear installation on its territory is required to have only that legislation which is necessary to enable such a Party to give effect to its obligations under this Convention.

Article 1

DEFINITIONS

1. In addition to the definitions in article I of this Convention, the following definitions apply for the purposes of this annex:

(*a*) "Nuclear fuel" means any material which is capable of producing energy by a self-sustaining chain process of nuclear fission;

(*b*) "Nuclear installation" means:

(i) Any nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose;

(ii) Any factory using nuclear fuel for the production of nuclear material, or any factory for the processing of nuclear material, including any factory for the reprocessing of irradiated nuclear fuel; and

(iii) Any facility where nuclear material is stored, other than storage incidental to the carriage of such material, provided that the Installation State may determine that several nuclear installations of one operator which are located at the same site shall be considered as a single nuclear installation;

(*c*) "Nuclear material" means:

(i) Nuclear fuel, other than natural uranium and depleted uranium, capable of producing energy by a self-sustaining chain process of nuclear fission outside a nuclear reactor, either alone or in combination with some other material; and

(ii) Radioactive products or waste;

(*d*) "Operator", in relation to a nuclear installation, means the person designated or recognized by the Installation State as the operator of that installation;

(*e*) "Radioactive products or waste" means any radioactive material produced in, or any material made radioactive by exposure to the radiation incidental to, the production or utilization of nuclear fuel, but does not include radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose.

2. An Installation State may, if the small extent of the risks involved so warrants, exclude any nuclear installation or small quantities of nuclear material from the application of this Convention, provided that:

(*a*) With respect to nuclear installations, criteria for such exclusion have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State satisfies such criteria; and

(*b*) With respect to small quantities of nuclear material, maximum limits for the exclusion of such quantities have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State is within such established limits.

The criteria for the exclusion of nuclear installations and the maximum limits for the exclusion of small quantities of nuclear material shall be reviewed periodically by the Board of Governors.

Article 2

CONFORMITY OF LEGISLATION

1. The national law of a Contracting Party is deemed to be in conformity with the provisions of articles 3, 4, 5 and 7 if it contained on 1 January 1995 and continues to contain provisions that:

(*a*) Provide for strict liability in the event of a nuclear incident where there is substantial nuclear damage off the site of the nuclear installation where the incident occurs;

(*b*) Require the indemnification of any person other than the operator liable for nuclear damage to the extent that person is legally liable to provide compensation; and

(*c*) Ensure the availability of at least 1,000 million SDRs in respect of a civil nuclear power plant and at least 300 million SDRs in respect of other civil nuclear installations for such indemnification.

2. If, in accordance with paragraph 1, the national law of a Contracting Party is deemed to be in conformity with the provisions of articles 3, 4, 5 and 7, then that Party:

(*a*) May apply a definition of nuclear damage that covers loss or damage set forth in article I(*f*) of this Convention and any other loss or damage to the extent that the loss or damage arises out of or results from the radioactive properties, or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation; or other ionizing radiation emitted by any source of radiation inside a nuclear installation, provided that such application does not affect the undertaking by that Contracting Party pursuant to article III of this Convention; and

(*b*) May apply the definition of nuclear installation in paragraph 3 of this article to the exclusion of the definition in article 1.1(*b*) of this annex.

3. For the purpose of paragraph 2(*b*) of this article, "nuclear installation" means:

(*a*) Any civil nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or any other purpose; and

(*b*) Any civil facility for processing, reprocessing or storing:

(i) Irradiated nuclear fuel; or

(ii) Radioactive products or waste that:

(1) Result from the reprocessing of irradiated nuclear fuel and contain significant amounts of fission products; or

(2) Contain elements that have an atomic number greater than 92 in concentrations greater than 10 nano-curies per gram.

(*c*) Any other civil facility for processing, reprocessing or storing nuclear material unless the Contracting Party determines the small extent of the risks involved with such an installation warrants the exclusion of such a facility from this definition.

4. Where that national law of a Contracting Party which is in compliance with paragraph 1 of this article does not apply to a nuclear incident which occurs outside the territory of that Contracting Party, but over which the courts of that Contracting Party have jurisdiction pursuant to article XIII of this Convention, articles 3 to 11 of the annex shall apply and prevail over any inconsistent provisions of the applicable national law.

Article 3

OPERATOR LIABILITY

1. The operator of a nuclear installation shall be liable for nuclear damage upon proof that such damage has been caused by a nuclear incident:

(*a*) In that nuclear installation; or

(*b*) Involving nuclear material coming from or originating in that nuclear installation, and occurring:

(i) Before liability with regard to nuclear incidents involving the nuclear material has been assumed, pursuant to the express terms of a contract in writing, by the operator of another nuclear installation;

(ii) In the absence of such express terms, before the operator of another nuclear installation has taken charge of the nuclear material; or

(iii) Where the nuclear material is intended to be used in a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose, before the person duly authorized to operate such reactor has taken charge of the nuclear material; but

(iv) Where the nuclear material has been sent to a person within the territory of a non-Contracting State, before it has been unloaded from the means of transport by which it has arrived in the territory of that non-Contracting State;

(*c*) Involving nuclear material sent to that nuclear installation, and occurring:

(i) After liability with regard to nuclear incidents involving the nuclear material has been assumed by the operator pursuant to the express terms of a contract in writing, from the operator of another nuclear installation;

(ii) In the absence of such express terms, after the operator has taken charge of the nuclear material; or

(iii) After the operator has taken charge of the nuclear material from a person operating a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose; but

(iv) Where the nuclear material has, with the written consent of the operator, been sent from a person within the territory of a non-Contracting State, only after it has been loaded on the means of transport by which it is to be carried from the territory of that State;

provided that, if nuclear damage is caused by a nuclear incident occurring in a nuclear installation and involving nuclear material stored therein incidentally to the carriage of such material, the provisions of subparagraph (*a*) shall not apply where another operator or person is solely liable pursuant to subparagraph (*b*) or (*c*).

2. The Installation State may provide by legislation that, in accordance with such terms as may be specified in that legislation, a carrier of nuclear material or a person handling radioactive waste may, at such carrier or such person's request and with the consent of the operator concerned, be designated or recognized as operator in the place of that operator in respect of such nuclear material or radioactive waste respectively. In this case such carrier or such person shall be considered, for all the purposes of this Convention, as an operator of a nuclear installation situated within the territory of that State.

3. The liability of the operator for nuclear damage shall be absolute.

4. Whenever both nuclear damage and damage other than nuclear damage have been caused by a nuclear incident or jointly by a nuclear incident and one or more other occurrences, such other damage shall, to the extent that it is not reasonably separable from the nuclear damage, be deemed to be nuclear damage caused by that nuclear incident. Where, however, damage is caused jointly by a nuclear incident covered by the provisions of this annex and by an emission of ionizing radiation not covered by it, nothing in this annex shall limit or otherwise affect the liability, either as regards any person suffering nuclear damage or by way of recourse or contribution, of any person who may be held liable in connection with that emission of ionizing radiation.

5. (*a*) No liability shall attach to an operator for nuclear damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war or insurrection.

(*b*) Except insofar as the law of the Installation State may provide to the contrary, the operator shall not be liable for nuclear damage caused by a nuclear incident caused directly due to a grave natural disaster of an exceptional character.

6. National law may relieve an operator wholly or partly from the obligation to pay compensation for nuclear damage suffered by a person if the operator proves the nuclear damage resulted wholly or partly from the gross negligence of that person or an act or omission of that person done with the intent to cause damage.

7. The operator shall not be liable for nuclear damage:

(*a*) To the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and

(*b*) To any property on that same site which is used or to be used in connection with any such installation;

(*c*) Unless otherwise provided by national law, to the means of transport upon which the nuclear material involved was at the time of the nuclear incident. If national law provides that the operator is liable for such damage, compensation for that damage shall not have the effect of reducing the liability of the operator in respect of other damage to an amount less than either 150 million SDRs, or any higher amount established by the legislation of a Contracting Party.

8. Nothing in this Convention shall affect the liability outside this Convention of the operator for nuclear damage for which by virtue of paragraph 7(*c*) he is not liable under this Convention.

9. The right to compensation for nuclear damage may be exercised only against the operator liable, provided that national law may permit a direct right of action against any supplier of funds that are made available pursuant to provisions in national law to ensure compensation through the use of funds from sources other than the operator.

10. The operator shall incur no liability for damage caused by a nuclear incident outside the provisions of national law in accordance with this Convention.

Article 4

LIABILITY AMOUNTS

1. Subject to article III.1(*a*)(ii), the liability of the operator may be limited by the Installation State for any one nuclear incident, either:

(*a*) To not less than 300 million SDRs; or

(*b*) To not less than 150 million SDRs provided that in excess of that amount and up to at least 300 million SDRs public funds shall be made available by that State to compensate nuclear damage.

2. Notwithstanding paragraph 1, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of liability of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures that public funds shall be made available up to the amount established pursuant to paragraph 1.

3. The amounts established by the Installation State of the liable operator in accordance with paragraphs 1 and 2, as well as the provisions of any legislation of a Contracting Party pursuant to article 3.7(*c*), shall apply wherever the nuclear incident occurs.

Article 5

FINANCIAL SECURITY

1. (*a*) The operator shall be required to have and maintain insurance or other financial security covering his liability for nuclear damage in such amount, of such type and in such terms as the Installation State shall specify. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator by providing the necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, but not in excess of the limit, if any, established pursuant to article 4. Where the liability of the operator is unlimited, the Installation State may establish a limit of the financial security of the operator liable provided that such limit is not lower than 300 million SDRs. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator to the extent that yield of the financial security is inadequate to satisfy such claims, but not in excess of the amount of the financial security to be provided under this paragraph.

(*b*) Notwithstanding subparagraph (*a*), the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of financial security of the operator, provided that in no event shall any amount so established be less than

5 million SDRs, and provided that the Installation State ensures the payment of claims for compensation for nuclear damage which have been established against the operator by providing necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, and up to the limit provided in subparagraph (*a*).

2. Nothing in paragraph 1 shall require a Contracting Party or any of its constituent subdivisions to maintain insurance or other financial security to cover their liability as operators.

3. The funds provided by insurance, by other financial security or by the Installation State pursuant to paragraph 1 or article 4.1(*b*) shall be exclusively available for compensation due under this annex.

4. No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided pursuant to paragraph 1 without giving notice in writing of at least two months to the competent public authority or, insofar as such insurance or other financial security relates to the carriage of nuclear material, during the period of the carriage in question.

Article 6

CARRIAGE

1. With respect to a nuclear incident during carriage, the maximum amount of liability of the operator shall be governed by the national law of the Installation State.

2. A Contracting Party may subject carriage of nuclear material through its territory to the condition that the amount of liability of the operator be increased to an amount not to exceed the maximum amount of liability of the operator of a nuclear installation situated in its territory.

3. The provisions of paragraph 2 shall not apply to:

(*a*) Carriage by sea where, under international law, there is a right of entry in cases of urgent distress into ports of a Contracting Party or a right of innocent passage through its territory;

(*b*) Carriage by air where, by agreement or under international law, there is a right to fly over or land on the territory of a Contracting Party.

Article 7

LIABILITY OF MORE THAN ONE OPERATOR

1. Where nuclear damage engages the liability of more than one operator, the operators involved shall, insofar as the damage attributable to each operator is not reasonably separable, be jointly and severally liable. The Installation State may limit the amount of public funds made available per incident to the difference, if any, between the amounts hereby established and the amount established pursuant to article 4.1.

2. Where a nuclear incident occurs in the course of carriage of nuclear material, either in one and the same means of transport, or, in the case of storage incidental to the carriage, in one and the same nuclear installation, and causes nuclear damage which engages the liability of more than one operator, the total liability shall not exceed the highest amount applicable with respect to any one of them pursuant to article 4.

3. In neither of the cases referred to in paragraphs 1 and 2 shall the liability of any one operator exceed the amount applicable with respect to him pursuant to article 4.

4. Subject to the provisions of paragraphs 1 to 3, where several nuclear installations of one and the same operator are involved in one nuclear incident, such operator shall be liable in respect of each nuclear installation involved up to the amount applicable with respect to him pursuant to article 4. The Installation State may limit the amount of public funds made available as provided for in paragraph 1.

Article 8

COMPENSATION UNDER NATIONAL LAW

1. For purposes of this Convention, the amount of compensation shall be determined without regard to any interest or costs awarded in a proceeding for compensation of nuclear damage.

2. Compensation for damage suffered outside the Installation State shall be provided in a form freely transferable among Contracting Parties.

3. Where provisions of national or public health insurance, social insurance, social security, workmen's compensation or occupational disease compensation systems include compensation for nuclear damage, rights of beneficiaries of such systems and rights of recourse by virtue of such systems shall be determined by the national law of the Contracting Party in which such systems have been established or by the regulations of the intergovernmental organization which has established such systems.

Article 9

PERIOD OF EXTINCTION

1. Rights of compensation under this Convention shall be extinguished if an action is not brought within ten years from the date of the nuclear incident. If, however, under the law of the Installation State the liability of the operator is covered by insurance or other financial security or by State funds for a period longer than ten years, the law of the competent court may provide that rights of compensation against the operator shall only be extinguished after a period which may be longer than ten years, but shall not be longer than the period for which his liability is so covered under the law of the Installation State.

2. Where nuclear damage is caused by a nuclear incident involving nuclear material which at the time of the nuclear incident was stolen, lost, jettisoned or abandoned, the period established pursuant to paragraph 1 shall be computed from the date of that nuclear incident, but the period shall in no case, subject to legislation pursuant to paragraph 1, exceed a period of twenty years from the date of the theft, loss, jettison or abandonment.

3. The law of the competent court may establish a period of extinction or prescription of not less than three years from the date on which the person suffering nuclear damage had knowledge or should have had knowledge of the damage and of the operator liable for the damage, provided that the period established pursuant to paragraphs 1 and 2 shall not be exceeded.

4. If the national law of a Contracting Party provides for a period of extinction or prescription greater than ten years from the date of a nuclear incident, it shall contain provisions for the equitable and timely satisfaction of claims for loss of life or personal injury filed within ten years from the date of the nuclear incident.

Article 10

RIGHT OF RECOURSE

National law may provide that the operator shall have a right of recourse only:

(*a*) If this is expressly provided for by a contract in writing; or

(*b*) If the nuclear incident results from an act or omission done with intent to cause damage, against the individual who has acted or omitted to act with such intent.

Article 11

APPLICABLE LAW

Subject to the provisions of this Convention, the nature, form, extent and equitable distribution of compensation for nuclear damage caused by a nuclear incident shall be governed by the law of the competent court.

(*c*) Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management.[18] Done at Vienna on 29 September 1997[19]

PREAMBLE

The Contracting Parties,

(i) *Recognizing* that the operation of nuclear reactors generates spent fuel and radioactive waste and that other applications of nuclear technologies also generate radioactive waste;

(ii) *Recognizing* that the same safety objectives apply both to spent fuel and radioactive waste management;

(iii) *Reaffirming* the importance to the international community of ensuring that sound practices are planned and implemented for the safety of spent fuel and radioactive waste management;

(iv) *Recognizing* the importance of informing the public on issues regarding the safety of spent fuel and radioactive waste management;

(v) *Desiring* to promote an effective nuclear safety culture worldwide;

(vi) *Reaffirming* that the ultimate responsibility for ensuring the safety of spent fuel and radioactive waste management rests with the State;

(vii) *Recognizing* that the definition of a fuel cycle policy rests with the State, some States considering spent fuel as a valuable resource that may be reprocessed, others electing to dispose of it;

(viii) *Recognizing* that spent fuel and radioactive waste excluded from the present Convention because they are within military or defence programmes should be managed in accordance with the objectives stated in this Convention;

(ix) *Affirming* the importance of international cooperation in enhancing the safety of spent fuel and radioactive waste management through bilateral and multilateral mechanisms, and through this incentive Convention;

(x) *Mindful* of the needs of developing countries, and in particular the least developed countries, and of States with economies in transition and of the need to facilitate existing mechanisms to assist in the fulfilment of their rights and obligations set out in this incentive Convention;

(xi) *Convinced* that radioactive waste should, as far as is compatible with the safety of the management of such material, be disposed of in the State in which it was generated, whilst recognizing that, in certain circumstances, safe and efficient management of spent fuel and radioactive waste might be fostered through agreements among Contracting Parties to use facilities in one of them for the benefit of the other Parties, particularly where waste originates from joint projects;

(xii) *Recognizing* that any State has the right to ban import into its territory of foreign spent fuel and radioactive waste;

(xiii) *Keeping in mind* the Convention on Nuclear Safety (1994), the Convention on Early Notification of a Nuclear Accident (1986), the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (1986), the Convention on the Physical Protection of Nuclear Material (1980), the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter as amended (1994) and other relevant international instruments;

(xiv) *Keeping in mind* the principles contained in the inter-agency "International Basic Safety Standards for Protection against Ionizing Radiation and for the Safety of Radiation Sources" (1996), in the IAEA Safety Fundamentals entitled "The Principles of Radioactive Waste Management" (1995), and in the existing international standards relating to the safety of the transport of radioactive materials;

(xv) *Recalling* chapter 22 of Agenda 21 adopted in 1992 by the United Nations Conference on Environment and Development in Rio de Janeiro, which reaffirms the paramount importance of the safe and environmentally sound management of radioactive waste;

(xvi) *Recognizing* the desirability of strengthening the international control system applying specifically to radioactive materials as referred to in article 1(3) of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989);

Have agreed as follows:

CHAPTER 1. OBJECTIVES, DEFINITIONS AND SCOPE OF APPLICATION

Article 1. Objectives

The objectives of this Convention are:

(i) To achieve and maintain a high level of safety worldwide in spent fuel and radioactive waste management, through the enhancement of national measures and international cooperation, including, where appropriate, safety-related technical cooperation;

(ii) To ensure that during all stages of spent fuel and radioactive waste management there are effective defences against potential hazards so that individuals, society and the environment are protected from harmful effects of ionizing radiation, now and in the future, in such a way that the needs and aspirations of the present generation are met without compromising the ability of future generations to meet their needs and aspirations;

(iii) To prevent accidents with radiological consequences and to mitigate their consequences should they occur during any stage of spent fuel or radioactive waste management.

Article 2. Definitions

For the purposes of this Convention:

(*a*) "closure" means the completion of all operations at some time after the emplacement of spent fuel or radioactive waste in a disposal facility. This includes the final engineering or other work required to bring the facility to a condition that will be safe in the long term;

(*b*) "decommissioning" means all steps leading to the release of a nuclear facility, other than a disposal facility, from regulatory control. These steps include the processes of decontamination and dismantling;

(*c*) "discharges" means planned and controlled releases into the environment, as a legitimate practice, within limits authorized by the regulatory body, of

liquid or gaseous radioactive materials that originate from regulated nuclear facilities during normal operation;

(*d*) "disposal" means the emplacement of spent fuel or radioactive waste in an appropriate facility without the intention of retrieval;

(*e*) "licence" means any authorization, permission or certification granted by a regulatory body to carry out any activity related to management of spent fuel or of radioactive waste;

(*f*) "nuclear facility" means a civilian facility and its associated land, buildings and equipment in which radioactive materials are produced, processed, used, handled, stored or disposed of on such a scale that consideration of safety is required;

(*g*) "operating lifetime" means the period during which a spent fuel or a radioactive waste management facility is used for its intended purpose. In the case of a disposal facility, the period begins when spent fuel or radioactive waste is first emplaced in the facility and ends upon closure of the facility;

(*h*) "radioactive waste" means radioactive material in gaseous, liquid or solid form for which no further use is foreseen by the Contracting Party or by a natural or legal person whose decision is accepted by the Contracting Party, and which is controlled as radioactive waste by a regulatory body under the legislative and regulatory framework of the Contracting Party;

(*i*) "radioactive waste management" means all activities, including decommissioning activities, that relate to the handling, pretreatment, treatment, conditioning, storage or disposal of radioactive waste, excluding off-site transportation. It may also involve discharges;

(*j*) "radioactive waste management facility" means any facility or installation the primary purpose of which is radioactive waste management, including a nuclear facility in the process of being decommissioned only if it is designated by the Contracting Party as a radioactive waste management facility;

(*k*) "regulatory body" means any body or bodies given the legal authority by the Contracting Party to regulate any aspect of the safety of spent fuel or radioactive waste management including the granting of licences;

(*l*) "reprocessing" means a process or operation, the purpose of which is to extract radioactive isotopes from spent fuel for further use;

(*m*) "sealed source" means radioactive material that is permanently sealed in a capsule or closely bonded and in a solid form, excluding reactor fuel elements;

(*n*) "spent fuel" means nuclear fuel that has been irradiated in and permanently removed from a reactor core;

(*o*) "spent fuel management" means all activities that relate to the handling or storage of spent fuel, excluding off-site transportation. It may also involve discharges;

(*p*) "spent fuel management facility" means any facility or installation the primary purpose of which is spent fuel management;

(*q*) "State of destination" means a State to which a transboundary movement is planned or takes place;

(*r*) "State of origin" means a State from which a transboundary movement is planned to be initiated or is initiated;

(*s*) "State of transit" means any State, other than a State of origin or a State of destination, through whose territory a transboundary movement is planned or takes place;

(*t*) "storage" means the holding of spent fuel or of radioactive waste in a facility that provides for its containment, with the intention of retrieval;

(*u*) "transboundary movement" means any shipment of spent fuel or of radioactive waste from a State of origin to a State of destination.

Article 3. Scope of application

1. This Convention shall apply to the safety of spent fuel management when the spent fuel results from the operation of civilian nuclear reactors. Spent fuel held at reprocessing facilities as part of a reprocessing activity is not covered in the scope of this Convention unless the Contracting Party declares reprocessing to be part of spent fuel management.

2. This Convention shall also apply to the safety of radioactive waste management when the radioactive waste results from civilian applications. However, this Convention shall not apply to waste that contains only naturally occurring radioactive materials and that does not originate from the nuclear fuel cycle, unless it constitutes a disused seared source or it is declared as radioactive waste for the purposes of this Convention by the Contracting Party.

3. This Convention shall not apply to the safety of management of spent fuel or radioactive waste within military or defence programmes, unless declared as spent fuel or radioactive waste for the purposes of this Convention by the Contracting Party. However, this Convention shall apply to the safety of management of spent fuel and radioactive waste from military or defence programmes if and when such materials are transferred permanently to and managed within exclusively civilian programmes.

4. This Convention shall also apply to discharges as provided for in articles 4, 7, 11, 14, 24 and 26.

CHAPTER 2. SAFETY OF SPENT FUEL MANAGEMENT

Article 4. General safety requirements

Each Contracting Party shall take the appropriate steps to ensure that at all stages of spent fuel management, individuals, society and the environment are adequately protected against radiological hazards.

In so doing, each Contracting Party shall take the appropriate steps to:

(i) Ensure that criticality and removal of residual heat generated during spent fuel management are adequately addressed;

(ii) Ensure that the generation of radioactive waste associated with spent fuel management is kept to the minimum practicable, consistent with the type of fuel cycle policy adopted;

(iii) Take into account interdependencies among the different steps in spent fuel management;

(iv) Provide for effective protection of individuals, society and the environment, by applying at the national level suitable protective methods as approved by the regulatory body, in the framework of its national legislation which has due regard to internationally endorsed criteria and standards;

(v) Take into account the biological, chemical and other hazards that may be associated with spent fuel management;

(vi) Strive to avoid actions that impose reasonably predictable impacts on future generations greater than those permitted for the current generation;

(vii) Aim to avoid imposing undue burdens on future generations.

Article 5. Existing facilities

Each Contracting Party shall take the appropriate steps to review the safety of any spent fuel management facility existing at the time the Convention enters into force for that Contracting Party and to ensure that, if necessary, all reasonably practicable improvements are made to upgrade the safety of such a facility.

Article 6. Siting of proposed facilities

1. Each Contracting Party shall take the appropriate steps to ensure that procedures are established and implemented for a proposed spent fuel management facility:

(i) To evaluate all relevant site-related factors likely to affect the safety of such a facility during its operating lifetime;

(ii) To evaluate the likely safety impact of such a facility on individuals, society and the environment;

(iii) To make information on the safety of such a facility available to members of the public;

(iv) To consult Contracting Parties in the vicinity of such a facility, insofar as they are likely to be affected by that facility, and provide them, upon their request, with general data relating to the facility to enable them to evaluate the likely safety impact of the facility upon their territory.

2. In so doing, each Contracting Party shall take the appropriate steps to ensure that such facilities shall not have unacceptable effects on other Contracting Parties by being sited in accordance with the general safety requirements of article 4.

Article 7. Design and construction of facilities

Each Contracting Party shall take the appropriate steps to ensure that:

(i) The design and construction of a spent fuel management facility provide for suitable measures to limit possible radiological impacts on individuals, society and the environment, including those from discharges or uncontrolled releases;

(ii) At the design stage, conceptual plans and, as necessary, technical provisions for the decommissioning of a spent fuel management facility are taken into account;

(iii) The technologies incorporated in the design and construction of a spent fuel management facility are supported by experience, testing or analysis.

Article 8. Assessment of safety of facilities

Each Contracting Party shall take the appropriate steps to ensure that:

(i) Before construction of a spent fuel management facility, a systematic safety assessment and an environmental assessment appropriate to the hazard presented by the facility and covering its operating lifetime shall be carried out;

(ii) Before the operation of a spent fuel management facility, updated and detailed versions of the safety assessment and of the environmental assessment shall be prepared when deemed necessary to complement the assessments referred to in subparagraph (i).

Article 9. Operation of facilities

Each Contracting Party shall take the appropriate steps to ensure that:

(i) The licence to operate a spent fuel management facility is based upon appropriate assessments as specified in article 8 and is conditional on the completion of a commissioning programme demonstrating that the facility, as constructed, is consistent with design and safety requirements;

(ii) Operational limits and conditions derived from tests, operational experience and the assessments, as specified in article 8, are defined and revised as necessary;

(iii) Operation, maintenance, monitoring, inspection and testing of a spent fuel management facility are conducted in accordance with established procedures;

(iv) Engineering and technical support in all safety-related fields are available throughout the operating lifetime of a spent fuel management facility;

(v) Incidents significant to safety are reported in a timely manner by the holder of the licence to the regulatory body;

(vi) Programmes to collect and analyse relevant operating experience are established and the results are acted upon, where appropriate;

(vii) Decommissioning plans for a spent fuel management facility are prepared and updated, as necessary, using information obtained during the operating lifetime of that facility, and are reviewed by the regulatory body.

Article 10. Disposal of spent fuel

If, pursuant to its own legislative and regulatory framework, a Contracting Party has designated spent fuel for disposal, the disposal of such spent fuel shall be in accordance with the obligations of chapter 3 relating to the disposal of radioactive waste.

CHAPTER 3. SAFETY OF RADIOACTIVE WASTE MANAGEMENT

Article 11. General safety requirements

Each Contracting Party shall take the appropriate steps to ensure that at all stages of radioactive waste management individuals, society and the environment are adequately protected against radiological and other hazards.

In so doing, each Contracting Party shall take the appropriate steps to:

(i) Ensure that criticality and removal of residual heat generated during radioactive waste management are adequately addressed;

(ii) Ensure that the generation of radioactive waste is kept to the minimum practicable;

(iii) Take into account interdependencies among the different steps in radioactive waste management;

(iv) Provide for effective protection of individuals, society and the environment, by applying at the national level suitable protective methods as approved by the regulatory body, in the framework of its national legislation which has due regard to internationally endorsed criteria and standards;

(v) Take into account the biological, chemical and other hazards that may be associated with radioactive waste management;

(vi) Strive to avoid actions that impose reasonably predictable impacts on future generations greater than those permitted for the current generation;

(vii) Aim to avoid imposing undue burdens on future generations.

Article 12. Existing facilities and past practices

Each Contracting Party shall in due course take the appropriate steps to review:

(i) The safety of any radioactive waste management facility existing at the time the Convention enters into force for that Contracting Party and to ensure that, if necessary, all reasonably practicable improvements are made to upgrade the safety of such a facility;

(ii) The results of past practices in order to determine whether any intervention is needed for reasons of radiation protection bearing in mind that the reduction in detriment resulting from the reduction in dose should be sufficient to justify the harm and the costs, including the social costs, of the intervention.

Article 13. Siting of proposed facilities

1. Each Contracting Party shall take the appropriate steps to ensure that procedures are established and implemented for a proposed radioactive waste management facility:

(i) To evaluate all relevant site-related factors likely to affect the safety of such a facility during its operating lifetime as well as that of a disposal facility after closure;

(ii) To evaluate the likely safety impact of such a facility on individuals, society and the environment, taking into account possible evolution of the site conditions of disposal facilities after closure;

(iii) To make information on the safety of such a facility available to members of the public;

(iv) To consult Contracting Parties in the vicinity of such a facility, insofar as they are likely to be affected by that facility, and provide them, upon their request, with general data relating to the facility to enable them to evaluate the likely safety impact of the facility upon their territory.

2. In so doing, each Contracting Party shall take the appropriate steps to ensure that such facilities shall not have unacceptable effects on other Contracting Parties by being sited in accordance with the general safety requirements of article 11.

Article 14. Design and construction of facilities

Each Contracting Party shall take the appropriate steps to ensure that:

(i) The design and construction of a radioactive waste management facility provide for suitable measures to limit possible radiological impacts on individuals, society and the environment, including those from discharges or uncontrolled releases;

(ii) At the design stage, conceptual plans and, as necessary, technical provisions for the decommissioning of a radioactive waste management facility other than a disposal facility are taken into account;

(iii) At the design stage, technical provisions for the closure of a disposal facility are prepared;

(iv) The technologies incorporated in the design and construction of a radioactive waste management facility are supported by experience, testing or analysis.

Article 15. Assessment of safety of facilities

Each Contracting Party shall take the appropriate steps to ensure that:

(i) Before construction of a radioactive waste management facility, a systematic safety assessment and an environmental assessment appropriate to the hazard presented by the facility and covering its operating lifetime shall be carried out;

(ii) In addition, before construction of a disposal facility, a systematic safety assessment and an environmental assessment for the period following closure shall be carried out and the results evaluated against the criteria established by the regulatory body;

(iii) Before the operation of a radioactive waste management facility, updated and detailed versions of the safety assessment and of the environmental assessment shall be prepared when deemed necessary to complement the assessments referred to in paragraph (i).

Article 16. Operation of facilities

Each Contracting Party shall take the appropriate steps to ensure that:

(i) The licence to operate a radioactive waste management facility is based upon appropriate assessments as specified in article 15 and is conditional on the completion of a commissioning programme demonstrating that the facility, as constructed, is consistent with design and safety requirements;

(ii) Operational limits and conditions, derived from tests, operational experience and the assessments as specified in article 15 are defined and revised as necessary;

(iii) Operation, maintenance, monitoring, inspection and testing of a radioactive waste management facility are conducted in accordance with established procedures. For a disposal facility the results thus obtained shall be used to verify and to review the validity of assumptions made and to update the assessments as specified in article 15 for the period after closure;

(iv) Engineering and technical support in all safety-related fields are available throughout the operating lifetime of a radioactive waste management facility;

(v) Procedures for characterization and segregation of radioactive waste are applied;

(vi) Incidents significant to safety are reported in a timely manner by the holder of the licence to the regulatory body;

(vii) Programmes to collect and analyse relevant operating experience are established and the results are acted upon, where appropriate;

(viii) Decommissioning plans for a radioactive waste management facility other than a disposal facility are prepared and updated, as necessary, using information obtained during the operating lifetime of that facility, and are reviewed by the regulatory body;

(ix) Plans for the closure of a disposal facility are prepared and updated, as necessary, using information obtained during the operating lifetime of that facility and are reviewed by the regulatory body.

Article 17. Institutional measures after closure

Each Contracting Party shall take the appropriate steps to ensure that after closure of a disposal facility:

(i) Records of the location, design and inventory of that facility required by the regulatory body are preserved;

(ii) Active or passive institutional controls such as monitoring or access restrictions are carried out, if required; and

(iii) If, during any period of active institutional control, an unplanned release of radioactive materials into the environment is detected, intervention measures are implemented, if necessary.

CHAPTER 4. GENERAL SAFETY PROVISIONS

Article 18. Implementing measures

Each Contracting Party shall take, within the framework of its national law, the legislative, regulatory and administrative measures and other steps necessary for implementing its obligations under this Convention.

Article 19. Legislative and regulatory framework

1. Each Contracting Party shall establish and maintain a legislative and regulatory framework to govern the safety of spent fuel and radioactive waste management.

2. This legislative and regulatory framework shall provide for:

(i) The establishment of applicable national safety requirements and regulations for radiation safety;

(ii) A system of licensing of spent fuel and radioactive waste management activities;

(iii) A system of prohibition of the operation of a spent fuel or radioactive waste management facility without a licence;

(iv) A system of appropriate institutional control, regulatory inspection and documentation and reporting;

(v) The enforcement of applicable regulations and of the terms of the licences;

(vi) A clear allocation of responsibilities of the bodies involved in the different steps of spent fuel and of radioactive waste management.

3. When considering whether to regulate radioactive materials as radioactive waste, Contracting Parties shall take due account of the objectives of this Convention.

Article 20. Regulatory body

1. Each Contracting Party shall establish or designate a regulatory body entrusted with the implementation of the legislative and regulatory framework referred to in article 19, and provided with adequate authority, competence and financial and human resources to fulfil its assigned responsibilities.

2. Each Contracting Party, in accordance with its legislative and regulatory framework, shall take the appropriate steps to ensure the effective independence of the regulatory functions from other functions where organizations are involved in both spent fuel or radioactive waste management and in their regulation.

Article 21. Responsibility of the licence holder

1. Each Contracting Party shall ensure that prime responsibility for the safety of spent fuel or radioactive waste management rests with the holder of the relevant licence and shall take the appropriate steps to ensure that each such licence holder meets its responsibility.

2. If there is no such licence holder or other responsible party, the responsibility rests with the Contracting Party which has jurisdiction over the spent fuel or over the radioactive waste.

Article 22. Human and financial resources

Each Contracting Party shall take the appropriate steps to ensure that:

(i) Qualified staff are available as needed for safety-related activities during the operating lifetime of a spent fuel and a radioactive waste management facility;

(ii) Adequate financial resources are available to support the safety of facilities for spent fuel and radioactive waste management during their operating lifetime and for decommissioning;

(iii) Financial provision is made which will enable the appropriate institutional controls and monitoring arrangements to be continued for the period deemed necessary following the closure of a disposal facility.

Article 23. Quality assurance

Each Contracting Party shall take the necessary steps to ensure that appropriate quality assurance programmes concerning the safety of spent fuel and radioactive waste management are established and implemented.

Article 24. Operational radiation protection

1. Each Contracting Party shall take the appropriate steps to ensure that during the operating lifetime of a spent fuel or radioactive waste management facility:

(i) The radiation exposure of the workers and the public caused by the facility shall be kept as low as reasonably achievable, economic and social factors being taken into account;

(ii) No individual shall be exposed, in normal situations, to radiation doses which exceed national prescriptions for dose limitation which have due regard to internationally endorsed standards on radiation protection; and

(iii) Measures are taken to prevent unplanned and uncontrolled releases of radioactive materials into the environment.

2. Each Contracting Party shall take appropriate steps to ensure that discharges shall be limited:

(i) To keep exposure to radiation as low as reasonably achievable, economic and social factors being taken into account; and

(ii) So that no individual shall be exposed, in normal situations, to radiation doses which exceed national prescriptions for dose limitation which have due regard to internationally endorsed standards on radiation protection.

3. Each Contracting Party shall take appropriate steps to ensure that during the operating lifetime of a regulated nuclear facility, in the event that an unplanned or uncontrolled release of radioactive materials into the environment occurs, appropriate corrective measures are implemented to control the release and mitigate its effects.

Article 25. Emergency preparedness

1. Each Contracting Party shall ensure that before and during operation of a spent fuel or radioactive waste management facility there are appropriate on-site and, if necessary, off-site emergency plans. Such emergency plans should be tested at an appropriate frequency.

2. Each Contracting Party shall take the appropriate steps for the preparation and testing of emergency plans for its territory insofar as it is likely to be affected in the event of a radiological emergency at a spent fuel or radioactive waste management facility in the vicinity of its territory.

Article 26. Decommissioning

Each Contracting Party shall take the appropriate steps to ensure the safety of decommissioning of a nuclear facility. Such steps shall ensure that:

(i) Qualified staff and adequate financial resources are available;

(ii) The provisions of article 24 with respect to operational radiation protection, discharges and unplanned and uncontrolled releases are applied;

(iii) The provisions of article 25 with respect to emergency preparedness are applied; and

(iv) Records of information important to decommissioning are kept.

CHAPTER 5. MISCELLANEOUS PROVISIONS

Article 27. Transboundary movement

1. Each Contracting Party involved in transboundary movement shall take the appropriate steps to ensure that such movement is undertaken in a manner consistent with the provisions of this Convention and relevant binding international instruments.

In so doing:

(i) A Contracting Party which is a State of origin shall take the appropriate steps to ensure that transboundary movement is authorized and takes place only with the prior notification and consent of the State of destination;

(ii) Transboundary movement through States of transit shall be subject to those international obligations which are relevant to the particular modes of transport utilized;

(iii) A Contracting Party which is a State of destination shall consent to a transboundary movement only if it has the administrative and technical capacity, as well as the regulatory structure, needed to manage the spent fuel or the radioactive waste in a manner consistent with this Convention;

(iv) A Contracting Party which is a State of origin shall authorize a transboundary movement only if it can satisfy itself in accordance with the consent of the State of destination that the requirements of subparagraph (iii) are met prior to transboundary movement;

(v) A Contracting Party which is a State of origin shall take the appropriate steps to permit re-entry into its territory, if a transboundary movement is not or

cannot be completed in conformity with this article, unless an alternative safe arrangement can be made.

2. A Contracting Party shall not license the shipment of its spent fuel or radioactive waste to a destination south of latitude 60 degrees South for storage or disposal.

3. Nothing in this Convention prejudices or affects:

(i) The exercise, by ships and aircraft of all States, of maritime, river and air navigation rights and freedoms, as provided for in international law;

(ii) Rights of a Contracting Party to which radioactive waste is exported for processing to return, or provide for the return of, the radioactive waste and other products after treatment to the State of origin;

(iii) The right of a Contracting Party to export its spent fuel for reprocessing;

(iv) Rights of a Contracting Party to which spent fuel is exported for reprocessing to return, or provide for the return of, radioactive waste and other products resulting from reprocessing operations to the State of origin.

Article 28. Disused sealed sources

1. Each Contracting Party shall, in the framework of its national law, take the appropriate steps to ensure that the possession, remanufacturing or disposal of disused sealed sources takes place in a safe manner.

2. A Contracting Party shall allow for re-entry into its territory of disused sealed sources if, in the framework of its national law, it has accepted that they be returned to a manufacturer qualified to receive and possess the disused sealed sources.

CHAPTER 6. MEETINGS OF THE CONTRACTING PARTIES

Article 29. Preparatory meeting

1. A preparatory meeting of the Contracting Parties shall be held not later than six months after the date of entry into force of this Convention.

2. At this meeting, the Contracting Parties shall:

(i) Determine the date for the first review meeting as referred to in article 30. This review meeting shall be held as soon as possible, but not later than thirty months after the date of entry into force of this Convention;

(ii) Prepare and adopt by consensus Rules of Procedure and Financial Rules;

(iii) Establish in particular and in accordance with the Rules of Procedure:

(*a*) Guidelines regarding the form and structure of the national reports to be submitted pursuant to article 32;

(*b*) A date for the submission of such reports;

(*c*) The process for reviewing such reports.

3. Any State or regional organization of an integration or other nature which ratifies, accepts, approves, accedes to or confirms this Convention and for

which the Convention is not yet in force, may attend the preparatory meeting as if it were a Party to this Convention.

Article 30. Review meetings

1. The Contracting Parties shall hold meetings for the purpose of reviewing the reports submitted pursuant to article 32.

2. At each review meeting the Contracting Parties:

(i) Shall determine the date for the next such meeting, the interval between review meetings not exceeding three years;

(ii) May review the arrangements established pursuant to paragraph 2 of article 29, and adopt revisions by consensus unless otherwise provided for in the Rules of Procedure. They may also amend the Rules of Procedure and Financial Rules by consensus.

3. At each review meeting each Contracting Party shall have a reasonable opportunity to discuss the reports submitted by other Contracting Parties and to seek clarification of such reports.

Article 31. Extraordinary meetings

An extraordinary meeting of the Contracting Parties shall be held:

(i) If so agreed by a majority of the Contracting Parties present and voting at a meeting; or

(ii) At the written request of a Contracting Party, within six months of this request having been communicated to the Contracting Parties and notification having been received by the secretariat referred to in article 37 that the request has been supported by a majority of the Contracting Parties.

Article 32. Reporting

1. In accordance with the provisions of article 30, each Contracting Party shall submit a national report to each review meeting of Contracting Parties. This report shall address the measures taken to implement each of the obligations of the Convention. For each Contracting Party the report shall also address its:

(i) Spent fuel management policy;

(ii) Spent fuel management practices;

(iii) Radioactive waste management policy;

(iv) Radioactive waste management practices;

(v) Criteria used to define and categorize radioactive waste.

2. This report shall also include:

(i) A list of the spent fuel management facilities subject to this Convention, their location, main purpose and essential features;

(ii) An inventory of spent fuel that is subject to this Convention and that is being held in storage and of that which has been disposed of. This inventory shall contain a description of the material and, if available, give information on its mass and its total activity;

(iii) A list of the radioactive waste management facilities subject to this Convention, their location, main purpose and essential features;

(iv) An inventory of radioactive waste that is subject to this Convention that:

(*a*) Is being held in storage at radioactive waste management and nuclear fuel cycle facilities;

(*b*) Has been disposed of; or

(*c*) Has resulted from past practices.

This inventory shall contain a description of the material and other appropriate information available, such as volume or mass, activity and specific radionuclides;

(v) A list of nuclear facilities in the process of being decommissioned and the status of decommissioning activities at those facilities.

Article 33. Attendance

1. Each Contracting Party shall attend meetings of the Contracting Parties and be represented at such meetings by one delegate, and by such alternates, experts and advisers as it deems necessary.

2. The Contracting Parties may invite, by consensus, any intergovernmental organization which is competent in respect of matters governed by this Convention to attend, as an observer, any meeting, or specific sessions thereof. Observers shall be required to accept in writing, and in advance, the provisions of article 36.

Article 34. Summary reports

The Contracting Parties shall adopt, by consensus, and make available to the public a document addressing issues discussed and conclusions reached during meetings of the Contracting Parties.

Article 35. Languages

1. The languages of meetings of the Contracting Parties shall be Arabic, Chinese, English, French, Russian and Spanish unless otherwise provided in the Rules of Procedure.

2. Reports submitted pursuant to article 32 shall be prepared in the national language of the submitting Contracting Party or in a single designated language to be agreed in the Rules of Procedure. Should the report be submitted in a national language other than the designated language, a translation of the report into the designated language shall be provided by the Contracting Party.

3. Notwithstanding the provisions of paragraph 2, the secretariat, if compensated, will assume the translation of reports submitted in any other language of the meeting into the designated language.

Article 36. Confidentiality

1. The provisions of this Convention shall not affect the rights and obligations of the Contracting Parties under their laws to protect information from dis-

closure. For the purposes of this article, "information" includes, inter alia, information relating to national security or to the physical protection of nuclear materials, information protected by intellectual property rights or by industrial or commercial confidentiality and personal data.

2. When, in the context of this Convention, a Contracting Party provides information identified by it as protected as described in paragraph 1, such information shall be used only for the purposes for which it has been provided and its confidentiality shall be respected.

3. With respect to information relating to spent fuel or radioactive waste falling within the scope of this Convention by virtue of paragraph 3 of article 3, the provisions of this Convention shall not affect the exclusive discretion of the Contracting Party concerned to decide:

(i) Whether such information is classified or otherwise controlled to preclude release;

(ii) Whether to provide information referred to in subparagraph (i) above in the context of the Convention; and

(iii) What conditions of confidentiality are attached to such information if it is provided in the context of this Convention.

4. The content of the debates during the reviewing of the national reports at each review meeting held pursuant article 30 shall be confidential.

Article 37. Secretariat

1. The International Atomic Energy Agency (hereinafter referred to as "the Agency") shall provide the secretariat for the meetings of the Contracting Parties.

2. The secretariat shall:

(i) Convene, prepare and service the meetings of the Contracting Parties referred to in articles 29, 30 and 31;

(ii) Transmit to the Contracting Parties information received or prepared in accordance with the provisions of this Convention.

The costs incurred by the Agency in carrying out the functions referred to in subparagraphs (i) and (ii) above shall be borne by the Agency as part of its regular budget.

3. The Contracting Parties may, by consensus, request the Agency to provide other services in support of meetings of the Contracting Parties. The Agency may provide such services if they can be undertaken within its programme and regular budget. Should this not be possible, the Agency may provide such services if voluntary funding is provided from another source.

CHAPTER 7. FINAL CLAUSES AND OTHER PROVISIONS

Article 38. Resolution of disagreements

In the event of a disagreement between two or more Contracting Parties concerning the interpretation or application of this Convention, the Contracting Parties shall consult within the framework of a meeting of the Contracting Parties

with a view to resolving the disagreement. In the event that the consultations prove unproductive, recourse can be made to the mediation, conciliation and arbitration mechanisms provided for in international law, including the rules and practices prevailing within IAEA.

Article 39. Signature, ratification, acceptance, approval, accession

1. This Convention shall be open for signature by all States at the headquarters of the Agency in Vienna from 29 September 1997 until its entry into force.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After its entry into force, this Convention shall be open for accession by all States.

4. (i) This Convention shall be open for signature subject to confirmation, or accession by regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.

(ii) In matters within their competence, such organizations shall, on their own behalf, exercise the rights and fulfil the responsibilities which this Convention attributes to States Parties.

(iii) When becoming party to this Convention, such an organization shall communicate to the depositary referred to in article 43 a declaration indicating which States are members thereof, which articles of this Convention apply to it, and the extent of its competence in the field covered by those articles.

(iv) Such an organization shall not hold any vote additional to those of its member States.

5. Instruments of ratification, acceptance, approval, accession or confirmation shall be deposited with the depositary.

Article 40. Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit with the depositary of the twenty-fifth instrument of ratification, acceptance or approval, including the instruments of fifteen States each having an operational nuclear power plant.

2. For each State or regional organization of an integration or other nature which ratifies, accepts, approves, accedes to or confirms this Convention after the date of deposit of the last instrument required to satisfy the conditions set forth in paragraph 1, this Convention shall enter into force on the ninetieth day after the date of deposit with the depositary of the appropriate instrument by such a State or organization.

Article 41. Amendments to the Convention

1. Any Contracting Party may propose an amendment to this Convention. Proposed amendments shall be considered at a review meeting or at an extraordinary meeting.

2. The text of any proposed amendment and the reasons for it shall be provided to the depositary, who shall communicate the proposal to the Contracting Parties at least ninety days before the meeting for which it is submitted for consideration. Any comments received on such a proposal shall be circulated by the depositary to the Contracting Parties.

3. The Contracting Parties shall decide after consideration of the proposed amendment whether to adopt it by consensus, or, in the absence of consensus, to submit it to a Diplomatic Conference. A decision to submit a proposed amendment to a Diplomatic Conference shall require a two-thirds majority vote of the Contracting Parties present and voting at the meeting, provided that at least one half of the Contracting Parties are present at the time of voting.

4. The Diplomatic Conference to consider and adopt amendments to this Convention shall be convened by the depositary and held no later than one year after the appropriate decision taken in accordance with paragraph 3 of this article. The Diplomatic Conference shall make every effort to ensure amendments are adopted by consensus. Should this not be possible, amendments shall be adopted with a two-thirds majority of all Contracting Parties.

5. Amendments to this Convention adopted pursuant to paragraphs 3 and 4 above shall be subject to ratification, acceptance, approval or confirmation by the Contracting Parties and shall enter into force for those Contracting Parties which have ratified, accepted, approved or confirmed them on the ninetieth day after the receipt by the depositary of the relevant instruments of at least two thirds of the Contracting Parties. For a Contracting Party which subsequently ratifies, accepts, approves or confirms the said amendments, the amendments will enter into force on the ninetieth day after that Contracting Party has deposited its relevant instrument.

Article 42. Denunciation

1. Any Contracting Party may denounce this Convention by written notification to the depositary.

2. Denunciation shall take effect one year following the date of the receipt of the notification by the depositary or on such later date as may be specified in the notification.

Article 43. Depositary

1. The Director General of the Agency shall be the depositary of this Convention.

2. The depositary shall inform the Contracting Parties of:

(i) The signature of this Convention and of the deposit of instruments of ratification, acceptance, approval, accession or confirmation in accordance with article 39;

(ii) The date on which the Convention enters into force, in accordance with article 40;

(iii) The notifications of denunciation of the Convention and the date thereof, made in accordance with article 42;

(iv) The proposed amendments to this Convention submitted by Contracting Parties, the amendments adopted by the relevant Diplomatic Conference or by the meeting of the Contracting Parties, and the date of entry into force of the said amendments, in accordance with article 41.

Article 44. Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary, who shall send certified copies thereof to the Contracting Parties.

IN WITNESS WHEREOF, the undersigned, being duly authorized to that effect, have signed this Convention.

DONE at Vienna on the day of 199 .

NOTES

[1]United Nations document A/51/869.

[2]Not yet in force.

[3]United Nations document SPLOS/25; and depositary notification C.N.495.1998.TREATIES-5 of 7 October 1998 (proces-verbal of rectification of the French authentic text.)

[4]Not yet in force.

[5]Depositary notification C.N.473.1997.TREATIES-2 of 15 December 1997.

[6]Entered into force on 1 March 1999.

[7]Decision 1/CP.3 of the Conference of the Parties to the Convention at its third session.

[8]Not yet in force.

[9]General Assembly resolution 52/164, annex.

[10]Not yet in force.

[11]Not yet in force. In accordance with article XIII, paragraph 4, of the Convention, the new text will come into force with respect to all Contracting Parties as from the thirtieth day after acceptance by two thirds of the Contracting Parties.

[12]*International Legal Materials*, vol. XXXVI, No. 6 (November 1997).

[13]Not yet in force.

[14]INFCIRC/566.

[15]Not yet in force.

[16]INFCIRC/567.

[17]Not yet in force.

[18]INFCIRC/546; see also *International Legal Materials*, vol. XXXVI, No. 6 (November 1997).

[19]Entered into force on 18 June 2001.