

**REPORT OF THE FIFTH MEETING OF  
THE WORKING GROUP ON CONVENTION AMENDMENT**  
*(Madrid, Spain, 26 June 2017)*

## **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 Fifth Meeting of the Working Group on Convention Amendment (Working Group).

The Executive Secretary, Mr. Driss Meski, introduced the 28 Contracting Parties and one cooperating non-Contracting Party, Entity, and Fishing Entity in attendance (collectively CPCs). He also noted the participation of one intergovernmental and four non-governmental organizations. He explained that although El Salvador could not be present, its position has been sent in writing and is attached as **Appendix 3**. The list of participants is attached as **Appendix 2**.

## **2 Nomination of Rapporteur**

Ms. Andreina Fenech Farrugia (EU) was appointed rapporteur.

## **3 Adoption of agenda**

The agenda was adopted as proposed and is attached as **Appendix 1**. In response to questions and concerns raised by Cote d'Ivoire, on behalf of the members of the Ministerial Conference on Fisheries Cooperation among African States bordering the Atlantic Ocean (ATLAFCO), and China about whether or not the issue of the possible change in Convention depositary should appear on the agenda, the Chair explained that the depositary issue has always been discussed as a component of the item related to fishing entity participation, rather than as a discrete issue, and thus has never been included as a separate, stand-alone issue on the Working Group's agenda.

## **4 Finalizing remaining proposals for amendment**

The Chair summarized the significant progress the Working Group has made to develop a comprehensive set of proposed amendments to the ICCAT Convention that address almost all of the key issues identified in the Working Group's terms of reference. She noted that the two remaining issues before the Working Group concerned the proposals on fishing entity participation in the work of the Commission, (linked to the issue of the Convention depositary) and on dispute resolution procedures.

To facilitate discussion of these matters, the Chair invited the Chair of the Commission to present his paper, "Correspondence from the ICCAT Chair regarding the meeting of the Working Group on Convention Amendment", **Appendix 4**. This document makes a detailed analysis of the outstanding issues and offers a number of proposals intended to initiate the discussion with a view to reach an agreement on the basic principles. Among the proposed ways forward, and respecting the views expressed by the ATLAFCO members and the precondition by one Contracting Party, the Chair of the Commission proposed that the FAO Director General would remain depositary of the original ICCAT Convention, but that the ICCAT Executive Secretary also be designated depositary for any new members of the Commission, including the fishing entity participating pursuant to the proposed new Annex II. The paper also offers ideas intended to further clarify the functions of the depositary, and a proposal to establish explicitly the Commission's intention that Chinese Taipei is to be the only fishing entity to participate in ICCAT pursuant to Annex II.

### ***Fishing entity participation***

The Chair recalled that, at the time the Commission decided by consensus to include non-party participation on Annex I of the Working Group's terms of reference [Rec. 12-10], one Contracting Party had clearly indicated that a change to the depositary was a precondition for the advancement of that issue. She requested the views of the participants on ways forward, and in particular on the dual depositary approach proposed by the Chair of the Commission.

The Chair explained that, should ICCAT proceed to a dual depositary, the Working Group would need to consider the following issues:

- Who will be the second depositary?
- Would the second depositary be a possible option for any CPC to use, or only for a fishing entity?
- Should there be a new article in the Convention specifying the functions of the depositary, either through a specific list of duties or incorporating by reference the relevant sections of the Vienna Convention on the Law of Treaties?
- How would the two depositaries function together and what communication channels should be established?

The ATLAFCO member CPCs indicated that their position remained in favor of maintaining the FAO as the depositary of the ICCAT Convention; however, these delegations expressed appreciation for the Commission Chairman's proposal, which could help to find a way forward on this issue. They noted that, since this concept had only recently been put forward, more time was needed for the necessary consultations prior to the communication of an official position. A number of CPCs requested additional clarity on the costs and workload implications of the Executive Secretary taking on such a role. A request was also made to ensure that FAO is informed of such a proposal in order to maintain the current good relationship with this organization.

With regard to the functions of the depositary, several CPCs noted that the creation of a second depositary would have no impact on the rights and obligations of members given that this is an administrative, mailbox function, and that, correspondingly, workload and costs of a second depositary could be minimal. Some CPCs also suggested that no new article on the functions of a depositary would be necessary given that the role of a depositary is already spelled out clearly in existing provisions in the Convention. The Chair of the Working Group noted that there seemed to be little appetite to include a new paragraph on functions of a depositary given that the duties of the depositary are already set out in various articles of the Convention and such an effort could create a very complicated, lengthy negotiation. She also noted the risk that the end result could be inconsistent with other international instruments.

Following a long discussion, a number of delegations indicated that, while they may prefer different options, the option that appeared most likely to address all concerns would be to establish the ICCAT Executive Secretary as a second depositary solely for the processes set out in the proposed new annex regarding the fishing entities' participation in Commission work. Some CPCs stated that this may not increase the financial burden on CPCs.

The Working Group considered the other proposals in the Chair of the Commission's paper intended to provide additional clarity around the application of the proposed fishing entity annex. Several CPCs noted that the concept of fishing entity was not clearly defined in the Convention and raised questions about how broadly it could be interpreted in the ICCAT context. Some CPCs noted that the Convention should more clearly define what the term "fishing entity" meant in this context. One Party emphasized that the concept of "fishing entities" is a term taken from the 1995 UN Fish Stocks Agreement and ICCAT is not in the position to clarify its meaning. The Chairman recalled that the text of the annex, as resolved at the 2016 meeting of the Working Group, made it clear that only a fishing entity that had been granted cooperating status by the Commission as of 10 July 2013 was eligible to deposit its commitment to comply with the Convention and receive in return enhanced participation comparable to members. The Working Group further noted that only one such fishing entity, Chinese Taipei, met this clear criterion. At the same time, some CPCs proposed that, if some CPCs had lingering concerns that this could change in the future, the Working Group could consider adding an additional provision that would stipulate that this annex could only be amended in the future with the consensus of all Contracting Parties. The Working Group considered this option, or the option presented in the paper from the Chair of the Commission that participation of any other fishing entities pursuant to the annex would require invitation by the Commission. China pointed out that, as integral parts of the Convention, the annexes should not be subject to a different amendment process than that already set out in Article XIII. These issues remain unsolved.

### ***Dispute Settlement Procedures***

The Chair noted that the Working Group had made good progress to develop an ICCAT dispute resolution process as mandated in the Working Group's terms of reference, and much of the text in the new Article VIII bis was now resolved. She highlighted that two key issues remain in brackets: first, whether recourse to arbitration for settlement of a dispute would be compulsory, voluntary, or some hybrid approach, and second, whether ICCAT would establish its own procedures for arbitration or defer to the procedures under the Permanent Court of Arbitration (PCA) in The Hague.

Regarding the process to initiate arbitration, paragraph 3 of Article VIII bis contains three alternative options in brackets:

- Arbitration can be invoked at the request of any party to the dispute (compulsory);
- Arbitration can be invoked at the joint request of the parties to the dispute (voluntary); or
- Arbitration can be invoked either at the joint request of the parties to the dispute, or by some percentage of the Contracting Parties (hybrid).

The Working Group agreed that the third option above, which had been proposed as a possible compromise at the previous meeting of the Working Group, could be deleted. However, the Working Group remained unable to reach consensus on either of the other options. One Party highlighted that, without prejudice to the ongoing discussion, Parties are free to revisit other options such as comprehensive dispute settlement procedures embodied in UNCLOS part XV as this issue remains open.

Regarding the procedures ICCAT would use in constituting and conducting an arbitral tribunal, the text in paragraph 3 of Article VIII bis presents two bracketed alternatives: either to establish ICCAT-specific procedures, set out in a new Annex I to the Convention, to utilize the processes established by the PCA. Several CPCs noted that using the PCA rules could create potential confusion or ambiguities, as these rules are updated from time to time. In order to address these potential ambiguities, Norway presented a proposal (**Appendix 5**) that would specifically call for ICCAT to utilize the 2012 version of the PCA rules unless the Commission agreed otherwise. The Working Group also discussed different options for specifying key details under the PCA rules (such as the place of arbitration, language(s) to be used, number of arbitrators, etc.) but did not come to final agreement. Several CPCs expressed a strong preference to maintain the ICCAT-specific procedure in Annex I rather than using some form of the PCA rules, as they interpreted the PCA Rules to envision only a non-compulsory process.

The Working Group was unable to further refine the text in paragraph 3 of Article VIII bis.

In response to one Party's inquiry, the Chair of the Working Group noted her opinion that the dispute settlement procedure in Article VIII bis will only be applied among Contracting Parties. The disputes involving fishing entities should be referred to the dispute settlement procedure in the proposed Annex II.

## **5 Arrangements for the formalization of the amended text**

The updated compiled proposals for Convention amendment is attached as **Appendix 6**.

Without prejudice to the clear positions on the Depositary issue stated by a number of Contracting Parties, the Working Group agreed that the concept of a dual depositary showed some promise to form the basis for an eventual resolution of the Fishing Entity issue. The Working Group also noted the need to come to closure on 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 2017 ICCAT annual meeting.

In order to facilitate progress, the Working Group agreed that the Chair will prepare a paper with concrete drafting proposals based on the ideas discussed in this meeting, and the previous meetings of the Working Group, that appear to have the best chance at reaching consensus to resolve the remaining issues. This paper will be circulated as soon as possible after the Working Group meeting to allow CPCs to consult internally with their relevant government authorities and with other CPCs. The Chair highlighted the importance of transparency in the process of finalizing the remaining issues and urged CPCs to share positions and any alternative drafting proposals in the months before the annual meeting, including through a dedicated share-point page that will be established on the ICCAT website for this purpose.

The Chair will be in contact with the Chair of the Commission to reserve sufficient time during the 2017 ICCAT annual meeting in order to finalize and adopt the draft proposals for Convention amendment put forward by this Working Group. The Working Group agreed that its preference was to work on the remaining issues in the months leading up to the annual meeting. The Chair noted that it would be very difficult to defer extensive, detailed debate on the unresolved issues themselves at the annual meeting, given the extremely heavy Commission agenda this year. Her expectation is that CPCs will work to resolve the remaining issues intersessionally through electronic correspondence, and both internal and bilateral consultations, and that a clear report will be made to the Commission that will facilitate decision-making.

## **6 Other matters**

There were no other matters raised.

## **7 Adoption of Report and adjournment**

The Chair noted that the remaining issues of substance must be solved by the time of the 2017 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 fishing entity annex by considering positively a dual depositary.

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 and meeting arrangements
4. Finalizing remaining proposals for amendment
  - a) Fishing Entity Participation
  - b) Dispute Settlement Procedures
5. Arrangements for the formalisation of the amended text
6. Other matters
7. Adoption of the Report and adjournment

## Appendix 2

### List of participants

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**Appendix 3**

**Correspondence from El Salvador on Convention Amendment**

**MINISTRY OF AGRICULTURE AND LIVESTOCK  
GENERAL DIRECTORATE OF DEVELOPMENT OF THE FISHERIES AND AQUACULTURE  
(CENDEPESCA)  
EL SALVADOR**

El Salvador, 23 June 2017

Mr. Driss Meski  
Executive Secretary  
International Commission for the Conservation of Atlantic Tunas  
Madrid, Spain

Dear Mr. Meski,

I greet you with the same cordiality as always, and I shall take this opportunity to refer to the upcoming meeting of the Working Group on Convention Amendment, which my country is unable to attend. However, I would like to make known our position on the three subjects to be addressed according to the agenda.

**Change in depositary**

We have carefully read the declaration of the sixteen member countries of the Ministerial Conference on Fisheries Cooperation among African States bordering the Atlantic Ocean (ATLAFCO/COMHAFAT), all of the recitals of which we respect, but we do not support withdrawal from the agenda of the item related to the change in depositary; this is because we have already made very substantial progress in this area, and profit should be drawn from the efforts made on this occasion. Since ICCAT has been in existence for the past 50 years we believe that these small but significant details of the Convention that governs us should be clarified.

In accordance with the foregoing, we welcome and support the proposal of the Commission Chairman contained in Circular #4115/17 of 12 June of the current, which provides a solution for the change in depositary by applying the provisions contained in article 76, paragraph 1 of the 1969 Vienna Convention on the Law of Treaties.

**Participation of Fishing Entities**

El Salvador, as a member of the Inter-American Tropical Tuna Commission (IATTC), would like to share that in 1998, at the 62nd Annual Meeting, we invited the Fishing Entities actively fishing in the Commission area to become members, a decision which has without doubt contributed to the governance of the Organization.

In the context of this discussion on Convention amendment, we believe that it should be clearly set out in Annex 2 of the amendments that Fishing Entities shall be understood to be those that in 2013 were registered with ICCAT as a cooperating non-contracting fishing entity.

It is our belief that it should be taken into consideration that the Fishing Entity that we support through this amendment has been a cooperating non-contracting Entity since 1999, and that according to the historical statistics of Commission, it has been fishing in the Convention area since 1962.

The Recommendation containing all the amendments to the Convention should make clear in one of its paragraphs that the only Fishing Entity that at the date of the amendments is entitled to become a member of the Commission is Chinese Taipei, which would resolve the concerns of all those involved in these discussions.

## **Dispute settlement**

We welcome Norway's initiative which has studied more closely the appropriateness of having recourse to the Permanent Court of Arbitration or the International Court of Justice as a court of arbitration to settle disputes, in accordance with Circular #6131/16 of September 2016.

We consider that it is appropriate to include Article VIII bis in the Convention, since, as we all know, the current text does not establish a mechanism or contain a provision for settling disputes.

In view of the foregoing, we approve the contents of paragraph 3, Article VIII bis of the amendments, in that the Regulations of the Permanent Court of Arbitration are retained as the mechanism for settling disputes, and the city of The Hague as the arbitration venue, which is the seat of the Court, and where all the parties involved in this discussion regarding amendment of the Convention text are sure to have diplomatic representation.

El Salvador wishes success to all the participants in this final meeting of the Working Group on Convention Amendment.

We thank the Executive Secretary for making our views contained herein known to all the members of the Commission, and the cooperating non-contracting Fishing Entities and Parties.

Regards,

GOD UNION LIBERTY

(signed)

(sealed)

Gustavo Antonio Portillo  
Director General

**Correspondence from the ICCAT Chair regarding the meeting of  
the Working Group on Convention Amendment**  
ICCAT Circular #4115/17

12 June 2017

**SUBJECT: ICCAT CHAIR'S PROPOSAL FOR THE CONVENTION AMENDMENT**

Dear Colleagues,

As you are aware, ICCAT commenced a process of modernizing the ICCAT Convention, through ICCAT Recommendation 12-10 with the establishment of the Convention Amendment Working Group, in 2012. After several rounds of Working Group meetings<sup>1</sup>, substantial progress has been achieved and agreement has been reached on several key priority issues.

Despite the progress achieved by the Working Group, three issues remain to be resolved. These include: (1) change of Depositary of the Convention, (2) non-party participation and (3) dispute resolution.

To enable a timely completion of its work, the 20th Special Meeting of the Commission agreed to convene an additional one-day meeting of the Convention Amendment Working Group in 2017 which is scheduled to be held in Madrid on 26 June 2017. While the intent of the Commission is applauded, if current positions are maintained in respect of the three issues, we run the real risk of simply going over old ground with very little progress likely to be achieved at that one day meeting. Further delay would reflect poorly on our organization.

In my capacity as Chair of the Commission, and in an effort to ensure that we make maximum use of time at the forthcoming one-day meeting to reach consensus on the unresolved issues I offer some ideas and suggestions for your consideration. These ideas and suggestions are presented in good faith with due respect to, and in recognition of, the various positions and views of CPCs expressed during the Convention amendment process to date. I am open to additional modifications and refinements of my ideas to ensure consistency and coherency.

## **1 Change of Depositary**

The Terms of Reference for the Convention Amendment Working Group, in ICCAT Recommendation 12-10, did not require the amendment of provisions relating to the Depositary<sup>2</sup>. Despite this, the Convention Amendment Working Group has spent a lot of time and resources trying to resolve this issue which has delayed the amendment process. As I well know, it became necessary to discuss changing the depositary of the Convention because of the precondition laid down by one Contracting Party before inclusion of any provisions in the amended Convention on fishing entities which is one component of “non-party participation” under Recommendation 12-10.

In response to this request, the European Union offered the Agreements Office of the Council of the European Union as the Depositary for the amended Convention. Although there has been no formal rejection of the offer by EU, it is on record that a few CPCs have expressed a preference to retain the FAO Director-General as the Depositary for the amended Convention. Attempts to reach a compromise on this issue, including communications from the Director-General of FAO, have not been able to produce consensus. The continuing failure to reach agreement on the Depositary issue has been frustrating, time consuming and has delayed completion of the work of the Working Group. In my view, we need a bold and fresh approach on the issue of change of depositary to make progress at the forthcoming one-day meeting.

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<sup>1</sup> Sapporo, Japan (10-12 July, 2013); Barcelona, Spain (19-21 May 2014); Miami, United States (18-22 May 2015); Madrid, Spain (7-8 March 2016).

<sup>2</sup> Currently the Director-General of the Food and Agriculture Organisation (FAO).

In a recent development, sixteen ATLAFCO members States issued a joint Declaration requesting withdrawal of the item relating to change of Depositary from the agenda of the Convention Amendment Working Group meeting. I understand the view expressed by the ATLAFCO Resolution. In my view, the position expressed by the ATLAFCO member States who represent about 25% of the ICCAT membership cannot be ignored. As I have noted above, the original Terms of Reference for the Convention Amendment Working Group, in ICCAT Recommendation 12-10, did not require amendment of provisions of the Convention relating to the Depositary.

As a way forward and respecting the views expressed by the ATLAFCO members and the precondition by one Contracting Party I propose that we adopt a dual depositary approach. This will involve retaining the FAO Director-General as the Depositary for the amended ICCAT Convention as is currently the case. Because of the inability of CPCs to reach consensus on the offer by EU, and to accommodate the precondition by one Contracting Party which I referred to earlier, I propose that in place of the Agreements Office of the Council of the European Union, we designate the Executive Secretary of ICCAT as the second Depositary for the amended Convention (and in any subsequent amendments to the Convention if that were to arise).

The proposal to designate the Executive Secretary of ICCAT as a Depositary for the amended ICCAT Convention is consistent with international law (as provided for in Article 76 paragraph 1 of the 1969 Vienna Convention on the Law of Treaties).<sup>3</sup> The proposal is also consistent with State practice (for example, the Protocol to the United Nations Charter and the International Coffee Agreement).<sup>4</sup>

This proposal would address three concerns expressed in the Working Group: (1) the preference for the FAO Director-General as the Depositary by some CPCs, including (2) the Declaration recently submitted by some of the ATLAFCO member States and (3) the precondition established by one Contracting Party for the incorporation of provisions on fishing entities in the ICCAT Convention.

If this proposal is accepted, all original Contracting Parties to the ICCAT Convention will have the discretion and flexibility to choose either of the two Depositaries to communicate their instruments of acceptance of the amended Convention. On the other hand, to respect the precondition laid down by one Contracting Party, all non-contracting parties to the ICCAT Convention and new members of the Commission (including fishing entities and those accepting the Convention after the adoption of the amended Convention) will be required to use the Executive Secretary of ICCAT as their Depositary. The text reflecting this proposal, for insertion in the revised Convention, is included in the attachment to this Proposal.

I have consulted the Head of the EU delegation to ICCAT on this proposal who advised me in his personal capacity that the offer by EU was made in good faith and as a service. He would have no difficulty with the approach I have suggested if this will pave the way for the reaching of consensus on the depositary issue in the Working Group. I thank the Head of EU Delegation for his understanding.

The capacity of the Executive Secretary of ICCAT to discharge his/her duty as a Depositary, consistent with the Vienna Convention on the Law of Treaties, is a relevant consideration. If CPCs decide to use the Executive Secretary of ICCAT as the Depositary, it may give rise to additional financial cost for the Commission. It could be argued that assigning the depositary functions to a neutral and experienced office like the Agreements Office of the Council of the European Union would reduce cost and enable the functions to be discharged competently.

However, if there is a preference to assign that responsibility to the Executive Secretary of ICCAT, there are practical ways by which the Commission can address the resource implications of the Executive Secretary acting as the Depositary.

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<sup>3</sup> Article 76 paragraph 1 of the 1969 Vienna Convention on the Law of Treaties stipulates that

“1. The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.”

<sup>4</sup> In the case of the UN, United States of America is the Depositary of the UN Charter, whilst the Secretary General of UN is the Depositary for the Protocol. Another good example of the use of an international organization as the Depositary is the International Coffee Agreement which designates its own Secretariat as the Depositary.

## 2 Non-party participation/Fishing Entities

The key issue being considered in the Convention amendment process under this heading is the involvement of fishing entities in ICCAT, with the objective of bringing ICCAT into line with virtually all other modern RFMOs, and international fisheries instruments including the UN Fish Stocks Agreement (1995);<sup>5</sup> and the FAO Code of Conduct for Responsible Fisheries (1995)<sup>6</sup> which make specific reference to fishing entities. Although these instruments do not specifically define a fishing entity, it is commonly understood in international fisheries law and management that the term refers to Chinese Taipei. For example, provisions on fishing entities to broaden non-party participation are included in the Convention 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 Conventions establishing the South Pacific Regional Fisheries Management Organization (SPRFMO, 2010), and the North Pacific Fisheries Commission (NPFC, 2012).

With the exception of location of the depositary, the incorporation of provisions into the revised ICCAT Convention to enable the participation of fishing entities in the Commission to broaden non-party participation as reflected in draft Annex 2 has received general agreement in the Working Group. In relation to the concept of fishing entities, however, it appears that there are lingering uncertainties among a few CPCs as to the exact scope of the “fishing entities” and to whom it may apply in the ICCAT context. Further, there appears to be some concern that the fishing entity concept is very broad, undefined, and could result in indirectly creating a loophole that would allow a large number of new members to join the Commission under the fishing entity category. To make progress, it is important to address these concerns openly and clearly in the amended Convention to allay the concerns of CPCs. In addition to clarifying the concept of fishing entities, and who qualifies to become a member of the ICCAT Commission as a fishing entity, we need to ensure that we do not create a loophole under the fishing entity category. The concerns noted above have largely been addressed in the current draft Annex 2 on fishing entities which specifies clearly the criteria to qualify as a fishing entity.

To provide an additional safeguard for CPCs concerned about the scope of the fishing entity concept, I propose that, in the Resolution for the Adoption of the Amendments to the ICCAT Convention, we include a paragraph which expressly states that for the purpose of the ICCAT Convention, Chinese Taipei is the only fishing entity to qualify for membership status in ICCAT. In addition, the same Resolution could state that, in future, any other entity intending to apply for membership of ICCAT under the legal capacity of fishing entity will be subject to consensus invitation by an ICCAT Commission Resolution. This proposal, if accepted may also be incorporated into the current Annex 2 or may be stated clearly in the records of the Working Group as a recommendation to the Commission.

## 3 Dispute resolution

“Dispute resolution” is one of the priority matters listed in the Annex 1 of ICCAT Recommendation 12-10. Despite several efforts since the commencement of the Working Group, CPCs have not been able to reach consensus on various proposals.

Article VIII *bis* and the related Annex 1 reflect the status of discussions on dispute resolution in the Working Group. Paragraph 3 of Article VIII *bis* seems to be the source of disagreement among CPCs at present. The key points of difference are whether the dispute settlement framework shall be subject to compulsory or non-compulsory settlement.

<sup>5</sup> For example, Article 1 paragraph 3 of the 1995 UN Fish Stocks Agreement reads: “This Agreement applies *mutatis mutandis* to other fishing entities whose vessels fish on the high seas.”

<sup>6</sup> For example, Article 1.2 of the 1995 FAO Code of Conduct for Responsible Fisheries reads: “The Code is global in scope, and is directed toward members and non-members of FAO, fishing entities, sub regional, regional and global organizations . . .” and Article 4.1 reads: “All members and non-members of FAO, fishing entities and relevant sub-regional, regional and global organizations, whether governmental or non-governmental, and all persons concerned with the conservation, management and utilization of fisheries resources and trade in fish and fishery products should collaborate in the fulfillment and implementation of the objectives and principles contained in this Code.”



The ICCAT Convention does not have any provisions on dispute resolution. This sets ICCAT apart from all other tuna RFMOs and modern international fisheries treaties and governance standards.

The absence of a dispute resolution provision in the ICCAT Convention makes it imperative for us to include provisions on dispute resolution in the amended Convention. Therefore, I appeal to all CPCs to come to the Working Group meeting willing to show some flexibility to reach agreement on a dispute resolution provision in a constructive manner.

If CPCs are not able to reach consensus on a dispute resolution framework for ICCAT based on the draft Article VIII *bis*, and the proposal by Norway and any other proposals, another option to consider is to replace the current draft paragraph 3 of Article VIII *bis* with a new paragraph to empower the Commission to determine a dispute resolution framework through a Resolution of the Commission, or in any other manner, at some future point in time after the adoption of the amendments. This approach will avoid further delays to completing the amendments, and ensure that the ICCAT Convention will eventually have a dispute resolution mechanism.

In addition, in order to accommodate a constructive proposal made by Norway for the adopting the 2012 Arbitration Rules of the Permanent Court of Arbitration into the ICCAT dispute resolution mechanism, I suggest the revision of Point 2 of the current draft Annex 1 so as to allow the arbitral tribunal to proceed in accordance with the 2012 Arbitration Rules of the Permanent Court of Arbitration. The suggested wording is presented in the attachment to this Proposal.

## Conclusion

It is my understanding that some CPCs, mainly from the ATLAFCO member States, may not be able to attend the Working Group meeting because the dates for the meeting coincide with Ramadan. To ensure adequate geographical representation at the Working Group meeting, I have raised with the Executive Secretary the possibilities of rescheduling the meeting to another more convenient date to ensure a more inclusive participation. However, I have been advised by the Executive Secretary that rescheduling the meeting at this late stage is not a feasible option because the Secretariat has already made administrative arrangements which will result in additional cost to the Commission if the meeting were postponed. To prevent further delay to the work of the Working Group, I respectfully request all CPCs to make every effort to ensure that their views are represented at the Working Group meeting. If all efforts to ensure representation fail, I respectfully request all CPCs who will not be able to attend the Working Group meeting to clearly communicate their positions and views on the proposals I have made to the Chairperson of the Working Group not later than close of business on 25 June 2017. This will enable the Working Group to make well-informed and inclusive Recommendations to the Commission on the Convention amendment.

I plan to attend the forthcoming Convention Amendment Working Group meeting and I look forward to discussing my ideas and proposals with you.

I urge all CPCs to consider my proposals in good faith and to be constructive at the Working Group meeting in order to bring the Convention amendment process to a close as soon as possible to pave the way for an early adoption of the new Convention.

Sincerely,



Martin Tsamenyi  
ICCAT Chair

### **Attachment to the ICCAT Chair's Proposal**

#### ***On the issue of depositary***

##### *Article XIII bis Depositaries and their functions*

1. Notwithstanding the provisions of Article XIII, the Director-General of the Food and Agriculture Organization of the United Nations shall be the Depositary of the International Convention for the Conservation of Atlantic Tunas (ICCAT) as may be amended from time to time.
2. The Executive Secretary of the ICCAT Commission is also hereby designated as the Depositary of this and any later amended Convention.
3. The functions of the Director-General of FAO and the Executive Secretary of the Commission as Depositaries of this and any later amended Convention include but not limited to:
  - (a) keeping custody of the original text of this and any later amended Convention and of any Full Powers delivered to him.
  - (b) preparing and circulating certified true copies of this and any later amended Convention.
  - (c) receiving and keeping custody of any instruments, notifications and communications relating to this and any later amended Convention.
  - (d) examining whether the signature or any instrument, notification or communication relating to this and any later amended Convention is in due and proper form.
  - (e) circulating acts, notifications and communications relating to this and any later amended Convention.
  - (f) informing all members of the Commission of the date of deposit of each instrument or notification of acceptance, of the date of entry into force of this and any later amended Convention.
  - (g) registering this and any later amended Convention with the Secretariat of the United Nations.
  - (h) in the event of any questions about the performance of the Depositary's functions, bringing the matter to the attention of the members of the Commission.
4. In relation to matters strictly within the functions of Depositaries, any acceding Contracting Parties to the 1966 ICCAT Convention and those who intend to become members of the ICCAT Commission, including fishing entities, after the adoption of this and any later amended Convention shall communicate their consent to be bound with the Executive Secretary of the Commission.
5. Any proposal to amend this Convention shall be communicated in writing to the Executive Secretary of the Commission at least ninety (90) days prior to the meeting at which it is proposed to be considered, and the Executive Secretary shall promptly transmit the proposal to all members of the Commission.
6. The Commission shall ensure that adequate resources and capacity are provided to the Secretariat of the Commission to enable the Executive Secretary to discharge his/her functions adequately as a Depositary in accordance with the Vienna Convention on the Law of Treaties. To that end, at its first meeting after the adoption of these amendments, the Commission shall cause to be undertaken an assessment of the resource implications of the Secretariat for the Executive Secretary serving as a Depositary.

#### ***On the fishing entity***

In addition to the current draft Annex 2, in the Resolution for the Adoption of Amendments to the ICCAT Convention, a paragraph as shown below may be incorporated:

“... Agrees that for the purpose of this present amended Convention, Chinese Taipei is, and will be, the one and the only fishing entity to qualify for membership status in ICCAT.” This idea can also be inserted into an appropriate part of draft Annex 2.

***On the dispute resolution***

The current draft text of paragraph 3 of Article VIII *bis* will be replaced in its entirety by the paragraph as show below:

“The Commission shall develop the modality and procedures for dispute resolution within two years after the entry into force of these amendments to the Convention through a Commission Resolution or in any other manner. If the Commission is unable to agree on a dispute resolution framework within two years after the adoption of these amendments, the procedures specified in Annex 1 to this Convention shall apply to all disputes among members of the Commission relating to the interpretation or application of this Convention.”

And, the entire draft Article VIII *bis* will read as:

**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]].~~  
3. The Commission shall develop the modality and procedures for dispute resolution within two years after the entry into force of these amendments to the Convention through a Commission Resolution or in any other manner. If the Commission is unable to agree on a dispute resolution framework within two years after the adoption of these amendments, the procedures specified in Annex 1 to this Convention shall apply to all disputes among members of the Commission relating to the interpretation or application of this Convention.
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.

**Annex 1**

Point 2 The arbitral tribunal shall decide the location of its headquarters and shall ~~adopt its own rules of procedure~~ proceed in accordance with the 2012 Arbitration Rules of the Permanent Court of Arbitration.

**Appendix 5**

**Norwegian proposal regarding the ICCAT Convention amendment:  
dispute settlement**

ICCAT Circular #6131/16

With reference to the report from the fourth meeting of the Working Group on Convention Amendment in March 2016 and to ICCAT Circular # 1477/2016 regarding the intersessional work of this working group, Norway would like to take this opportunity to revive the discussions on remaining issues. Although the Working Group on Convention Amendment has made considerable progress, two important issues remain unsolved: procedures for dispute resolution and Convention depositary. Both the Commission Chair and the Chair of the working group have urged CPCs to work intersessionally to find solutions to these issues.

The key remaining issue regarding a dispute resolution is whether the Convention should provide for a compulsory or non-compulsory process for final and binding arbitration. As a way forward, Norway proposed, at the fourth working group meeting, to replace the arbitration procedures bracketed in Annex 1 of the compiled proposals, by a reference to the Permanent Court of Arbitration (PCA) 2012 Arbitration Rules. This proposal was supported by several CPCs, whereas others needed more time to reflect on this. Hence, both proposals remain in brackets<sup>7</sup>.

The PCA is dedicated to serving the international community in the field of dispute resolution, and the PCA 2012 Arbitration Rules are the PCA's newest set of procedural rules for arbitration of disputes involving various combinations of states, state-controlled entities, intergovernmental organizations and private parties. They are a consolidation of four prior sets of PCA procedural rules<sup>8</sup> and build on the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules. Hence, the PCA 2012 Arbitration Rules reflect public international law elements that may arise in disputes involving states, state controlled entities and/or intergovernmental organisations. They offer an internationally recognized framework for dispute resolution, reflect arbitration rules which have been tried over a number of years and reduce the number of negotiation topics for dispute resolution. As the PCA 2012 Arbitration Rules and the services of the Secretary-General and the International Bureau of the PCA are available for use by all states, and are not restricted to disputes in which the state is a party to either the Hague Convention for the Pacific Settlement of International Disputes of 1899 or that of 1907, Norway would reiterate our proposal to refer to these rules when it comes to submitting a dispute concerning the interpretation or application of the ICCAT Convention to final arbitration.

At the working group meeting in March it was noted by some parties that the PCA 2012 Arbitration Rules could be amended at a later point in time, and that this could lead to confusion as to whether or not such amendments would apply. In order to include any subsequent amendments, a more general referral to the PCA's Arbitration Rules was included in the draft. It is, however, important to notice that the 2012 Arbitration Rules as such will not be subject to any future amendments. The PCA may establish new sets of Arbitration Rules, but such new rules will not affect the 2012 Arbitration Rules. The 2012 Arbitration Rules will continue to apply, just as the four previous sets of PCA Arbitration Rules still applies to any dispute subject to those Arbitration Rules. A general reference to PCA's Arbitration Rules would, on the other hand, create ambiguity with regard to which set of rules should apply, as well as insecurity with

<sup>7</sup> cf. Appendix 3 to the Report of the Fourth Meeting of the Working Group on Convention Amendment, Article VIII bis paragraph 3 and Annex 1.

<sup>8</sup> The PCA Arbitration Rules 2012 are a consolidation of four prior sets of PCA procedural rules: the Optional Rules for Arbitrating Disputes between Two States (1992); the Optional Rules for Arbitrating Disputes between Two Parties of Which Only One is a State (1993); the Optional Rules for Arbitration Between International Organizations and States (1996); and the Optional Rules for Arbitration Between International Organizations and Private Parties (1996).

regard to future amendments, the content of which is not known. Our preferred option would hence be to refer to the 2012 Arbitration Rules, alternatively with the option to apply any subsequent sets of PCA Arbitration Rules, if the parties to the dispute so agree.

Under the PCA 2012 Arbitration Rules, the International Bureau of the Permanent Court of Arbitration at the Hague shall serve as registry for the proceedings and provide secretariat services. Furthermore, the 2012 rules includes topics such as recourse to arbitration, representation and assistance during arbitration, composition of the arbitral tribunal, appointment of arbitrators, arbitral proceedings, applicable law, interim measures, evidence, hearings, objections, form and effect of the award, interpretation of the award, costs etc.

It should be noted that it is clearly stated in Article 1 Paragraph 1 that where it is agreed to refer disputes to arbitration under the PCA 2012 Arbitration Rules, such disputes shall be settled in accordance with those rules, *subject to such modification as the parties may agree*. At the working group meeting in March, concern was raised by some parties fearing that a referral to the PCA 2012 Arbitration Rules would make the discussions regarding whether the final dispute resolution measure should be compulsory or non-compulsory redundant. However, as it is clearly stated that the parties may make modifications to the arbitration rules, the question of whether a dispute should be submitted to final dispute resolution [at the request of any party to the dispute] or [at the joint request of the parties to the dispute]<sup>9</sup> remains an important issue to agree on before finalising the amended Convention.

The 2012 Arbitration Rules include an Annex with model arbitration clauses for treaties, encouraging parties to consider adding the number of arbitrators, the place of arbitration (country and town) and the language to be used during arbitration. Furthermore, according to Article 35, the arbitral tribunal shall apply the rules of law designated by the parties. Hence, Norway proposed that ICCAT should include text regarding these issues in the amended Convention. This proposal is now included in brackets in Article VIII bis Paragraph 3 of the compiled proposals and reads as follows: [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 languages of the Commission unless otherwise agreed by the parties to the dispute.]

The parties should, however, bear in mind that it might be preferable to choose the Hague, and not Madrid, as the place of arbitration. This would enable the International Bureau of the Permanent Court of Arbitration at the Hague to serve as registry for the proceedings and to provide secretariat services in a cost-efficient manner as envisaged in the 2012-rules. The parties may want to consider whether suitable premises and infrastructure for such arbitral proceedings exist in Madrid, and whether the ICCAT secretariat would have the capacity and the competence necessary to provide secretariat services for arbitration proceedings taking place in Madrid.

In order to reduce cost, Norway would prefer the place of arbitration to be the Hague, but we remain open to the views of other parties on this.

If not previously agreed by the parties, Article 7 of the 2012 rules provides that the number of arbitrators shall be three, and if the place of arbitration and language is not agreed, the tribunal shall determine this in accordance with Articles 18 and 19. In addition, Article 35 provides the rules of law to be applied, if not designated by the parties.

Unlike the International Court of Justice, the Permanent Court of Arbitration has no sitting judges, as the parties themselves select the arbitrators. In exercising its discretion, the arbitral tribunal shall establish a provisional timetable and conduct the proceedings to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute. All awards shall be made in writing and shall be final and binding on the parties and the arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given. The parties shall carry out all awards without delay.

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<sup>9</sup> Cf. Article VIII bis paragraph 3 in the Compiled Proposal for Amendment of the ICCAT Convention, Appendix III to the Report of the Fourth Meeting of the Working Group on Convention Amendment.

Norway would welcome other parties' views on the proposal to refer to the PCA 2012 Arbitration Rules for final dispute resolution under the ICCAT Convention.

We would ask the ICCAT Secretary to kindly circulate this proposal to all CPCs.

Yours sincerely,

Sigrun M. Holst  
Deputy Director General

Elisabeth Sjørdahl  
Adviser

*This document has been signed electronically and therefore it is not signed by hand.*

## Appendix 6

**Compiled proposals for amendment of the  
International Convention for the Conservation of Atlantic Tunas  
as of 26 June 2017**

*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 this Convention, international law, and generally accepted standards for the conservation 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 sState 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].

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

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 reappportionment of amounts in the Commission budget for the second year within the total budget approved by the Commission.

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.

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\*\* See FAO Agreement.

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.

## 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 on 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.

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

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.



**[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 2<sup>10</sup>**

**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.<sup>11</sup>
5. The provisions of this Annex relating to the participation of a fishing entity are only for the purposes of this Convention.]

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\* 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.

<sup>10</sup>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.

<sup>11</sup>Resolution of the remaining bracketed issues related to dispute settlement in Article VIII bis may require conforming changes to this paragraph.