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

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

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. International Cocoa Agreement. Geneva, 25 June 2010*

Preamble

The Parties to the Agreement,

(*a*) *Recognizing* the contribution of the cocoa sector to poverty alleviation and the achievement of the internationally agreed development goals, including the Millennium Development Goals (MDGs);

(*b*) *Recognizing* the importance of cocoa and the cocoa trade for the economies of developing countries, as a source of income for their populations, and recognizing the key contribution of the cocoa trade to their export earnings and to the formulation of social and economic development programmes;

(*c*) *Recognizing* the importance of the cocoa sector to the livelihoods of millions of people, particularly in developing countries where small-scale farmers rely on cocoa production as a direct source of income;

(*d*) *Recognizing* that close international cooperation on cocoa matters and continuing dialogue between all stakeholders in the cocoa value chain may contribute to the sustainable development of the world cocoa economy;

(*e*) *Recognizing* the importance of strategic partnerships between exporting and importing Members to ensure the achievement of a sustainable cocoa economy;

(*f*) *Recognizing* the need to ensure the transparency of the international cocoa market, for the benefit of both producers and consumers;

(*g*) *Recognizing* the contribution of the previous International Cocoa Agreements of 1972, 1975, 1980, 1986, 1993, and 2001 to the development of the world cocoa economy;

Hereby agree the following;

* Adopted on 25 June 2010 by the United Nations Cocoa Conference held in Geneva under the auspices of the United Nations Conference for Trade and Development.

Chapter I. Objectives

Article 1. Objectives

With a view to strengthening the global cocoa sector, supporting its sustainable development and increasing the benefits to all stakeholders, the objectives of the Seventh International Cocoa Agreement are:

(*a*) To promote international cooperation in the world cocoa economy;

(*b*) To provide an appropriate framework for discussion on all cocoa matters among governments, and with the private sector;

(*c*) To contribute to the strengthening of the national cocoa economies of Member countries, through the preparation, development and evaluation of appropriate projects to be submitted to the relevant institutions for financing and implementation and seeking finance for projects that benefit Members and the world cocoa economy;

(*d*) To strive towards obtaining fair prices leading to equitable economic returns to both producers and consumers in the cocoa value chain, and to contribute to a balanced development of the world cocoa economy in the interest of all Members;

(*e*) To promote a sustainable cocoa economy in economic, social and environmental terms;

(*f*) To encourage research and the implementation of its findings through the promotion of training and information programmes leading to the transfer to Members of technologies suitable for cocoa;

(*g*) To promote transparency in the world cocoa economy, and in particular in the cocoa trade, through the collection, analysis and dissemination of relevant statistics and the undertaking of appropriate studies, as well as to promote the elimination of trade barriers;

(*h*) To promote and to encourage consumption of chocolate and cocoa-based products in order to increase demand for cocoa, inter alia through the promotion of the positive attributes of cocoa, including health benefits, in close cooperation with the private sector;

(*i*) To encourage Members to promote cocoa quality and to develop appropriate food safety procedures in the cocoa sector;

(*j*) To encourage Members to develop and implement strategies to enhance the capacity of local communities and small-scale farmers to benefit from cocoa production and thereby contribute to poverty alleviation;

(*k*) To facilitate the availability of information on financial tools and services that can assist cocoa producers, including access to credit and approaches to managing risk.

Chapter II. Definitions

Article 2. Definitions

For the purposes of this Agreement:

1. *Cocoa* means cocoa beans and cocoa products;

2. *Fine or flavour cocoa* is cocoa recognized for its unique flavour and colour, and produced in countries designated in annex C of this Agreement;

3. *Cocoa products* means products made exclusively from cocoa beans, such as cocoa paste/liquor, cocoa butter, unsweetened cocoa powder, cocoa cake and cocoa nibs;

4. *Chocolate and chocolate products* are products made from cocoa beans which comply with the *Codex Alimentarius* standard for chocolate and chocolate products;

5. *Stocks of cocoa beans* means all dry cocoa beans that can be identified as at the last day of the cocoa year (30 September), irrespective of location, ownership or intended use;

6. *Cocoa year* means the period of 12 months from 1 October to 30 September inclusive;

7. *Organization* means the International Cocoa Organization referred to in article 3;

8. *Council* means the International Cocoa Council referred to in article 6;

9. *Contracting Party* means a Government, the European Union or an intergovernmental organization as provided for in article 4, which has consented to be bound by this Agreement provisionally or definitively;

10. *Member* means a Contracting Party as defined above;

11. *Importing country* or *importing Member* means a country or a Member respectively whose imports of cocoa, expressed in terms of beans, exceed its exports;

12. *Exporting country* or *exporting Member* means a country or a Member respectively whose exports of cocoa, expressed in terms of beans, exceed its imports. However, a cocoa-producing country whose imports of cocoa, expressed in bean equivalent terms, exceed its exports but whose production of cocoa beans exceeds its imports or whose production exceeds its apparent domestic cocoa consumption* may, if it so chooses, be an exporting Member;

13. *Export of cocoa* means any cocoa which leaves the customs territory of any country and *import of cocoa* means any cocoa which enters the customs territory of any country, provided that, for the purposes of these definitions, customs territory shall, in the case of a Member which comprises more than one customs territory, be deemed to refer to the combined customs territories of that Member;

14. *A sustainable cocoa economy* implies an integrated value chain in which all stakeholders develop and promote appropriate policies to achieve levels of production, processing and consumption that are economically viable, environmentally sound and socially responsible for the benefit of present and future generations, with the aim of improving productivity and profitability in the cocoa value chain for all stakeholders concerned, in particular for the smallholder producers;

15. *Private sector* comprises all private entities which have main activities in the cocoa sector, including farmers, traders, processors, manufacturers and research institutes. In the framework of this Agreement, the private sector also comprises public enterprises, agencies and institutions which, in certain countries, fulfil roles that are performed by private entities in other countries;

* Calculated as grindings of cocoa beans plus net imports of cocoa products and of chocolate and chocolate products in beans equivalent.

16. *Indicator price* is the representative indicator of the international price of cocoa used for the purposes of this Agreement and computed in accordance with the provisions of article 33;

17. *Special Drawing Right (SDR)* means the Special Drawing Right of the International Monetary Fund;

18. *Tonne* means a mass of 1,000 kilograms or 2,204.6 pounds and pound means 453.597 grams;

19. *Simple distributed majority vote* means a majority of votes cast by exporting Members and a majority of votes cast by importing Members, counted separately;

20. *Special vote* means two thirds of the votes cast by exporting Members and two thirds of the votes cast by importing Members, counted separately, on condition that at least five exporting Members and a majority of importing Members are present;

21. *Entry into force* means, except when qualified, the date on which this Agreement first enters into force, whether provisionally or definitively.

Chapter III. The International Cocoa Organization (Icco)

Article 3. Headquarters and structure of the International Cocoa Organization

1. The International Cocoa Organization established by the International Cocoa Agreement, 1972, shall continue in being and shall administer the provisions and supervise the operation of this Agreement.

2. The headquarters of the Organization shall always be located in the territory of a Member.

3. The headquarters of the Organization shall be in London unless the Council decides otherwise.

4. The Organization shall function through:

(*a*) The International Cocoa Council, which is the highest authority of the Organization;

(*b*) The subsidiary bodies of the Council, comprising the Administration and Finance Committee, the Economics Committee, the Consultative Board on the World Cocoa Economy, and any other committees established by the Council; and

(*c*) The Secretariat.

Article 4. Membership in the Organization

1. Each Contracting Party shall be a Member of the Organization.

2. There shall be two categories of Members of the Organization, namely:

(*a*) Exporting Members; and

(*b*) Importing Members.

3. A Member may change its category on such conditions as the Council may establish.

4. Two or more Contracting Parties may, by appropriate notification to the Council and to the Depositary, which will take effect on a date to be specified by the Contracting

Parties concerned and on conditions agreed by the Council, declare that they are participating in the Organization as a Member group.

5. Any reference in this Agreement to "a Government" or "Governments" shall be construed as including the European Union and any intergovernmental organization having comparable responsibilities in respect of the negotiation, conclusion and implementation of international agreements, in particular commodity agreements. Accordingly, any reference in this Agreement to signature, ratification, acceptance or approval, or to notification of provisional application or to accession shall, in the case of such intergovernmental organizations, be construed as including a reference to signature, ratification, acceptance or approval, or to notification of provisional application, or to accession, by such intergovernmental organizations.

6. In the case of voting on matters within their competence, such intergovernmental organizations shall vote with a number of votes equal to the total number of votes attributable to their member States in accordance with article 10. In such cases, the member States of such intergovernmental organizations shall not exercise their individual voting rights.

Article 5. Privileges and immunities

1. The Organization shall have legal personality. It shall in particular have the capacity to contract, acquire and dispose of movable and immovable property and to institute legal proceedings.

2. The status, privileges and immunities of the Organization, its Executive Director, its staff, experts and representatives of Members, while in the territory of the host country for the purpose of exercising their functions, shall be governed by the Headquarters' Agreement concluded between the host country and the International Cocoa Organization.

3. The Headquarters' Agreement referred to in paragraph 2 of this article shall be independent of this Agreement. It shall, however, terminate:

(*a*) Pursuant to the provisions of the aforementioned Headquarters' Agreement;

(*b*) In the event of the headquarters of the Organization being moved from the territory of the host Government; or

(*c*) In the event of the Organization ceasing to exist.

4. The Organization may conclude with one or more other Members agreements to be approved by the Council relating to such privileges and immunities as may be necessary for the proper functioning of this Agreement.

Chapter IV. The International Cocoa Council

Article 6. Composition of the International Cocoa Council

1. The International Cocoa Council shall consist of all the Members of the Organization.

2. In the meetings of the Council, Members shall be represented by duly accredited delegates.

Article 7. Powers and functions of the Council

1. The Council shall exercise all such powers and perform or arrange for the performance of all such functions as are necessary to carry out the express provisions of this Agreement.

2. The Council shall not have the power, and shall not be taken to have been authorized by the Members, to incur any obligation outside the scope of this Agreement; in particular, it shall not have the capacity to borrow money. In exercising its capacity to contract, the Council shall incorporate in its contracts the terms of this provision and of article 23 in such a way as to bring them to the notice of the other parties entering into contracts with the Council, but any failure to incorporate such terms shall not invalidate such a contract or render it ultra vires the Council.

3. The Council shall adopt such rules and regulations as are necessary to carry out the provisions of this Agreement and are consistent therewith, including its rules of procedure and those of its committees, and the financial and staff regulations of the Organization. The Council may, in its rules of procedure, provide for a procedure whereby it may, without meeting, decide specific questions.

4. The Council shall keep such records as are required for the performance of its functions under this Agreement, and such other records as it considers appropriate.

5. The Council may set up any working group(s) as appropriate to assist it in carrying out its task.

Article 8. Chairman and Vice-Chairman of the Council

1. The Council shall elect a Chairman and a Vice-Chairman for each cocoa year, who shall not be paid by the Organization.

2. Both the Chairman and the Vice-Chairman shall be elected from among the representatives of the exporting Members or from among the representatives of the importing Members. These offices shall alternate each cocoa year between the two categories.

3. In the temporary absence of both the Chairman and the Vice-Chairman or the permanent absence of one or both of them, the Council may elect new officers from among the representatives of the exporting Members or from among the representatives of the importing Members, as appropriate, on a temporary or permanent basis as may be required.

4. Neither the Chairman nor any other officer presiding at meetings of the Council shall vote. A member of his/her delegation may exercise the voting rights of the Member which he or she represents.

Article 9. Sessions of the Council

1. As a general rule, the Council shall hold one regular session in each half of the cocoa year.

2. The Council shall meet in special session whenever it so decides or at the request of:

(*a*) Any five Members;

(*b*) At least two Members having at least 200 votes;

(*c*) The Executive Director, for the purposes of articles 22 and 59.

3. Notice of sessions shall be given at least 30 calendar days in advance, except in case of emergency, where notice shall be at least 15 days.

4. Sessions shall normally be held at the headquarters of the Organization unless the Council decides otherwise. If, on the invitation of any Member, the Council decides to meet elsewhere than at the headquarters of the Organization, that Member shall pay the additional costs involved, as defined in the administrative rules of the Organization.

Article 10. Votes

1. The exporting Members shall together hold 1,000 votes and the importing Members shall together hold 1,000 votes, distributed within each category of Members—that is, exporting and importing Members, respectively—in accordance with the following paragraphs of this article.

2. For each cocoa year, the votes of exporting Members shall be distributed as follows: each exporting Member shall have five basic votes. The remaining votes shall be divided among all the exporting Members in proportion to the average volume of their respective exports of cocoa in the preceding three cocoa years for which data have been published by the Organization in its latest issue of the *Quarterly Bulletin of Cocoa Statistics*. For this purpose, exports shall be calculated as net exports of cocoa beans plus net exports of cocoa products, converted to beans equivalent using the conversion factors as specified in article 34.

3. For each cocoa year, the votes of importing Members shall be distributed among all importing Members in proportion to the average volume of their respective imports of cocoa in the preceding three cocoa years for which data have been published by the Organization in its latest issue of the *Quarterly Bulletin of Cocoa Statistics*. For this purpose, imports shall be calculated as net imports of cocoa beans plus gross imports of cocoa products, converted to beans equivalent using the conversion factors as specified in article 34. No Member country shall have less than five votes. Hence voting rights of Member countries with above the minimum number of votes shall be redistributed among Members with below the minimum number of votes.

4. If, for any reason, difficulties should arise in the determination or the updating of the statistical basis for the calculation of votes in accordance with the provisions of paragraphs 2 and 3 of this article, the Council may decide on a different statistical basis for the calculation of votes.

5. No Member except those mentioned in paragraphs 4 and 5 of article 4 shall have more than 400 votes. Any votes above this figure arising from the calculations in paragraphs 2, 3 and 4 of this article shall be redistributed among the other Members on the basis of those paragraphs.

6. When the membership in the Organization changes or when the voting rights of a Member are suspended or restored under any provision of this Agreement, the Council shall provide for the redistribution of votes in accordance with this article. The European Union or any intergovernmental Organization as defined in article 4 shall hold votes as a single Member according to the procedure set out in paragraphs 2 or 3 of this article.

7. There shall be no fractional votes.

Article 11. Voting procedure of the Council

1. Each Member shall be entitled to cast the number of votes it holds and no Member shall be entitled to divide its votes. A Member may, however, cast differently from such votes any votes which it is authorized to cast under paragraph 2 of this article.

2. By written notification to the Chairman of the Council, any exporting Member may authorize any other exporting Member, and any importing Member may authorize any other importing Member, to represent its interests and to cast its votes at any meeting of the Council. In this case the limitation provided for in paragraph 5 of article 10 shall not apply.

3. A Member authorized by another Member to cast the votes held by the authorizing Member under article 10 shall cast such votes in accordance with the instructions of the authorizing Member.

Article 12. Decisions of the Council

1. The Council shall endeavour to take all decisions and to make all recommendations by consensus. If consensus cannot be reached, the Council shall take decisions and make recommendations by a special vote, according to the following procedures:

(*a*) If the majority required by the special vote is not obtained because of the negative vote of more than three exporting or more than three importing Members, the proposal shall be considered as rejected;

(*b*) If the majority required by the special vote is not obtained because of the negative vote of three or less exporting or three or less importing Members, the proposal shall be put to a vote again within 48 hours; and

(*c*) If the majority required by the special vote is again not obtained, the proposal shall be considered as rejected.

2. In arriving at the number of votes necessary for any of the decisions or recommendations of the Council, votes of Members abstaining shall not be taken into consideration.

3. Members are committed to accept as binding all decisions of the Council under the provisions of this Agreement.

Article 13. Cooperation with other organizations

1. The Council shall make whatever arrangements are appropriate for consultation or cooperation with the United Nations and its organs, in particular the United Nations Conference on Trade and Development, and with the Food and Agriculture Organization of the United Nations and such other specialized agencies of the United Nations and intergovernmental organizations as may be appropriate.

2. The Council, bearing in mind the particular role of the United Nations Conference on Trade and Development in international commodity trade, shall, as appropriate, keep that organization informed of its activities and programmes of work.

3. The Council may also make whatever arrangements are appropriate for maintaining effective contact with international organizations of cocoa producers, traders and manufacturers.

4. The Council shall seek to involve the international financial agencies and other parties with an interest in the world cocoa economy in its work on cocoa production and consumption policy.

5. The Council may seek to cooperate with other relevant experts in cocoa matters.

Article 14. Invitation and admission of observers

1. The Council may invite any non-Member State to attend any of its meetings as an observer.

2. The Council may also invite any of the organizations referred to in article 13 to attend any of its meetings as an observer.

3. The Council may also invite non-governmental organizations having relevant expertise in aspects of the cocoa sector, as observers.

4. For each of its sessions, the Council shall decide on the attendance of observers, including, on an ad hoc basis, non-governmental organizations having relevant expertise in aspects of the cocoa sector, in conformity with the conditions set out in the administrative rules of the Organization.

Article 15. Quorum

1. The quorum for the opening meeting of any session of the Council shall be constituted by the presence of at least five exporting Members and a majority of importing Members, provided that such Members together hold in each category at least two thirds of the total votes of the Members in that category.

2. If there is no quorum in accordance with paragraph 1 of this article on the day appointed for the opening meeting of any session, on the second day, and throughout the remainder of the session, the quorum for the opening session shall be constituted by the presence of exporting and importing Members holding a simple majority of the votes in each category.

3. The quorum for meetings subsequent to the opening meeting of any session pursuant to paragraph 1 of this article shall be that prescribed in paragraph 2 of this article.

4. Representation in accordance with paragraph 2 of article 11 shall be considered as presence.

Chapter V. The Secretariat of the Organization

Article 16. The Executive Director and the staff of the Organization

1. The Secretariat shall consist of the Executive Director and the staff.

2. The Council shall appoint the Executive Director for a period of not more than the duration of the Agreement and its extensions, if any. The rules for selection of candidates and the terms of appointment of the Executive Director shall be fixed by the Council.

3. The Executive Director shall be the chief administrative officer of the Organization and shall be responsible to the Council for the administration and operation of this Agreement in accordance with the decisions of the Council.

4. The staff of the Organization shall be responsible to the Executive Director.

5. The Executive Director shall appoint the staff in accordance with regulations to be established by the Council. In drawing up such regulations, the Council shall have regard to those applying to officials of similar intergovernmental organizations. Staff appointments shall be made insofar as is practicable from exporting and importing Members.

6. Neither the Executive Director nor the staff shall have any financial interest in the cocoa industry, the cocoa trade, cocoa transportation or cocoa publicity.

7. In the performance of their duties, the Executive Director and the staff shall neither seek nor receive instructions from any Member or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization. Each Member undertakes to respect the exclusively international character of the responsibilities of the Executive Director and the staff and not to seek to influence them in the discharge of their responsibilities.

8. No information concerning the operation or administration of this Agreement shall be revealed by the Executive Director or the staff of the Organization, except as may be authorized by the Council or as is necessary for the proper discharge of their duties under this Agreement.

Article 17. Work programme

1. At the first session of the Council, after the entry into force of this agreement, the Executive Director shall submit a five-year strategic plan for review and approval by the Council. One year before the expiry of the five-year strategic plan, the Executive Director shall present a new draft of the five-year strategic plan to the Council.

2. At its last session of each cocoa year, and on the recommendation of the Economics Committee, the Council shall adopt a work programme for the Organization for the coming year prepared by the Executive Director. The work programme shall include projects, initiatives and activities to be undertaken by the Organization. The Executive Director shall implement the work programme.

3. During its last meeting of each cocoa year, the Economics Committee shall evaluate the implementation of the work programme for the current year on the basis of a report by the Executive Director. The Economics Committee shall report its findings to the Council.

Article 18. Annual report

The Council shall publish an annual report.

Chapter VI. The Administration and Finance Committee

Article 19. Establishment of the Administration and Finance Committee

1. An Administration and Finance Committee is hereby established. The Committee shall:

(*a*) Supervise, on the basis of a budget proposal presented by the Executive Director, the preparation of the draft administrative budget to be submitted to the Council;

(*b*) Carry out any other administrative and financial tasks which the Council assigns to it, including the monitoring of income and expenditure and matters related to the administration of the Organization.

2. The Administration and Finance Committee shall submit recommendations on the above matters to the Council.

3. The Council shall establish rules and regulations of the Administration and Finance Committee.

Article 20. Composition of the Administration and Finance Committee

1. The Administration and Finance Committee shall consist of six exporting Members on a rotational basis and six importing Members.

2. Each Member of the Administration and Finance Committee shall appoint one representative and if it so desires, one or more alternates. Members in each category shall be elected by the Council, on the basis of the votes held in accordance with article 10. Membership shall be for a two-year period, and shall be renewable.

3. The Chairman and Vice-Chairman shall be elected from among the representatives of the Administration and Finance Committee, for a period of two years. The posts of Chairman and Vice-Chairman shall alternate between exporting and importing Members.

Article 21. Meetings of the Administration and Finance Committee

1. The meetings of the Administration and Finance Committee shall be open to all other Members of the Organization as observers.

2. The Administration and Finance Committee shall normally meet at the headquarters of the Organization, unless it decides otherwise. If, on the invitation of any Member, the Administration and Finance Committee meets elsewhere than at the headquarters of the Organization, that Member shall pay the additional costs involved, as defined in the administrative rules of the Organization.

3. The Administration and Finance Committee shall normally meet twice a year and report on its proceedings to the Council.

Chapter VII. Finance

Article 22. Finance

1. There shall be kept an administrative account for the administration of this Agreement. The expenses necessary for the administration of this Agreement shall be brought into the administrative account and shall be met by annual contributions from Members assessed in accordance with article 24. If, however, a Member requests special services, the Council may decide to accede to the request and shall require that Member to pay for them.

2. The Council may establish separate accounts for specific purposes that it may establish in accordance with the objectives of the present Agreement. These accounts shall be financed through voluntary contributions from Members or other bodies.

3. The financial year of the Organization shall be the same as the cocoa year.

4. The expenses of delegations to the Council, to the Administration and Finance Committee, to the Economics Committee and to any of the Committees of the Council or of the Administration and Finance Committee and Economics Committee, shall be met by the Members concerned.

5. If the financial position of the Organization is or appears likely to be insufficient to finance the remainder of the cocoa year, the Executive Director shall call a special session of the Council within 15 days unless the Council is otherwise scheduled to meet within 30 calendar days.

Article 23. Liabilities of Members

A Member's liability to the Council and to other Members is limited to the extent of its obligations regarding contributions specifically provided for in this Agreement. Third parties dealing with the Council shall be deemed to have notice of the provisions of this Agreement regarding the powers of the Council and the obligations of the Members, in particular, paragraph 2 of article 7 and the first sentence of this article.

Article 24. Approval of the administrative budget and assessment of contributions

1. During the second half of each financial year, the Council shall approve the administrative budget of the Organization for the following financial year, and shall assess the contribution of each Member to that budget.

2. The contribution of each Member to the administrative budget for each financial year shall be in the proportion which the number of its votes at the time the administrative budget for that financial year is approved bears to the total votes of all the Members. For the purpose of assessing contributions, the votes of each Member shall be calculated without regard to the suspension of any Member's voting rights and any redistribution of votes resulting therefrom.

3. The initial contribution of any Member joining the Organization after the entry into force of this Agreement shall be assessed by the Council on the basis of the number of votes to be held by that Member and the period remaining in the current financial year, but the assessment made upon other Members for the current financial year shall not be altered.

4. If this Agreement enters into force before the beginning of the first full financial year, the Council shall, at its first session, approve an administrative budget covering the period up to the commencement of the first full financial year.

Article 25. Payment of contributions to the administrative budget

1. Contributions to the administrative budget for each financial year shall be payable in freely convertible currencies, shall be exempt from foreign exchange restrictions and shall become due on the first day of that financial year. Contributions of Members in respect of the financial year in which they join the Organization shall be due on the date on which they become Members.

2. Contributions to the administrative budget approved under paragraph 4 of article 24 shall be payable within three months of the date of assessment.

3. If, at the end of four months after the beginning of the financial year or, in the case of a new Member, three months after the Council has assessed its contribution, a Member

has not paid its full contribution to the administrative budget, the Executive Director shall request that Member to make payment as quickly as possible. If, at the expiration of two months after the request of the Executive Director, that Member has still not paid its contribution, the voting rights of that Member in the Council, the Administration and Finance Committee and the Economics Committee shall be suspended until such time as it has made full payment of the contribution.

4. A Member whose voting rights have been suspended under paragraph 3 of this article shall not be deprived of any of its other rights or relieved of any of its obligations under this Agreement unless the Council decides otherwise. It shall remain liable to pay its contribution and to meet any other financial obligations under this Agreement.

5. The Council shall consider the question of membership of any Member with two years' contributions unpaid, and may decide that this Member shall cease to enjoy the rights of membership and/or cease to be assessed for budgetary purposes. It shall remain liable to meet any other of its financial obligations under this Agreement. By payment of the arrears the Member will regain the rights of membership. Any payments made by Members in arrears will be credited first to those arrears, rather than to current contributions.

Article 26. Audit and publication of accounts

1. As soon as possible, but not later than six months after the close of each financial year, the statement of the Organization's accounts for that financial year and the balance sheet at the close of that financial year under the accounts referred to in article 22 shall be audited. The audit shall be carried out by an independent auditor of recognized standing, to be elected by the Council for each financial year.

2. The terms of appointment of the independent auditor of recognized standing, as well as the intentions and objectives of the audit, shall be laid down in the financial regulations of the Organization. The audited statement of the Organization's accounts and the audited balance sheet shall be presented to the Council at its next regular session for approval.

3. A summary of the audited accounts and balance sheet shall be published.

Chapter VIII. The Economics Committee

Article 27. Establishment of the Economics Committee

1. An Economics Committee is hereby established. The Economics Committee shall:

(*a*) Review cocoa statistics and statistical analyses of cocoa production and consumption, stocks and grindings, international trade and cocoa prices;

(*b*) Examine analyses of market trends and of other factors influencing such trends, with particular regard to cocoa supply and demand, including the effect of the use of cocoa butter substitutes on consumption and on the international cocoa trade;

(*c*) Analyse information on market access for cocoa and cocoa products in producing and consuming countries including information on tariff and non-tariff barriers as

well as the activities undertaken by Members with the view to promoting the elimination of trade barriers;

(*d*) Examine and recommend to the Council projects for funding by the Common Fund for Commodities (CFC) or other donor agencies;

(*e*) Address issues regarding the economic dimension of sustainable development in the cocoa economy;

(*f*) Review the draft annual work programme of the Organization in cooperation with the Administration and Finance Committee as appropriate;

(*g*) Prepare international cocoa conferences and seminars, at the request of the Council; and

(*h*) Deal with any other matters as approved by the Council.

2. The Economics Committee shall submit recommendations on the above matters to the Council.

3. The Council shall establish the rules and regulations of the Economics Committee.

Article 28. Composition of the Economics Committee

1. The Economics Committee shall be open to all Members of the Organization.

2. The Chairman and the Vice-Chairman of the Economics Committee shall be elected from among the Members for a period of two years. The posts of Chairman and Vice-Chairman shall alternate between exporting and importing Members.

Article 29. Meetings of the Economics Committee

1. The Economics Committee shall normally meet at the headquarters of the Organization, unless it decides otherwise. If, on the invitation of any Member, the Economics Committee meets elsewhere than at the headquarters of the Organization, that Member shall pay the additional costs involved, as defined in the administrative rules of the Organization.

2. The Economics Committee shall normally meet twice a year coinciding with the sessions of the Council. The Economics Committee shall report on its proceedings to the Council.

Chapter IX. Market transparency

Article 30. Information and market transparency

1. The Organization shall act as a global information centre for the efficient collection, collation, exchange and dissemination of statistical information and studies on all matters relating to cocoa and cocoa products. To this effect, the Organization shall:

(*a*) Maintain up-to-date statistical information on world production, grindings, consumption, exports, re-exports, imports, prices and stocks of cocoa and cocoa products;

(*b*) Request, as appropriate, technical information on the cultivation, marketing, transportation, processing, utilization and consumption of cocoa.

2. The Council may request Members to provide the information related to cocoa which it deems necessary for its functioning, including information on government policies, taxation, national standards, regulations and legislation relating to cocoa.

3. In order to promote market transparency, Members shall, insofar as possible, provide the Executive Director with the relevant statistics within a reasonable time and in as detailed and accurate a manner as is practicable.

4. If a Member fails to supply, or finds difficulty in supplying, within a reasonable time, statistical information required by the Council for the proper functioning of the Organization, the Council may request the Member concerned to explain the reasons for non-compliance. If it is found that assistance is needed in the matter, the Council may offer the necessary measures of support to overcome existing difficulties.

5. The Council shall publish at an appropriate date, but at least twice every cocoa year, projections on cocoa production and cocoa grindings. The Council may use relevant information from other sources in order to follow the evolution of the market as well as assess or evaluate the current and possible future cocoa production and consumption levels. However, the Council may not publish any information likely to disclose the operation of individuals or commercial entities that produce, process or distribute cocoa.

Article 31. Stocks

1. In order to facilitate the assessment of world cocoa stocks with a view to ensuring greater market transparency, each Member shall provide, on a yearly basis, and not later than the end of May, the Executive Director with information on stocks of cocoa beans and cocoa products held in its country, in accordance with Article 30, paragraph 3.

2. The Executive Director shall take the necessary steps to obtain the full cooperation of the private sector in this exercise, whilst fully respecting the issues of commercial confidentiality associated with this information.

3. The Executive Director shall make an annual report to the Economics Committee on the information received on the levels of stocks of cocoa beans and cocoa products worldwide.

Article 32. Cocoa substitutes

1. Members recognize that the use of substitutes may have negative effects on the expansion of cocoa consumption and the development of a sustainable cocoa economy. In this regard, Members shall take full account of the recommendations and decisions of competent international bodies, in particular the provisions of the *Codex Alimentarius*.

2. The Executive Director shall make regular reports to the Economics Committee on the development of the situation. On the basis of these reports, the Economics Committee shall assess the situation and, if necessary, make recommendations to the Council for appropriate decisions.

Article 33. Indicator price

1. For the purposes of this Agreement and, in particular, for monitoring the evolution of the cocoa market, the Executive Director shall compute and publish the ICCO indicator

price for cocoa beans. This price shall be expressed in United States dollars per tonne as well as in Euros, Pounds Sterling and Special Drawing Rights (SDRs) per tonne.

2. The ICCO indicator price shall be the average of the daily quotations for cocoa beans of the nearest three active futures trading months on the London market (NYSE Liffe) and on the New York market (ICE Futures US) at the time of the London close. The London prices shall be converted into United States dollars per tonne by using the current six months forward rate of exchange in London at closing time. The United States dollar-denominated average of the London and New York prices shall be converted into its Euro and Pound Sterling equivalents by using the spot rates of exchange in London at closing time and its SDR equivalent at the appropriate daily official United States dollar/SDR exchange rate published by the International Monetary Fund. The Council shall decide the method of calculation to be used when the quotations on only one of these two cocoa markets are available or when the London Foreign Exchange market is closed. The time for shift to the next three-month period shall be the fifteenth of the month immediately preceding the nearest active maturing month.

3. The Council may decide on any other method of computing the ICCO indicator price if it considers such other method to be more satisfactory than that prescribed in this article.

Article 34. Conversion factors

1. For the purpose of determining the beans equivalent of cocoa products, the following shall be the conversion factors: cocoa butter 1.33; cocoa cake and powder 1.18; cocoa paste/liquor and nibs 1.25. The Council may determine, if necessary, that other products containing cocoa are cocoa products. The conversion factors for cocoa products other than those for which conversion factors are set out in this paragraph shall be fixed by the Council.

2. The Council may revise the conversion factors in paragraph 1 of this article.

Article 35. Scientific research and development

The Council shall encourage and promote scientific research and development in the areas of cocoa production, transportation, processing, marketing and consumption as well as the dissemination and practical application of the results obtained in this field. To this end, the Organization may cooperate with international organizations, research institutions and the private sector.

Chapter X. Market development

Article 36. Market analyses

1. The Economics Committee shall analyse trends and prospects for development in cocoa-producing and -consuming sectors, as well as the movement of stocks and prices, and shall identify any market imbalances at an early stage.

2. At its first session after the start of a new cocoa year, the Economics Committee shall examine annual forecasts of world production and consumption for the next five cocoa years. The forecasts provided shall be reviewed and revised, if necessary, every year.

3. The Economics Committee shall submit detailed reports to each regular session of the Council. On the basis of these reports, the Council will examine the general situation, and in particular will review trends in world supply and demand. The Council may make recommendations to its members on the basis of this review.

4. On the basis of these forecasts, and in order to deal with the problems of market imbalances in the medium and long term, the exporting Members may undertake to coordinate their national production policies.

Article 37. Consumption promotion

1. Members undertake to encourage the consumption of chocolate and the use of cocoa products, improve the quality of products and develop markets for cocoa, including in exporting Member countries. Each Member shall be responsible for the means and methods it employs for that purpose.

2. All Members shall endeavour to remove or reduce substantially domestic obstacles to the expansion of cocoa consumption. In this regard, Members shall regularly provide the Executive Director with information on pertinent domestic regulations and measures and with other information concerning cocoa consumption, including domestic taxes and customs tariffs.

3. The Economics Committee shall establish a programme for the promotion activities of the Organization which may comprise information campaigns, research, capacity-building and studies related to the production and consumption of cocoa. The Organization shall seek the collaboration of the private sector for the implementation of those activities.

4. The promotion activities shall be included in the annual work programme of the Organization and may be financed by resources pledged by Members, non-Members, other organizations and the private sector.

Article 38. Studies, surveys and reports

1. In order to assist Members, the Council shall encourage the preparation of studies, surveys, technical reports and other documents on the economics of cocoa production and distribution, including trends and projections, the impact of governmental measures in exporting and importing countries on the production and consumption of cocoa, the analysis of the cocoa value chain, approaches to managing financial and other risks, sustainability aspects of the cocoa sector, opportunities for expansion of cocoa consumption for traditional and possible new uses, links between cocoa and health and the effects of the operation of this Agreement on exporters and importers of cocoa, including their terms of trade.

2. It may also promote studies likely to contribute to greater market transparency and facilitate the development of a balanced and sustainable world cocoa economy.

3. In order to carry out the provisions of paragraphs 1 and 2 of this article, the Council, upon recommendations of the Economics Committee, may adopt the list of studies, surveys and reports to be included in the annual work programme in conformity with the provisions of article 17 of this Agreement. These activities may be financed either from provisions within the administrative budget or from other sources.

Chapter XI. Fine or flavour cocoa

Article 39. Fine or flavour cocoa

1. The Council shall, at its first session following the entry into force of this Agreement, review annex C of this Agreement and, if necessary, revise it determining the proportions in which the countries listed therein produce and export exclusively or partially fine or flavour cocoa. Thereafter, the Council may at any time during the lifetime of this Agreement review annex C and, if necessary, revise it. The Council shall seek expert advice on this matter, as appropriate. In such cases, the composition of the Panel of Experts should, as far as possible, ensure a balance between experts from importing countries and experts from exporting countries. The Council shall decide on the composition of and on the procedures to be followed by the Panel of Experts.

2. The Economics Committee may make proposals for the Organization to devise and implement a system of statistics on production of and trade in fine or flavour cocoa.

3. Giving due consideration to the importance of fine or flavour cocoa, Members shall examine, and adopt as appropriate, projects relating to fine or flavour cocoa in accordance with the provisions of articles 37 and 43.

Chapter XII. Projects

Article 40. Projects

1. Members may submit project proposals which contribute to the achievement of the objectives of this Agreement and the priority areas for work identified in the five-year strategic plan referred to in paragraph 1 of article 17.

2. The Economics Committee shall examine project proposals and make recommendations to the Council, according to the mechanisms and procedures for submission, appraisal, approval, prioritization and funding of projects, as established by the Council. The Council may, as appropriate, establish mechanisms and procedures for the implementation and monitoring of projects, as well as the wide dissemination of their results.

3. At each meeting of the Economics Committee, the Executive Director shall report on the status of all projects approved by the Council, including those awaiting financing, under implementation or completed. A summary shall be presented to the Council pursuant to paragraph 2 of article 27.

4. As a general rule, the Organization shall act as supervisory body during project execution. The overhead costs incurred by the Organization for the preparation, management, supervision and evaluation of projects shall be included in the total costs of projects. These overhead costs shall not exceed 10 per cent of the total costs of any project.

Article 41. Relationship with the Common Fund for Commodities and other multilateral and bilateral donors

1. The Organization shall take full advantage of the facilities of the Common Fund for Commodities in order to assist in the preparation and financing of projects of interest to the cocoa economy.

2. The Organization shall endeavour to cooperate with other international organizations, as well as with multilateral and bilateral donor agencies, in order to obtain financing for programmes and projects of interest to the cocoa economy as appropriate.

3. Under no circumstances shall the Organization undertake any financial obligations related to projects, either on its own behalf or in the name of Members. No Member of the Organization shall be responsible by reason of its membership of the Organization for any liability arising from borrowing or lending by any other Member or entity in connection with such projects.

Chapter XIII. Sustainable development

Article 42. Standard of living and working conditions

Members shall give consideration to improving the standard of living and working conditions of populations engaged in the cocoa sector, consistent with their stage of development, bearing in mind internationally recognized principles and applicable ILO standards. Furthermore, Members agree that labour standards shall not be used for protectionist trade purposes.

Article 43. Sustainable cocoa economy

1. Members shall make all necessary efforts to accomplish a sustainable cocoa economy, taking into account the sustainable development principles and objectives contained, inter alia, in the Rio Declaration on Environment and Development and in Agenda 21 adopted in Rio de Janeiro in 1992, the United Nations Millennium Declaration adopted in New York in 2000, the Report of the World Summit on Sustainable Development held in Johannesburg in 2002, the 2002 Monterrey Consensus on Financing for Development, and the 2001 Ministerial Declaration on the Doha Development Agenda.

2. The Organization shall, upon request, assist Members to fulfil their goals in the development of a sustainable cocoa economy in accordance with article 1, paragraph (e) and article 2, paragraph 14.

3. The Organization shall serve as a focal point for a permanent dialogue amongst stakeholders as appropriate to foster the development of a sustainable cocoa economy.

4. The Organization shall encourage cooperation between Members through activities which help to ensure a sustainable cocoa economy.

5. The Council shall adopt and periodically review programmes and projects related to a sustainable cocoa economy and in accordance with paragraph 10f this article.

6. The Organization shall actively seek the assistance and support of multilateral and bilateral donors for the execution of programmes, projects and activities aimed at achieving a sustainable cocoa economy.

Chapter XIV. The Consultative Board on the World Cocoa Economy

Article 44. Establishment of the Consultative Board on the World Cocoa Economy

1. A Consultative Board on the World Cocoa Economy (herein after called the Board) is hereby established to encourage the active participation of experts from the private sec-

tor in the work of the Organization and to promote a continuous dialogue among experts from the public and private sectors.

2. The Board shall be an advisory body which advises the Council on issues of general and strategic interest to the cocoa sector, which include:

(*a*) The long-term structural developments in supply and demand;

(*b*) The ways and means of strengthening the position of cocoa farmers, with a view to improving their livelihoods;

(*c*) Proposals to encourage the sustainable production, trade and use of cocoa;

(*d*) The development of a sustainable cocoa economy;

(*e*) The elaboration of the modalities and frameworks for promotion of consumption; and

(*f*) Any other cocoa-related matters within the scope of the Agreement.

3. The Board shall assist the Council in gathering information on production, consumption and stocks.

4. The Board shall submit its recommendations on the above matters to the Council for consideration.

5. The Board may set up ad hoc working groups to assist in fulfilling its mandate provided that their operating costs have no budgetary implications for the Organization.

6. Upon its establishment, the Board shall draw up its own rules and recommend them for adoption by the Council.

Article 45. Composition of the Consultative Board on the World Cocoa Economy

1. The Consultative Board on the World Cocoa Economy shall be composed of experts from all sectors of the cocoa economy, such as:

(*a*) Associations from the trade and industry;

(*b*) National and regional cocoa producer organizations, from both the public and private sectors;

(*c*) National cocoa exporters' organizations and farmers' associations;

(*d*) Cocoa research institutes; and

(*e*) Other private sector associations or institutions having an interest in the cocoa economy.

2. These experts shall act in their personal capacity or on behalf of their respective associations.

3. The Board shall be composed of eight experts from exporting countries and eight experts from importing countries as defined in paragraph 1 of this article. These experts shall be appointed by the Council every two cocoa years. The members of the Board may designate one or more alternates and advisers to be approved by the Council. In the light of the experience of the Board, the Council may increase the number of members of the Board.

4. The Chairman of the Board shall be chosen from among its members. The chairmanship shall alternate between exporting and importing countries every two cocoa years.

Article 46. Meetings of the Consultative Board on the World Cocoa Economy

1. The Consultative Board on the World Cocoa Economy shall normally meet at the headquarters of the Organization, unless the Council decides otherwise. If, on invitation of any Member, the Consultative Board meets elsewhere than at the headquarters of the Organization, that Member shall pay the additional costs involved, as defined in the administrative rules of the Organization.

2. The Board shall normally meet twice a year alongside the regular sessions of the Council. The Board shall report regularly to the Council on its proceedings.

3. The meetings of the Consultative Board on the World Cocoa Economy shall be open to all Members of the Organization as observers.

4. The Board may also invite eminent experts or personalities of high standing in a specific field, from the public and private sectors, including appropriate non-governmental organizations, having relevant expertise in aspects of the cocoa sector, to participate in its work and meetings.

Chapter XV. Relief from obligations and differential and remedial measures

Article 47. Relief from obligations in exceptional circumstances

1. The Council may relieve a Member of an obligation on account of exceptional or emergency circumstances, force majeure or international obligations under the Charter of the United Nations for territories administered under the trusteeship system.

2. The Council, in granting relief to a Member under paragraph 1 of this article, shall state explicitly the terms and conditions on which, and the period for which, the Member is relieved of the obligation and the reasons for which the relief is granted.

3. Notwithstanding the foregoing provisions of this article, the Council shall not grant relief to a Member in respect of the obligation under article 25 to pay contributions, or the consequences of a failure to pay them.

4. The basis for the calculation of the distribution of votes of an exporting Member for which the Council has recognized a case of force majeure, shall be the effective volume of its exports for the year in which the force majeure occurred and subsequently for the ensuing three years following the force majeure.

Article 48. Differential and remedial measures

Developing importing Members, and least developed countries which are Members, whose interests are adversely affected by measures taken under this Agreement may apply to the Council for appropriate differential and remedial measures. The Council shall consider taking such appropriate measures in the light of the provisions of resolution 93 (IV) adopted by the United Nations Conference on Trade and Development.

Chapter XVI. Consultations, disputes and complaints

Article 49. Consultations

Each member shall accord full and due consideration to any representations made to it by another member concerning the interpretation or application of this Agreement and shall afford adequate opportunity for consultations. In the course of such consultations, on the request of either party and with the consent of the other, the Executive Director shall establish an appropriate conciliation procedure. The costs of such a procedure shall not be chargeable to the Organization. If such a procedure leads to a solution, this shall be reported to the Executive Director. If no solution is reached, the matter may, at the request of either party, be referred to the Council in accordance with article 50.

Article 50. Disputes

1. Any dispute concerning the interpretation or application of this Agreement which is not settled by the parties to the dispute shall, at the request of either party to the dispute, be referred to the Council for decision.

2. When a dispute has been referred to the Council under paragraph 1 of this article and has been discussed, Members holding not less than one third of the total votes, or any five Members, may require the Council, before giving its decision, to seek the opinion on the issues in dispute of an ad hoc advisory panel to be constituted as described in paragraph 3 of this article.

3. (*a*) Unless the Council decides otherwise, the ad hoc advisory panel shall consist of:

(i) Two persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience, nominated by the exporting Members;

(ii) Two persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience, nominated by the importing Members; and

(iii) A chairman selected unanimously by the four persons nominated under (i) and (ii) above or, if they fail to agree, by the Chairman of the Council.

(*b*) Nationals of Members shall not be ineligible to serve on the ad hoc advisory panel.

(*c*) Persons appointed to the ad hoc advisory panel shall act in their personal capacities and without instructions from any Government.

(*d*) The costs of the ad hoc advisory panel shall be paid by the Organization.

4. The opinion of the ad hoc advisory panel and the reasons therefore shall be submitted to the Council, which, after considering all the relevant information, shall decide the dispute.

Article 51. Complaints and action by the Council

1. Any complaint that any Member has failed to fulfil its obligations under this Agreement shall, at the request of the Member making the complaint, be referred to the Council, which shall consider it and take a decision on the matter.

2. Any finding by the Council that a Member is in breach of its obligations under this Agreement shall be made by a simple distributed majority vote and shall specify the nature of the breach.

3. Whenever the Council, whether as a result of a complaint or otherwise, finds that a Member is in breach of its obligations under this Agreement, it may, without prejudice to such other measures as are specifically provided for in other articles of this Agreement, including article 60:

(*a*) Suspend that Member's voting rights in the Council; and

(*b*) If it considers it necessary, suspend additional rights of such Member, including that of being eligible for, or of holding, office in the Council or in any of its committees, until it has fulfilled its obligations.

4. A Member whose voting rights are suspended under paragraph 3 of this article shall remain liable for its financial and other obligations under this Agreement.

Chapter XVII. Final provisions

Article 52. Depositary

The Secretary-General of the United Nations is hereby designated as the Depositary of this Agreement.

Article 53. Signature

This Agreement shall be open for signature at United Nations Headquarters from 1 October 2010 until and including 30 September 2012 by parties to the International Cocoa Agreement, 2001, and Governments invited to the United Nations Cocoa Conference, 2010. The Council under the International Cocoa Agreement, 2001, or the Council under this Agreement may, however, extend once the period of signature of this Agreement. The Council shall immediately notify the Depositary of such extension.

Article 54. Ratification, acceptance, approval

1. This Agreement shall be subject to ratification, acceptance or approval by the signatory Governments in accordance with their respective constitutional procedures. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. Each Contracting Party shall notify the Secretary-General whether it is an exporting Member or an importing Member at the time of deposit of its instrument of ratification, acceptance or approval or as soon as possible thereafter.

Article 55. Accession

1. This Agreement shall be open to accession by the Government of any State entitled to sign it.

2. The Council shall determine under which of the annexes to this Agreement the acceding State is to be deemed to be listed, if such State is not listed in any of these annexes.

3. Accession shall be effected by deposit of an instrument of accession with the Depositary.

Article 56. Notification of provisional application

1. A signatory Government which intends to ratify, accept or approve this Agreement or a Government which intends to accede to the Agreement, but which has not yet been able to deposit its instrument, may at any time notify the Depositary that, in accordance with its constitutional procedures and/or its domestic laws and regulations, it will apply this Agreement provisionally either when it enters into force in accordance with article 57 or, if it is already in force, at a specified date. Each Government giving such notification shall inform the Secretary-General whether it is an exporting Member or an importing Member at the time of giving such notification or as soon as possible thereafter.

2. A Government which has notified under paragraph 1 of this article that it will apply this Agreement either when it enters into force or at a specified date shall, from that time, be a provisional Member. It shall remain a provisional Member until the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 57. Entry into force

1. This Agreement shall enter into force definitively on 1 October 2012, or any time thereafter, if by such date Governments representing at least five exporting countries accounting for at least 80 per cent of the total exports of countries listed in annex A and Governments representing importing countries having at least 60 per cent of total imports as set out in annex B have deposited their instruments of ratification, acceptance, approval or accession with the Depositary. It shall also enter into force definitively once it has entered into force provisionally and these percentage requirements are satisfied by the deposit of instruments of ratification, acceptance, approval or accession.

2. This Agreement shall enter into force provisionally on 1 January 2011 if by such date Governments representing at least five exporting countries accounting for at least 80 per cent of the total exports of countries listed in annex A and Governments representing importing countries having at least 60 per cent of total imports as set out in annex B have deposited their instruments of ratification, acceptance, approval or accession, or have notified the Depositary that they will apply this Agreement provisionally when it enters into force. Such Governments shall be provisional Members.

3. If the requirements for entry into force under paragraph 1 or paragraph 2 of this article have not been met by 1 September 2011, the Secretary-General of the United Nations Conference on Trade and Development shall, at the earliest time practicable, convene a meeting of those Governments which have deposited instruments of ratification, acceptance, approval or accession, or have notified the Depositary that they will apply this Agreement provisionally. These Governments may decide whether to put this Agreement into force definitively or provisionally among themselves, in whole or in part, on such date as they may determine or to adopt any other arrangement as they may deem necessary.

4. For a Government on whose behalf an instrument of ratification, acceptance, approval or accession or a notification of provisional application is deposited after the entry into force of this Agreement in accordance with paragraph 1, paragraph 2 or paragraph 3 of this article, the instrument or notification shall take effect on the date of such deposit and, with regard to notification of provisional application, in accordance with the provisions of paragraph 1 of article 56.

Article 58. Reservations

Reservations may not be made with respect to any of the provisions of this Agreement.

Article 59. Withdrawal

1. At any time after the entry into force of this Agreement, any Member may withdraw from this Agreement by giving written notice of withdrawal to the Depositary. The Member shall immediately inform the Council of the action it has taken.

2. Withdrawal shall become effective 90 days after the notice is received by the Depositary. If, as a consequence of withdrawal, membership in this Agreement falls below the requirements provided for in paragraph 1 of article 57 for its entry into force, the Council shall meet in special session to review the situation and to take appropriate decisions.

Article 60. Exclusion

If the Council finds, under paragraph 3 of article 51, that any Member is in breach of its obligations under this Agreement and decides further that such breach significantly impairs the operation of this Agreement, it may exclude such Member from the Organization. The Council shall immediately notify the Depositary of any such exclusion. Ninety days after the date of the Council's decision, that Member shall cease to be a member of the Organization.

Article 61. Settlement of accounts with withdrawing or excluded Members

The Council shall determine any settlement of accounts with a withdrawing or excluded Member. The Organization shall retain any amounts already paid by a withdrawing or excluded Member, and such Member shall remain bound to pay any amounts due from it to the Organization at the time the withdrawal or the exclusion becomes effective, except that, in the case of a Contracting Party which is unable to accept an amendment and consequently ceases to participate in this Agreement under the provisions of paragraph 2 of article 63, the Council may determine any settlement of accounts which it finds equitable.

Article 62. Duration, extension and termination

1. This Agreement shall remain in force until the end of the tenth full cocoa year after its entry into force, unless extended under paragraph 4 of this article, or terminated earlier under paragraph 5 of this article.

2. The Council shall review the present Agreement five years after its entry into force and shall take decisions as appropriate.

3. While this Agreement is in force, the Council may decide to renegotiate it with a view to having the renegotiated agreement enter into force at the end of the fifth cocoa year referred to in paragraph 1 of this article, or at the end of any period of extension decided upon by the Council under paragraph 4 of this article.

4. The Council may extend this Agreement in whole or in part for two periods not exceeding two cocoa years each. The Council shall notify the Depositary of any such extension.

5. The Council may at any time decide to terminate this Agreement. Such termination shall take effect on such date as the Council shall decide, provided that the obligations of Members under article 25 shall continue until the financial liabilities relating to the operation of this Agreement have been discharged. The Council shall notify the Depositary of any such decision.

6. Notwithstanding the termination of this Agreement by any means whatsoever, the Council shall remain in being for as long as necessary to carry out the liquidation of the Organization, settlement of its accounts and disposal of its assets. The Council shall have during that period the necessary powers for the conclusion of all administrative and financial matters.

7. Notwithstanding the provisions of paragraph 2 of article 59, a Member which does not wish to participate in this Agreement as extended under this article shall so inform the Depositary and the Council. Such Member shall cease to be a party to this Agreement from the beginning of the period of extension.

Article 63. Amendments

1. The Council may recommend an amendment of this Agreement to the Contracting Parties. The amendment shall become effective 100 days after the Depositary has received notifications of acceptance from Contracting Parties representing at least 75 per cent of the exporting Members holding at least 85 per cent of the votes of the exporting Members, and from Contracting Parties representing at least 75 per cent of the importing Members holding at least 85 per cent of the votes of the importing Members, or on such later date as the Council may have determined. The Council may fix a time within which Contracting Parties shall notify the Depositary of their acceptance of the amendment, and, if the amendment has not become effective by such time, it shall be considered withdrawn.

2. Any Member on behalf of which notification of acceptance of an amendment has not been made by the date on which such amendment becomes effective shall, as of that date, cease to participate in this Agreement, unless the Council decides to extend the period fixed for acceptance for such Member to enable it to complete its internal procedures. Such Member shall not be bound by the amendment before it has notified its acceptance thereof.

3. Immediately upon adoption of a recommendation for an amendment the Council shall communicate to the Depositary copies of the text of the amendment. The Council shall provide the Depositary with the information necessary to determine whether the notifications of acceptance received are sufficient to make the amendment effective.

Chapter XVIII. Supplementary and transitional provisions

Article 64. Special Reserve Fund

1. A Special Reserve Fund shall be maintained for the sole purpose of meeting the eventual liquidation expenses of the Organization. The Council shall decide how the interest earned on this Fund will be used.

2. The Special Reserve Fund established by the Council under the International Cocoa Agreement, 1993, shall be transferred to this Agreement for the purpose set out under paragraph 1.

3. A non-Member of the International Cocoa Agreements, 1993 and 2001, which becomes a Member of this Agreement shall be required to contribute to the Special Reserve Fund. The contribution of such Member shall be assessed by the Council on the basis of the number of votes to be held by the Member.

Article 65. Other supplementary and transitional provisions

1. This Agreement shall be considered as a replacement of the International Cocoa Agreement, 2001.

2. All acts by or on behalf of the Organization or any of its organs under the International Cocoa Agreement, 2001, which are in effect on the date of entry into force of this Agreement and the terms of which do not provide for expiry on that date shall remain in effect unless changed under the provisions of this Agreement.

Done at Geneva on 25 June 2010, the texts of this Agreement in the Arabic, Chinese, English, French, Russian and Spanish languages being equally authentic.

ANNEXES

Annex A

Exports of cocoa [a/] calculated for the purposes of article 57 (Entry into force)

Country	*b/*	*2005/06*	*2006/07*	*2007/08*	*Average 3-year period 2005/06—2007/08*	
			(tonnes)			*(Share)*
Côte d'Ivoire	m	1 349 639	1 200 154	1 191 377	1 247 057	38.75%
Ghana	m	648 687	702 784	673 403	674 958	20.98%
Indonesia		592 960	520 479	465 863	526 434	16.36%
Nigeria	m	207 215	207 075	232 715	215 668	6.70%
Cameroon	m	169 214	162 770	178 844	170 276	5.29%
Ecuador	m	108 678	110 308	115 264	111 417	3.46%
Togo	m	73 064	77 764	110 952	87 260	2.71%

Country	*b/*	*2005/06*	*2006/07*	*2007/08*	*Average 3-year period 2005/06—2007/08*	
			(tonnes)			*(Share)*
Papua New Guinea	m	50 840	47 285	51 588	49 904	1.55%
Dominican Republic	m	31 629	42 999	34 106	36 245	1.13%
Guinea		18 880	17 620	17 070	17 857	0.55%
Peru		15 414	11 931	11 178	12 841	0.40%
Brazil	m	57 518	10 558	- 32 512	11 855	0.37%
Bolivarian Republic of Venezuela	m	11 488	12 540	4 688	9 572	0.30%
Sierra Leone		4 736	8 910	14 838	9 495	0.30%
Uganda		8 270	8 880	8 450	8 533	0.27%
United Republic of Tanzania		6 930	4 370	3 210	4 837	0.15%
Solomon Islands		4 378	4 075	4 426	4 293	0.13%
Haiti		3 460	3 900	4 660	4 007	0.12%
Madagascar		2 960	3 593	3 609	3 387	0.11%
São Tomé & Príncipe		2 250	2 650	1 500	2 133	0.07%
Liberia		650	1 640	3 930	2 073	0.06%
Equatorial Guinea		1 870	2 260	1 990	2 040	0.06%
Vanuatu		1 790	1 450	1 260	1 500	0.05%
Nicaragua		892	750	1 128	923	0.03%
Congo, Dem. Rep. of		900	870	930	900	0.03%
Honduras		1 230	806	- 100	645	0.02%
Congo		90	300	1 400	597	0.02%
Panama		391	280	193	288	0.01%
Viet Nam		240	70	460	257	0.01%
Grenada		80	218	343	214	0.01%
Gabon	m	160	99	160	140	–
Trinidad and Tobago	m	193	195	- 15	124	–
Belize		60	30	20	37	–
Dominica		60	20	0	27	–

Country	b/	2005/06	2006/07 (tonnes)	2007/08	Average 3-year period 2005/06—2007/08	(Share)
Fiji		20	10	10	13	–
Total	**c/**	**3 376 836**	**3 169 643**	**3 106 938**	**3 217 806**	**100.00%**

Notes:

a/ Three-year average, 2005/06—2007/08 of net exports of cocoa beans plus net exports of cocoa products converted to beans equivalent using the following conversion factors: cocoa butter 1.33; cocoa powder and cake 1.18; cocoa paste/liquor 1.25.

b/ List restricted to countries which individually exported cocoa in the three-year period 2005/06 to 2007/08, based on information available to the ICCO Secretariat.

c/ Totals may differ from the sum of constituents due to rounding.

m Member of the International Cocoa Agreement, 2001 as at 9 November 2009.

- nil, negligible or less than the unit employed

Source: International Cocoa Organization, *Quarterly Bulletin of cocoa statistics*, Vol. XXXV, No. 3, Cocoa year 2008/09.

Annex B

Imports of cocoa[a/] calculated for the purpose of article 57 (Entry into force)

Country	b/	2005/06	2006/07 (tonnes)	2007/08	Average 3-year period 2005/06—2007/08	(Share)
European Union:	m	2 484 235	2 698 016	2 686 041	2 622 764	53.24%
Austria		*20 119*	*26 576*	*24 609*	*23 768*	*0.48%*
Belgium/Luxembourg		*199 058*	*224 761*	*218 852*	*214 224*	*4.35%*
Bulgaria		*12 770*	*14 968*	*12 474*	*13 404*	*0.27%*
Cyprus		*282*	*257*	*277*	*272*	*0.01%*
Czech Republic		*12 762*	*14 880*	*16 907*	*14 850*	*0.30%*
Denmark		*15 232*	*15 493*	*17 033*	*15 919*	*0.32%*
Estonia		*37 141*	*14 986*	*- 1 880*	*16 749*	*0.34%*
Finland		*10 954*	*10 609*	*11 311*	*10 958*	*0.22%*
France		*388 153*	*421 822*	*379 239*	*396 405*	*8.05%*
Germany		*487 696*	*558 357*	*548 279*	*531 444*	*10.79%*
Greece		*16 451*	*17 012*	*17 014*	*16 826*	*0.34%*
Hungary		*10 564*	*10 814*	*10 496*	*10 625*	*0.22%*
Ireland		*22 172*	*19 383*	*17 218*	*19 591*	*0.40%*

Country			2005/06	2006/07	2007/08	Average 3-year period 2005/06—2007/08
	b/			(tonnes)		(Share)
Italy			*126 949*	*142 128*	*156 277*	*141 785*	*2.88%*
Latvia			*2 286*	*2 540*	*2 434*	*2 420*	*0.05%*
Lithuania			*5 396*	*4 326*	*4 522*	*4 748*	*0.10%*
Malta			*34*	*46*	*81*	*54*	–
Netherlands			*581 459*	*653 451*	*681 693*	*638 868*	*12.97%*
Poland			*103 382*	*108 275*	*113 175*	*108 277*	*2.20%*
Portugal			*3 643*	*4 179*	*3 926*	*3 916*	*0.08%*
Romania			*11 791*	*13 337*	*12 494*	*12 541*	*0.25%*
Slovak Republic			*15 282*	*16 200*	*13 592*	*15 025*	*0.30%*
Slovenia			*1 802*	*2 353*	*2 185*	*2 113*	*0.04%*
Spain			*150 239*	*153 367*	*172 619*	*158 742*	*3.22%*
Sweden			*15 761*	*13 517*	*14 579*	*14 619*	*0.30%*
United Kingdom			*232 857*	*234 379*	*236 635*	*234 624*	*4.76%*
United States			822 314	686 939	648 711	719 321	14.60%
Malaysia	c/	m	290 623	327 825	341 462	319 970	6.49%
Russian Federation		m	163 637	176 700	197 720	179 352	3.64%
Canada			159 783	135 164	136 967	143 971	2.92%
Japan			112 823	145 512	88 403	115 579	2.35%
Singapore			88 536	110 130	113 145	103 937	2.11%
China			77 942	72 532	101 671	84 048	1.71%
Switzerland		m	74 272	81 135	90 411	81 939	1.66%
Turkey			73 112	84 262	87 921	81 765	1.66%
Ukraine			63 408	74 344	86 741	74 831	1.52%
Australia			52 950	55 133	52 202	53 428	1.08%
Argentina			33 793	38 793	39 531	37 372	0.76%
Thailand			26 737	31 246	29 432	29 138	0.59%
Philippines			18 549	21 260	21 906	20 572	0.42%
Mexico	c/		19 229	15 434	25 049	19 904	0.40%
Korea, Republic of			17 079	24 454	15 972	19 168	0.39%

Country		2005/06	2006/07	2007/08	Average 3-year period 2005/06—2007/08
	b/		(tonnes)		(Share)
South Africa		15 056	17 605	16 651	16 437	0.33%
Iran (Islamic Republic of)		10 666	14 920	22 056	15 881	0.32%
Colombia	c/	16 828	19 306	9 806	15 313	0.31%
Chile		13 518	15 287	15 338	14 714	0.30%
India		9 410	10 632	17 475	12 506	0.25%
Israel		11 437	11 908	13 721	12 355	0.25%
New Zealand		11 372	12 388	11 821	11 860	0.24%
Serbia		10 864	11 640	12 505	11 670	0.24%
Norway		10 694	11 512	12 238	11 481	0.23%
Egypt		6 026	10 085	14 036	10 049	0.20%
Algeria		9 062	7 475	12 631	9 723	0.20%
Croatia		8 846	8 904	8 974	8 908	0.18%
Syrian Arab Republic		7 334	7 229	8 056	7 540	0.15%
Tunisia		6 019	7 596	8 167	7 261	0.15%
Kazakhstan		6 653	7 848	7 154	7 218	0.15%
Saudi Arabia		6 680	6 259	6 772	6 570	0.13%
Belarus		8 343	3 867	5 961	6 057	0.12%
Morocco		4 407	4 699	5 071	4 726	0.10%
Pakistan		2 123	2 974	2 501	2 533	0.05%
Costa Rica		1 965	3 948	1 644	2 519	0.05%
Uruguay		2 367	2 206	2 737	2 437	0.05%
Lebanon		2 059	2 905	2 028	2 331	0.05%
Guatemala		1 251	2 207	1 995	1 818	0.04%
Bolivia	c/	1 282	1 624	1 927	1 611	0.03%
Sri Lanka		1 472	1 648	1 706	1 609	0.03%
El Salvador		1 248	1 357	1 422	1 342	0.03%
Azerbaijan		569	2 068	1 376	1 338	0.03%
Jordan		1 263	1 203	1 339	1 268	0.03%
Kenya		1 073	1 254	1 385	1 237	0.03%
Uzbekistan		684	1 228	1 605	1 172	0.02%

Country	b/	2005/06	2006/07	2007/08	Average 3-year period 2005/06—2007/08	
			(tonnes)			(Share)
Hong Kong, China		2 018	870	613	1 167	0.02%
Republic of Moldova		700	1 043	1 298	1 014	0.02%
Iceland		863	1 045	1 061	990	0.02%
The former Yugoslav Republic of Macedonia		628	961	1 065	885	0.02%
Bosnia and Herzegovina		841	832	947	873	0.02%
Cuba	c/	2 162	- 170	107	700	0.01%
Kuwait		427	684	631	581	0.01%
Senegal		248	685	767	567	0.01%
Libyan Arab Jamahiriya		224	814	248	429	0.01%
Paraguay		128	214	248	197	–
Albania		170	217	196	194	–
Jamaica	c/	479	- 67	89	167	–
Oman		176	118	118	137	–
Zambia		95	60	118	91	–
Zimbabwe		111	86	62	86	–
Saint Lucia	c/	26	20	25	24	–
Samoa		48	15	0	21	–
Saint Vincent and the Grenadines		6	0	0	2	–
Total	d/	4 778 943	5 000 088	5 000 976	4 926 669	100.00%

Notes:

a/ Three-year average, 2005/06—2007/08 of net imports of cocoa beans plus gross imports of cocoa products converted to beans equivalent using the following conversion factors: cocoa butter 1.33; cocoa powder and cake 1.18; cocoa paste/liquor 1.25.

b/ List restricted to countries which individually imported cocoa in the three-year period 2005/06 to 2007/08, based on information available to the ICCO Secretariat.

c/ Country may also qualify as an exporting country.

d/ Totals may differ from the sum of constituents due to rounding.

m Member of the International Cocoa Agreement, 2001 as at 9 November 2009.

- nil, negligible or less than the unit employed

Source: International Cocoa Organization, *Quarterly Bulletin of cocoa statistics*, Vol. XXXV, No. 3, Cocoa year 2008/09.

ANNEX C

Producing countries exporting exclusively or partially fine or flavour cocoa

Colombia	Madagascar
Costa Rica	Papua New Guinea
Dominica	Peru
Dominican Republic	Saint Lucia
Ecuador	São Tomé & Príncipe
Grenada	Trinidad and Tobago
Indonesia	Bolivarian Republic of Venezuela
Jamaica	

2. MULTILATERAL AGREEMENT FOR THE ESTABLISHMENT OF AN INTERNATIONAL THINK TANK FOR LANDLOCKED DEVELOPING COUNTRIES. NEW YORK, 24 SEPTEMBER 2010*

Preamble

The Landlocked Developing Countries (LLDCs), Parties to the present Agreement:

Referring to the outcomes of the International Ministerial Conference of Landlocked and Transit Developing Countries and Donor Countries and International Financial and Development Organizations and bodies of the United Nations system to mobilizing awareness at Addressing the Special Needs of Landlocked Developing Countries within a New Global Framework for Transit Transport Cooperation for Landlocked and Transit Developing Countries, held in Almaty, Kazakstan, in August 2003 and to the importance of full and effective implementation of the Almaty Programme of Action;

Recalling the resolution 58/201 of the General Assembly on 23 December 2003 adopting the outcome of the International Ministerial Conference and the Almaty Programme of Action, and the resolution A/Res/64/214 of the General Assembly on the 22 December that welcomed the establishment of the think tank for the landlocked developing countries in Ulaanbaatar;

Further recalling the Resolution A/Res/64/214 of the General Assembly on 22 December 2009 that welcomed the establishment of the International Think Tank for the landlocked developing countries in Ulaanbaatar to enhance analytical capability of landlocked developing countries and to promote the exchange of experience and best practices needed to maximize their coordinated efforts for the full and effective implementation of the Almaty Programme of Action and the Millennium Development Goals. In that resolution, the General Assembly invited the Office of the High representative for Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, other relevant organizations of the United Nations system, Member States, as well as relevant

* Adopted on 24 September 2010 by the Foreign Ministers of the Group of Landlocked Developing Countries (LLDCs) at their ninth Annual Meeting in New York.

international and regional organizations, to assist the landlocked developing countries in implementing the activities of the international think tank;

Recalling the Ulaanbaatar Declaration adopted at the Meeting of Trade Ministers of LLDCs in August 2007, reaffirming the need for LLDCs to set up an international think tank, located at Ulaanbaatar and urging international organizations and donor countries to assist LLDC in achieving this project;

Recalling also the Final Outcome Document of the Mid-Term review of the Implementation of the Almaty Programme of Action, in New York, 3 October 2008, which welcomed the proposal to set up in Ulaanbaatar an international think tank to enhance analytical capability of landlocked developing countries in view to maximize the efficiency in implementing the Almaty Programme of Action;

Recalling, the Communiqué of the Eight Ministerial Meeting of LLDCs in New York, on the 25 September 2009, and the Ezulwini Declaration of the Third Meeting of LLDCs Trade Ministers in October 2009, which welcomed the establishment of the international think tank for the landlocked developing countries;

Recalling that the Group of Landlocked Developing Countries is composed of 31 Member States of the United Nations, that have no seacoast as defined in article 124 of the United Nations Convention on the Law of the Sea;

Referring to the Final Document of the XV Summit of Heads of State and Government of the Non Alignment Movement in Egypt in July 2009, that welcomed the Ulaanbaatar Declaration that adopted outcome documents of various meetings and conferences;

Further recognizing that lack of territorial access to the sea, aggravated by remoteness from world markets, and prohibitive transit costs and risks continue to impose serious constraints on export earnings, private capital inflow and domestic resource mobilization of landlocked developing countries and therefore adversely affect their overall growth and socio-economic development;

Recognizing also the need for LLDCs to establish a centre of excellence for analytical research and policy advice for LLDCs and contribute to strengthening analytical capacities of landlocked developing countries in key areas of economic growth and poverty reduction, in particular transit transport, aid for trade and trade facilitation, as well as provide to negotiators in LLDCs appropriate negotiation tools at World Trade Organization and other international institutions;

Stressing the need for close and effective cooperation among landlocked developing countries for the effective implementation of the Almaty Programme of Action;

Reaffirming the importance of establishing appropriate mechanisms to facilitate and promote cooperation within LLDCs and the need to expedite the operationalization and realization of the mandate of the international think tank with effective participation of all LLDCs and full support of international organizations and donor countries;

Have agreed the following:

Article I. Establishment and Headquarters of the International Think Tank

1.1. The Parties to this Agreement decide to establish the International Think Tank for Landlocked Developing Countries, hereinafter referred to as "The International Think Tank for LLDCs".

1.2. The Headquarters of the Think Tank is located at Ulaanbaatar, Mongolia. The Think Tank may be authorized by the Parties to have representations elsewhere.

Article II. Objectives of the International Think Tank

2.1. The overall goal of the International Think Tank is to use top-quality research and advocacy to improve the ability of landlocked developing countries to build capacity with a view to benefiting from the international trade including WTO negotiations, with the ultimate aim of raising human development and reducing poverty.

2.2. Within that framework, the International Think Tank shall pursue the following activities:

a) Producing and disseminating research and studies on trade-related topics, aid-for-trade, transport and transit, as well as databases on issues of interest to landlocked developing countries;

b) Promoting cooperation between landlocked developing countries with a view to strengthening their analytical capacity in key areas of transit transport, infrastructure investment, aid and trade facilitation, trade negotiations, poverty reduction and economic growth;

c) Sharing information, networking with a view to coming up with a better understanding of challenges facing landlocked developing countries;

d) Contributing to the formulation of strategies and policies aimed at the effective implementation of the Almaty Programme of Action through analytical studies and research on key issues;

e) Fostering convergent views and approaches among landlocked developing countries with respect to global economic issues of interest to landlocked developing countries, such as effects of the global economic and financial crisis, climate change and food security;

f) Establishing continual relationships with international organizations, including the United Nations system, and development partners, with a view to mobilizing awareness of special needs of landlocked developing countries and financial and technical resources for the implementation of identified studies and research;

g) Making available to all landlocked developing countries, development partners and other partner research institutions, publications, research results and studies for the use and benefit of landlocked developing countries.

Article III. Functions

In order to fulfill its objectives, the Think Tank shall:

3.1. Set up relationships with specialized institutions in landlocked developing countries, international organizations including United Nations system organizations among

others Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, United Nations Development Programme, United Nations Conference on Trade and Development, United Nations University, World Bank, United Nations Regional Commissions, World Trade Organization, International Road Transport Union, World Customs Organization and donor countries, research institutions in landlocked developing countries and in other countries, as well as key private sector and civil society institutions, and convene working group meetings and online discussions on identified subjects pertinent to landlocked and transit developing countries;

3.2. Generate ideas and action-oriented proposals for consideration by the Group of Landlocked Developing Countries at its various meetings and conferences;

3.3. Develop a website to promote all activities achieved by landlocked developing countries in the implementation of the Almaty Programme of Action, both at national, regional and international levels, research results by the Think Tank and other partner institutions, studies and outcomes of key meetings, conferences and summits;

3.4. Collect, systematize, analyze and disseminate through the website and other means relevant information concerning landlocked developing countries, as well as actions and programmes developed by international organizations' and donor countries towards landlocked developing countries in the implementation of the Almaty Programme of Action.

Article IV. Membership and Organization of the Work of the Think Tank

4.1. Membership of the International Think Tank for Landlocked Developing Countries shall be open to all States who are Parties to this Agreement;

4.2. Representatives of

a) any Member State of the United Nations;

b) United Nations Institutions and related agencies as indicated in 3.1;

c) inter-governmental and non-governmental organizations; and

d) representatives from the private sector may be invited by the Board of Governors to join the Think Tank as Observers.

Article V. Organs

5.1. The Think Tank will consist of a Board of Governors and a Secretariat.

Article VI. Board of Governors

6.1. *a*) The Board of Governors, hereinafter called "The Board" shall be the highest authority established by the present Agreement. It shall be composed of a representative from each Member State that is party to the present Agreement;

b) Representatives to the Board shall be persons of high standing known for their commitment and contribution to the development of LLDCs and knowledgeable of key issues and challenges of trade policy and LLDCs;

c) The Executive Director of the Think Tank shall serve as Secretary of the Board of Governors and in such capacity, shall keep and circulate minutes of the meetings of the Board to its Members;

d) Observers may, at the Board discretion, be invited to attend meetings of the Board.

6.2. The Board may decide to set up an Advisory Council with the view to provide advices to the Board and Secretariat on issues of strategic and policy importance, including setting research and policy priorities for the Think Tank. Members of the Advisory Council shall also be called upon to provide peer review and support, including information dissemination and discussion for Think Tank's programs and initiatives. The Advisory Council shall comprise international scholars and policy practitioners with expertise in LLDCs affairs. The members of the Advisory Council may participate time to time in meetings of the Board.

6.3. The Board shall, at each regular session, elect a Chairperson and the Vice-Chairperson. The Chair and Vice-Chair shall hold office until the next regular session of the Board. The Chairperson, or in his/her absence the Vice-Chairperson, shall preside at meetings of the Board. If the Chairperson is unable to serve for the full session for which he/she has been elected, the Vice-Chairperson shall act as Chairperson for the remainder of that session.

6.4. The members of the Board will serve for two years, with the possibility of renewal only once.

6.5. The Board will formulate and adopt its rules of procedures.

6.6. The Board shall review and approve all aspects of the Think Tank's activities including its budget, its programme of work and fund raising activities. The Executive Director shall submit an annual report to the Board for its review and approval.

6.7. The Board shall meet once every year in ordinary session. Extraordinary meetings may be called upon by its Chairperson.

Article VII. The Secretariat

7.1. The Secretariat of the Think Tank, headed by the Executive Director, shall consist of a small team comprising of: Director of Operations, a Chief Analyst, researchers and analysts, and an Administrative and Finance Assistant. Its small size shall be kept to the minimum number necessary for the proper execution of the Think Tank's activities.

7.2. The Executive Director shall be responsible for assisting the Board, its Chairperson and Vice-Chairperson in the performance of their official functions.

7.3. The Secretariat shall, under the Executive Director's supervision, perform the following functions:

a) Preparation and implementation of the annual programme of work;

b) Preparation of the budget;

c) Preparation and review of the staff regulations and rules and financial regulations and rules, as well as any other administrative issuances that are needed for the effective functioning of the Think Tank;

d) Preparation and development of fund-raising plans and outreach communication programmes; and

e) Establishment of networks with international organizations, LLDCs experts, members of the academia as well as representatives of civil society and the private sector for purpose of facilitating the Think Tank's activities,

Article VIII. Finance

8.1. The Chairperson of the Board, with the assistance of the Executive Director, is responsible for mobilizing financial and technical resources meant at implementing International Think Tank for Landlocked Developing Countries' programmes and activities.

8.2. Member States will be requested to make voluntary contributions to the Think Tank's budget. The Think Tank will also be entrusted with the mandate to mobilize funds from international organizations and other development partners, including private organizations, in particular for funding of development programmes, such as research activities, economic studies, seminars and conferences.

8.3. The Board and the Executive Director shall mobilize appropriate resources meant at financing key activities of the Think Tank. Those resources will be deposited in a Trust Fund. The management of the Trust Fund will be agreed upon by the members of the Board.

8.4. The financial situation and perspectives of the Think Tank will be reviewed by an independent audit and submitted to the Board of Governors at one of its meetings.

Article IX. Privileges and Immunities of the Think Tank

9.1. The Think Tank shall have an international status and enjoy privileges and immunities usually granted to similar international organizations working in Mongolia. In that context, the Think Tank shall conclude an agreement with the host country relating to its status, the privileges and immunities accorded to the International Think Tank and its staff.

Article X. Signature, Ratification, Acceptance, Approval

10.1. The present Agreement shall be open to signature by Landlocked Developing Countries at the United Nations Headquarters in New York from 1 November 2010 until 31 October 2011.

10.2. The present Agreement shall be subject to ratification, acceptance or approval by signatory States.

10.3. Instruments of ratification, acceptance or approval shall be deposited with the depositary.

Article XI. Accession

11.1. The present Agreement shall be subject to accession by any Landlocked Developing Country which has not signed this Agreement. The instruments of accession shall be deposited with the depositary.

Article XII. Entry into Force

12.1. The present Agreement shall enter into force on the sixtieth day after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession.

12.2. For each State which ratifies, accepts or approves this Agreement or accedes thereto after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Agreement shall enter into force on the sixtieth day after the date of deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article XIII. Amendments

13.1. This Agreement may be modified by written agreement between the Parties. Any State Party may propose an amendment to the present Agreement. The Executive-Director shall communicate any proposed amendment to States Parties. Any amendment shall be adopted by a majority of two-thirds of the States Parties. The text of any adopted amendment shall be submitted to the depositary who shall communicate it to States Parties.

13.2. An amendment adopted in accordance with paragraph I of this article shall enter into force on the sixtieth day after the instruments of acceptance are deposited by all States Parties. Instruments of acceptance of the amendments shall be deposited with the depositary. A State that becomes Party after the entry into force of the amendment shall be bound by the Agreement as amended.

Article XIV. Dispute Settlement

14.1. Any dispute between the Parties concerning the interpretation or application of this Agreement shall be settled by negotiations or other agreed mode of settlement.

Article XV. Depository

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

In witness whereof, the undersigned representatives, duly authorized by their respective Governments, have signed this Agreement.

Done in New York, on 24 September of 2010 in a single copy in English.

3. Central African Convention for the control of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly. Kinshasa, 30 April 2010*

Preamble

We, Heads of State and Government of the States members of the Economic Community of Central African States (ECCAS) and the Republic of Rwanda, and States members of the United Nations Standing Advisory Committee on Security Questions in Central Africa ("the Committee");

* Adopted on 30 April 2010 by the thirtieth ministerial meeting of the Committee of the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC) held 26 to 30 April 2010 in Kinshasa.

Recalling the principles of the Charter of the United Nations, especially those concerning disarmament and arms control and those inherent in the right of States of individual or collective self-defence, non-intervention and non-interference in the internal affairs of another State, and prohibition of the use or threat to use force;

Taking into account the importance of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime; the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects; the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons; and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

Reaffirming the importance of United Nations Security Council resolution 1325 (2000) and subsequent resolutions 1820 (2008), 1888 (2009) and 1889 (2009) on women, peace and security;

Taking into account the importance of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, and also the Windhoek Declaration and the Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations;

Reaffirming also the importance of Security Council resolution 1612 (2005) and subsequent resolutions on children and armed conflict and condemning the recruitment of children in armed forces and their participation in armed conflicts;

Recalling also the relevant provisions of the Constitutive Act of the African Union and the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons;

Aware of the harmful effects on development of the chaotic proliferation and uncontrolled circulation of small arms and light weapons, and the fact that poverty and the lack of prospects for a better future create conditions conducive to the misuse of such arms, especially by youth;

Taking account also of the actions taken under the Brazzaville Programme of Priority Activities for the implementation in Central Africa of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects;

Taking account also of the importance of instruments for the implementation of confidence-building measures among Central African States, such as the Non Aggression Pact, the Mutual Assistance Pact and the Protocol relating to the Council for Peace and Security in Central Africa (COPAX).

Considering that the illicit trade and trafficking in small arms and light weapons poses a threat to the stability of States and to the security of their populations by, inter alia, promoting armed violence, prolonging armed conflict and encouraging the illicit exploitation of natural resources;

Mindful of the need to ensure that peace and security remain one of the major goals of relations among Central African States;

Taking into account the porous nature of borders between our States and how difficult it is for States to stop the illicit trade and trafficking in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

Recalling that bladed weapons are tools that can be used for violent and criminal purposes;

Anxious to fight the phenomenon of roadblockers, cross-border insecurity and organized crime;

Recognizing the important contribution of civil society organizations in the fight against the illicit trade and trafficking in small arms and light weapons;

Taking into account that certain members of the Committee have signed the Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community Region and the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, and considering that this Convention is fully consistent with the efforts being made by the Central African States to combat illicit weapons at the subregional, continental and global level;

Bearing in mind the adoption on 18 May 2007, of the Sao Tome Initiative whereby the States that are members of the Committee decided, inter alia, to draw up a legal instrument on the control of small arms and light weapons in Central Africa;

Have agreed as follows:

Chapter I. Purpose and definitions

Article 1. Purpose

The purpose of this Convention is to:

1. Prevent, combat and eradicate, in Central Africa, the illicit trade and trafficking in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

2. Strengthen the control, in Central Africa, of the manufacture, trade, movement, transfer, possession and use of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

3. Combat armed violence and ease the human suffering caused in Central Africa by the illicit trade and trafficking in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

4. Foster cooperation and confidence among States Parties and cooperation and dialogue among Governments and civil society organizations.

Article 2. Definitions

For the purposes of this Convention:

(*a*) Small arms and light weapons: any man-portable lethal weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive, excluding antique small arms and

light weapons or their replicas. Antique small arms and light weapons and their replicas shall be defined in accordance with domestic law. In no case shall antique small arms and light weapons include those manufactured after 1899;

(*b*) Small arms: broadly speaking, weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub machine guns, assault rifles and light machine guns;

(*c*) Light weapons: broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, heavy machine guns; hand-held under-barrel and mounted grenade launchers; portable anti-aircraft guns; portable anti-tank guns; recoilless rifles; portable launchers of anti-tank missile and rocket systems; portable launchers of anti-aircraft missile systems; and mortars of a calibre of less than 100 millimetres;

(*d*) Ammunition: the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm, provided that those components are themselves subject to authorization in the respective State Party;

(*e*) Transfer: the import, export, transit, trans-shipment and transport or other movement to, across and from the territory of one State Party of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

(*f*) Illicit: anything done in violation of the provisions of this Convention;

(*g*) Illicit manufacturing: manufacturing or assembly of small arms and light weapons, their parts and components or their ammunition:

- from parts and components illicitly trafficked;
- without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place;
- without marking the small arms and light weapons at the time of manufacture, in accordance with this Convention;

(*h*) Illicit trafficking: the import, export, acquisition, sale, delivery, movement or transfer of small arms and light weapons, their ammunition and parts and components that can be used for their manufacture, repair and assembly from across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it in accordance with the terms of this Convention or if the weapons and ammunition are not marked in accordance with this Convention;

(*i*) Parts and components: that can be used for the manufacture, repair and assembly of small arms and light weapons and their ammunition (9): any element or replacement element specifically designed for small arms or light weapons and essential to their operation, including a barrel, frame or receiver, slide or cylinder, bolt or breechblock, and any device designed or adapted to diminish the sound caused by firing a such a weapon, and any chemical substance serving as an active material and used as a propellant or explosive agent;

(*j*) Tracing: the systematic tracking of illicit small arms and light weapons, their ammunition and parts and components that can be used for their manufacture, repair or

assembly, found or seized in the territory of a State from the point of manufacture or the point of importation through the lines of supply to the point at which they became illicit;

(*k*) Broker: any person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise;

(*l*) Brokering activities: can take place in the broker's country of nationality, residence or registration; they can also take place in another country. The small arms and light weapons do not necessarily pass through the territory of the country where the brokering activity takes place, nor does the broker necessarily take ownership of them;

(*m*) Activities closely associated with brokering: activities that do not necessarily, in themselves, constitute brokering may be undertaken by brokers as part of the process of putting a deal together to gain a benefit. These may include, for example, acting as dealers or agents in small arms and light weapons, providing for technical assistance, training, transport, freight forwarding, storage, finance, insurance, maintenance, security and other services;

(*n*) Non-State armed group: a group that could potentially use weapons as part of its use of force in order to achieve political, ideological or economic goals, but which is not part of the formal military establishment of a State, alliance of States or intergovernmental organization and over which the State in which it operates has no control;

(*o*) Civil society organization: any non-State, not-for-profit, voluntary, non political organization that is registered with the competent authorities and that has an official structure and acts within the social sphere;

(*p*) Marking: mark on a weapon or ammunition that makes it easy to identify in accordance with this Convention;

(*q*) Central Africa: the geographical area covering the 11 States that are members of the United Nations Standing Advisory Committee on Security Questions in Central Africa, namely, the Republic of Angola, the Republic of Burundi, the Republic of Cameroon, the Central African Republic, the Republic of Chad, the Republic of the Congo, the Democratic Republic of the Congo, the Republic of Equatorial Guinea, the Gabonese Republic, the Republic of Rwanda and the Democratic Republic of Sao Tome and Principe;

(*r*) End-user certificate: document used to identify, monitor and certify the end-user and the intended end use before the competent authorities issue an import or export licence;

(*s*) Visitor's certificate: a document giving a visitor temporary authorization for the duration of their stay in a State Party to this Convention, to bring their weapons into or through the country and to use them, as appropriate, for purposes specified by the competent national authorities;

(*t*) Destruction: process whereby a weapon, ammunition or explosive is rendered permanently inert so that it can no longer operate as it was designed to operate;

(*u*) National stockpile: all the small arms and light weapons, their ammunition and all parts and components that can be used for the their manufacture, repair and assembly held by a country, including those in the possession of the armed forces, security forces and manufacturing firms working for the State;

(*v*) Management of the national stockpile: procedures and activities to ensure safe and secure storage, transport, handling, accounting and recording of small arms and light weapons, their ammunition and all parts and components that can be used for the manufacture, repair amid assembly of such weapons.

Chapter II. Transfers

Article 3. Authorization of transfers to States

1. States Parties shall authorize the transfer of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly to, through and from other States.

2. The only grounds for authorizing the transfers are that they are necessary in order to:

(*a*) Maintain law and order, or for defence or national security purposes;

(*b*) Participate in peacekeeping operations conducted under the aegis of the United Nations, the African Union, the Economic Community of Central African States or other regional or subregional organizations of which the State Party concerned is a member.

Article 4. Prohibition of transfers to non-State armed groups

States Parties shall prohibit any transfer of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly to, through and from their respective territories to non-State armed groups.

Article 5. Procedure and conditions for the issuance of transfer authorizations

1. States Parties shall set up, and maintain at the national level, a system for authorizing the transfer of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly to, through and from their respective territories.

2. States Parties shall each designate a national body to be responsible for handling issues relating to the issuance of transfer authorizations both to public institutions and to qualified private actors, in accordance with the national laws and regulations in force.

3. States Parties shall require that any request for a transfer authorization from a public institution or a private individual be addressed by the applicant to the competent national body and that it contain, at the very least, the following information:

(*a*) Quantity, nature and type of weapon, including all the information concerning markings, in accordance with this Convention;

(*b*) Name, address and contact details of the supplier and his representative;

(*c*) Name, address and contact details of the companies and individuals involved in the transaction, including brokers;

(*d*) Number and time frame of shipments, routes, transit locations, type of transport used, companies involved in importing, forwarding agents and relevant information about storage conditions;

(*e*) End-user certificate;

(*f*) Description of the end use of the small arms and light weapons, ammunition and all parts and components that can be used for their manufacture, repair and assembly;

(*g*) Designation of where they are to be loaded and unloaded.

4. When issuing a transfer authorization States Parties shall include, at the very least, the following information:

(*a*) Place and date of authorization;

(*b*) Date the authorization expires;

(*c*) Exporting, importing, trans-shipment or transit country;

(*d*) Name and full and up-to-date details of end-user and broker;

(*e*) Quantity, nature and type of weapons concerned;

(*f*) Name and full and up-to-date details of the end-user and signature of applicant;

(*g*) Practical means of transport, complete details regarding the carrier and time frame for transport;

(*h*) Name and full and up-to-date details and signature of the authority issuing the authorization.

5. Notwithstanding the provisions of article 3 and the national laws and regulations in force the States Parties agree that a transfer authorization shall be denied by the competent national body if:

(*a*) There is a possibility that the small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly might be diverted, in the importing or transit State, to unauthorized use or users or to illicit trade, or even re-exported;

(*b*) The small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly are to be or might be used to commit violations of international human rights law or international humanitarian law; to commit war crimes, genocide or crimes against humanity; or for terrorist purposes;

(*c*) The transfer of the small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly might violate an international arms embargo;

(*d*) The applicant has, on the occasion of a prior transfer, violated the letter and spirit of national texts in force that regulate transfers and the provisions of this Convention;

6. The States Parties shall take the necessary steps to harmonize, at the subregional level, administrative procedures and supporting documents for authorizations for the transfer of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

Article 6. End-user certificate

1. The States Parties shall draw up an end-user certificate and the administrative procedures and supporting documents needed for such certificates. A certificate shall

be issued for each import shipment and shall be contingent upon the applicant's having obtained an import authorization issued by the competent authorities.

2. The States Parties shall harmonize the contents of the end-user certificates at the subregional level.

Chapter III. Possession by civilians

Article 7. Prohibition of the possession of small arms by civilians

1. The States Parties shall enact provisions, in accordance with the laws and regulations in force, to prohibit the possession, carrying, use and trade of small arms by civilians within their respective territories.

2. The States Parties shall enact national laws and regulations to penalize the possession of small arms by civilians.

Article 8. Authorization of the possession of light weapons by civilians

1. The States Parties shall determine, in accordance with the laws and regulations in force, the conditions for authorization of the possession, carrying, use and trade by civilians of light weapons, except for those manufactured to military specifications, such as sub-machine guns, assault rifles and light machine guns.

2. The States Parties shall define the administrative procedures governing requests for and issuance of licences for the possession, carrying, use and trade of light weapons by civilians. A licence shall be issued for each light weapon in the possession of a civilian.

3. The States Parties shall issue licences only to civilians who meet, at a minimum, the following conditions:

(*a*) Are of legal age, as defined by the national legislation;

(*b*) Have no criminal record and have undergone a good conduct investigation;

(*c*) Are not involved in any criminal proceedings and do not belong to a gang or a group of bandits;

(*d*) Provide a valid reason for the need to possess, carry, use and trade in light weapons;

(*e*) Prove that they are familiar with the laws governing light weapons;

(*f*) Provide proof that the light weapon will be stored in a safe place and separately from its ammunition;

(*g*) Have no record of domestic violence or any psychiatric history;

(*h*) Provide a complete and up-to-date physical address.

4. The States Parties shall impose a limit on the number of light weapons that may be possessed by the same individual.

5. The States Parties shall establish a minimum period of 30 days and any additional time they deem appropriate before a licence is issued in order to enable the competent authorities to do all the necessary checking.

6. Licences granted to civilians for the possession of light weapons must include an expiration date not to exceed five years. At the expiration of each licence, requests for

renewal shall be subject to a complete review of the conditions cited in paragraph 3 of this article.

7. Persons wishing to turn in their weapons must voluntarily deposit them, against receipt, either at the powder magazine of the competent administration or at the police station or gendarmerie nearest to their domicile. Weapons thus turned in voluntarily shall become the property of the State and shall be transferred, if necessary, to the powder magazine for their destruction.

8. The States Parties shall enact laws and regulations for the strict prohibition of the carrying of light weapons by civilians in public places.

Article 9. Measures for control of the possession of light weapons by civilians

1. The States Parties shall determine by law or by regulation the national administrative procedures and measures for the granting or withdrawal of licences for the possession of light weapons.

2. The States Parties shall revise, update and harmonize national administrative procedures and measures for the granting and withdrawal of authorizations for the possession of light weapons.

3. The States Parties shall establish norms and standards for the proper management of stocks of weapons and ammunition possessed by civilians, particularly manufacturers and dealers.

4. The States Parties shall define by law or regulation the penalties, including civil and criminal penalties, for violations with respect to the possession of light weapons by civilians.

5. The States Parties shall keep a register of owners and dealers of light weapons in their respective territories and shall maintain an electronic database pertaining thereto.

6. The States Parties shall set up a subregional common system for verification of the validity of licences granted at the national level for the possession of, carrying, use and trade in light weapons by civilians. They shall establish for that purpose an electronic database of licences accessible to the competent services of each of the States Parties.

Article 10. Visitor's certificate

1. The States Parties shall require that civilians without authorization for the possession of light weapons valid in the State in question who wish to import or ship in transit, through their respective territories light weapons and their ammunition in their possession must obtain a visitor's certificate authorizing temporary import for the length of their stay or temporary transit.

2. The States Parties shall designate the competent national body responsible for dealing with matters connected with the issuance of visitors' certificates.

3. The States Parties stipulate that the visitors' certificates must include, as a minimum, all the following information: number of weapons, proof of ownership of the weapons, as well as their technical specifications, including the marking components, in order to establish their legality under national laws and the provisions of this Convention.

4. The States Parties shall set the maximum number of light weapons eligible for a visitor's certificate and the maximum duration of temporary import. They shall determine the duration of validity and number of certificates that may be granted to each visitor per year.

5. Every weapon in the possession of a visitor must have its own certificate. All weapons must be marked in accordance with the provisions of this Convention.

6. The States Parties undertake to harmonize the procedures for obtaining visitors' certificates and to prepare and publish an annual report on the visitors' certificates issued and denied.

Chapter IV. Manufacture, distribution and repair

Article 11. Authorization for manufacture, distribution and repair

1. The industrial manufacture and home production of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly shall be subject to the granting of a licence and to strict control by the States Parties in the territories in which these activities are carried out.

2. The States Parties shall define by law or regulation the rules and procedures governing the industrial manufacture and home production as well as the distribution of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly. They undertake to adopt policies and strategies for the reduction and/or limitation of the local manufacture of small arms and light weapons and their ammunition.

3. The States Parties stipulate that activities with respect to the manufacture, distribution and repair of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly which are carried out without a licence are illicit and make their authors liable to penalties, including criminal penalties.

4. The States Parties undertake to define in their respective national legislation the conditions for granting a licence for the manufacture, distribution and repair of small arms and light weapons for legal entities.

5. The States Parties shall issue licences for manufacture, distribution and repair only to individuals who meet, at a minimum, the following conditions:

(*a*) Are of legal age, as defined by the national legislation in force;

(*b*) Have no criminal record and have undergone a good conduct investigation;

(*c*) Prove that they are familiar with the laws governing small arms and light weapons;

(*d*) Provide proof that the weapons and ammunition have been manufactured, distributed or repaired in conformity with the appropriate safety and security norms and procedures established by the laws and regulations in force;

(*e*) Have no history of domestic violence, no psychiatric history and no conviction for a crime using a small arm or a light weapon or violation of the legal provisions relating to the carrying of light weapons by civilians.

6. The States Parties shall ensure that licences are issued for a specific period not to exceed five years, after which every licence-holder must submit a request for renewal to the competent national authorities.

Article 12. Measures for the control of manufacture, distribution, repair and enforcement

1. The States Parties stipulate that manufacturers, distributors and repairers shall provide the competent authorities with information concerning compliance with the rules and procedures in force with respect to the registration, storage and management of weapons and ammunition.

2. The States Parties stipulate that each small arm and light weapon, as well as all ammunition, must be marked at the time of manufacture, in accordance with the provisions of this Convention.

3. The States Parties shall establish norms and standards for the proper management of stocks of weapons and ammunition which have been manufactured and distributed so as to ensure their safety and security, and shall monitor compliance by authorized manufacturers, distributors and repairers.

4. The States Parties undertake to monitor and inspect manufacturers, distributors and repairers so as to ensure compliance with the laws and regulations in force.

5. The States Parties shall exercise the appropriate enforcement powers under their national laws, as well as their international obligations, in order to ensure that those who do not abide by the laws and regulations governing the activities of manufacturers, distributors and repairers of small arms and light weapons and their ammunition are subject to penalties, including the revocation of their licences and/or the confiscation of stocks.

6. The States Parties shall ensure that every entity holding a licence for manufacture, distribution or repair maintains an electronic database and a register in paper form to enable the competent authorities to monitor its activities.

Chapter V. Operational procedures

Article 13. Brokering

1. The States Parties shall register private individuals and companies established or operating in their respective national territories as brokers of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly, regardless of their nationality.

2. The States Parties also stipulate that brokers are required to register in their country of origin and in their country of residence.

3. The States Parties undertake to enact laws and regulations limiting the maximum number of weapons brokers or brokering companies established or operating in their respective territories.

4. Without prejudice to the provisions of paragraph 1 of this article, financial and shipping agents of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly, which are estab-

lished and operating within or outside the territory of each State Party shall also be subject to registration.

5. The States Parties stipulate that financial and shipping agents of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly must make financial transactions for the relevant operations through bank accounts that are traceable by the competent national authorities.

6. Brokers, including financial and shipping agents, who do not register with the competent national authorities, shall be considered illegal.

7. The States Parties shall require that all brokers, including financial and shipping agents duly registered with the competent national authorities, shall obtain a license in their country of origin or in their country of residence for each individual transaction in which they are involved, regardless of where the arrangements concerning the transaction are to be made.

8. The States Parties shall adopt legislative and regulatory measures to punish and establish as a criminal offence the illicit brokering of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

Article 14. Marking and tracing

1. The States Parties shall enact the necessary legislative and regulatory provisions to ensure that all small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly that are found in their respective territories bear a unique and specific marking applied upon manufacture or import.

2. All small arms and light weapons and all ammunition which is not marked in accordance with this Convention shall be considered illicit. Unless marked for use under the conditions defined by national laws and regulations and this Convention, such weapons and ammunition must be duly recorded and destroyed.

3. Marking shall be in alphanumeric script and must be legible. It shall be applied to as many parts of weapons as possible, but must appear on the barrel, the frame and especially, the breachblock.

4. Marking on ammunition must appear first of all on the case containing the powder or liquid used in the ammunition or the explosive.

5. The marking of weapons under this Convention shall include, at a minimum, the following elements:

(*a*) The unique serial number of the weapon;

(*b*) Identification of the manufacturer;

(*c*) Identification of the country of manufacture;

(*d*) Identification of the year of manufacture;

(*e*) Calibre;

(*f*) The ministerial department or State body under whose responsibility the weapon falls.

6. Importing countries must mark weapons and provide the year of import.

7. Without prejudice to the provisions of paragraph 2 of this article, and in order to increase the effectiveness of the marking and tracing of manufactured and/or imported weapons, a security marking shall also be applied. It shall be made on parts which are hard to access after manufacture so as to enable identification of the weapon in the event that the classic marking is obliterated or falsified.

8. The security marking shall include the elements described in paragraph 5 of this article.

9. For ammunition, the marking shall include:

(*a*) A unique batch number;

(*b*) Identification of the manufacturer;

(*c*) Identification of the country and year of manufacture;

(*d*) Identification of the purchaser, the ammunition and the country of destination if this information is known at the time of manufacture.

10. The States Parties shall adopt a tracing procedure and may submit a tracing request to the Secretary-General of ECCAS, to any other organization to which they belong, or to another State, in respect of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly found within their respective territorial jurisdictions and deemed illicit.

11. The States Parties shall ensure that the national Interpol offices are fully operational, and are able to request assistance from the headquarters of Interpol in the tracing of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

Article 15. Registration, collection and destruction

1. The States Parties shall conduct semi-annual inspections to evaluate and inventory stockpiles and the conditions under which small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly in the possession of the armed and security forces and other authorized bodies are stored.

2. The States Parties shall collect, seize and register small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly that are surplus, obsolete or illicit.

3. The States Parties shall systematically destroy small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly that are surplus, obsolete or illicit and shall transmit the relevant information to the subregional database established by the Secretary-General of ECCAS.

4. The States Parties shall keep information concerning the destruction of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly that are surplus, obsolete or illicit, in national electronic databases for a minimum of 30 years.

5. The States Parties shall adopt the most effective techniques for destruction, in accordance with the international norms in force.

6. The States Parties shall conduct joint operations to locate, seize and destroy illicit caches of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

Article 16. Management and security of stockpiles

1. The States Parties shall maintain the security of depots and ensure the proper management of stockpiles of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly at all times. For that purpose, they shall define and harmonize the necessary administrative measures and procedures for stockpile management, security and storage.

2. The administrative measures and procedures referred to in paragraph 1 of this article shall take into account, inter alia, determination of appropriate storage sites, establishment of physical security measures, definition of procedures for inventory management and recordkeeping, staff training and the identification of measures to ensure security during manufacture and transport.

3. The States Parties shall establish national inventories of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly that are in the possession of the armed and security forces and any other competent State body.

4. The States Parties shall adopt the necessary administrative measures and procedures to strengthen the capacity to manage and secure stores of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly belonging to the armed and security forces and any other competent State body.

Article 17. Border control

1. The States Parties undertake to adopt appropriate legislative and regulatory measures to strengthen border control in order to put an end in Central Africa to the illicit traffic in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

2. The States Parties shall establish fully operational customs administrations which shall cooperate with the international customs organization and Interpol, including in requesting their assistance to ensure effective control of small arms and light weapons and their ammunition at border entry points.

3. The States Parties agree to submit small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly to the border controls and taxation in force at the national level.

4. The States Parties undertake to develop and strengthen their cooperation at borders and specifically to organize joint and mixed transborder operations and patrols so as better to control the circulation of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

5. The States Parties undertake to strengthen border controls by inter alia setting up mobile border posts equipped with non-intrusive technical facilities and by establishing

a mechanism for cooperation and a system for the exchange of information among the border countries, in accordance with the provisions of this Convention.

Article 18. Points of entry of small arms and light weapons

1. Without prejudice to their other border control measures, the States Parties shall determine and secure in their respective territories the mode of transport for export and import, as well as a precise and limited number of points of entry for small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

2. The States Parties shall determine the order of precedence of the competent services over border controls with respect to small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

3. The States Parties shall designate other competent bodies which may support the customs services in controlling small arms and light weapons and their ammunition at the border entry points.

4. The States Parties stipulate that small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly that do not pass through the official entry points are illicit.

5. The States Parties shall take the measures necessary for regular controls at official entry points, as determined by the competent authorities, over all of their respective territories.

Article 19. Education and awareness programmes

1. The States Parties undertake to develop public and community education and awareness programmes at the local, national and regional levels to promote greater public and community involvement and to support the efforts to combat illicit trade and trafficking in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

2. The education and awareness programmes shall aim to promote a culture of peace and involve all sectors of society, including civil society organizations.

Chapter VI. Transparency and exchange of information

Article 20. National electronic database

1. The States Parties shall establish and maintain, at the national level, a centralized electronic database on small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

2. The data shall be kept in the national databases for a minimum of 30 years, including marking procedures and all other relevant and related data.

3. All the data in the national electronic databases must also be kept by each State Party in paper form in a centralized national register.

4. The following information shall be registered in the database:

(*a*) Type or model, calibre and quantity of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly, found in the national territory of each State Party, including those manufactured locally;

(*b*) The content of the marking as indicated in the present Convention;

(*c*) The names and addresses of the former and current owners of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly and, if applicable, subsequent owners;

(*d*) The date of registration of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

(*e*) The name and address of the shipper, any intermediary, the consignee and the user indicated on the end-user certificate;

(*f*) The origin, points of departure, transit, if applicable, entry and destination, as well as the customs notations and the dates of departure, transit and delivery to the end-user;

(*g*) Full details concerning export, transit and import licences (quantities and batches corresponding to the same licence as well as the validity of the licence);

(*h*) Full details concerning method(s) of shipment and shipper(s); the monitoring agency or agencies (on departure, at the point of transit if applicable and on arrival);

(*i*) Description of the nature of the transaction (commercial or non commercial, private or public, conversion, repair); and, where applicable, complete information concerning the insurer and/or the financial institution involved in the operation;

(*j*) Information concerning civilian owners of light weapons, in particular: name, address, marking of the weapon, licences;

(*k*) The name and complete and up-to-date addresses of every home producer or industrial manufacturer, every distributor and every repairer of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

Article 21. Subregional electronic database

1. The States Parties stipulate that the Secretary-General of ECCAS shall establish and maintain as a means of promoting and strengthening confidence, a subregional electronic database of transfers of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

2. The information shall be kept in the subregional database for a minimum of 30 years, including marking procedures and all other relevant and related data.

3. The Secretary-General of ECCAS, in conjunction with the States Parties, shall determine the modalities for the establishment and management of the subregional database, including all the areas to be covered.

4. The States Parties shall periodically provide the Secretary-General of ECCAS with information to be included in the subregional electronic database, including information relating to marking procedures and all other relevant and related data.

5. The States Parties shall submit to the Secretary-General of ECCA.S an annual report on the management and operation of their respective national databases.

6. The Secretary-General of ECCAS shall prepare for the States Parties an annual report regarding the management and operation of the subregional database.

7. All the data in the subregional database must also be kept by the Secretary-General of ECCAS in a subregional register in paper form.

Article 22. Subregional electronic database of weapons used in peacekeeping operations

1. The States Parties stipulate that the Secretary-General of ECCAS shall establish and maintain, in order to ensure control of their movement, a subregional electronic database of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly intended for use in peacekeeping operations.

2. The States Parties stipulate that the data, including data relating to weapons and ammunition collected during disarmament, demobilization and reintegration operations, shall be kept in the subregional database of weapons used in peacekeeping operations for a minimum of 30 years.

3. The States Parties stipulate that the Secretary-General of ECCAS, in conjunction with the States Parties, shall determine the modalities for the establishment and management of the subregional database of weapons used in peacekeeping operations, including all the areas to be covered.

4. The States Parties shall provide the Secretary-General of ECCAS with all the information to be included in the database of weapons used in peacekeeping operations, including information relating to marking procedures and all other relevant and related data.

5. All the data in the subregional database of weapons used in peacekeeping operations must also be kept by each State Party in a national register, in paper form, and by the Secretary-General of ECCAS in a subregional register in paper form.

Article 23. Dialogue with international manufacturers and international organizations

1. The States Parties shall communicate with international producers and suppliers of arms, as well as the competent international and regional organizations, and may also request the Secretary-General of ECCAS for relevant information, including information relating to peacekeeping operations, with a view to the exchange of information and the strengthening of the implementation of this Convention.

2. The Secretary-General of ECCAS shall also take the necessary steps to ensure that international weapons manufacturers support, respect and conform to the spirit and letter of this Convention through, inter alia, the signing of memorandums of understanding and/or framework agreements for cooperation.

Article 24. Confidence-building

1. In order to strengthen confidence, the States Parties shall establish a system of judicial cooperation and shall share and exchange information through the customs, police,

water and forest services, the gendarmerie, the border guards or any other competent State body.

2. The information exchanged may concern criminal groups and networks of illicit trafficking in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

3. The States Parties shall also exchange information on sources and supply routes, consignee States, means of transport and any financial support available to the groups indicated in paragraph 2 of this article.

4. Each State Party shall inform the others of the convictions of individuals or legal entities involved in manufacture, trade or illicit trafficking decided by its courts. The information shall also cover any seizure and destruction operations.

5. Without prejudice to other actions they might take, the States Parties shall also exchange data relating to:

(*a*) Manufacture (marking system and techniques, authorized manufacturers);

(*b*) Transfers (exports to and/or imports from any other State, transit, available information concerning national legislation, existing practices and controls, authorized dealers and brokers);

(*c*) Existing stockpiles (security, destruction, losses, thefts, illicit seizures).

6. The cooperation mechanism and the system for the exchange of information must make it possible, inter alia, to improve the capacity of the security forces and other intelligence services including through training sessions on investigative procedures and law enforcement techniques in relation to the implementation of this Convention.

7. In order to promote transparency, the States Parties shall prepare an annual national report on requests for transfer authorizations and end-user certificates that have been accepted or denied by the competent national authorities.

8. The annual report of each State Party must include at a minimum, for each transfer authorization that has been denied or accepted, the following information:

(*a*) The type and number of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

(*b*) The name and complete and up-to-date address of the applicant;

(*c*) The number and reasons for denial or acceptance of the transfer;

(*d*) The measures taken to respect the relevant provisions of this Convention, including the enacting of specific laws.

9. The States Parties shall submit their annual report on transfers to the United Nations Register of Conventional Arms and to the subregional electronic database on small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly, maintained by ECCAS.

10. The States Parties stipulate that requests for assistance in tracing small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly, shall contain detailed information, including, inter alia:

(*a*) Information describing the illicit nature of the small arm or light weapon, including the legal justification therefor and the circumstances under which the weapon in question was found;

(*b*) Detailed identification of the weapon, including the markings, type, calibre, serial number, country of import or manufacture and other relevant information;

(*c*) Intended use of the information requested;

(*d*) A specific listing of the information to be provided by the State receiving the tracing request.

11. The State Party receiving the tracing request shall acknowledge receipt of this request within one month and shall duly examine it. It shall respond formally to the request made by the other State within a maximum period of three months from the date of receipt.

12. In responding to a tracing request, the requested State Party shall provide the requesting State with all available and relevant information.

13. The States Parties shall record in their respective national databases and shall exchange information on industrial and home-based manufacturers of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

Chapter VII. Harmonization of national legislation

Article 25. Adoption and harmonization of legislative provisions

1. The States Parties undertake to revise, update and harmonize their respective national legislation to bring it in line with the relevant provisions of this Convention.

2. The States Parties shall adopt legislative and regulatory measures at the domestic level to penalize the following practices:

(*a*) Illicit trafficking in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

(*b*) The illicit manufacture of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

(*c*) The illicit possession and use of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

(*d*) The falsification or obliteration, illicit removal or alteration of the markings of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly, as required by the present Convention;

(*e*) Any other activity carried out in violation of the provisions of this Convention;

(*f*) Any activity carried out in violation of an embargo on small arms and light weapons imposed by the United Nations, the African Union, ECCAS or any other relevant organization.

3. The States Parties stipulate that the Secretary-General of ECCAS shall prepare within a reasonable time, a guide for the harmonization of legislative provisions.

Article 26. Campaign against corruption and other forms of criminality

The States Parties shall adopt appropriate measures to establish or strengthen cooperation between the administrative departments concerned and the security forces in order to prevent and combat corruption, money- laundering, terrorism and drug trafficking associated with the illicit manufacturing of, trafficking in, trade, possession and use of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

CHAPTER VIII. INSTITUTIONAL ARRANGEMENTS AND IMPLEMENTATION

Article 27. National focal points

Each State Party shall appoint a national focal point on small arms and light weapons who shall also serve as the permanent secretary or chairperson of its national commission. The national focal points shall be the first points of contact for, inter alia, the facilitation of exchanges with the internal and external partners of the States Parties.

Article 28. National commissions

1. Each State Party shall establish a national commission to serve as a coordinating body for the action taken by the State to combat illicit trade and trafficking in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

2. The national commissions shall be established in accordance with existing international standards.

3. The States Parties undertake, on the basis of their annual budgets, to provide the national commissions with adequate human, material and financial resources in order to ensure that they function effectively and efficiently. They shall create a specific budget line allocated to the national commissions.

4. The States Parties stipulate that the Secretary-General of ECCAS shall support the strengthening of the financial, technical, institutional and operational capacities of the national commissions.

Article 29. The Secretary-General of ECCAS

1. The States Parties stipulate that the Secretary-General of ECCAS shall ensure the follow-up and coordination of all the activities carried out at the subregional level for the purposes of combating illicit trade and trafficking in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

2. The States Parties shall take the necessary measures to provide the secretariat of ECCAS with institutional and operational capacities commensurate with its responsibilities in the implementation of this Convention.

3. The States Parties stipulate that the tasks of the Secretary-General of ECCAS shall include the responsibility of:

(*a*) Facilitating and encouraging the establishment of a network of civil-society organizations;

(*b*) Mobilizing the necessary resources for the implementation of this Convention;

(*c*) Providing financial and technical support to public authorities and non governmental organizations;

(*d*) Preparing an annual report and ensuring follow-up and appraisal of the implementation of this Convention.

Article 30. National action plans

1. The States Parties undertake to prepare national action plans on small arms and light weapons, which shall be implemented by the national commissions. The national action plans shall be prepared using a data collection process involving all relevant national stakeholders, including civil society organizations, particularly associations of women and youth, who are considered to be the most vulnerable to the dangers posed by small arms and light weapons.

2. The national action plans shall take due account of the findings of studies on the impact of small arms and light weapons on populations and States which the relevant authorities carry out in each State Party.

Article 31. Subregional action plan

1. The Secretary-General of ECCAS shall prepare an action plan describing all the measures and actions to be taken at the subregional level in order to ensure the implementation of this Convention.

2. The subregional action plan must also lay out the strategy to be carried out by the Secretary-General of ECCAS to promote the signing and ratification of this Convention by the States, as well as its entry into force.

Article 32. Financial support

The States Parties undertake to contribute financially towards the implementation of this Convention. They also undertake to support the establishment, by the Secretary-General of ECCAS, of a group of experts responsible for follow-up and appraisal of the implementation of activities.

Article 33. Assistance and cooperation

1. The States Parties undertake to promote cooperation among States and among various competent government bodies in the implementation of this Convention.

2. The States Parties request the Secretary-General of ECCAS to provide them all necessary assistance to enable them to benefit from the multifaceted support of technical and financial partners, particularly as regards capacity-building for the armed and security forces, the border-control services and all other services involved in combating illicit trade and trafficking in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

Article 34. Follow-up and appraisal

1. The group of experts may seek any information it deems useful to its work in relation to the States Parties and, in particular, from other States Members of the United Nations, the States participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, the European Union and any arms manufacturer or supplier.

2. Each State Party shall prepare and submit an annual report to the Secretary-General of ECCAS on its activities to implement this Convention.

3. The Secretary-General of the United Nations shall convene a Conference of States Parties to this Convention one year after its entry into force.

4. The first Conference of States Parties shall be responsible for reviewing the implementation of this Convention and may have additional mandates in accordance with decisions taken by the States Parties. The subsequent conferences of States Parties shall be held once every two years, beginning two years from the date of the first conference, in order to review the state of implementation of this Convention.

5. Five years after the entry into force of this Convention, the Secretary-General of the United Nations shall convene a review conference. The Secretary-General shall also convene other review conferences at the request of one or more States Parties.

6. The items to be considered during the review conferences shall be considered and adopted within the framework of the United Nations Standing Advisory Committee on Security Questions in Central Africa. The review conferences shall, at a minimum, consider the state of implementation of this Convention.

Chapter IX. General and final provisions

Article 35. Signature, ratification, acceptance, approval and accession

1. This Convention, adopted in Kinshasa on 30 April 2010, shall be open for signature to all the States members of ECCAS and by the Republic of Rwanda, States members of the United Nations Standing Advisory Committee on Security Questions in Central Africa, at Brazzaville on 19 November 2010, and subsequently at United Nations Headquarters in New York, until its entry into force.

2. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

3. Any other interested State, other than those specified in article 35, paragraph 1, may accede to this Convention, subject to the approval of the Conference of States Parties.

Article 36. Entry into force

1. This Convention shall enter into force 30 days after the date of deposit of the sixth instrument of ratification, acceptance, approval or accession.

2. For each State that deposits its instrument of ratification, acceptance, approval or accession after the date of deposit of the sixth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force 30 days after the date of deposit of that instrument.

Article 37. Amendments

1. Any State Party may propose amendments to this Convention at any time after its entry into force.

2. Any proposed amendment shall be transmitted to the Secretary-General of the United Nations, who shall circulate it to all of the States Parties at least 90 days before the opening of the Conference of States Parties.

3. Amendments shall be adopted by consensus at the Conference of States Parties.

4. For the parties that have accepted amendments, they shall enter into force 30 days after the deposit of the sixth instrument of acceptance of the amendment with the depositary. Subsequently, they shall enter into force for a party 30 days after the deposit of that party's instrument of acceptance of the amendment with the depositary.

Article 38. Reservations

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

Article 39. Denunciation and withdrawal

1. Any State Party, in the exercise of its national sovereignty, shall have the right to withdraw from this Convention.

2. Such withdrawal shall be effected by a State Party by means of written notification, including a statement of the extraordinary events that jeopardized its supreme interests, addressed to the Secretary-General of the United Nations in his or her capacity as depositary, who shall then convey it to the other States Parties.

3. Withdrawal shall not take effect until 12 months after the depositary receives the withdrawal instrument.

4. Withdrawal shall not release the State Party concerned from the obligations imposed on it by the Convention with regard to any violation that occurred before the date when the denunciation took effect, nor shall it hinder in any way the continued consideration of any matter concerning the interpretation or application of this Convention.

Article 40. Depositary and languages

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

2. The original of this Convention, of which the English, French and Spanish texts are equally authentic, shall be deposited with the depositary, who shall have certified official copies sent to all the States.

Article 41. Special provisions

1. The commitments resulting from the provisions of this Convention shall not be interpreted as contradicting the letter or the spirit of conventions or agreements between a State Party and a third State provided that such conventions or agreements do not contradict the letter or spirit of this Convention.

2. In the event of any dispute between two or more States Parties concerning the interpretation or application of this Convention, the States Parties in question shall consult each other with a view to settling the dispute quickly through negotiation or by any other peaceful means of their choosing, including recourse to the good offices of the Secretary-General of ECCAS, the Secretary-General of the United Nations or an extraordinary Conference of States Parties.

In witness whereof, we, the Heads of State and Government of the States members of Economic Community of Central African States and the Republic of Rwanda, States members of the United Nations Standing Advisory Committee on Security Questions in Central Africa

Have signed this Convention in three (3) original copies in the English, Spanish and French languages, all three texts being equally authentic.

Done at Kinshasa on 30 April 2010

The Republic of Angola
The Republic of Burundi
The Republic of Cameroon
The Central African Republic
The Republic of Chad
The Democratic Republic of the Congo
The Republic of the Congo
The Republic of Equatorial Guinea
The Gabonese Republic
The Republic of Rwanda
The Democratic Republic of Sao Tome and Principe

4. Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization to the Convention on Biological Diversity. Nagoya, 29 October 2010*

The Parties to this Protocol,

Being Parties to the Convention on Biological Diversity, hereinafter referred to as "the Convention",

Recalling that the fair and equitable sharing of benefits arising from the utilization of genetic resources is one of three core objectives of the Convention, and recognizing that this Protocol pursues the implementation of this objective within the Convention,

Reaffirming the sovereign rights of States over their natural resources and according to the provisions of the Convention,

Recalling further Article 15 of the Convention,

Recognizing the important contribution to sustainable development made by technology transfer and cooperation to build research and innovation capacities for adding value

* Adopted by the Conference of the Parties to the Convention on Biological Diversity at its tenth meeting on 29 October 2010 held in Nagoya, Japan.

to genetic resources in developing countries, in accordance with Articles 16 and 19 of the Convention,

Recognizing that public awareness of the economic value of ecosystems and biodiversity and the fair and equitable sharing of this economic value with the custodians of biodiversity are key incentives for the conservation of biological diversity and the sustainable use of its components,

Acknowledging the potential role of access and benefit-sharing to contribute to the conservation and sustainable use of biological diversity, poverty eradication and environmental sustainability and thereby contributing to achieving the Millennium Development Goals,

Acknowledging the linkage between access to genetic resources and the fair and equitable sharing of benefits arising from the utilization of such resources,

Recognizing the importance of providing legal certainty with respect to access to genetic resources and the fair and equitable sharing of benefits arising from their utilization,

Further recognizing the importance of promoting equity and fairness in negotiation of mutually agreed terms between providers and users of genetic resources,

Recognizing also the vital role that women play in access and benefit- sharing and affirming the need for the full participation of women at all levels of policymaking and implementation for biodiversity conservation,

Determined to further support the effective implementation of the access and benefit-sharing provisions of the Convention,

Recognizing that an innovative solution is required to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent,

Recognizing the importance of genetic resources to food security, public health, biodiversity conservation, and the mitigation of and adaptation to climate change,

Recognizing the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions,

Recognizing the interdependence of all countries with regard to genetic resources for food and agriculture as well as their special nature and importance for achieving food security worldwide and for sustainable development of agriculture in the context of poverty alleviation and climate change and acknowledging the fundamental role of the International Treaty on Plant Genetic Resources for Food and Agriculture and the FAO Commission on Genetic Resources for Food and Agriculture in this regard,

Mindful of the International Health Regulations (2005) of the World Health Organization and the importance of ensuring access to human pathogens for public health preparedness and response purposes,

Acknowledging ongoing work in other international forums relating to access and benefit-sharing,

Recalling the Multilateral System of Access and Benefit-sharing established under the International Treaty on Plant Genetic Resources for Food and Agriculture developed in harmony with the Convention,

Recognizing that international instruments related to access and benefit- sharing should be mutually supportive with a view to achieving the objectives of the Convention,

Recalling the relevance of Article 8(j) of the Convention as it relates to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising from the utilization of such knowledge,

Noting the interrelationship between genetic resources and traditional knowledge, their inseparable nature for indigenous and local communities, the importance of the traditional knowledge for the conservation of biological diversity and the sustainable use of its components, and for the sustainable livelihoods of these communities,

Recognizing the diversity of circumstances in which traditional knowledge associated with genetic resources is held or owned by indigenous and local communities,

Mindful that it is the right of indigenous and local communities to identify the rightful holders of their traditional knowledge associated with genetic resources, within their communities,

Further recognizing the unique circumstances where traditional knowledge associated with genetic resources is held in countries, which may be oral, documented or in other forms, reflecting a rich cultural heritage relevant for conservation and sustainable use of biological diversity,

Noting the United Nations Declaration on the Rights of Indigenous Peoples, and

Affirming that nothing in this Protocol shall be construed as diminishing or extinguishing the existing rights of indigenous and local communities,

Have agreed as follows:

Article 1. Objective

The objective of this Protocol is the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components.

Article 2. Use of terms

The terms defined in Article 2 of the Convention shall apply to this Protocol. In addition, for the purposes of this Protocol:

(*a*) "Conference of the Parties" means the Conference of the Parties to the Convention;

(*b*) "Convention" means the Convention on Biological Diversity;

(*c*) "Utilization of genetic resources" means to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology as defined in Article 2 of the Convention;

(*d*) "Biotechnology" as defined in Article 2 of the Convention means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use;

(*e*) "Derivative" means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.

Article 3. Scope

This Protocol shall apply to genetic resources within the scope of Article 15 of the Convention and to the benefits arising from the utilization of such resources. This Protocol shall also apply to traditional knowledge associated with genetic resources within the scope of the Convention and to the benefits arising from the utilization of such knowledge.

Article 4. Relationship with international agreements and instruments

1. The provisions of this Protocol shall not affect the rights and obligations of any Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity. This paragraph is not intended to create a hierarchy between this Protocol and other international instruments.

2. Nothing in this Protocol shall prevent the Parties from developing and implementing other relevant international agreements, including other specialized access and benefit-sharing agreements, provided that they are supportive of and do not run counter to the objectives of the Convention and this Protocol.

3. This Protocol shall be implemented in a mutually supportive manner with other international instruments relevant to this Protocol. Due regard should be paid to useful and relevant ongoing work or practices under such international instruments and relevant international organizations, provided that they are supportive of and do not run counter to the objectives of the Convention and this Protocol.

4. This Protocol is the instrument for the implementation of the access and benefit-sharing provisions of the Convention. Where a specialized international access and benefit-sharing instrument applies that is consistent with, and does not run counter to the objectives of the Convention and this Protocol, this Protocol does not apply for the Party or Parties to the specialized instrument in respect of the specific genetic resource covered by and for the purpose of the specialized instrument.

Article 5. Fair and equitable benefit-sharing

1. In accordance with Article 15, paragraphs 3 and 7 of the Convention, benefits arising from the utilization of genetic resources as well as subsequent applications and commercialization shall be shared in a fair and equitable way with the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention. Such sharing shall be upon mutually agreed terms.

2. Each Party shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these

genetic resources, are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms.

3. To implement paragraph 1 above, each Party shall take legislative, administrative or policy measures, as appropriate.

4. Benefits may include monetary and non monetary benefits, including but not limited to those listed in the Annex.

5. Each Party shall take legislative, administrative or policy measures as appropriate, in order that the benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with indigenous and local communities holding such knowledge. Such sharing shall be upon mutually agreed terms.

Article 6. Access to genetic resources

1. In the exercise of sovereign rights over natural resources, and subject to domestic access and benefit-sharing legislation or regulatory requirements, access to genetic resources for their utilization shall be subject to the prior informed consent of the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention, unless otherwise determined by that Party.

2. In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained for access to genetic resources where they have the established right to grant access to such resources.

3. Pursuant to paragraph 1 above, each Party requiring prior informed consent shall take the necessary legislative, administrative or policy measures, as appropriate, to:

(*a*) Provide for legal certainty, clarity and transparency of their domestic access and benefit sharing legislation or regulatory requirements;

(*b*) Provide for fair and non-arbitrary rules and procedures on accessing genetic resources;

(*c*) Provide information on how to apply for prior informed consent;

(*d*) Provide for a clear and transparent written decision by a competent national authority, in a cost-effective manner and within a reasonable period of time;

(*e*) Provide for the issuance at the time of access of a permit or its equivalent as evidence of the decision to grant prior informed consent and of the establishment of mutually agreed terms, and notify the Access and Benefit-sharing Clearing-House accordingly;

(*f*) Where applicable, and subject to domestic legislation, set out criteria and/or processes for obtaining prior informed consent or approval and involvement of indigenous and local communities for access to genetic resources; and

(*g*) Establish clear rules and procedures for requiring and establishing mutually agreed terms. Such terms shall be set out in writing and may include, *inter alia*:

(i) A dispute settlement clause;

(ii) Terms on benefit-sharing, including in relation to intellectual property rights;

(iii) Terms on subsequent third-party use, if any; and

(iv) Terms on changes of intent, where applicable.

Article 7. Access to traditional knowledge associated with genetic resources

In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.

Article 8. Special considerations

In the development and implementation of its access and benefit-sharing legislation or regulatory requirements, each Party shall:

(*a*) Create conditions to promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, including through simplified measures on access for non-commercial research purposes, taking into account the need to address a change of intent for such research;

(*b*) Pay due regard to cases of present or imminent emergencies that threaten or damage human, animal or plant health, as determined nationally or internationally. Parties may take into consideration the need for expeditious access to genetic resources and expeditious fair and equitable sharing of benefits arising out of the use of such genetic resources, including access to affordable treatments by those in need, especially in developing countries;

(*c*) Consider the importance of genetic resources for food and agriculture and their special role for food security.

Article 9. Contribution to conservation and sustainable use

The Parties shall encourage users and providers to direct benefits arising from the utilization of genetic resources towards the conservation of biological diversity and the sustainable use of its components.

Article 10. Global multilateral benefit-sharing mechanism

Parties shall consider the need for and modalities of a global multilateral benefit-sharing mechanism to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent. The benefits shared by users of genetic resources and traditional knowledge associated with genetic resources through this mechanism shall be used to support the conservation of biological diversity and the sustainable use of its components globally.

Article 11. Transboundary cooperation

1. In instances where the same genetic resources are found *in situ* within the territory of more than one Party, those Parties shall endeavour to cooperate, as appropriate, with the involvement of indigenous and local communities concerned, where applicable, with a view to implementing this Protocol.

2. Where the same traditional knowledge associated with genetic resources is shared by one or more indigenous and local communities in several Parties, those Parties shall endeavour to cooperate, as appropriate, with the involvement of the indigenous and local communities concerned, with a view to implementing the objective of this Protocol.

Article 12. Traditional knowledge associated with genetic resources

1. In implementing their obligations under this Protocol, Parties shall in accordance with domestic law take into consideration indigenous and local communities' customary laws, community protocols and procedures, as applicable, with respect to traditional knowledge associated with genetic resources.

2. Parties, with the effective participation of the indigenous and local communities concerned, shall establish mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations, including measures as made available through the Access and Benefit-sharing Clearing-House for access to and fair and equitable sharing of benefits arising from the utilization of such knowledge.

3. Parties shall endeavour to support, as appropriate, the development by indigenous and local communities, including women within these communities, of:

(*a*) Community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilization of such knowledge;

(*b*) Minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources; and

(*c*) Model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources.

4. Parties, in their implementation of this Protocol, shall, as far as possible, not restrict the customary use and exchange of genetic resources and associated traditional knowledge within and amongst indigenous and local communities in accordance with the objectives of the Convention.

Article 13. National focal points and competent national authorities

1. Each Party shall designate a national focal point on access and benefit- sharing. The national focal point shall make information available as follows:

(*a*) For applicants seeking access to genetic resources, information on procedures for obtaining prior informed consent and establishing mutually agreed terms, including benefit-sharing;

(*b*) For applicants seeking access to traditional knowledge associated with genetic resources, where possible, information on procedures for obtaining prior informed con-

sent or approval and involvement, as appropriate, of indigenous and local communities and establishing mutually agreed terms including benefit-sharing; and

(*c*) Information on competent national authorities, relevant indigenous and local communities and relevant stakeholders.

The national focal point shall be responsible for liaison with the Secretariat.

2. Each Party shall designate one or more competent national authorities on access and benefit sharing. Competent national authorities shall, in accordance with applicable national legislative, administrative or policy measures, be responsible for granting access or, as applicable, issuing written evidence that access requirements have been met and be responsible for advising on applicable procedures and requirements for obtaining prior informed consent and entering into mutually agreed terms.

3. A Party may designate a single entity to fulfil the functions of both focal point and competent national authority.

4. Each Party shall, no later than the date of entry into force of this Protocol for it, notify the Secretariat of the contact information of its national focal point and its competent national authority or authorities. Where a Party designates more than one competent national authority, it shall convey to the Secretariat, with its notification thereof relevant information on the respective responsibilities of those authorities. Where applicable, such information shall, at a minimum, specify which competent authority is responsible for the genetic resources sought. Each Party shall forthwith notify the Secretariat of any changes in the designation of its national focal point or in the contact information or responsibilities of its competent national authority or authorities.

5. The Secretariat shall make information received pursuant to paragraph 4 above available through the Access and Benefit-sharing Clearing-House.

Article 14. The Access and Benefit-sharing Clearing-House and information sharing

1. An Access and Benefit-sharing Clearing-House is hereby established as part of the clearing house mechanism under Article 18, paragraph 3, of the Convention. It shall serve as a means for sharing of information related to access and benefit-sharing. In particular, it shall provide access to information made available by each Party relevant to the implementation of this Protocol.

2. Without prejudice to the protection of confidential information, each Party shall make available to the Access and Benefit-sharing Clearing-House any information required by this Protocol, as well as information required pursuant to the decisions taken by the Conference of the Parties serving as the meeting of the Parties to this Protocol. The information shall include:

(*a*) Legislative, administrative and policy measures on access and benefit-sharing;

(*b*) Information on the national focal point and competent national authority or authorities; and

(*c*) Permits or their equivalent issued at the time of access as evidence of the decision to grant prior informed consent and of the establishment of mutually agreed terms.

3. Additional information, if available and as appropriate, may include:

(*a*) Relevant competent authorities of indigenous and local communities, and information as so decided;

(*b*) Model contractual clauses;

(*c*) Methods and tools developed to monitor genetic resources; and

(*d*) Codes of conduct and best practices.

4. The modalities of the operation of the Access and Benefit-sharing Clearing-House, including reports on its activities, shall be considered and decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first meeting, and kept under review thereafter.

Article 15. Compliance with domestic legislation or regulatory requirements on access and benefit-sharing

1. Each Party shall take appropriate, effective and proportionate legislative, administrative or policy measures to provide that genetic resources utilized within its jurisdiction have been accessed in accordance with prior informed consent and that mutually agreed terms have been established, as required by the domestic access and benefit-sharing legislation or regulatory requirements of the other Party.

2. Parties shall take appropriate, effective and proportionate measures to address situations of non compliance with measures adopted in accordance with paragraph 1 above.

3. Parties shall, as far as possible and as appropriate, cooperate in cases of alleged violation of domestic access and benefit-sharing legislation or regulatory requirements referred to in paragraph 1 above.

Article 16. Compliance with domestic legislation or regulatory requirements on access and benefit-sharing for traditional knowledge associated with genetic resources

1. Each Party shall take appropriate, effective and proportionate legislative, administrative or policy measures, as appropriate, to provide that traditional knowledge associated with genetic resources utilized within their jurisdiction has been accessed in accordance with prior informed consent or approval and involvement of' indigenous and local communities and that mutually agreed terms have been established, as required by domestic access and benefit sharing legislation or regulatory requirements of the other Party where such indigenous and local communities are located.

2. Each Party shall take appropriate, effective and proportionate measures to address situations of non-compliance with measures adopted in accordance with paragraph 1 above.

3. Parties shall, as far as possible and as appropriate, cooperate in cases of alleged violation of domestic access and benefit-sharing legislation or regulatory requirements referred to in paragraph 1 above.

Article 17. Monitoring the utilization of genetic resources

1. To support compliance, each Party shall take measures, as appropriate, to monitor and to enhance transparency about the utilization of genetic resources. Such measures shall include:

(*a*) The designation of one or more checkpoints, as follows:

(i) Designated checkpoints would collect or receive, as appropriate, relevant information related to prior informed consent, to the source of the genetic resource, to the establishment of mutually agreed terms, and/or to the utilization of genetic resources, as appropriate;

(ii) Each Party shall, as appropriate and depending on the particular characteristics of a designated checkpoint, require users of genetic resources to provide the information specified in the above paragraph at a designated checkpoint. Each Party shall take appropriate, effective and proportionate measures to address situations of non-compliance;

(iii) Such information, including from internationally recognized certificates of compliance where they are available, will, without prejudice to the protection of confidential information, be provided to relevant national authorities, to the Party providing prior informed consent and to the Access and Benefit-sharing Clearing-House, as appropriate;

(iv) Check points must be effective and should have functions relevant to implementation of this subparagraph (a). They should be relevant to the utilization of genetic resources, or to the collection of relevant information at, *inter alia*, any stage of research, development, innovation, pre-commercialization or commercialization.

(*b*) Encouraging users and providers of genetic resources to include provisions in mutually agreed terms to share information on the implementation of such terms, including through reporting requirements; and

(*c*) Encouraging the use of cost-effective communication tools and systems.

2. A permit or its equivalent issued in accordance with Article 6, paragraph 3 (e) and made available to the Access and Benefit-sharing Clearing-House, shall constitute an internationally recognized certificate of compliance.

3. An internationally recognized certificate of compliance shall serve as evidence that the genetic resource which it covers has been accessed in accordance with prior informed consent and that mutually agreed terms have been established, as required by the domestic access and benefit-sharing legislation or regulatory requirements of the Party providing prior informed consent.

4. The internationally recognized certificate of compliance shall contain the following minimum information when it is not confidential:

(*a*) Issuing authority;

(*b*) Date of issuance;

(*c*) The provider;

(*d*) Unique identifier of the certificate;

(*e*) The person or entity to whom prior informed consent was granted;

(*f*) Subject-matter or genetic resources covered by the certificate;

(*g*) Confirmation that mutually agreed terms were established;

(*h*) Confirmation that prior informed consent was obtained; and

(*i*) Commercial and/or non-commercial use.

Article 18. Compliance with mutually agreed terms

1. In the implementation of Article 6, paragraph 3 (g) (i) and Article 7, each Party shall encourage providers and users of genetic resources and/or traditional knowledge associated with genetic resources to include provisions in mutually agreed terms to cover, where appropriate, dispute resolution including:

(*a*) The jurisdiction to which they will subject any dispute resolution processes;

(*b*) The applicable law; and/or

(*c*) Options for alternative dispute resolution, such as mediation or arbitration.

2. Each Party shall ensure that an opportunity to seek recourse is available under their legal systems, consistent with applicable jurisdictional requirements, in cases of disputes arising from mutually agreed terms.

3. Each Party shall take effective measures, as appropriate, regarding:

(*a*) Access to justice; and

(*b*) The utilization of mechanisms regarding mutual recognition and enforcement of foreign judgments and arbitral awards.

4. The effectiveness of this article shall be reviewed by the Conference of the Parties serving as the meeting of the Parties to this Protocol in accordance with Article 31 of this Protocol.

Article 19. Model contractual clauses

1. Each Party shall encourage, as appropriate, the development, update and use of sectoral and cross-sectoral model contractual clauses for mutually agreed terms.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of sectoral and cross-sectoral model contractual clauses.

Article 20. Codes of conduct, guidelines and best practices and/or standards

1. Each Party shall encourage, as appropriate, the development, update and use of voluntary codes of conduct, guidelines and best practices and/or standards in relation to access and benefit-sharing.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of voluntary codes of conduct, guidelines and best practices and/or standards and consider the adoption of specific codes of conduct, guidelines and best practices and/or standards.

Article 21. Awareness-raising

Each Party shall take measures to raise awareness of the importance of genetic resources and traditional knowledge associated with genetic resources, and related access and benefit sharing issues. Such measures may include, *inter alia*:

(*a*) Promotion of this Protocol, including its objective;

(*b*) Organization of meetings of indigenous and local communities and relevant stakeholders;

(*c*) Establishment and maintenance of a help desk for indigenous and local communities and relevant stakeholders;

(*d*) Information dissemination through a national clearing-house;

(*e*) Promotion of voluntary codes of conduct, guidelines and best practices and/or standards in consultation with indigenous and local communities and relevant stakeholders;

(*f*) Promotion of, as appropriate, domestic, regional and international exchanges of experience;

(*g*) Education and training of users and providers of genetic resources and traditional knowledge associated with genetic resources about their access and benefit-sharing obligations;

(*h*) Involvement of indigenous and local communities and relevant stakeholders in the implementation of this Protocol; and

(*i*) Awareness-raising of community protocols and procedures of indigenous and local communities.

Article 22. Capacity

1. The Parties shall cooperate in the capacity-building, capacity development and strengthening of human resources and institutional capacities to effectively implement this Protocol in developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition, including through existing global, regional, subregional and national institutions and organizations. In this context, Parties should facilitate the involvement of indigenous and local communities and relevant stakeholders, including non-governmental organizations and the private sector.

2. The need of developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition for financial resources in accordance with the relevant provisions of the Convention shall be taken fully into account for capacity building and development to implement this Protocol.

3. As a basis for appropriate measures in relation to the implementation of this Protocol, developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition should identify their national capacity needs and priorities through national capacity self-assessments. In doing so, such Parties should support the capacity needs and priorities of indigenous and local communities and relevant stakeholders, as identified by them, emphasizing the capacity needs and priorities of women.

4. In support of the implementation of this Protocol, capacity-building and development may address, inter alia, the following key areas:

(*a*) Capacity to implement, and to comply with the obligations of, this Protocol;

(*b*) Capacity to negotiate mutually agreed terms;

(*c*) Capacity to develop, implement and enforce domestic legislative, administrative or policy measures on access and benefit-sharing; and

(*d*) Capacity of countries to develop their endogenous research capabilities to add value to their own genetic resources.

5. Measures in accordance with paragraphs 1 to 4 above may include, *inter alia*:

(*a*) Legal and institutional development;

(*b*) Promotion of equity and fairness in negotiations, such as training to negotiate mutually agreed terms;

(*c*) The monitoring and enforcement of compliance;

(*d*) Employment of best available communication tools and Internet-based systems for access and benefit-sharing activities;

(*e*) Development and use of valuation methods;

(*f*) Bioprospecting, associated research and taxonomic studies;

(*g*) Technology transfer, and infrastructure and technical capacity to make such technology transfer sustainable;

(*h*) Enhancement of the contribution of access and benefit-sharing activities to the conservation of biological diversity and the sustainable use of its components;

(*i*) Special measures to increase the capacity of relevant stakeholders in relation to access and benefit-sharing; and

(*j*) Special measures to increase the capacity of indigenous and local communities with emphasis on enhancing the capacity of women within those communities in relation to access to genetic resources and/or traditional knowledge associated with genetic resources.

6. Information on capacity-building and development initiatives at national, regional and international levels, undertaken in accordance with paragraphs 1 to 5 above, should be provided to the Access and Benefit-sharing Clearing-House with a view to promoting synergy and coordination on capacity-building and development for access and benefit-sharing.

Article 23. Technology transfer, collaboration and cooperation

In accordance with Articles 15, 16, 18 and 19 of the Convention, the Parties shall collaborate and cooperate in technical and scientific research and development programmes, including biotechnological research activities, as a means to achieve the objective of this Protocol. The Parties undertake to promote and encourage access to technology by, and transfer of technology to, developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition, in order to enable the development and strengthening of a sound and viable technological and scientific base for the attainment of the objectives of the Convention and this Protocol. Where possible and appropriate such collaborative activities shall take place in and with a Party or the Parties providing genetic resources that is the country or are the countries of origin of such resources or a Party or Parties that have acquired the genetic resources in accordance with the Convention.

Article 24. Non-Parties

The Parties shall encourage non-Parties to adhere to this Protocol and to contribute appropriate information to the Access and Benefit-sharing Clearing-House.

Article 25. Financial mechanism and resources

1. In considering financial resources for the implementation of this Protocol, the Parties shall take into account the provisions of Article 20 of the Convention.

2. The financial mechanism of the Convention shall be the financial mechanism for this Protocol.

3. Regarding the capacity-building and development referred to in Article 22 of this Protocol, the Conference of the Parties serving as the meeting of the Parties to this Protocol, in providing guidance with respect to the financial mechanism referred to in paragraph 2 above, for consideration by the Conference of the Parties, shall take into account the need of developing country Parties, in particular the least developed countries and small island developing States among them, and of Parties with economies in transition, for financial resources, as well as the capacity needs and priorities of indigenous and local communities, including women within these communities.

4. In the context of paragraph 1 above, the Parties shall also take into account the needs of the developing country Parties, in particular the least developed countries and small island developing States among them, and of the Parties with economies in transition, in their efforts to identify and implement their capacity-building and development requirements for the purposes of the implementation of this Protocol.

5. The guidance to 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 Article.

6. The developed country Parties may also provide, and the developing country Parties and the Parties with economies in transition avail themselves of, financial and other resources for the implementation of the provisions of this Protocol through bilateral, regional and multilateral channels.

Article 26. Conference of the Parties serving as the meeting of the Parties to this Protocol

1. The Conference of the Parties 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 meeting 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 it.

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 substituted by a member to be elected by and from among 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 effective implementation. It shall perform the functions assigned to it by this Protocol and shall:

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

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

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

(d) Establish the form and the intervals for transmitting the information to be submitted in accordance with Article 29 of this Protocol and consider such information as well as reports submitted by any subsidiary body;

(e) Consider and adopt, as required, amendments to this Protocol and its Annex, as well as any additional annexes to this Protocol, that are deemed necessary for the implementation of this Protocol; and

(*f*) Exercise such other functions as may be required for the implementation of this Protocol.

5. The rules of procedure of the Conference of the Parties and financial rules of 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 meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be convened by the Secretariat and held concurrently with the first meeting of the Conference of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held concurrently with ordinary meetings 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 meetings 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 as observers at meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Any body or agency, whether national or international, governmental or non-governmental, that is qualified in matters covered by this Protocol and that has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties serving as a meeting of the Parties to this Protocol as an observer, may be so admitted, unless at least one third of the Parties present object.

Except as otherwise provided in this Article, the admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5 above.

Article 27. Subsidiary bodies

1. Any subsidiary body established by or under the Convention may serve this Protocol, including upon a decision of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Any such decision shall specify the tasks to be undertaken.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of any such subsidiary bodies. When a subsidiary body of the Convention serves as a subsidiary body to this Protocol, decisions under this Protocol shall be taken only by Parties to this Protocol.

3. When a subsidiary body of the Convention exercises its functions with regard to matters concerning this Protocol, any member of the bureau of that subsidiary body representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be substituted by a member to be elected by and from among the Parties to this Protocol.

Article 28. Secretariat

1. The Secretariat established by Article 24 of the Convention shall serve as the secretariat to this Protocol.

2. Article 24, paragraph 1, of the Convention on the functions of the Secretariat shall apply, *mutatis mutandis*, to this Protocol.

3. To the extent that they are distinct, the costs of the secretariat services for this Protocol shall be met by the Parties hereto. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, decide on the necessary budgetary arrangements to this end.

Article 29. Monitoring and reporting

Each Party shall monitor the implementation of its obligations under this Protocol, and shall, at intervals and in the format to be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, report to the Conference of the Parties serving as the meeting of the Parties to this Protocol on measures that it has taken to implement this Protocol.

Article 30. Procedures and mechanisms to promote compliance with this Protocol

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms under Article 27 of the Convention.

Article 31. Assessment and review

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall undertake, four years after the entry into force of this Protocol and thereafter at intervals determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, an evaluation of the effectiveness of this Protocol.

Article 32. Signature

This Protocol shall be open for signature by Parties to the Convention at the United Nations Headquarters in New York, from 2 February 2011 to 1 February 2012.

Article 33. Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession by States or regional economic integration organizations that are Parties to the Convention.

2. This Protocol shall enter into force for a State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after the deposit of the fiftieth instrument as referred to in paragraph 1 above, on the ninetieth day after the date on which that State or regional economic integration organization deposits its instrument of ratification, acceptance, approval or accession, or on the date on which the Convention enters into force for that State or regional economic integration organization, whichever shall be the later.

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

Article 34. Reservations

No reservations may be made to this Protocol.

Article 35. Withdrawal

1. At any time after two 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 place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

Article 36. Authentic texts

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.

In witness whereof the undersigned, being duly authorized to that effect, have signed this Protocol on the dates indicated.

Done at Nagoya on this twenty-ninth day of October, two thousand and ten.

Annex

Monetary and non-monetary benefits

Monetary benefits may include, but not be limited to:

(*a*) Access fees/fee per sample collected or otherwise acquired;

(*b*) Up-front payments;

(*c*) Milestone payments;

(*d*) Payment of royalties;

(*e*) Licence fees in case of commercialization;

(*f*) Special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity;

(*g*) Salaries and preferential terms where mutually agreed;

(*h*) Research funding;

(*i*) Joint ventures;

(*j*) Joint ownership of relevant intellectual property rights.

2. Non-monetary benefits may include, but not be limited to:

(*a*) Sharing of research and development results;

(*b*) Collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities, where possible in the Party providing genetic resources;

(*c*) Participation in product development;

(*d*) Collaboration, cooperation and contribution in education and training;

(*e*) Admittance to *ex situ* facilities of genetic resources and to databases;

(*f*) Transfer to the provider of the genetic resources of knowledge and technology under fair and most favourable terms, including on concessional and preferential terms where agreed, in particular, knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity;

(*g*) Strengthening capacities for technology transfer;

(*h*) Institutional capacity-building;

(*i*) Human and material resources to strengthen the capacities for the administration and enforcement of access regulations;

(*j*) Training related to genetic resources with the full participation of countries providing genetic resources, and where possible, in such countries;

(*k*) Access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;

(*l*) Contributions to the local economy;

(*m*) Research directed towards priority needs, such as health and food security, taking into account domestic uses of genetic resources in the Party providing genetic resources;

(*n*) Institutional and professional relationships that can arise from an access and benefit sharing agreement and subsequent collaborative activities;

(*o*) Food and livelihood security benefits;

(*p*) Social recognition;

(*q*) Joint ownership of relevant intellectual property rights.

5. Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety. Nagoya, 15 October 2010*

The Parties to this Supplementary Protocol,

Being Parties to the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, hereinafter referred to as "the Protocol",

Taking into account Principle 13 of the Rio Declaration on Environment and Development,

Reaffirming the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development,

Recognizing the need to provide for appropriate response measures where there is damage or sufficient likelihood of damage, consistent with the Protocol,

Recalling Article 27 of the Protocol,

Have agreed as follows:

Article 1. Objective

The objective of this Supplementary Protocol is to contribute to the conservation and sustainable use of biological diversity, taking also into account risks to human health, by providing international rules and procedures in the field of liability and redress relating to living modified organisms.

Article 2. Use of terms

1. The terms used in Article 2 of the Convention on Biological Diversity, hereinafter referred to as "the Convention", and Article 3 of the Protocol shall apply to this Supplementary Protocol.

2. In addition, for the purposes of this Supplementary Protocol:

(*a*) "Conference of the Parties serving as the meeting of the Parties to the Protocol" means the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol;

(*b*) "Damage" means an adverse effect on the conservation and sustainable use of biological diversity, taking also into account risks to human health, that:

(i) Is measurable or otherwise observable taking into account, wherever available, scientifically-established baselines recognized by a competent authority that

* Adopted on 15 October 2010 at Nagoya, Japan, during the fifth meeting of the Parties to the Cartagena Protocol on Biosafety.

takes into account any other human induced variation and natural variation; and

(ii) Is significant as set out in paragraph 3 below;

(*c*) "Operator" means any person in direct or indirect control of the living modified organism which could, as appropriate and as determined by domestic law, include, *inter alia,* the permit holder, person who placed the living modified organism on the market, developer, producer, notifier, exporter, importer, carrier or supplier;

(*d*) "Response measures" means reasonable actions to:

(i) Prevent, minimize, contain, mitigate, or otherwise avoid damage, as appropriate;

(ii) Restore biological diversity through actions to be undertaken in the following order of preference:

a. Restoration of biological diversity to the condition that existed before the damage occurred, or its nearest equivalent; and where the competent authority determines this is not possible;

b. Restoration by, *inter alia,* replacing the loss of biological diversity with other components of biological diversity for the same, or for another type of use either at the same or, as appropriate, at an alternative location.

3. A "significant" adverse effect is to be determined on the basis of factors, such as:

(*a*) The long-term or permanent change, to be understood as change that will not be redressed through natural recovery within a reasonable period of time;

(*b*) The extent of the qualitative or quantitative changes that adversely affect the components of biological diversity;

(*c*) The reduction of the ability of components of biological diversity to provide goods and services;

(*d*) The extent of any adverse effects on human health in the context of the Protocol.

Article 3. Scope

1. This Supplementary Protocol applies to damage resulting from living modified organisms which find their origin in a transboundary movement. The living modified organisms referred to are those:

(*a*) Intended for direct use as food or feed, or for processing;

(*b*) Destined for contained use;

(*c*) Intended for intentional introduction into the environment.

2. With respect to intentional transboundary movements, this Supplementary Protocol applies to damage resulting from any authorized use of the living modified organisms referred to in paragraph 1 above.

3. This Supplementary Protocol also applies to damage resulting from unintentional transboundary movements as referred to in Article 17 of the Protocol as well as damage resulting from illegal transboundary movements as referred to in Article 25 of the Protocol.

4. This Supplementary Protocol applies to damage resulting from a transboundary movement of living modified organisms that started after the entry into force of this Supplementary Protocol for the Party into whose jurisdiction the transboundary movement was made.

5. This Supplementary Protocol applies to damage that occurred in areas within the limits of the national jurisdiction of Parties.

6. Parties may use criteria set out in their domestic law to address damage that occurs within the limits of their national jurisdiction.

7. Domestic law implementing this Supplementary Protocol shall also apply to damage resulting from transboundary movements of living modified organisms from non-Parties.

Article 4. Causation

A causal link shall be established between the damage and the living modified organism in question in accordance with domestic law.

Article 5. Response measures

1. Parties shall require the appropriate operator or operators, in the event of damage, subject to any requirements of the competent authority, to:

(*a*) Immediately inform the competent authority;

(*b*) Evaluate the damage; and

(*c*) Take appropriate response measures.

2. The competent authority shall:

(*a*) Identify the operator which has caused the damage;

(*b*) Evaluate the damage; and

(*c*) Determine which response measures should be taken by the operator.

3. Where relevant information, including available scientific information or information available in the Biosafety Clearing-House, indicates that there is a sufficient likelihood that damage will result if timely response measures are not taken, the operator shall be required to take appropriate response measures so as to avoid such damage.

4. The competent authority may implement appropriate response measures, including, in particular, when the operator has failed to do so.

5. The competent authority has the right to recover from the operator the costs and expenses of, and incidental to, the evaluation of the damage and the implementation of any such appropriate response measures. Parties may provide, in their domestic law, for other situations in which the operator may not be required to bear the costs and expenses.

6. Decisions of the competent authority requiring the operator to take response measures should be reasoned. Such decisions should be notified to the operator. Domestic law shall provide for remedies, including the opportunity for administrative or judicial review of such decisions. The competent authority shall, in accordance with domestic law, also inform the operator of the available remedies. Recourse to such remedies shall not impede

the competent authority from taking response measures in appropriate circumstances, unless otherwise provided by domestic law.

7. In implementing this Article and with a view to defining the specific response measures to be required or taken by the competent authority, Parties may, as appropriate, assess whether response measures are already addressed by their domestic law on civil liability.

8. Response measures shall be implemented in accordance with domestic law.

Article 6. Exemptions

1. Parties may provide, in their domestic law, for the following exemptions:

(*a*) Act of God or *force majeure*; and

(*b*) Act of war or civil unrest.

2. Parties may provide, in their domestic law, for any other exemptions or mitigations as they may deem fit.

Article 7. Time limits

Parties may provide, in their domestic law, for:

(*a*) Relative and/or absolute time limits including for actions related to response measures; and

(*b*) The commencement of the period to which a time limit applies.

Article 8. Financial limits

Parties may provide, in their domestic law, for financial limits for the recovery of costs and expenses related to response measures.

Article 9. Right of recourse

This Supplementary Protocol shall not limit or restrict any right of recourse or indemnity that an operator may have against any other person.

Article 10. Financial security

1. Parties retain the right to provide, in their domestic law, for financial security.

2. Parties shall exercise the right referred to in paragraph 1 above in a manner consistent with their rights and obligations under international law, taking into account the final three preambular paragraphs of the Protocol.

3. The first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol after the entry into force of the Supplementary Protocol shall request the Secretariat to undertake a comprehensive study which shall address, *inter alia*:

(*a*) The modalities of financial security mechanisms;

(*b*) An assessment of the environmental, economic and social impacts of such mechanisms, in particular on developing countries; and

(*c*) An identification of the appropriate entities to provide financial security.

Article 11. Responsibility of States for internationally wrongful acts

This Supplementary Protocol shall not affect the rights and obligations of States under the rules of general international law with respect to the responsibility of States for internationally wrongful acts.

Article 12. Implementation and relation to civil liability

1. Parties shall provide, in their domestic law, for rules and procedures that address damage. To implement this obligation, Parties shall provide for response measures in accordance with this Supplementary Protocol and may, as appropriate:

(*a*) Apply their existing domestic law, including, where applicable, general rules and procedures on civil liability;

(*b*) Apply or develop civi11iability rules and procedures specifically for this purpose; or

(*c*) Apply or develop a combination of both.

2. Parties shall, with the aim of providing adequate rules and procedures in their domestic law on civil liability for material or personal damage associated with the damage as defined in Article 2, paragraph 2 (b):

(*a*) Continue to apply their existing general law on civil liability;

(*b*) Develop and apply or continue to apply civil liability law specifically for that purpose; or

(*c*) Develop and apply or continue to apply a combination of both.

3. When developing civil liability law as referred to in subparagraphs (b) or (c) of paragraphs 1 or 2 above, Parties shall, as appropriate, address, *inter alia*, the following elements:

(*a*) Damage;

(*b*) Standard of liability, including strict or fault-based liability;

(*c*) Channelling of liability, where appropriate;

(*d*) Right to bring claims.

Article 13. Assessment and review

The Conference of the Parties serving as the meeting of the Parties to the Protocol shall undertake a review of the effectiveness of this Supplementary Protocol five years after its entry into force and every five years thereafter, provided information requiring such a review has been made available by Parties. The review shall be undertaken in the context of the assessment and review of the Protocol as specified in Article 35 of the Protocol, unless otherwise decided by the Parties to this Supplementary Protocol. The first review shall include a review of the effectiveness of Articles 10 and 12.

Article 14. Conference of the Parties serving as the meeting of the Parties to the Protocol

1. Subject to paragraph 2 of Article 32 of the Convention, the Conference of the parties serving as the meeting of the Parties to the Protocol shall serve as the meeting of the Parties to this Supplementary Protocol.

2. The Conference of the Parties serving as the meeting of the Parties to the Protocol shall keep under regular review the implementation of this Supplementary Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Supplementary Protocol and, *mutatis mutandis,* the functions assigned to it by paragraphs 4 (a) and (f) of Article 29 of the Protocol.

Article 15. Secretariat

The Secretariat established by Article 24 of the Convention shall serve as the secretariat to this Supplementary Protocol.

Article 16. Relationship with the Convention and the Protocol

1. This Supplementary Protocol shall supplement the Protocol and shall neither modify nor amend the Protocol.

2. This Supplementary Protocol shall not affect the rights and obligations of the Parties to this Supplementary Protocol under the Convention and the Protocol.

3. Except as otherwise provided in this Supplementary Protocol, the provisions of the Convention and the Protocol shall apply, *mutatis mutandis*, to this Supplementary Protocol.

4. Without prejudice to paragraph 3 above, this Supplementary Protocol shall not affect the rights and obligations of a Party under international law.

Article 17. Signature

This Supplementary Protocol shall be open for signature by Parties to the Protocol at the United Nations Headquarters in New York from 7 March 2011 to 6 March 2012.

Article 18. Entry into force

1. This Supplementary Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession by States or regional economic integration organizations that are Parties to the Protocol.

2. This Supplementary Protocol shall enter into force for a State or regional economic integration organization that ratifies, accepts or approves it or accedes thereto after the deposit of the fortieth instrument as referred to in paragraph 1 above, on the ninetieth day after the date on which that State or regional economic integration organization deposits its instrument of ratification, acceptance, approval, or accession, or on the date on which the Protocol enters into force for that State or regional economic integration organization, whichever shall be the later.

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

Article 19. Reservations

No reservations may be made to this Supplementary Protocol.

Article 20. Withdrawal

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

2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

3. Any Party which withdraws from the Protocol in accordance with Article 39 of the Protocol shall be considered as also having withdrawn from this Supplementary Protocol.

Article 21. Authentic texts

The original of this Supplementary 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.

In witness whereof the undersigned, being duly authorized to that effect, have signed this Supplementary Protocol.

Done at Nagoya on this fifteenth day of October two thousand and ten.

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

1. International Civil Aviation Organization

(*a*) Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation. Beijing, 10 September 2010*

The States Parties to this Convention,

Deeply concerned that unlawful acts against civil aviation jeopardize the safety and security of persons and property, seriously affect the operation of air services, airports and air navigation, and undermine the confidence of the peoples of the world in the safe and orderly conduct of civil aviation for all States;

Recognizing that new types of threats against civil aviation require new concerted efforts and policies of cooperation on the part of States; and

Being convinced that in order to better address these threats, there is an urgent need to strengthen the legal framework for international cooperation in preventing and suppressing unlawful acts against civil aviation;

Have agreed as follows:

* Adopted at the International Conference on Air Law (Diplomatic Conference on Aviation Security), held under the auspices of the International Civil Aviation Organization in Beijing, China, from 30 August to 10 September 2010.

Article 1

1. Any person commits an offence if that person unlawfully and intentionally:

(*a*) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or

(*b*) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or

(*c*) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or

(*d*) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or

(*e*) communicates information which that person knows to be false, thereby endangering the safety of an aircraft in flight; or

(*f*) uses an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment; or

(*g*) releases or discharges from an aircraft in service any BCN weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment; or

(*h*) uses against or on board an aircraft in service any BCN weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment; or

(*i*) transports, causes to be transported, or facilitates the transport of, on board an aircraft:

(1) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national law, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act; or

(2) any BCN weapon, knowing it to be a BCN weapon as defined in Article 2; or

(3) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to a safeguards agreement with the International Atomic Energy Agency; or

(4) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon without lawful authorization and with the intention that it will be used for such purpose;

provided that for activities involving a State Party, including those undertaken by a person or legal entity authorized by a State Party, it shall not be an offence under subparagraphs (3) and (4) if the transport of such items or materials is consistent with or is

for a use or activity that is consistent with its rights, responsibilities and obligations under the applicable multilateral non-proliferation treaty to which it is a party including those referred to in Article 7.

2. Any person commits an offence if that person unlawfully and intentionally, using any device, substance or weapon:

(*a*) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or

(*b*) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport,

if such an act endangers or is likely to endanger safety at that airport.

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

(*a*) makes a threat to commit any of the offences in subparagraphs (a), (b), (c), (d), (f), (g) and (h) of paragraph 1 or in paragraph 2 of this Article; or

(*b*) unlawfully and intentionally causes any person to receive such a threat, under circumstances which indicate that the threat is credible.

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

(*a*) attempts to commit any of the offences set forth in paragraph 1 or 2 of this Article; or

(*b*) organizes or directs others to commit an offence set forth in paragraph 1, 2, 3 or 4(a) of this Article; or

(*c*) participates as an accomplice in an offence set forth in paragraph 1, 2, 3 or 4(a) of this Article; or

(*d*) unlawfully and intentionally assists another person to evade investigation, prosecution or punishment, knowing that the person has committed an act that constitutes an offence set forth in paragraph 1, 2, 3, 4(a), 4(b) or 4(c) of this Article, or that the person is wanted for criminal prosecution by law enforcement authorities for such an offence or has been sentenced for such an offence.

5. Each State Party shall also establish as offences, when committed intentionally, whether or not any of the offences set forth in paragraph 1, 2 or 3 of this Article is actually committed or attempted, either or both of the following:

(*a*) agreeing with one or more other persons to commit an offence set forth in paragraph 1, 2 or 3 of this Article and, where required by national law, involving an act undertaken by one of the participants in furtherance of the agreement; or

(*b*) contributing in any other way to the commission of one or more offences set forth in paragraph 1, 2 or 3 of this Article by a group of persons acting with a common purpose, and such contribution shall either:

(i) be made with the aim of furthering the general criminal activity or purpose of the group, where such activity or purpose involves the commission of an offence set forth in paragraph 1, 2 or 3 of this Article; or

(ii) be made in the knowledge of the intention of the group to commit an offence set forth in paragraph 1, 2 or 3 of this Article.

Article 2

For the purposes of this Convention:

(*a*) an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation; in the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board;

(*b*) an aircraft is considered to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this Article;

(*c*) "Air navigation facilities" include signals, data, information or systems necessary for the navigation of the aircraft;

(*d*) "Toxic chemical" means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere;

(*e*) "Radioactive material" means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment;

(*f*) "Nuclear material" means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing;

(*g*) "Uranium enriched in the isotope 235 or 233" means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;

(*h*) "BCN weapon" means:

(a) "biological weapons", which are:

(i) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or

(ii) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

(b) "chemical weapons", which are, together or separately:

(i) toxic chemicals and their precursors, except where intended for:

(A) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or

(B) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or

(C) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or

(D) law enforcement including domestic riot control purposes, as long as the types and quantities are consistent with such purposes;

(ii) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (b)(i), which would be released as a result of the employment of such munitions and devices;

(iii) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b)(ii).

(c) nuclear weapons and other nuclear explosive devices.

(*i*) "Precursor" means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system;

(*j*) the terms "source material" and "special fissionable material" have the same meaning as given to those terms in the Statute of the International Atomic Energy Agency, done at New York on 26 October 1956.

Article 3

Each State Party undertakes to make the offences set forth in Article 1 punishable by severe penalties.

Article 4

1. Each State Party, in accordance with its national legal principles, may take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in Article 1. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. If a State Party takes the necessary measures to make a legal entity liable in accordance with paragraph 1 of this Article, it shall endeavour to ensure that the applicable criminal, civil or administrative sanctions are effective, proportionate and dissuasive. Such sanctions may include monetary sanctions.

Article 5

1. This Convention shall not apply to aircraft used in military, customs or police services.

2. In the cases contemplated in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall apply irrespective of whether the aircraft is engaged in an international or domestic flight, only if:

(*a*) the place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the State of registry of that aircraft; or

(*b*) the offence is committed in the territory of a State other than the State of registry of the aircraft.

3. Notwithstanding paragraph 2 of this Article, in the cases contemplated in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall also apply if the offender or the alleged offender is found in the territory of a State other than the State of registry of the aircraft.

4. With respect to the States Parties mentioned in Article 15 and in the cases set forth in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall not apply if the places referred to in subparagraph (a) of paragraph 2 of this Article are situated within the territory of the same State where that State is one of those referred to in Article 15, unless the offence is committed or the offender or alleged offender is found in the territory of a State other than that State.

5. In the cases contemplated in subparagraph (d) of paragraph 1 of Article 1, this Convention shall apply only if the air navigation facilities are used in international air navigation.

6. The provisions of paragraphs 2, 3, 4 and 5 of this Article shall also apply in the cases contemplated in paragraph 4 of Article 1.

Article 6

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, the Convention on International Civil Aviation 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.

3. The provisions of paragraph 2 of this Article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.

Article 7

Nothing in this Convention shall affect the rights, obligations and responsibilities under the Treaty on the Non-Proliferation of Nuclear Weapons, signed at London, Moscow and Washington on 1 July 1968, the Convention on the Prohibition of the Development,

Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, signed at London, Moscow and Washington on 10 April 1972, or the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, signed at Paris on 13 January 1993, of States Parties to such treaties.

Article 8

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

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

(*b*) when the offence is committed against or on board an aircraft registered in that State;

(*c*) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;

(*d*) when the offence is committed against or on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence is in that State;

(*e*) when the offence is committed by a national of that State.

2. Each State Party may also establish its jurisdiction over any such offence in the following cases:

(*a*) when the offence is committed against a national of that State;

(*b*) when the offence is committed by a stateless person whose habitual residence is in the territory of that State.

3. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1, in the case where the alleged offender is present in its territory and it does not extradite that person pursuant to Article 12 to any of the States Parties that have established their jurisdiction in accordance with the applicable paragraphs of this Article with regard to those offences.

4. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 9

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present, shall take that person into custody or take other measures to ensure that person's presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which that person is a national.

4. When a State Party, pursuant to this Article, has taken a person into custody, it shall immediately notify the States Parties which have established jurisdiction under paragraph 1 of Article 8 and established jurisdiction and notified the Depositary under subparagraph (a) of paragraph 4 of Article 21 and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State Party which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States Parties and shall indicate whether it intends to exercise jurisdiction.

Article 10

The State Party in the territory of which the alleged offender is found shall, 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 to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

Article 11

Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being 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 human rights law.

Article 12

1. The offences set forth in Article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.

2. If 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, it may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in Article 1. 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 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with subparagraphs (b), (c), (d) and (e) of paragraph 1 of Article 8, and who have established jurisdiction in accordance with paragraph 2 of Article 8.

5. The offences set forth in subparagraphs (a) and (b) of paragraph 5 of Article 1 shall, for the purpose of extradition between States Parties, be treated as equivalent.

Article 13

None of the offences set forth in Article 1 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 14

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 1 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, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 15

The States Parties which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registry for the purpose of this Convention and shall give notice thereof to the Secretary General of the International Civil Aviation Organization who shall communicate the notice to all States Parties to this Convention.

Article 16

1. States Parties shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences set forth in Article 1.

2. When, due to the commission of one of the offences set forth in Article 1, a flight has been delayed or interrupted, any State Party in whose territory the aircraft or passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

Article 17

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Article 1. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 18

Any State Party having reason to believe that one of the offences set forth in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States Parties which it believes would be the States set forth in paragraphs 1 and 2 of Article 8.

Article 19

Each State Party shall in accordance with its national law report to the Council of the International Civil Aviation Organization as promptly as possible any relevant information in its possession concerning:

(*a*) the circumstances of the offence;

(*b*) the action taken pursuant to paragraph 2 of Article 16;

(*c*) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

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, 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 request 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 the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

Article 21

1. This Convention shall be open for signature in Beijing on 10 September 2010 by States participating in the Diplomatic Conference on Aviation Security held at Beijing from 30 August to 10 September 2010. After 27 September 2010, this Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montréal until it enters into force in accordance with Article 22.

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 International Civil Aviation Organization, which is hereby designated as the Depositary.

3. Any State which does not ratify, accept or approve this Convention in accordance with paragraph 2 of this Article may accede to it at any time. The instrument of accession shall be deposited with the Depositary.

4. Upon ratifying, accepting, approving or acceding to this Convention, each State Party:

(*a*) shall notify the Depositary of the jurisdiction it has established under its national law in accordance with paragraph 2 of Article 8, and immediately notify the Depositary of any change; and

(*b*) may declare that it shall apply the provisions of subparagraph (d) of paragraph 4 of Article 1 in accordance with the principles of its criminal law concerning family exemptions from liability.

Article 22

1. This Convention shall enter into force on the first day of the second month following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession.

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

3. As soon as this Convention enters into force, it shall be registered with the United Nations by the Depositary.

Article 23

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one year following the date on which notification is received by the Depositary.

Article 24

As between the States Parties, this Convention shall prevail over the following instruments:

(*a*) the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Signed at Montreal on 23 September 1971; and

(*b*) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Done at Montreal on 23 September 1971, Signed at Montreal on 24 February 1988.

Article 25

The Depositary shall promptly inform all States Parties to this Convention and all signatory or acceding States to this Convention of the date of each signature, the date of deposit of each instrument of ratification, approval, acceptance or accession, the date of coming into force of this Convention, and other relevant information.

In witness whereof the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

Done at Beijing on the tenth day of September of the year Two Thousand and Ten in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all Contracting States to this Convention.

(*b*) Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft. Beijing, 10 September 2010*

The State Parties to this Protocol,

Deeply concerned about the worldwide escalation of unlawful acts against civil aviation;

Recognizing that new types of threats against civil aviation require new concerted efforts and policies of cooperation on the part of States; and

Believing that in order to better address these threats, it is necessary to adopt provisions supplementary to those of the Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague on 16 December 1970, to suppress unlawful acts of seizure or exercise of control of aircraft and to improve its effectiveness;

Have agreed as follows:

Article I

This Protocol supplements the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 (hereinafter referred to as "the Convention").

Article II

Article 1 of the Convention shall be replaced by the following:

"*Article 1*

1. Any person commits an offence if that person unlawfully and intentionally seizes or exercises control of an aircraft in service by force or threat thereof, or by coercion, or by any other form of intimidation, or by any technological means.

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

(*a*) makes a threat to commit the offence set forth in paragraph 1 of this Article; or

(*b*) unlawfully and intentionally causes any person to receive such a threat, under circumstances which indicate that the threat is credible.

* Adopted at the International Conference on Air Law (Diplomatic Conference on Aviation Security), held under the auspices of the International Civil Aviation Organization in Beijing, China, from 30 August to 10 September 2010.

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

(*a*) attempts to commit the offence set forth in paragraph 1 of this Article; or

(*b*) organizes or directs others to commit an offence set forth in paragraph 1, 2 or 3 (a) of this Article; or

(*c*) participates as an accomplice in an offence set forth in paragraph 1, 2 or 3 (a) of this Article; or

(*d*) unlawfully and intentionally assists another person to evade investigation, prosecution or punishment, knowing that the person has committed an act that constitutes an offence set forth in paragraph 1, 2, 3 (a), 3 (b) or 3 (c) of this Article, or that the person is wanted for criminal prosecution by law enforcement authorities for such an offence or has been sentenced for such an offence.

4. Each State Party shall also establish as offences, when committed intentionally, whether or not any of the offences set forth in paragraph 1 or 2 of this Article is actually committed or attempted, either or both of the following:

(*a*) agreeing with one or more other persons to commit an offence set forth in paragraph 1 or 2 of this Article and, where required by national law, involving an act undertaken by one of the participants in furtherance of the agreement; or

(*b*) contributing in any other way to the commission of one or more offences set forth in paragraph 1 or 2 of this Article by a group of persons acting with a common purpose, and such contribution shall either:

(i) be made with the aim of furthering the general criminal activity or purpose of the group, where such activity or purpose involves the commission of an offence set forth in paragraph 1 or 2 of this Article; or

(ii) be made in the knowledge of the intention of the group to commit an offence set forth in paragraph 1 or 2 of this Article".

Article III

Article 2 of the Convention shall be replaced by the following:

"*Article 2*

Each State Party undertakes to make the offences set forth in Article 1 punishable by severe penalties".

Article IV

The following shall be added as Article 2 *bis* of the Convention:

"*Article 2* bis

1. Each State Party, in accordance with its national legal principles, may take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in Article 1. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. If a State Party takes the necessary measures to make a legal entity liable in accordance with paragraph 1 of this Article, it shall endeavour to ensure that the applicable criminal, civil or administrative sanctions are effective, proportionate and dissuasive. Such sanctions may include monetary sanctions".

Article V

1. Article 3, paragraph 1, of the Convention shall be replaced by the following:

"*Article 3*

1. For the purposes of this Convention, an aircraft is considered to be in service from the beginning of the pre-flight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board".

2. In Article 3, paragraph 3, of the Convention, "registration" shall be replaced by "registry".

3. In Article 3, paragraph 4, of the Convention, "mentioned" shall be replaced by "set forth".

4. Article 3, paragraph 5, of the Convention shall be replaced by the following:

"5. Notwithstanding paragraphs 3 and 4 of this Article, Articles 6, 7, 7 *bis*, 8, 8 *bis*, 8 *ter* and 10 shall apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a State other than the State of registry of that aircraft".

Article VI

The following shall be added as Article 3 *bis* of the Convention:

"*Article 3* bis

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, the Convention on International Civil Aviation 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.

3. The provisions of paragraph 2 of this Article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws".

Article VII

Article 4 of the Convention shall be replaced by the following:

"*Article 4*

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 and any other act of violence against passengers or crew committed by the alleged offender in connection with the offences, in the following cases:

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

(*b*) when the offence is committed against or on board an aircraft registered in that State;

(*c*) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;

(*d*) when the offence is committed against or on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence is in that State;

(*e*) when the offence is committed by a national of that State.

2. Each State Party may also establish its jurisdiction over any such offence in the following cases:

(*a*) when the offence is committed against a national of that State;

(*b*) when the offence is committed by a stateless person whose habitual residence is in the territory of that State.

3. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 in the case where the alleged offender is present in its territory and it does not extradite that person pursuant to Article 8 to any of the States Parties that have established their jurisdiction in accordance with the applicable paragraphs of this Article with regard to those offences.

4. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law".

Article VIII

Article 5 of the Convention shall be replaced by the following:

"*Article 5*

The States Parties which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registry for the purpose of this Convention and shall give notice thereof to the Secretary General of the International Civil Aviation Organization who shall communicate the notice to all States Parties to this Convention".

Article IX

Article 6, paragraph 4, of the Convention shall be replaced by the following:

"*Article 6*

4. When a State Party, pursuant to this Article, has taken a person into custody, it shall immediately notify the States Parties which have established jurisdiction under paragraph 1 of Article 4, and established jurisdiction and notified the Depositary under paragraph 2 of Article 4 and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State Party which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States Parties and shall indicate whether it intends to exercise jurisdiction".

Article X

The following shall be added as Article 7 *bis* of the Convention:

"*Article 7 bis*

Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being 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 human rights law".

Article XI

Article 8 of the Convention shall be replaced by the following:

"*Article 8*

1. The offences set forth in Article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.

2. If 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, it may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in Article 1. 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 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with subparagraphs (b), (c), (d) and (e) of paragraph 1 of Article 4 and who have established jurisdiction in accordance with paragraph 2 of Article 4.

5. The offences set forth in subparagraphs (a) and (b) of paragraph 4 of Article 1 shall, for the purpose of extradition between States Parties, be treated as equivalent".

Article XII

The following shall be added as Article 8 *bis* of the Convention:

"*Article 8* bis

None of the offences set forth in Article 1 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 XIII

The following shall be added as Article 8 *te*r of the Convention:

"*Article 8* ter

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 1 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, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons".

Article XIV

Article 9, paragraph 1, of the Convention shall be replaced by the following:

"*Article 9*

1. When any of the acts set forth in paragraph 1 of Article 1 has occurred or is about to occur, States Parties shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve the commander's control of the aircraft".

Article XV

Article 10, paragraph 1, of the Convention shall be replaced by the following:

"*Article 10*

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Article 1 and other acts set forth in Article 4. The law of the State requested shall apply in all cases".

Article XVI

The following shall be added as Article 10 *bis* of the Convention:

"*Article 10* bis

Any State Party having reason to believe that one of the offences set forth in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States Parties which it believes would be the States set forth in paragraphs 1 and 2 of Article 4".

Article XVII

1. All references in the Convention to "Contracting State" and "Contracting States" shall be replaced by "State Party" and "States Parties" respectively.

2. All references in the Convention to "him" and "his" shall be replaced by "that person" and "that person's" respectively.

Article XVIII

The texts of the Convention in the Arabic and Chinese languages annexed to this Protocol shall, together with the texts of the Convention in the English, French, Russian and Spanish languages, constitute texts equally authentic in the six languages.

Article XIX

As between the States Parties to this Protocol, the Convention and this Protocol shall be read and interpreted together as one single instrument and shall be known as The Hague Convention as amended by the Beijing Protocol, 2010.

Article XX

This Protocol shall be open for signature in Beijing on 10 September 2010 by States participating in the Diplomatic Conference on Aviation Security held at Beijing from 30 August to 10 September 2010. After 27 September 2010, this Protocol shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montréal until it enters into force in accordance with Article XXIII.

Article XXI

1. This Protocol is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the International Civil Aviation Organization, who is hereby designated as the Depositary.

2. Ratification, acceptance or approval of this Protocol by any State which is not a Party to the Convention shall have the effect of ratification, acceptance or approval of The Hague Convention as amended by the Beijing Protocol, 2010.

3. Any State which does not ratify, accept or approve this Protocol in accordance with paragraph 1 of this Article may accede to it at any time. The instruments of accession shall be deposited with the Depositary.

Article XXII

Upon ratifying, accepting, approving or acceding to this Protocol, each State Party:

(*a*) shall notify the Depositary of the jurisdiction it has established under its national law in accordance with paragraph 2 of Article 4 of The Hague Convention as amended by the Beijing Protocol, 2010, and immediately notify the Depositary of any change; and

(*b*) may declare that it shall apply the provisions of subparagraph (d) of paragraph 3 of Article 1 of The Hague Convention as amended by the Beijing Protocol, 2010 in accordance with the principles of its criminal law concerning family exemptions from liability.

Article XXIII

1. This Protocol shall enter into force on the first day of the second month following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Depositary.

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

3. As soon as this Protocol enters into force, it shall be registered with the United Nations by the Depositary.

Article XXIV

1. Any State Party may denounce this Protocol by written notification to the Depositary.

2. Denunciation shall take effect one year following the date on which notification is received by the Depositary.

Article XXV

The Depositary shall promptly inform all States Parties to this Protocol and all signatory or acceding States to this Protocol of the date of each signature, the date of deposit of each instrument of ratification, acceptance, approval or accession, the date of coming into force of this Protocol, and other relevant information.

In witness whereof the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol.

Done at Beijing on the tenth day of September of the year Two Thousand and Ten in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another. This Protocol shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all Contracting States to this Protocol.

2. International Criminal Court

(*a*) Resolution RC/Res.5. Amendments to article 8 of the Rome Statute*

The Review Conference,

Noting article 123, paragraph 1, of the Rome Statute of the International Criminal Court which requests the Secretary-General of the United Nations to convene a Review Conference to consider any amendments to the Statute seven years after its entry into force,

Noting article 121, paragraph 5, of the Statute which states that any amendment to articles 5, 6, 7 and 8 of the Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance and that in respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding the crime covered by the amendment when committed by that State Party's nationals or on its territory, and *confirming* its understanding that in respect to this amendment the same principle that applies in respect of a State Party which has not accepted the amendment applies also in respect of States that are not parties to the Statute,

Confirming that, in light of the provision of article 40, paragraph 5, of the Vienna Convention on the Law of Treaties, States that subsequently become States Parties to the Statute will be allowed to decide whether to accept the amendment contained in this resolution at the time of ratification, acceptance or approval of, or accession to the Statute,

Noting article 9 of the Statute on the Elements of Crimes which states that such Elements shall assist the Court in the interpretation and application of the provisions of the crimes within its jurisdiction,

Taking due account of the fact that the crimes of employing poison or poisoned weapons; of employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; and of employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions, already fall within the jurisdiction of the Court under article 8, paragraph 2 (b), as serious violations of the laws and customs applicable in international armed conflict,

Noting the relevant elements of the crimes within the Elements of Crimes already adopted by the Assembly of States Parties on 9 September 2000,

Considering that the abovementioned relevant elements of the crimes can also help in their interpretation and application in armed conflict not of an international character, in that *inter alia* they specify that the conduct took place in the context of and was associated with an armed conflict, which consequently confirm the exclusion from the Court's jurisdiction of law enforcement situations,

Considering that the crimes referred to in article 8, paragraph 2 (e) (xiii) (employing poison or poisoned weapons) and in article 8, paragraph 2 (e) (xiv) (asphyxiating, poisonous or other gases, and all analogous liquids, materials and devices) are serious violations

* Adopted by consensus on 10 June 2010 at the 12th plenary meeting of the Review Conference of the Rome Statute of the International Criminal Court in Kampala, Uganda. See Depositary Notification C.N.533.2010 Treaties-6, dated 29 November 2010, available from http://treaties.un.org.

of the laws and customs applicable in armed conflict not of an international character, as reflected in customary international law,

Considering that the crime referred to in article 8, paragraph 2 (e) (xv) (employing bullets which expand or flatten easily in the human body), is also a serious violation of the laws and customs applicable in armed conflict not of an international character, and *understanding* that the crime is committed only if the perpetrator employs the bullets to uselessly aggravate suffering or the wounding effect upon the target of such bullets, as reflected in customary international law,

1. *Decides* to adopt the amendment to article 8, paragraph 2 (e), of the Rome Statute of the International Criminal Court contained in annex I to the present resolution, which is subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph 5, of the Statute;

2. *Decides* to adopt the relevant elements to be added to the Elements of Crimes, as contained in annex II to the present resolution.

Annex I Amendment to article 8

Add to article 8, paragraph 2 (e), the following:

"(xiii) Employing poison or poisoned weapons;

(xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions".

Annex II Elements of crimes

Add the following elements to the Elements of Crimes:

Article 8(2)(e)(xiii). War crime of employing poison or poisoned weapons

Elements

1. The perpetrator employed a substance or a weapon that releases a substance as a result of its employment.

2. The substance was such that it causes death or serious damage to health in the ordinary course of events, through its toxic properties.

3. The conduct took place in the context of and was associated with an armed conflict not of an international character.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8(2)(e)(xiv) War crime of employing prohibited gases, liquids, materials or devices

Elements

1. The perpetrator employed a gas or other analogous substance or device.

2. The gas, substance or device was such that it causes death or serious damage to health in the ordinary course of events, through its asphyxiating or toxic properties.*

3. The conduct took place in the context of and was associated with an armed conflict not of an international character.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8(2)(e)(xv) War crime of employing prohibited bullets

Elements

1. The perpetrator employed certain bullets.

2. The bullets were such that their use violates the international law of armed conflict because they expand or flatten easily in the human body.

3. The perpetrator was aware that the nature of the bullets was such that their employment would uselessly aggravate suffering or the wounding effect.

4. The conduct took place in the context of and was associated with an armed conflict not of an international character.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

(*b*) Resolution RC/Res.6. The crime of aggression**

The Review Conference,

Recalling paragraph 1 of article 12 of the Rome Statute,

Recalling paragraph 2 of article 5 of the Rome Statute,

Recalling also paragraph 7 of resolution F, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998,

Recalling further resolution ICC-ASP/1/Res.1 on the continuity of work in respect of the crime of aggression, and expressing its appreciation to the Special Working Group on the Crime of Aggression for having elaborated proposals on a provision on the crime of aggression,

Taking note of resolution ICC-ASP/8/Res.6, by which the Assembly of States Parties forwarded proposals on a provision on the crime of aggression to the Review Conference for its consideration,

Resolved to activate the Court's jurisdiction over the crime of aggression as early as possible,

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* Nothing in this element shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law with respect to the development, production, stockpiling and use of chemical weapons.

** Adopted by consensus on 11 June 2010 at the 13th plenary meeting of the Review Conference of the Rome Statute of the International Criminal Court in Kampala, Uganda. See Depositary Notification C.N.651.2010 Treaties-8, dated 29 November 2010, available at http://treaties.un.org.

1. *Decides* to adopt, in accordance with article 5, paragraph 2, of the Rome Statute of the International Criminal Court (hereinafter: "the Statute") the amendments to the Statute contained in annex I of the present resolution, which are subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph 5; and notes that any State Party may lodge a declaration referred to in article 15 bis prior to ratification or acceptance;

2. *Also decides* to adopt the amendments to the Elements of Crimes contained in annex II of the present resolution;

3. *Also decides* to adopt the understandings regarding the interpretation of the abovementioned amendments contained in annex III of the present resolution;

4. *Further decides* to review the amendments on the crime of aggression seven years after the beginning of the Court's exercise of jurisdiction;

5. *Calls upon* all States Parties to ratify or accept the amendments contained in annex I.

Annex I. Amendments to the Rome Statute of the International Criminal Court on the crime of aggression

1. Article 5, paragraph 2, of the Statute is deleted.

2. The following text is inserted after article 8 of the Statute:

Article 8 bis. *Crime of aggression*

1. For the purpose of this Statute, "crime of aggression" means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

2. For the purpose of paragraph 1, "act of aggression" means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

(*a*) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(*b*) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(*c*) The blockade of the ports or coasts of a State by the armed forces of another State;

(*d*) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(*e*) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(*f*) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(*g*) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

3. The following text is inserted after article 15 of the Statute:

Article 15 bis. *Exercise of jurisdiction over the crime of aggression (State referral,* proprio motu*)*

1. The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, paragraphs (a) and (c), subject to the provisions of this article.

2. The Court may exercise jurisdiction only with respect to crimes of aggression committed one year after the ratification or acceptance of the amendments by thirty States Parties.

3. The Court shall exercise jurisdiction over the crime of aggression in accordance with this article, subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute.

4. The Court may, in accordance with article 12, exercise jurisdiction over a crime of aggression, arising from an act of aggression committed by a State Party, unless that State Party has previously declared that it does not accept such jurisdiction by lodging a declaration with the Registrar. The withdrawal of such a declaration may be effected at any time and shall be considered by the State Party within three years.

5. In respect of a State that is not a party to this Statute, the Court shall not exercise its jurisdiction over the crime of aggression when committed by that State's nationals or on its territory.

6. Where the Prosecutor concludes that there is a reasonable basis to proceed with an investigation in respect of a crime of aggression, he or she shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned. The Prosecutor shall notify the Secretary-General of the United Nations of the situation before the Court, including any relevant information and documents.

7. Where the Security Council has made such a determination, the Prosecutor may proceed with the investigation in respect of a crime of aggression.

8. Where no such determination is made within six months after the date of notification, the Prosecutor may proceed with the investigation in respect of a crime of aggression, provided that the Pre-Trial Division has authorized the commencement of the investigation in respect of a crime of aggression in accordance with the procedure contained in article 15, and the Security Council has not decided otherwise in accordance with article 16.

9. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the Court's own findings under this Statute.

10. This article is without prejudice to the provisions relating to the exercise of jurisdiction with respect to other crimes referred to in article 5.

4. The following text is inserted after article 15 *bis* of the Statute:

Article 15 ter. *Exercise of jurisdiction over the crime of aggression (Security Council referral)*

1. The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, paragraph (b), subject to the provisions of this article.

2. The Court may exercise jurisdiction only with respect to crimes of aggression committed one year after the ratification or acceptance of the amendments by thirty States Parties.

3. The Court shall exercise jurisdiction over the crime of aggression in accordance with this article, subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute.

4. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the Court's own findings under this Statute.

5. This article is without prejudice to the provisions relating to the exercise of jurisdiction with respect to other crimes referred to in article 5.

5. The following text is inserted after article 25, paragraph 3, of the Statute:

3 *bis*. In respect of the crime of aggression, the provisions of this article shall apply only to persons in a position effectively to exercise control over or to direct the political or military action of a State.

6. The first sentence of article 9, paragraph 1, of the Statute is replaced by the following sentence:

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7, 8 and 8 *bis*.

7. The chapeau of article 20, paragraph 3, of the Statute is replaced by the following paragraph; the rest of the paragraph remains unchanged:

3. No person who has been tried by another court for conduct also proscribed under article 6, 7, 8 or 8 bis shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:

Annex II. Amendments to the elements of crimes

Article 8 bis. *Crime of aggression*

Introduction

1. It is understood that any of the acts referred to in article 8 *bis*, paragraph 2, qualify as an act of aggression.

2. There is no requirement to prove that the perpetrator has made a legal evaluation as to whether the use of armed force was inconsistent with the Charter of the United Nations.

3. The term "manifest" is an objective qualification.

4. There is no requirement to prove that the perpetrator has made a legal evaluation as to the "manifest" nature of the violation of the Charter of the United Nations.

Elements

1. The perpetrator planned, prepared, initiated or executed an act of aggression.

2. The perpetrator was a person* in a position effectively to exercise control over or to direct the political or military action of the State which committed the act of aggression.

3. The act of aggression—the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations—was committed.

4. The perpetrator was aware of the factual circumstances that established that such a use of armed force was inconsistent with the Charter of the United Nations.

5. The act of aggression, by its character, gravity and scale, constituted a manifest violation of the Charter of the United Nations.

6. The perpetrator was aware of the factual circumstances that established such a manifest violation of the Charter of the United Nations.

Annex III. Understandings regarding the amendments to the Rome Statute of the International Criminal Court on the crime of aggression

Referrals by the Security Council

1. It is understood that the Court may exercise jurisdiction on the basis of a Security Council referral in accordance with article 13, paragraph (b), of the Statute only with respect to crimes of aggression committed after a decision in accordance with article 15 *ter*, paragraph 3, is taken, and one year after the ratification or acceptance of the amendments by thirty States Parties, whichever is later.

2. It is understood that the Court shall exercise jurisdiction over the crime of aggression on the basis of a Security Council referral in accordance with article 13, paragraph (b), of the Statute irrespective of whether the State concerned has accepted the Court's jurisdiction in this regard.

Jurisdiction *ratione temporis*

3. It is understood that in case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction only with respect to crimes of aggression committed after a decision in accordance with article 15 *bis*, paragraph 3, is taken, and one year after the ratification or acceptance of the amendments by thirty States Parties, whichever is later.

Domestic jurisdiction over the crime of aggression

4. It is understood that the amendments that address the definition of the act of aggression and the crime of aggression do so for the purpose of this Statute only. The amendments shall, in accordance with article 10 of the Rome Statute, not be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

5. It is understood that the amendments shall not be interpreted as creating the right or obligation to exercise domestic jurisdiction with respect to an act of aggression committed by another State.

Other understandings

* With respect to an act of aggression, more than one person may be in a position that meets these criteria.

6. It is understood that aggression is the most serious and dangerous form of the illegal use of force; and that a determination whether an act of aggression has been committed requires consideration of all the circumstances of each particular case, including the gravity of the acts concerned and their consequences, in accordance with the Charter of the United Nations.

7. It is understood that in establishing whether an act of aggression constitutes a manifest violation of the Charter of the United Nations, the three components of character, gravity and scale must be sufficient to justify a "manifest" determination. No one component can be significant enough to satisfy the manifest standard by itself.