

**REPORT OF THE FOURTH MEETING OF
THE WORKING GROUP ON CONVENTION AMENDMENT**
(Madrid, Spain, 7-8 March 2016)

1 Opening of the meeting

The Chair of the Working Group, Ms. Deirdre Warner-Kramer (USA), opened the meeting and welcomed the delegations to the Fourth Meeting of the Working Group on Convention Amendment (Working Group).

The Executive Secretary, Mr. Driss Meski, introduced the 25 Contracting Parties and one cooperating non-Contracting Party, Entity, or Fishing Entity, in attendance. He also noted the participation of one intergovernmental and two non-governmental organizations. The list of participants is attached as **Appendix 2**.

2 Nomination of Rapporteur

Ms. Kimberly Blankenbeker (USA) was appointed rapporteur.

3 Adoption of agenda

The agenda was adopted as proposed and is attached as **Appendix 1**.

4 Consideration of the report of the previous meeting of the Working Group on Convention Amendment

a) Finalizing remaining proposals for amendment

The Chair summarized the progress to date, including the outcomes of the sessions of the Working Group held in conjunction with the annual meeting of the Commission in November 2015. She noted that the two remaining issues before the Working Group concerned the proposals on dispute resolution procedures and on fishing entity participation in the work of the Commission, which was linked to the issue of the Convention depositary. To facilitate discussion of these matters, the Chair called attention to the document entitled “Compiled Proposals for Amendment of the International Convention for the Conservation of Atlantic Tunas”. She also noted that the Working Group still needed to review the options for how, and when, the amendments will be agreed and enter into force.

The Chair invited Contracting Parties and non-Contracting Parties, Entities, and Fishing Entities (CPCs) to provide any editorial or technical edits to the compiled text directly to her; if she concluded that any of the edits were substantive, she would highlight them for discussion.

– *Dispute settlement*

The Chair opened discussion on Article VIII bis on dispute settlement. She noted that the key unresolved issue was whether ICCAT would provide for a process that was compulsory or non-compulsory, i.e. could any one party to a dispute invoke the option for resolution through final and binding arbitration, or would all parties to a dispute have to agree.

A number of CPCs noted difficulties with the sequencing of concepts in Article VIII bis and suggested ways to improve it. The Working Group generally agreed on the elements that called for CPCs to cooperate to resolve disputes amicably, and acknowledged the ability of CPCs to use a tribunal or court constituted under another treaty to which they were party. The Working Group recognized that the latter option existed whether or not this was specifically provided for. The Working Group discussed whether the Article should include a right of appeal once such a court or arbitral tribunal has rendered a decision. It was agreed that an appeal process need not be specified, as such processes would be elaborated within the respective rules of the court or tribunal.

Several delegations noted the need for flexibility and creativity to find a way forward on the issue of compulsory or non-compulsory arbitration as an essential first step for reaching agreement on the rest of the Article. To try to advance the debate, one CPC suggested a possible middle ground, while noting a need to consider the idea further within its own delegation. Specifically, either a dispute would be submitted to final and binding arbitration at the joint request of the parties to the dispute, or at the request of a certain number or percentage of parties to the dispute. Some CPCs did not support this option, as it was complicated and set a problematic precedent. Others indicated their interest in considering the idea further.

Canada introduced the draft procedures for an arbitral tribunal set forth in Annex 1, which had been discussed by an informal working group Canada had facilitated on the margins of the 2015 ICCAT Commission meeting. Canada noted that the procedures in Annex 1 were modeled from the Convention establishing the General Fisheries Commission for the Mediterranean.

One CPC suggested that Annex 1 could be eliminated if the option for arbitration is non-compulsory, since the joint decision to refer a dispute to binding arbitration would necessarily include all the relevant procedural matters related to the tribunal. Others supported retaining Annex 1, noting that it would streamline the application of the arbitration process. To provide additional clarity on the rules for constituting an arbitral tribunal, it was suggested that the rules of the Permanent Court of Arbitration (PCA) be referenced in Article VIII bis.

In light of discussions, a revision to Article VIII bis was tabled by the United States with a view to advancing the debate. The Working Group welcomed the U.S. proposal, noting that it provided a good basis for further discussion.

It was suggested that the text could perhaps be further improved to clarify how the options of using either the ICCAT arbitration process or the dispute resolution mechanisms of other treaties would work. The United States noted the legal complexities of this matter and explained that the text as drafted tried to treat the issue as lightly as possible. The Chair welcomed any additional drafting suggestions to improve this aspect of the text.

The revised text provided the option of constituting an arbitral tribunal in accordance with Annex 1 or in accordance with the rules of the PCA. Some CPCs preferred to incorporate the well-established rules of the PCA, whether by reference or as a replacement for Annex 1. Other CPCs requested more time to study the matter. One CPC reiterated its view that there would be no need to establish an arbitral process in the Convention if it is decided that ICCAT's dispute resolution procedures are not compulsory. The Working Group was unable to resolve this issue, and CPCs noted the need for their legal experts to study the options.

In addition, Norway noted that, if reference to PCA rules were included in the Convention, there would still be a need to specify certain additional aspects of the arbitral process not covered by those rules. Norway suggested additional text to Article VIII bis to address these aspects. The Working Group agreed to bracket the text offered by Norway for the time being while it considered the broader questions of whether and how to incorporate the PCA rules into the Convention. The revisions to Article VIII bis and Annex 1 are reflected in the updated compiled text attached as **Appendix 3**.

The Chair noted the constructive discussions on Article VIII bis, highlighting the need to resolve the remaining technical and legal issues prior to the 2016 ICCAT annual meeting. Toward that end, she asked interested CPCs to work intersessionally to develop a proposed way forward on the question of the arbitral tribunal process. She also urged CPCs to continue to consult on the question of whether ICCAT's dispute resolution procedure should be compulsory or not, or whether some middle ground exists. She stressed that both the technical/legal and policy questions must be resolved in November.

– *Fishing entity participation*

The Executive Secretary reported that he had received, from the Food and Agriculture Organization (FAO), a copy of the Note Verbale sent to them by China's Permanent Representative to the FAO in relation to the letter from the Commission Chair. Following consultation with the ICCAT Chair, the Secretariat had circulated this Note Verbale as a meeting document before the start of the meeting. The Executive Secretary was later informed by the FAO that the Permanent Representative of China had requested the

withdrawal of this Note Verbale, and hence the document was removed from the meeting document site. China confirmed that the communication in question should be disregarded, and its position on the issues under discussion by the Working Group was unchanged.

China also noted the letter sent by the Commission Chair, Mr. Martin Tsamenyi (Ghana), to the FAO informing that organization of the deliberations of the Working Group, including a possible change in the Convention depositary (**Appendix 4**). China thanked the Commission Chair for taking this action, stressing that a move of the depositary is a precondition to facilitate resolution of the question of fishing entity participation in ICCAT.

The Commission Chair explained his outreach to the FAO on the question of the depositary. While no written response to his letter had yet been received, Mr. Tsamenyi reported that he had received a phone call from the FAO Assistant Director General who made three points. First, the choice of the depositary for the ICCAT Convention is a decision to be made solely by ICCAT Contracting Parties. The FAO will respect whatever decision is made and will continue to work closely with ICCAT as the FAO-ICCAT relationship is not based on the issue of the depositary. Second, the FAO did not intend to send a representative to participate in the Working Group meeting as the FAO did not view their presence as necessary to the discussions. Third, the FAO would like to be kept informed on the progress of ICCAT's discussions. Mr. Tsamenyi indicated that he would continue to seek a written response from the FAO, and that any communication he received would be duly circulated to CPCs.

Morocco thanked the Commission Chair for reaching out to the FAO. Morocco also took note of the comments by China concerning the withdrawal of the Note Verbale.

At the invitation of the Chair, the United States explained the status of the proposal regarding fishing entity participation in Annex 2 of the compiled text. The United States reminded the Working Group that the proposal was modified as a result of the Working Group discussions held in conjunction with the 2015 Commission meeting, in order to clarify that the Annex is intended to apply only to the fishing entity that has already been participating in ICCAT as a Cooperating non-member. The United States explained that the proposal now stipulates that only a fishing entity that had been granted Cooperating status by the Commission as of a specific date in the past would be eligible to become a Member of the Commission pursuant to the Annex. The United States further noted that the Working Group should identify the appropriate date for this provision.

The Working Group determined that an appropriate date should be 10 July 2013, the day the Working Group began its negotiations. A few CPCs noted that there could still be ambiguity with regard to the application of the fishing entity annex to other potential fishing entities. After some debate, Annex 2 was further clarified through the addition of a footnote specifying that any Non-Contracting Party, Entity, or Fishing Entity that obtains Cooperating Status after 10 July 2013 shall not be considered a Fishing Entity for purposes of the annex and, thus, shall not enjoy the same rights and obligations as Members of the Commission. The Working Group noted that the footnote addressed any remaining ambiguity. The revised text of Annex 2 is reflected in the updated compiled text attached as **Appendix 3**.

The Working Group took note of the corresponding changes to be made to relevant Convention Articles once agreement was reached on the Annex 2, which are presented as bracketed options in the compiled text. One CPC highlighted its close involvement in the development of the fishing entity annex and its view that the Articles mentioned in paragraph 3 Annex 2 are a closed list; references to "Members of the Commission" should not appear in any other Articles of the Convention.

The Working Group reviewed those Convention Articles where decisions needed to be made on the use of "Contracting Parties", "Members of the Commission", or some other construction that would eliminate the need to use either phrase. Revisions to relevant Articles were agreed in principle. With respect to Article III, paragraph 5, the Working Group agreed that the current reference to "Members" should be changed to "Contracting Parties", which would mean that only representatives of Contracting Parties may serve as Chair or Vice Chair of the Commission. The United States noted that this was not its preferred outcome, but that it could go along with this change given the balance found on the fishing entity issue in other Convention Articles.

The Chair reminded the Working Group that the related issue of a change to the Convention depositary was still pending. She recalled that, at the time the Commission decided by consensus to include non-party participation on Annex 1 of the Working Group's terms of reference [Rec. 12-10], one CPC had clearly indicated that a change to the depositary was a precondition for the advancement of that issue. The EU emphasized that its offer to assume this function was solely to facilitate resolution of this issue, and that if the precondition were withdrawn, the EU would withdraw its proposal.

The Working Group could not reach consensus on the question of depositary. Some CPCs indicated they needed more time to undertake internal consultations on the matter and emphasized that receiving an official, written communication from the FAO expressing its view would be important to inform their position. The Chair urged CPCs to consult to find a way forward on this issue and expressed her willingness to reach out to the FAO to convey this message and seek a written response.

b) Process for adoption and entry into force of amendments

The Chair made a presentation setting out the points that need to be decided on procedures and timing for the adoption and entry into force of the amendments (**Appendix 5**). The Working Group welcomed this information. The Working Group agreed to consider the options, including the financial, legal, and practical implications of different ways to adopt the amendments and terms for their entry into force, in order to agree on a process at the 2016 ICCAT annual meeting.

5 Other matters

There were no other matters raised.

6 Adjournment

The Chair noted that the remaining two issues of substance must be solved by the time of the 2016 ICCAT annual meeting. She stressed that the Working Group does not want to be in the position of seeking another extension of its mandate from the Commission this year. She again urged CPCs to work together to resolve the technical, legal, and policy aspects of the dispute resolution issue as well as to come to closure on the question of depositary.

The Working Group considered whether to convene another meeting in conjunction with the 2016 ICCAT annual meeting, recognizing that finding time for such a meeting would be difficult. The Working Group agreed that its preference was to work out the remaining issues in the months leading up to the annual meeting. The Commission Chair stated that he does not want to open debate on the Convention amendments themselves at the annual meeting. His expectation is that the Working Group will resolve the remaining issues intersessionally and that a clear report will be made to the Commission that will facilitate decision-making.

In order to facilitate intersessional progress, the Chair committed to work with the ICCAT Secretariat to establish a website open to all CPCs to share relevant information. She requested the virtual working group on dispute resolution to work to resolve the rules for an arbitration process, and highlighted the importance of transparency in the process of finalizing the remaining issues.

The Working Group adopted the report by correspondence.

Appendix 1

Agenda

1. Opening of the meeting
2. Nomination of rapporteur
3. Adoption of the agenda
4. Consideration of the report of the previous meeting of the Working Group on Convention Amendment:
 - a) Finalizing remaining proposals for amendment
 - b) Process for adoption and entry into force of amendments
5. Other matters
6. Adjournment

Appendix 2

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Appendix 3

**Compiled Proposals for Amendment of the International
Convention for the Conservation of Atlantic Tunas as of 29 March 2016**
(Prepared by the Chair of the Working Group on Convention Amendment)

NOTE: Highlighted text below reflects editorial corrections identified by the Chair, or received in writing from CPCs in response to the Chair's invitation.

Preamble

The Governments whose duly authorized representatives have subscribed hereto, considering their mutual interest in the populations of tuna and tuna-like fishes and elasmobranchs that are oceanic, pelagic, and highly migratory found in the Atlantic Ocean, and desiring to co-operate in maintaining the populations of these fishes at levels which will permit their long term conservation and sustainable use ~~maximum sustainable catch~~ for food and other purposes, resolve to conclude a Convention for the conservation of these resources of tuna and tuna-like fishes of the Atlantic Ocean, and to that end agree as follows:

Article I

The area to which this Convention shall apply, hereinafter referred to as the "Convention area", shall be all waters of the Atlantic Ocean, including the adjacent Seas.

Article II

Nothing in this Convention shall prejudice the rights, jurisdiction and duties of States under international law. This Convention shall be interpreted and applied in a manner consistent with international law, be considered as affecting the rights, claims or views of any Contracting Party in regard to the limits of territorial waters or the extent of jurisdiction over fisheries under international law.

Article III

1. The Contracting Parties hereby agree to establish and maintain a Commission to be known as the International Commission for the Conservation of Atlantic Tunas, hereinafter referred to as "the Commission", which shall carry out the objectives set forth in this Convention. [Each Contracting Party shall be a Member of the Commission.]

2. Each of the ~~[Contracting Parties]~~[Members of the Commission] shall be represented on the Commission by not more than three Delegates. Such Delegates may be assisted by experts and advisors.

3. ~~Except as may otherwise be provided in this Convention~~ Decisions of the Commission shall be taken by consensus as a general rule. Except as may otherwise be provided in this Convention, if consensus cannot be achieved, decisions shall be made by a two-thirds majority of the [Contracting Parties][Members of the Commission] present and casting affirmative or negative votes, each [Contracting Party][Member of the Commission] having one vote. Two-thirds of the [Contracting Parties][Members of the Commission] shall constitute a quorum.

4. The Commission shall hold a regular meeting once every two years. A special meeting may be called at any time at the request of a majority of the ~~[Contracting Parties]~~[Members of the Commission] or by decision of the Council as constituted in Article V.

5. At its first meeting, and thereafter at each regular meeting, the Commission shall elect from among its ~~[Contracting Parties]~~~~[Members]~~ a Chairman, a first Vice-Chairman and a second Vice-Chairman who shall not be re-elected for more than one term.
6. The meetings of the Commission and its subsidiary bodies shall be public unless the Commission otherwise decides.
7. The official languages of the Commission shall be English, French and Spanish.
8. The Commission shall have authority to adopt such rules of procedure and financial regulations as are necessary to carry out its functions.
9. The Commission shall submit a report to the ~~[Contracting Parties]~~~~[Members of the Commission]~~ every two years on its work and findings and shall also inform any ~~[Contracting Party]~~~~[Member of the Commission]~~, whenever requested, on any matter relating to the objectives of the Convention.

Article III bis

The Commission and its Members, in conducting work under the Convention, shall act to:

- (a) apply the precautionary approach and an ecosystem approach to fisheries management in accordance with relevant internationally agreed standards and, as appropriate, recommended practices and procedures;
- (b) use the best scientific evidence available;
- (c) protect biodiversity in the marine environment;
- (d) ensure fairness and transparency in decision making processes, including with respect to the allocation of fishing possibilities, and other activities; and
- (e) give full recognition to the special requirements of developing Members of the Commission, including the need for their capacity building, in accordance with international law, to implement their obligations under this Convention and to develop their fisheries.

Article IV

1. In order to carry out the objectives of this Convention the Commission shall be responsible for the study of the populations of tuna and tuna-like fishes ~~(the Scombriformes with the exception of the families Trichiuridae and Gempylidae and the genus *Scomber*)~~ and elasmobranchs that are oceanic, pelagic, and highly migratory (hereinafter "ICCAT species"), and such other species of fishes ~~exploited caught in tuna fishing for ICCAT species in the Convention area, as are not under investigation by another taking into account the work of other relevant international fishery-related organizations or arrangements.~~ Such study shall include research on ~~the abundance, biometry and ecology of the fishes these species;~~ the oceanography of their environment; and the effects of natural and human factors upon their abundance. The Commission may also study species belonging to the same ecosystem or dependent or associated with the ICCAT species. The Commission, in carrying out these responsibilities shall, insofar as feasible, utilise the technical and scientific services of, and information from, official agencies of the ~~[Contracting Parties]~~~~[Members of the Commission]~~ and their political sub-divisions and may, when desirable, utilise the available services and information of any public or private institution, organization or individual, and may undertake within the limits of its budget with the cooperation of concerned [Contracting Parties][Members of the Commission], independent research to supplement the research work being done by governments, national institutions or other international organizations. The Commission shall ensure that any information received from such institution, organization, or individual is consistent with established scientific standards regarding quality and objectivity.
2. The carrying out of the provisions in paragraph 1 of this Article shall include:
 - (a) collecting and analysing statistical information relating to the current conditions and trends of ~~the tuna fishery resources of ICCAT species in the Convention area;~~

- (b) studying and appraising information concerning measures and methods to ensure maintenance of the populations of ICCAT species ~~tuna and tuna-like fishes~~ in the Convention area at or above levels ~~which will permit the~~ capable of producing maximum sustainable ~~catch~~ yield and which will ensure the effective exploitation of these species ~~fishes~~ in a manner consistent with this yield ~~catch~~;
- (c) recommending studies and investigations to the ~~[Contracting Parties]~~[Members of the Commission];
- (d) publishing and otherwise disseminating reports of its findings and statistical, biological and other scientific information relative to ~~the tuna fisheries of~~ ICCAT species in the Convention area.

Article V

1. There is established within the Commission a Council which shall consist of the Chairman and the Vice-Chairmen of the Commission together with the representatives of not less than four and not more than eight Contracting Parties. The Contracting Parties represented on the Council shall be elected at each regular meeting of the Commission. However, if at any time the number of the Contracting Parties exceeds forty, the Commission may elect an additional two Contracting Parties to be represented on the Council. The Contracting Parties of which the Chairman and Vice-Chairmen are nationals shall not be elected to the Council. In elections to the Council the Commission shall give due consideration to the geographic, tuna fishing and tuna processing interests of the Contracting Parties, as well as to the equal right of the Contracting Parties to be represented on the Council.
2. The Council shall perform such functions as are assigned to it by this Convention or are designated by the Commission, and shall meet at least once in the interim between regular meetings of the Commission. Between meetings of the Commission the Council shall make necessary decisions on the duties to be carried out by the staff and shall issue necessary instructions to the Executive Secretary. Decisions of the Council shall be made in accordance with rules to be established by the Commission.

Article VI

To carry out the objectives of this Convention the Commission may establish Panels on the basis of species, group of species, or of geographic areas. Each Panel in such case:

- (a) shall be responsible for keeping under review the species, group of species, or geographic area under its purview, and for collecting scientific and other information relating thereto;
- (b) may propose to the Commission, upon the basis of scientific investigations, recommendations for joint action by the ~~[Contracting Parties]~~[Members of the Commission];
- (c) may recommend to the Commission studies and investigations necessary for obtaining information relating to its species, group of species, or geographic area, as well as the co-ordination of programmes of investigation by the ~~[Contracting Parties]~~[Members of the Commission].

Article VII

The Commission shall appoint an Executive Secretary who shall serve at the pleasure of the Commission. The Executive Secretary, subject to such rules and procedures as may be determined by the Commission, shall have authority with respect to the selection and administration of the staff of the Commission. He shall also perform, *inter alia*, the following functions as the Commission may prescribe:

- (a) coordinating the programmes of investigation ~~by the Contracting Parties~~ carried out pursuant to Articles IV and VI;
- (b) preparing budget estimates for review by the Commission;
- (c) authorising the disbursement of funds in accordance with the Commission's budget;
- (d) accounting for the funds of the Commission;
- (e) arranging for co-operation with the organizations referred to in Article XI of this Convention;
- (f) preparing the collection and analysis of data necessary to accomplish the purposes of the Convention particularly those data relating to the current and maximum sustainable ~~catch~~ yield of ~~tuna~~ stocks of ICCAT species;

- (g) preparing for approval by the Commission scientific, administrative and other reports of the Commission and its subsidiary bodies.

Article VIII

1. (a) The Commission may, on the basis of scientific evidence, make recommendations designed to ~~maintain the populations of tuna and tuna-like fished that may be taken in the Convention area at levels which will permit the maximum sustainable catch;~~
 - (i) ensure in the Convention area the long-term conservation and sustainable use of ICCAT species by maintaining or restoring the abundance of the stocks of those species at or above levels capable of producing maximum sustainable yield; and
 - (ii) promote where necessary the conservation of other species that are dependent on or associated with ICCAT species, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened.

These recommendations shall be applicable to the ~~[Contracting Parties]~~[Members of the Commission] under the conditions laid down in paragraphs 2 and 3 of this Article.
- (b) The recommendations referred to above shall be made:
 - (i) at the initiative of the Commission if an appropriate Panel has not been established; or
 - (ii) at the initiative of the Commission with the approval of at least two-thirds of all the [Contracting Parties][Members of the Commission] if an appropriate Panel has been established but a proposal has not been approved;
 - (iii) on a proposal that has been approved by an appropriate Panel if such a Panel has been established;
 - (iv) ~~on a proposal that has been approved by the appropriate Panels if the recommendation in question relates to more than one geographic area, species or group of species.~~
2. Each recommendation made under paragraph 1 of this Article shall become effective for all ~~[Contracting Parties][Members of the Commission] six~~ four months after the date of the notification from the Commission transmitting the recommendation to the ~~[Contracting Parties][Members of the Commission]~~, unless otherwise agreed upon by the Commission at the time a recommendation is adopted and except as provided in paragraph 3 of this Article. However, under no circumstances shall a recommendation become effective in less than three months.
3. (a) If any ~~[Contracting Party][Member of the Commission]~~ in the case of a recommendation made under paragraph 1(b)(i) or (ii) above, or any ~~[Contracting Party][Member of the Commission]~~ which is also a] member of a Panel concerned in the case of a recommendation made under paragraph 1(b)(iii) or (iv) above, presents to the Commission an objection to such recommendation within the ~~six months~~ period established pursuant to provided for in paragraph 2 above, the recommendation shall not become effective for ~~an additional sixty days the [Contracting Parties][Members of the Commission] concerned.~~
 - (b) ~~Thereupon any other Contracting Party may present an objection prior to the expiration of the additional sixty days period, or within forty five days of the date of the notification of an objection made by another Contracting Party within such additional sixty days, whichever date shall be the later.~~
 - (c) ~~The recommendation shall become effective at the end of the extended period or periods for objection, except for those Contracting Parties that have presented an objection.~~
 - (d) ~~However, if a recommendation has met with an objection presented by only one or less than one-fourth of the Contracting Parties, in accordance with sub-paragraphs (a) and (b) above, the Commission shall immediately notify the Contracting Party or Parties having presented such objection that it is to be considered as having no effect.~~
 - (e) ~~In the case referred to in sub-paragraph (d) above the Contracting Party or Parties concerned shall have an additional period of sixty days from the date of said notification in which to reaffirm their objection. On the expiry of this period the recommendation shall become effective, except with respect to any Contracting Party having presented an objection and reaffirmed it within the delay provided for.~~

- (f) ~~If a recommendation has met with objection from more than one fourth but less than the majority of the Contracting Parties, in accordance with sub-paragraphs (a) and (b) above, the recommendation shall become effective for the Contracting Parties that have not presented an objection thereto.~~
- (bg) ~~If objections have been presented by a majority of the [Contracting Parties][Members of the Commission] within the period established pursuant to paragraph 2 above, the recommendation shall not become effective for any [Contracting Party][Member of the Commission].~~
- (ch) ~~A [Contracting Party][Member of the Commission] presenting an objection in accordance with sub-paragraph (a) above shall provide to the Commission in writing, at the time of presenting its objection, the reason for its objection, which shall be based on one or more of the following grounds:~~
- ~~(i) The recommendation is inconsistent with this Convention or other relevant provisions of international law; or~~
 - ~~(ii) The recommendation unjustifiably discriminates in form or in fact against the objecting [Contracting Party][Member of the Commission].~~
 - ~~(iii) The [Contracting Party][Member of the Commission] cannot practicably comply with the measure because it has adopted a different approach to conservation and sustainable management or because it does not have the technical capabilities to implement the recommendation.~~
 - ~~(iv) Security constraints as a result of which the objecting [Contracting Party][Member of the Commission] is not in a position to implement or comply with the measure.~~
- (di) ~~Each [Contracting Party][Member of the Commission] that presents an objection pursuant to this Article shall also provide to the Commission, to the extent practicable, a description of any alternative conservation and management and conservation measures, which shall be at least equally effective as the measure to which it is objecting.~~

4. ~~Any [Contracting Party][Member of the Commission] objecting to a recommendation may at any time withdraw that objection, and the recommendation shall become effective with respect to such [Contracting Party][Member of the Commission] immediately if the recommendation is already in effect, or at such time as it may become effective under the terms of this Article.~~
5. ~~The Commission Executive Secretary shall promptly circulate to all [Contracting Parties][Members of the Commission] the details of any objection and explanation received in accordance with this Article notify each Contracting Party immediately upon receipt of each objection and of each withdrawal of such an objection, and shall notify all [Contracting Parties][Members of the Commission] of the entry into force of any recommendation.~~

Article VIII bis

1. Every effort shall be made within the Commission in order to prevent disputes, and the parties to any dispute shall consult each other in order to settle disputes concerning this Convention by amicable means and as quickly as possible.
2. Where a dispute concerns a matter of a technical nature, the parties to the dispute may jointly refer the dispute to an *ad hoc* expert panel established in accordance with the procedures that the Commission adopts for this purpose. The panel shall confer with the parties to the dispute and shall endeavour to expeditiously resolve the dispute without recourse to binding procedures.
3. A dispute concerning the interpretation or application of this Convention that is not resolved through a means set out in paragraph 1 or where relevant, paragraph 2, shall be submitted to final and binding arbitration for settlement, [at the request of any party to the dispute] [at the joint request of the parties to the dispute] [at the joint request of the parties to the dispute, or xxxx of the [Contracting Parties][Members of the Commission]]. The arbitral tribunal shall be constituted and conducted in accordance with [Annex 1 of this Convention] [the rules of the Permanent Court of Arbitration]. The arbitral tribunal shall be composed of three arbitrators. [The arbitral tribunal shall render its decisions in accordance with the relevant provisions of this Convention, other relevant rules of international law, and generally accepted standards for the conservation and management of living marine resources. The place of arbitration shall be Madrid, Spain, and the language used shall be one of the three official languages of the Commission unless otherwise agreed by the parties to the

dispute]].

4. The dispute settlement mechanisms set out in this Article are not applied to disputes that relate to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of this Article.
5. Nothing in this Article shall prejudice the ability of parties to any dispute to pursue dispute settlement under other treaties or international agreements to which they are parties, in accordance with the requirements of that treaty or international agreement.

Article IX

1. The ~~[Contracting Parties]~~[Members of the Commission] agree to take all action necessary to ensure the enforcement of this Convention. Each ~~[Contracting Party]~~[Member of the Commission] shall transmit to the Commission, biennially or at such other times as may be required by the Commission, a statement of the action taken by it for these purposes.
2. The ~~[Contracting Parties]~~[Members of the Commission] agree:
 - (a) to furnish, on the request of the Commission, any available statistical, biological and other scientific information the Commission may need for the purposes of this Convention;
 - (b) when their official agencies are unable to obtain and furnish the said information, to allow the Commission, through the ~~[Contracting Parties]~~[Members of the Commission], to obtain it on a voluntary basis direct from companies and individual fishermen.
3. The ~~[Contracting Parties]~~[Members of the Commission] undertake to collaborate with each other with a view to the adoption of suitable effective measures to ensure the application of the provisions of this Convention[.
4. ~~Contracting Parties undertake~~[and in particular] to set up a system of international enforcement to be applied to the Convention area except the territorial sea and other waters, if any, in which a ~~s~~State is entitled under international law to exercise jurisdiction over fisheries.

Article X*

1. The Commission shall adopt a budget for the joint expenses of the Commission for the biennium following each regular meeting.
2. Each ~~[Contracting Party]~~[Member of the Commission] shall contribute annually to the budget of the Commission an amount calculated in accordance with a scheme provided for in the Financial Regulations, as adopted by the Commission. The Commission, in adopting this scheme, should consider *inter alia* each ~~[Contracting Party's]~~[Member of the Commission's] fixed basic fees for Commission and Panel membership, the total round weight of catch and net weight of canned products of Atlantic tuna and tuna-like fishes and the degree of economic development of the ~~[Contracting Parties]~~[Members of the Commission].

The scheme of annual contributions in the Financial Regulations shall be established or modified only through the agreement of all the ~~[Contracting Parties]~~[Members of the Commission] present and voting. The ~~[Contracting Parties]~~[Members of the Commission] shall be informed of this ninety days in advance.
3. The Council shall review the second half of the biennial budget at its regular meeting between Commission meetings and, on the basis of current and anticipated developments, may authorise reapportionment of amounts in the Commission budget for the second year within the total budget approved by the Commission.

* As modified by the Madrid Protocol, which entered into force on March 10, 2005.

4. The Executive Secretary of the Commission shall notify each ~~[Contracting Party]~~[Member of the Commission] of its yearly assessment. The contributions shall be payable on January first of the year for which the assessment was levied. Contributions not received before January first of the succeeding year shall be considered as in arrears.
5. Contributions to the biennial budget shall be payable in such currencies as the Commission may decide.
6. At its first meeting the Commission shall approve a budget for the balance of the first year the Commission functions and for the following biennium. It shall immediately transmit to the ~~[Contracting Parties]~~[Members of the Commission] copies of these budgets together with notices of the respective assessments for the first annual contribution.
7. Thereafter, within a period not less than sixty days before the regular meeting of the Commission which precedes the biennium, the Executive Secretary shall submit to each ~~[Contracting Party]~~[Member of the Commission] a draft biennial budget together with a schedule of proposed assessments.
8. The Commission may suspend the voting rights of any ~~[Contracting Party]~~[Member of the Commission] when its arrears of contributions equal or exceed the amount due from it for the two preceding years.
9. The Commission shall establish a Working Capital fund to finance operations of the Commission prior to receiving annual contributions, and for such other purposes as the Commission may determine. The Commission shall determine the level of the Fund, assess advances necessary for its establishment, and adopt regulations governing the use of the Fund.
10. The Commission shall arrange an annual independent audit of the Commission's accounts. The reports of such audits shall be reviewed and approved by the Commission or by the Council in years when there is no regular Commission meeting.
11. The Commission may accept contributions, other than provided for in paragraph 2 of this Article, for the prosecution of its work.

Article XI

1. The Contracting Parties agree that there should be a working relationship between the Commission and the Food and Agriculture Organization of the United Nations. To this end the Commission shall enter into negotiations with the Food and Agriculture Organization of the United Nations with a view to concluding an agreement pursuant to Article XIII of the Organization's Constitution**. Such agreement should provide, *inter alia*, for the Director-General of the Food and Agriculture Organization of the United Nations to appoint a Representative who would participate in all meetings of the Commission and its subsidiary bodies, but without the right to vote.
2. The ~~[Contracting Parties]~~[Members of the Commission] agree that there should be co-operation between the Commission and other international fisheries commissions and scientific organizations which might contribute to the work of the Commission. The Commission may enter into agreements with such commissions and organizations.
3. The Commission may invite any appropriate international organization and any Government which is a member of the United Nations or of any Specialized Agency of the United Nations and which is not a member of the Commission, to send observers to meetings of the Commission and its subsidiary bodies.

** See FAO Agreement.

Article XII

1. This Convention shall remain in force for ten years and thereafter until a majority of the Contracting Parties agree to terminate it.
2. At any time after ten years from the date of entry into force of this Convention, any Contracting Party may withdraw from the Convention on December thirty-first of any year including the tenth year by written notification of withdrawal given on or before December thirty-first of the preceding year to the [Director-General of the Food and Agriculture Organization of the United Nations][Secretary General of the Council of the European Union].
3. Any other Contracting Party may thereupon withdraw from this Convention with effect from the same December thirty-first by giving written notification of withdrawal to the [Director-General of the Food and Agriculture Organization of the United Nations][Secretary General of the Council of the European Union] not later than one month from the date of receipt of information from the [Director-General of the Food and Agriculture Organization of the United Nations][Secretary General of the Council of the European Union] concerning any withdrawal, but not later than April first of that year.

Article XIII

1. Any Contracting Party or the Commission may propose amendments to this Convention. The [Director-General of the Food and Agriculture Organization of the United Nations][Secretary General of the Council of the European Union] shall transmit a certified copy of the text of any proposed amendment to all the Contracting Parties. Any amendment not involving new obligations shall take effect for all Contracting Parties on the thirtieth day after its acceptance by three-fourths of the Contracting Parties. Any amendment involving new obligations shall take effect for each Contracting Party accepting the amendment on the ninetieth day after its acceptance by three-fourths of the Contracting Parties and thereafter for each remaining Contracting Party upon acceptance by it. Any amendment considered by one or more Contracting Parties to involve new obligations shall be deemed to involve new obligations and shall take effect accordingly. A government which becomes a Contracting Party after an amendment to this Convention has been opened for acceptance pursuant to the provisions of this Article shall be bound by the Convention as amended when the said amendment comes into force.
2. Proposed amendments shall be deposited with the [Director-General of the Food and Agriculture Organization of the United Nations][Secretary General of the Council of the European Union]. Notifications of acceptance of amendments shall be deposited with the [Director-General of the Food and Agriculture Organization of the United Nations][Secretary General of the Council of the European Union].

[Article XIII bis]

The [Annex forms][Annexes form] an integral part of this Convention and a reference to this Convention includes a reference to the Annex[es].]

Article XIV***

1. This Convention shall be open for signature by the Government of any State which is a Member of the United Nations or of any Specialized Agency of the United Nations. Any such Government which does not sign this Convention may adhere to it at any time.

2. This Convention shall be subject to ratification or approval by signatory countries in accordance with their constitutions. Instruments of ratification, approval, or adherence shall be deposited with the [Director-General of the Food and Agriculture Organization of the United Nations][Secretary General of the Council of the European Union].

3. This Convention shall enter into force upon the deposit of instruments of ratification, approval, or adherence by seven Governments and shall enter into force with respect to each Government which subsequently deposits an instrument of ratification, approval, or adherence on the date of such deposit.

4. This Convention shall be open for signature or adherence by any inter-governmental economic integration organization constituted by States that have transferred to it competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters.

5. Upon the deposit of its instrument of formal confirmation or adherence, any organization referred to in paragraph 4 shall be a Contracting Party having the same rights and obligations in respect of the provisions of the Convention as the other Contracting Parties. Reference in the text of the Convention to the term "State" in Article IX, paragraph [3][4], and to the term "government" in the Preamble and in Article XIII, paragraph 1, shall be interpreted in this manner.

6. When an organization referred to in paragraph 4 becomes a Contracting Party to this Convention, the member states of that organization and those which adhere to it in the future shall cease to be parties to the Convention; they shall transmit a written notification to this effect to the [Director-General of the Food and Agriculture Organization of the United Nations][Secretary General of the Council of the European Union].

Article XV***

[The Director-General of the Food and Agriculture Organization of the United Nations][Secretary General of the Council of the European Union] shall inform all Governments referred to in paragraph 1 of Article XIV and all the organizations referred to in paragraph 4 of the same Article of deposits of instruments of ratification, approval, formal confirmation or adherence, the entry into force of this Convention, proposals for amendment, notifications of acceptance of amendments, entry into force of amendments, and notifications of withdrawal.

Article XVI***

The original of this Convention shall be deposited with the [Director-General of the Food and Agriculture Organization of the United Nations][Secretary General of the Council of the European Union] who shall send certified copies of it to the Governments referred to in paragraph 1 of Article XIV and to the organizations referred to in paragraph 4 of the same Article.

IN WITNESS WHEREOF the representatives duly authorized by their respective Governments have signed the present Convention. Done at Rio de Janeiro this fourteenth day of May 1966 in a single copy in the English, French and Spanish languages, each version being equally authoritative.

*** As modified by the Paris Protocol, which entered into force on December 14, 1997.

[ANNEX 1]

DISPUTE RESOLUTION

1. The arbitral tribunal referred to in paragraph 4 of Article VIII bis is composed of three arbitrators who are appointed as follows:
 - (a) The [Contracting Party] [Member of the Commission] that commences a proceeding shall communicate the name of an arbitrator to the other party to the dispute that shall, in turn, within a period of forty days following that notification, communicate the name of the second arbitrator. In disputes between more than two [Contracting Parties] [Members of the Commission], parties that have the same interest shall jointly appoint one arbitrator. The parties to the dispute shall, within a period of sixty days following the appointment of the second arbitrator, appoint the third arbitrator, who is not a national of either [Contracting Party] [Member of the Commission] and is not of the same nationality as either of the first two arbitrators. The third arbitrator shall preside over the tribunal;
 - (b) If the second arbitrator is not appointed within the prescribed period, or if the parties are not able to concur within the prescribed period on the appointment of the third arbitrator, that arbitrator is appointed, at the request of one of those parties, by the Chair of the Commission within two months from the date of receipt of the request.
2. The arbitral tribunal shall decide the location of its headquarters and shall adopt its own rules of procedure.
3. The arbitral tribunal shall render its decisions in accordance with this Convention and international law.
4. The decision of the arbitral tribunal is made by a majority of its members, which may not abstain from voting.
5. A [Contracting Party] [Member of the Commission] that is not a party to the dispute may intervene in the proceedings with the consent of the arbitral tribunal.
6. The decision of the arbitral tribunal is final and binding on the parties to the dispute. The parties to the dispute shall comply with the decision without delay. The arbitral tribunal shall interpret the decision at the request of one of the parties to the dispute or of any intervening party.
7. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the parties to the dispute shall bear in equal shares the expenses of the tribunal, including the remuneration of its members.]

[ANNEX 2¹

FISHING ENTITIES

1. After the entry into force of the amendments to the Convention adopted on <date of adoption>, any fishing entity that attained by 10 July 2013 Cooperating Status in accordance with the procedures established by the Commission, may, by a written instrument delivered to the Depositary, express its firm commitment to abide by the terms of this Convention and comply with recommendations adopted pursuant to it.* Such commitment shall become effective 30 days from the date of receipt of the instrument. Any such fishing entity may withdraw such commitment by a written notification addressed to the Depositary. The withdrawal shall become effective 1 year after the date of its receipt, unless the notification specifies a later date.
2. In case of any further amendment made to the Convention pursuant to Article XIII, any fishing entity referred to in paragraph 1 may, by a written instrument delivered to the Depositary, express its firm commitment to abide by the terms of the amended Convention and comply with recommendations adopted pursuant to it. This commitment of a fishing entity shall be effective from the dates referred to in Article XIII or on the date of receipt of the written communication referred to in this paragraph, whichever is later.
3. A fishing entity which has expressed its firm commitment to abide by the terms of this Convention and comply with recommendations adopted pursuant to it in accordance with paragraph 1 or 2 may participate in the relevant work, including decision making, of the Commission, and shall, mutatis mutandis, enjoy the same rights and obligations as Members of the Commission as set forth in Articles III, IV, VI, VIII, IX, X, and XI of the Convention.
4. If a dispute involves a fishing entity which has expressed its commitment to be bound by the terms of this Convention in accordance with this Annex and cannot be settled by amicable means, the dispute shall, at the request of any party to the dispute, be submitted to final and binding arbitration in accordance with the relevant rules of the Permanent Court of Arbitration.²
5. The provisions of this Annex relating to the participation of a fishing entity are only for the purposes of this Convention.]

 * Any Non-Contracting Party, Entity, or Fishing Entity that obtains Cooperating Status after 10 July 2013 shall not be considered a Fishing Entity for purposes of this Annex and, thus, shall not enjoy the same rights and obligations as Members of the Commission as set forth in Articles III, IV, VI, VIII, X, XI of the Convention.

¹ The proposal for this Annex is linked to the understanding that a Contracting Party will take the full role of depositary from the FAO as reflected in the bracketed proposals in Articles XII, XIII, XIV, XV and XVI.

² Resolution of the remaining bracketed issues related to dispute settlement in Article VIII bis may require conforming changes to this paragraph.

Appendix 4**Letter to FAO Director-General**

The Honorable José Graziano de Silva
 Director-General
 U.N. Food and Agriculture Organization
 Rome, Italy

8 February 2016

Dear Director-General Graziano,

As you may be aware, since 2012, the Member States of the International Commission for the Conservation of Atlantic Tunas (ICCAT) have been engaged in negotiations to formulate amendments to its underlying Convention. The purpose of this effort is to bring the ICCAT Convention, first adopted in 1966, fully in line with twenty-first century management and governance practices, including those reflected in the United Nations Convention on the Law of the Sea (1982), the U.N. Fish Stocks Agreement (1995), and the FAO's own Compliance Agreement (1994) and Code of Conduct for Responsible Fisheries (1995).

On-going negotiations have focused on a number of areas, identified by ICCAT to be of paramount importance. These include: clarifying the species subject to the purview of ICCAT; inclusion of basic principles of modern international fisheries norms such as the ecosystem and precautionary approaches, science based management decision making, recognition of the special requirements of developing States; decision making; dispute settlement; and new provisions on non-party participation, to ensure the full participation by Fishing Entities in the work of the Commission, consistently with the relevant provisions of the U.N. Fish Stocks Agreement, other international instruments and international best practice.

Virtually all regional fisheries management organizations established since 2000 have included provisions through which Fishing Entities enjoy rights and obligations similar to Contracting party members of the Commissions established, in exchange for a commitment to be bound by the decisions taken by these organizations for the conservation and management of the fishery resources under their respective jurisdictions. In particular, such provisions are included in the Conventions establishing the Western and Central Pacific Fisheries Commission (WCPFC, 2000), the "Antigua Convention" (2003) that amended in its entirety the 1949 Convention establishing the Inter-American Tropical Tuna Commission (IATTC), as well as the South Pacific Regional Fisheries Management Organization (SPRFMO, 2010), and the North Pacific Fisheries Commission (NPFC, 2011).

In ICCAT there is large support for the incorporation of similar provisions on Fishing Entities in an amended Convention. However, one ICCAT Contracting Party has indicated that a change of the depositary from FAO Director General to one of the Contracting Parties to the ICCAT Convention is a "pre-condition" for its acceptance of the provisions currently under consideration.

The position expressed by this Contracting Party is seriously being addressed, with a proposal to move the ICCAT depositary to the Agreements Office of the Council of the European Union. Apart from this change. I can assure you that no other changes in the longstanding relationship between the FAO, ICCAT, and ICCAT Contracting Parties is being contemplated and that the relevant provisions of the ICCAT Convention (i.e. Article XI) remain untouched.

Another round of negotiations will be held in Madrid, Spain on 7-8 March 2016 and will focus on resolving few outstanding issues, including the participation of Fishing Entities.

In accordance with the very well established relationship between FAO and ICCAT pursuant to the ICCAT Convention and the Memorandum of Understanding between us, I invite you to send your representative to the forthcoming meeting of the ICCAT Convention Amendment Working Group.

I will keep you updated on developments as we move closer to agreement on a proposal to amend the ICCAT Convention which you, as the depository of the current Convention, can transmit to Contracting Parties for their consideration in accordance with the provisions of the Convention.

Please accept the assurances of my highest consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Martin Tsamenyi', with a stylized, cursive script.

Martin Tsamenyi
ICCAT Chairman

ICCAT Amendment Process Points

Adoption

Convention sets out process for amendments in **Article XIII. Paragraph 1:**

“Any Contracting Party or the Commission may propose amendments to this Convention. The Director-General of the Food and Agriculture Organization of the United Nations shall transmit a certified copy of the text of any proposed amendment to all the Contracting Parties. Any amendment not involving new obligations shall take effect for all Contracting Parties on the thirtieth day after its acceptance by three-fourths of the Contracting Parties. Any amendment involving new obligations shall take effect for each Contracting Party accepting the amendment on the ninetieth day after its acceptance by three-fourths of the Contracting Parties and thereafter for each remaining Contracting Party upon acceptance by it. Any amendment considered by one or more Contracting Parties to involve new obligations shall be deemed to involve new obligations and shall take effect accordingly. A government which becomes a Contracting Party after an amendment to this Convention has been opened for acceptance pursuant to the provisions of this Article shall be bound by the Convention as amended when the said amendment comes into force.”

Adoption

“Any **Contracting Party** or the **Commission** may propose amendments to this Convention. The Director-General of the Food and Agriculture Organization of the United Nations shall transmit a certified copy of the text of any proposed amendment to all the Contracting Parties.”

- The **proposal** of amendments can be made by a Contracting Party (or Contracting Parties) or the Commission
- Convention is silent about **adoption** of proposal for amendment at the Commission level
- Assumption could be that **normal decision-making procedures** would apply
- Convention simply says any such proposal is circulated by the Depositary to Contracting Parties so they may consider moving forward with ratification or acceptance

Adoption

Form of the proposed amendments could go several ways

- Commission agrees on a set of amendments **pursuant to a Commission decision** made during an annual meeting in the usual way
- Commission convenes a **Conference of Plenipotentiaries** of the Contracting Parties who adopt a protocol containing the amendments and any related decisions related to procedure
- Adoption as a Commission decision is consistent with how several other RFMOs have formalized amendments
- Conference of Plenipotentiaries has been used in past ICCAT amendments
- No strict rule established either in the Convention or general international law

Adoption

Conference of Plenipotentiaries of the Contracting Parties

- Process used two previous times the Convention was amended
 - Paris Protocol (1984) – allowed regional economic integration organizations to become Parties
 - Madrid Protocol (1992) – amended the financial contribution scheme set out in Art. X
- In both of those cases, the Conference served both to **negotiate** and **agree** the proposals for amendment
- Included **proposal** for amendment and **process** points
- Credentials Committee - yes for Madrid Protocol, no for Paris Protocol
- Full Power – per VCLT, relevant for signature of Protocol
- Participation – Paris Protocol: 20 of 23 Contracting Parties; Madrid Protocol: 16 of 22 Contracting Parties

Entry into Force

Any amendment **not involving new obligations shall take effect for all** Contracting Parties on the thirtieth day after its acceptance by three-fourths of the Contracting Parties.

- Commission decision if involves new obligations or not
- Once ratification threshold met, is in effect **for all whether or not they have ratified yet**

Entry into Force

“Any amendment **involving new obligations shall take effect for each** Contracting Party accepting the amendment on the ninetieth day after its acceptance by three-fourths of the Contracting Parties and thereafter for each remaining Contracting Party upon acceptance by it.”

- Once ratification threshold is met, it enters into force and **only those that have ratified are bound**
- After that, becomes in effect for others **only as they complete** their ratification/acceptance processes
- Results in different provisions applying to different Parties for a time

Entry into Force

“Any amendment **considered by one or more** Contracting Parties to involve new obligations shall be deemed to involve new obligations and shall take effect accordingly.”

- Could be understood to imply that that alternative procedures for entry into force require consensus

Entry into Force

Paris Protocol, Paragraph III:

“This Protocol shall enter into force upon deposit with the Director-General of the Food and Agriculture Organization of the United Nations of instruments of approval, ratification or acceptance **of all Contracting Parties**. In this regard, the provisions set out in the last sentence of paragraph 1 of Article XIII of the International Convention for the Conservation of Atlantic Tunas shall apply *mutatis mutandis*. The date of entry into force shall be the thirtieth day following the deposit of the last instrument.”

- Required **all** CPs to approve before entry into force, then entered into force for all

Entry into Force

Madrid Protocol, Article 3:

“This Protocol shall enter into force for all the Contracting Parties the **ninetieth day** following the deposit with the Director-General of the Food and Agriculture Organization of the United Nations of the last instrument of approval, ratification or acceptance by three-quarters of the Contracting Parties, and these three-quarters shall include **all of the Parties classified by the United Nations Conference on Trade and Development as of June 5, 1992, as developed market economy countries**. Any Contracting Party not included in this category of **countries can, within six months following the notification of the adoption** of the Protocol by the Director-General of the Food and Agriculture Organization of the United Nations, **request the suspension of the entry into force of said Protocol**. The provisions set out in the last sentence of Paragraph 1 of Article XIII of the International Convention for the Conservation of Atlantic Tunas shall apply *mutatis mutandis*.”

Entry into Force

Madrid Protocol:

- Extended entry into force after ratification threshold met
- Alternate requirements for number of ratifications or acceptances
- Novel provision to allow request to suspend entry into force

Entry into Force

Vienna Convention on the Law of Treaties – general provisions on Entry into Force:

- Article 24 (Entry into force), paragraph 4:
“The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.”
- Article 25 (Provisional application), paragraph 1:
“A treaty or a part of a treaty is applied provisionally pending its entry into force if:
(a) the treaty itself so provides; or
(b) the negotiating States have in some other manner so agreed.”

Key Decision Points

- Proposal made per Commission decision or Protocol adopted by Conference of Plenipotentiaries
- Article XIII process for entry into force:
 - New obligations
 - No new obligations
- Alternative entry into force provisions
- Different process and provisions for different issues
- Provisional application