

Original: English

**LETTER FROM THE CHAIR OF THE WORKING GROUP ON CONVENTION AMENDMENT**  
(ICCAT Circular # 7690)

25 September 2017

**Subject: Chair's proposals to finalize proposals to amend the ICCAT Convention**

Dear Colleagues,

At its last meeting, the Working Group on Convention Amendment began to identify possible ways forward to find consensus on the remaining two sets of unresolved issues under its mandate: the participation of fishing entities, with the associated issue of the Convention depositary, and dispute resolution. As Chair, I was tasked to identify concrete drafting suggestions that, taking into account the discussions to date, appeared to have the best chance of resolving these issues. These proposals are reflected in the attached compilation document, and are introduced in more detail below. In order to make progress, Contracting Parties are invited to provide any views, specific comments, or alternative proposals, which will be made available to other CPCs on the ICCAT website.

*Depositary*

One of the core tasks mandated to the Working Group was to develop proposals for the meaningful participation of fishing entities in ICCAT, comparable to those in other, modern regional fisheries management conventions. Under the terms of those conventions, a fishing entity that submits its written instrument of commitment to the depositary is granted certain equivalent rights and obligations as members of the Commission. Following this model would create unique complications in ICCAT, where the Director General of FAO – and not a Contracting Party – serves as depositary.

In light of these sensitivities, one Contracting Party set out a pre-condition that consideration of any proposals in this regard was contingent on a Contracting Party offering to assume the functions of depositary. The European Union expressed a willingness to take this on. However, several Contracting Parties have maintained a strong preference to retain the Director General of FAO.

In light of this impasse, the approach that appears most promising involves establishing a dual depositary, which would utilize the Executive Secretary of ICCAT rather than a Contracting Party. In this scenario, the Director General of FAO would retain its responsibilities as depositary in respect of some or all Contracting Parties, and the Executive Secretary of ICCAT would take on this function for, at minimum, a Fishing Entity expressing its commitment pursuant to the proposed Annex 2.

A key question discussed by the Working Group was: in this case, would the Executive Secretary serve this function only in regard to fishing entities pursuant to Annex 2? Or would Contracting Parties also be able to choose to utilize the Executive Secretary? The Working Group identified important factors to consider in making this decision, including the potential workload burden on the Secretariat, the need for transparency and coordination between the two depositaries, and the need to ensure that the split role did not create undue complexity or potential discrimination.

Considering all of the considerations and principles that have been raised to-date, the most straightforward option would be to implement the option of a second depositary for new participants in ICCAT. In other words, the Executive Secretary would be designated to fulfil the applicable functions of depositary for a fishing entity expressing its commitment to ICCAT pursuant to Annex 2. In addition, any State that seeks to become a Contracting Party after the entry into force of the amendments would have the choice of depositing its instrument of adherence with either Director General of FAO, or the Executive Secretary of the Commission.

This formulation would likely generate minimal additional workload to the Secretariat. The Working Group has noted that only one fishing entity meets the qualifications set out in Annex 2, and there is little reason to expect that a large number of additional States will seek to become Contracting Parties to ICCAT in the coming years.

It would also require minimal changes to the text of the Convention. A new paragraph could be added to Article XIV that establishes the choice of depositary for non-signatories to the original Convention. For those that deposit their instrument with the Executive Secretary, this paragraph would also stipulate that the Executive Secretary would carry out the other depositary functions assigned to the Director-General of the FAO throughout the Convention – e.g. receiving notices of adherence or withdrawal, or acceptance of amendments. The one exception would be Article XVI: in the interest of simplicity, the original of the ICCAT Convention itself would remain deposited with the FAO.

An additional paragraph would call for the FAO and the Executive Secretary to establish appropriate cooperative mechanisms to ensure transparency. For instance, both would work together to ensure that any notifications each receives in its role as depositary are communicated to the other for prompt dissemination to the relevant members of the Commission, and vice versa.

This new text would read:

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

2bis. Instruments of adherence by non-signatories shall be deposited with either the Director-General of the Food and Agriculture Organization of the United Nations or the Executive Secretary of the Commission. For those non-signatories that choose to deposit their instrument of adherence with the Executive Secretary of the Commission, the functions and responsibilities of the Director-General of the Food and Agriculture Organization of the United Nations as set out in Articles XII, XIII, XV, and paragraph 6 of this Article shall be carried out, mutatis mutandis, by the Executive Secretary of the Commission.

2tris. The Director-General of the Food and Agriculture Organization of the United Nations and the Executive Secretary of the Commission shall coordinate to ensure the effective dissemination of all information pursuant to their respective functions as Depositary under this Convention, including as set out in Articles XII, XIII, XV, and XVI, and this Article.

#### *Fishing entity annex*

Consistent with this approach, the Executive Secretary would be specifically designated to receive and circulate the written instruments of commitment or withdrawal received from a fishing entity participating under the terms of Annex 2. This would be set out in paragraph one and two of the annex as follows:

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 Executive Secretary of the Commission, 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 Executive Secretary of the Commission. 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 Executive Secretary of the Commission, 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.

The text of the Annex 2 has been carefully developed over multiple negotiating sessions to meet the core concerns of a number of CPCs. In light of this balance, some delegations have expressed a desire that this annex should be subject to a high standard for amendment. At the same time, other CPCs noted that the annexes are to be an integral part of the Convention, and the process for amending them cannot derogate from the existing process set out in Article XIII.

Article XIII stipulates that any Contracting Party or the Commission may propose amendments to the Convention. But, in practice, all amendments to-date have come at the initiative of the Commission. In order to address both concerns noted above, Annex 2 could include an additional final paragraph to make it clear that this practice is to be followed in regard to this Annex. In other words, any proposal to amend the Annex must originate with the Commission, and not a single Contracting Party.

6. Pursuant to Article XIII, only the Commission may propose amendments to this Annex.

*Dispute Settlement*

Two key issues remain unresolved in regard to the establishment of a formal dispute resolution procedure for ICCAT. The first is fundamental: the Working Group has agreed in principle that the first recourse to settle any dispute should be through amicable means or, in the event of a technical dispute, with the assistance of an *ad hoc* expert panel. However, should those mechanisms not be able to resolve the dispute, the Working Group has not been able to agree whether recourse to final and binding arbitration requires the agreement of all parties to the dispute. There is no clear path forward on this point that would bridge the opposing positions expressed by all Contracting Parties. Both options remain on the table in paragraph 3 of Article VII bis, and Contracting Parties will need to identify their maximum flexibility to converge around one approach or the other.

The second issue is procedural: in the event a dispute is sent to final arbitration, will ICCAT establish its own rules for the establishment and conduct of an arbitral tribunal in Annex 1 of the Convention, or refer to rules established under the Permanent Court of Arbitration (PCA)? Some delegations expressed reservations with a general reference to the “rules of the Permanent Court of Arbitration” as there are a number of different rules that have been developed in this context. This is easiest solved by specifying the use of the most recent set of rules, developed in 2012, which are comprehensive and serve to consolidate previously adopted rules.

The 2012 PCA Rules are expansive, providing a number of options for factors such as the number of arbitrators that would serve on a panel, the location of the proceedings, and the languages to be used. If the Commission decided to defer to the 2012 PCA Rules, rather than establishing its own rules in Annex 1, Article VIII bis can also set out the general practice to be followed in ICCAT for these elements, with flexibility for the parties to the dispute to decide otherwise.

In the end, there are few substantive differences between the two approaches. In cases where an ICCAT-specific process in Annex 1 is silent, it is reasonable to assume that any arbitral tribunal will nonetheless take its guidance from the PCA Rules. And in the cases where the PCA Rules offer a range of possible options, the inclusion in Article VIII bis of guidance on the key procedural elements as noted above would support a comparable level of consistency to the more specific provisions in the proposed Annex 1.

The main substantive differences that have been identified within the Working Group come back to the fundamental issue above: whether use of the PCA rules prejudices a decision about whether recourse to arbitration may be compulsory, or must be agreed by all parties to the dispute. Therefore, the Chair’s proposal maintains, in brackets, both Annex 1 and the following option for use of the PCA rules in paragraph 3 of Article VIII bis:

The arbitral tribunal shall be constituted and conducted in accordance with [the 2012 Arbitration Rules of the Permanent Court of Arbitration. 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. Unless otherwise agreed by the parties to the dispute, the arbitral tribunal shall be composed of three arbitrators, the place of arbitration shall be Madrid, Spain, and the language used shall be one of the three official languages of the Commission]

*Considerations regarding the process for finalizing the proposals for amendment*

Once the Contracting Parties resolve these few remaining bracketed issues, the proposals for amendment can be finalized pursuant to a Commission decision at the annual meeting. The finalized proposals would be sent to the depositary, who will officially transmit them to the Contracting Parties for their review and approval.

According to Article XIII, there are slightly different processes for the entry into force for amendments determined to involve new obligations versus those that do not. The amendments under development would most appropriately be deemed to involve new obligations, given that they include changes to fundamental Commission functions such as scope, decision-making rules, and dispute resolution.

In this case, the Convention specifies that the amendments will enter into force on the 90<sup>th</sup> day after three-fourths of the Contracting Parties officially convey their notification of acceptance to the depositary. For Contracting Parties not part of this initial three-fourths, the amendments will enter into force for each upon deposit of its notification of acceptance with the depositary. This would result in some Contracting Parties being bound by the amended Convention while others are not yet. Other RFMOs have dealt with this type of situation by adopting a resolution that sets out how the Commission would function in those circumstances. Contracting Parties should consider whether to take this approach in ICCAT, which could be formalized in a resolution or recommendation adopted by the Commission. The Commission would also need to determine whether such a measure would need to be finalized along with the proposals for amendment, or could be developed at a later date.

Pursuant to Article 25 of the Vienna Convention on the Law of Treaties, parties can decide that some or all of the provisions may be provisionally applied, pending their formal entry into force. As part of the process to finalize the proposals for amendment, the Commission can identify any of the amendments that could be provisionally applied. This too could be formalized in either a resolution or recommendation adopted by the Commission.

Sincerely,



Deirdre M. Warner-Kramer  
*Chair of the Working Group on Convention Amendment*

**CHAIR’S PROPOSAL FOR AMENDMENT OF THE  
INTERNATIONAL CONVENTION FOR THE CONSERVATION OF ATLANTIC TUNAS**

*Prepared by the Chair of the Working Group on Convention Amendment  
Without Prejudice*

**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~~ 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 fishes 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.~~  
~~(g) 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].  
~~(h) 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.
- (d) 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]. The arbitral tribunal shall be constituted and conducted in accordance with [Annex 1 of this Convention] [the 2012 Arbitration Rules of the Permanent Court of Arbitration. 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. Unless otherwise agreed by the parties to the dispute, the arbitral tribunal shall be composed of three arbitrators, the place of arbitration shall be Madrid, Spain, and the language used shall be one of the three official languages of the Commission].
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 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.

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

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.

#### 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.
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 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 concerning any withdrawal, but not later than April first of that year.

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\*\* See FAO Agreement.

### 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 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. Notifications of acceptance of amendments shall be deposited with the Director-General of the Food and Agriculture Organization of the United Nations.

### [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 or approval ~~or adherence~~ shall be deposited with the Director-General of the Food and Agriculture Organization of the United Nations.  
2bis. Instruments of adherence by non-signatories shall be deposited with either the Director-General of the Food and Agriculture Organization of the United Nations or the Executive Secretary of the Commission. For those non-signatories that choose to deposit their instrument of adherence with the Executive Secretary of the Commission, the functions and responsibilities of the Director-General of the Food and Agriculture Organization of the United Nations as set out in Articles XII, XIII, XV, and paragraph 6 of this Article shall be carried out, mutatis mutandis, by the Executive Secretary of the Commission.  
2tris. The Director-General of the Food and Agriculture Organization of the United Nations and the Executive Secretary of the Commission shall coordinate to ensure the effective dissemination of all information pursuant to their respective functions as Depositary under this Convention, including as set out in Articles XII, XIII, XV, and XVI, and this Article.
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.

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

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.

**Article XV\*\*\***

The Director-General of the Food and Agriculture Organization of the United Nations 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 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.

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\*\*\* 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 2<sup>1</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~~ Executive Secretary of the Commission, 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~~ Executive Secretary of the Commission. 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~~ Executive Secretary of the Commission, 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>2</sup>
5. The provisions of this Annex relating to the participation of a fishing entity are only for the purposes of this Convention.
6. Pursuant to Article XIII, only the Commission may propose amendments to this Annex.]

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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>1</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>2</sup> Resolution of the remaining bracketed issues related to dispute settlement in Article VIII bis may require conforming changes to this paragraph