REPUBLIC OF VANUATU

BILL FOR THE RATIFICATION OF CERTAIN CONVENTIONS ACT NO. OF 2026

Explanatory Note

The purpose of this Bill is to ratify certain Conventions.

The Conventions set out in this Bill have been signed by Vanuatu and require ratification by Parliament.

(a) Convention on the Establishment of the International Organisation for Mediation

The Convention on the Establishment of the International Organization for Mediation (IOM) was negotiated by its founding members in Macao, China, in June 2024. It was signed on behalf of the Republic of Vanuatu by the Honourable Marc ATI, Minister of Foreign Affairs, International Cooperation and External Trade, on 30 May 2025. The purpose of the Convention is to create an intergovernmental legal organization dedicated to the peaceful settlement of internal disputes through mediation. The Convention reaffirms fundamental principles such as respect for sovereignty and territorial integrity, equality of States, non-interference in internal affairs, and a commitment to the international rule of law. It complements existing dispute resolution mechanisms such as the International Court of Justice, the Permanent Court of Arbitration, and other international or domestic courts. Settlement agreements reached under the IOM framework are binding on the parties.

By ratifying the Convention, Vanuatu reaffirms its dedication to peaceful resolution of disputes, supports multilateralism, and expands its options for international cooperation on legal matters.

(b) Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization - Agreement on Fisheries Subsidies

The purpose of this bill is to ratify the Protocol that amends the Marrakesh Agreement to add the Agreement on Fisheries Subsidies (F1) as an annexure to the Marrakesh Agreement. The fisheries subsidies negotiation was launched in 2001 at the Doha Ministerial Conference. The negotiation aimed to achieve the SDG target 14.6 to "Prohibit subsidies that contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing, and effective & appropriate special and differential treatment for developing and least- developed countries". The Agreement therefore prohibits support for illegal, unreported and unregulated (IUU) fishing, bans support for fishing overfished stocks and ends subsidies for fishing on the unregulated high seas.

The rational of ratifying the Agreement on Fisheries Subsidies is to protect Vanuatu's ocean from foreign vessels that intend to fish illegally in our waters. It will complement the National Fisheries Management practices and support the Fisheries Act on IUU to tighten its management system. The agreement will support the Vanuatu Ocean Policy that was launched in 2024.

(c) Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications

The Geneva Act, is the latest version of the Lisbon Agreement, was adopted on May 20, 2015, and has been administered by the World Intellectual Property Organization (WIPO).

The Geneva Act of the Lisbon Agreement is an international system that helps protect the names of products that come from a specific place. These products are often unique because of their location, climate, or traditional methods of production. For example, certain agricultural products from Vanuatu may have qualities that cannot be replicated elsewhere. The system allows countries to register these product names, so they are recognized and protected in other member countries. This means that no one can misuse the name or falsely claim that their product comes from that place. It also prevents these names from becoming generic over time.

The agreement is managed by the World Intellectual Property Organization, which oversees the international registration process. Once registered, the protection applies across all member countries. For Vanuatu, this is important because it helps protect local products like kava, cocoa, or coffee in global markets. It also increases the value and reputation of these products internationally. Producers can benefit from better prices and stronger branding.

The system encourages maintaining high quality standards and preserving traditional knowledge. It also supports rural communities that depend on these products for income. In addition, it helps prevent unfair competition from imitation products. Overall, the Geneva Act strengthens Vanuatu's ability to protect and promote its unique products worldwide.

(d) Hague Agreement Concerning the International Registration of Industrial Designs

The Hague Agreement is an international system that helps protect the design or appearance of products in different countries. It was first established in 1925 and later revised through various Acts, including the most recent Geneva Act of 1999, which entered into force on December 23, 2003, and the Hague Act of 1960, which adopted on November 28, 1960 and entered into force on August 1, 1984.

A design can include how a product looks, its shape, pattern, or style. Instead of applying for design protection in each country separately, the Hague Agreement allows a person or business to submit one application to cover multiple countries at once. This makes the process much easier, faster, and less expensive. It is especially helpful for small businesses and local designers who may not have the resources to apply in many countries. The system is managed by World Intellectual Property Organization, which ensures that applications are handled in a consistent and efficient way. Once a design is registered, it is protected in all the countries selected in the application. This means others cannot copy or use that design without permission.

Ratifying this agreement in Vanuatu would help local designers protect their work internationally. It would also encourage creativity and innovation within the country. Businesses would have more confidence to expand into overseas markets. The system also makes it easier for foreign designers to seek protection in Vanuatu, which can increase investment. Over time, this can support economic growth and job creation. Overall, the Hague Agreement helps connect local creativity with global opportunities.

(e) International Labour Organisation Convention No. 190: Convention concerning the Elimination of Violence and Harassment in the world of work

ILO Convention No. 190 (C190) was adopted in June 2019 and entered into force on 25 June 2021. It is the first international treaty to recognize the right of all persons to be free in their workplace from violence and harassment, and gender-based violence. The Convention applies across public and private sectors, formal and informal economies, and in urban and rural contexts. It defines violence and harassment broadly to include physical, psychological, sexual and economic harm, while emphasizing the disproportionate impact on women and young workers. Ratifying C190 commits Vanuatu to adopt inclusive and gender-responsive laws, policies, and measures to prevent and address violence and harassment in a workplace.

(f) International Labour Organisation Convention No. 191: Convention concerning Amendments to Standards Consequential to the Recognition of Safe and Healthy Working Environment as a Fundamental Principal

ILO Convention No. 191 (C191), adopted at the 11th Session of the International Labour Conference on 26 June 2023, affirms that a safe and healthy working environment is a fundamental right for all workers. It amends existing ILO standards to elevate occupational health and safety as a core labour right.

Ratifying C191 will require Vanuatu to strengthen protections under the Employment Act and the Health and Safety Act, ensuring that workplaces are free from harm and conducive to productivity and well-being.

(g) Noumea Convention for the Protection of the Natural Resources and Environment of the South Pacific Region and Related Protocols

The Noumea Convention refers to the Convention for the Protection of Natural Resources and Environment of the South Pacific Region, adopted in 1986 in Noumea, New Caledonia. The two Protocols of the Noumea Convention, which Vanuatu will be also ratifying as part of its ratification of the Convention. These are Dumping Protocol ("Protocol for the Prevention of Pollution of the South Pacific Region by Dumping") and the Emergencies Protocol ("Protocol Concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region").

Vanuatu faced growing environmental threats from pollution, coastal degradation, and to certain extent the over-exploitation of natural resources. In the Pacific, the industrial activities, mining, shipping, and military waste posted significant risks to marine and coastal ecosystems. As such Pacific nations under the auspices of SPEP established the Noumea Convention. By ratifying this convention, Vanuatu committed to protecting its marine and coastal environment, preventing pollution, and promoting the sustainable use of natural resources in cooperation with other pacific nations under the SPREP.

(h) Patent Cooperation Treaty for the International Registration of Inventions

The Patent Cooperation Treaty, (PCT) is an international system that helps inventors apply for patent protection in multiple countries. It was concluded in Washington, D.C. on June 19, 1970, and entered into force on January 24, 1978. A patent protects new inventions and gives the inventor the right to stop others from using or selling their invention without permission.

The PCT allows inventors to submit one international application, instead of filing separate applications in each country, . This saves time and reduces the complexity of the process.

The system is managed by the World Intellectual Property Organization and is used by many countries around the world. Although the PCT does not grant a single global patent, it makes it easier to seek protection in many countries. It also gives inventors more time usually up to 30 months to decide where they want to pursue protection. During this time, they can assess the commercial value of their invention and look for investors or partners. The process also includes an international search that helps identify whether the invention is new. This improves the quality of patent applications and helps inventors make better decisions.

Ratifying PCT in Vanuatu would make it easier for local inventors to access international markets, attract foreign innovation and investment into the country. The system supports technology sharing by making information about inventions publicly available. In the long term, this can help build local knowledge and technical capacity. Overall, the PCT helps promote innovation, economic development, and participation in the global knowledge economy.

(i) Agreement on Trade-Related Aspects of Intellectual Property Rights as amended by the 2005 Protocol Amending the TRIPS Agreement

This Protocol amending Article 31 of the World Trade Organization Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) as an annexure to the Marrakesh Agreement. The TRIPS agreement, a key part of the Marrakesh Agreement, was negotiated during the Uruguay Round and was signed in Marrakesh, Morocco, on April 15, 1994. It established minimum standards for intellectual property protection within the WTO framework and is to date the most comprehensive multilateral agreement on intellectual property.

The TRIPS Agreement came into effect on 1 January 1995.On 6 December 2005, WTO members approved changes to the WTO's intellectual property (Trips) agreement to make permanent a decision on patents and public health originally adopted in 2003. This was formally built into the TRIPS Agreement after acceptance of the Protocol amending the TRIPS Agreement by two thirds of the WTO's members. The amendment took effect on 23 January 2017 from members who have accepted the amendment.

Ratifying the amendment of TRIPS Agreement will ensure more access of medicines to the Government and the people of Vanuatu during a time of crisis. On the National Sustainable Development Plan (NSDP), social pillar on policy objective 3.1, the ratification ensure that the population of Vanuatu has equitable access to affordable, quality health care through the fair distribution of facilities that are suitably resourced and equipped. It will also ensure Vanuatu achieves its economy goals and policy objectives in its National Sustainable Development Plan from 2016 to 2030. This will strengthen Vanuatu's ability to promote trade in knowledge and innovation, resolves intellectual property trade, and allows Vanuatu to pursue their domestic goals.

(j) Protocol relating to the Madrid Agreement concerning the International Registration of Marks

The Madrid Agreement was concluded in 1891 and came into force in 1982, and its related Madrid Protocol was concluded in 1989 and came into force in 1996. The Madrid Protocol is an international system that helps businesses and individuals protect their trademarks in multiple countries. A trademark can be a name, logo, or symbol that identifies a product or business.

The Madrid Protocol allows applicants to file one application that can cover many countries, instead of applying for trademark protection in each country separately. This makes the process simpler, faster, and more cost-effective.

The system is administered by the World Intellectual Property Organization, which manages the international registration. Once a trademark is registered, it can be protected in all the countries selected by the applicant. This means others cannot use the same or similar mark without permission. For businesses in Vanuatu, this makes it easier to expand into international markets. It helps protect their brand identity and reputation overseas. The system also benefits foreign businesses seeking protection in Vanuatu, which can encourage trade and investment.

It provides a reliable and recognized framework for trademark protection globally. This can increase confidence for businesses engaging in international trade. It reduces administrative burdens and legal costs. Over time, this supports economic growth and business development. Overall, the Madrid Protocol helps strengthen brand protection and promotes global commercial opportunities.

Minister for Foreign Affairs and External Trade

REPUBLIC OF VANUATU

BILL FOR THE RATIFICATION OF CERTAIN CONVENTIONS ACT NO. OF 2026

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REPUBLIC OF VANUATU

BILL FOR THE RATIFICATION OF CERTAIN CONVENTIONS ACT NO. OF 2026

An Act to provide for the ratification of certain Conventions and Protocols:

Be it enacted by the President and Parliament as follows-

1 Ratification

(1) The following Conventions are ratified:

(a) Convention on the Establishment of the International Organisation for Mediation; and

(b) Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization - Agreement on Fisheries Subsidies; and

(c) Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications; and

(d) Hague Agreement concerning the International Registration of Industrial Designs; and

(e) International Labour Organisation Convention No. 190: Convention concerning the Elimination of Violence and Harassment in the world of work; and

(f) International Labour Organisation Convention No. 191: Convention concerning Amendments to Standards Consequential to the Recognition of Safe and Healthy Working Environment as a Fundamental Principal; and

(g) Noumea Convention for the Protection of the Natural Resources and Environment of the South Pacific Region and Related Protocols; and

(h) Patent Cooperation Treaty for the International Registration of Inventions; and

(i) Agreement on Trade-Related Aspects of Intellectual Property Rights as amended by the 2005 Protocol Amending the TRIPS Agreement; and

(j) Protocol relating to the Madrid Agreement concerning the International Registration of Marks.

(2) A copy of each Convention is attached.

2 Commencement

This Act comes into force on the day on which it is published in the Gazette.

Convention on the Establishment of the International Organization for Mediation

Convention on the Establishment of the International Organization for Mediation

Preamble

The Contracting States to this Convention,

Acknowledging the value of mediation for fostering peace and development, promoting friendly relations and cooperation among States,

Guided by the purposes and principles enshrined in the Charter of the United Nations,

Recognizing the need for flexibility in the settlement of international disputes and the significant advantages of mediation and its growing use in practice,

Considering the importance for the international community to establish a permanent intergovernmental organization to settle international disputes through mediation,

Recalling the Joint Statement on the Future Establishment of the International Organization for Mediation which serves as the initial milestone of creating an international organization for mediation,

Convinced that the establishment of the International Organization for Mediation would promote peaceful and

friendly settlement of international disputes and contribute to building harmonious international relations,

Believing that the establishment of the International Organization for Mediation would advance and promote the use of mediation, and would be a useful complement to existing international dispute settlement mechanisms,

Reiterating that no Contracting State shall by the mere fact of its ratification, acceptance, approval of or accession to this Convention and without its consent be deemed to be under any obligation to submit any particular dispute to mediation,

Have agreed as follows:

Chapter I

Establishment of the International Organization for Mediation

Article 1 Establishment

The International Organization for Mediation (hereinafter referred to as the Organization) is hereby established and shall function in accordance with the provisions of this Convention.

Article 2 Definitions

For the purposes of this Convention:

a. "mediation" means a process, whether referred to by the term mediation, conciliation or other similar expressions, whereby the parties attempt to reach a mutually acceptable and amicable settlement of their dispute on a voluntary basis with the assistance of a third person or persons (the mediator) who may facilitate a solution between the parties to the dispute and lack the power to impose it upon the parties;

b. "Contracting States" means States which have consented to be bound by this Convention and for which this Convention is in force;

c. "Non-Contracting States" means States for which this Convention has not entered into force;

d. "parties" means all parties to a dispute and "party" means any one of them;

e. "a third State" means a State which is involved in a dispute submitted by other States to the Organization;

f. "international organization" means an intergovernmental organization.

Article 3 Purposes and objectives

The purposes and objectives of the Organization shall be to promote and facilitate peaceful settlement of international disputes and to develop friendly relations and cooperation among States through mediation.

Article 4 Principles of the Organization

The Organization and its Contracting States in pursuit of the purposes and objectives stated in Article 3 shall act in accordance with the following principles:

a. respect for sovereignty and territorial integrity, equality, non-interference in the internal affairs of States, and commitment to international rule of law;

b. ensuring party autonomy and free choice of means in dispute settlement;

c. good faith and a spirit of cooperation in seeking an amicable settlement of international disputes; and

d. ensuring an impartial, neutral and equitable environment that fosters flexible and efficient approach to peaceful settlement of disputes through mediation.

Article 5 Functions

In accordance with the principles and to implement its purposes and objectives, the Organization shall have the following functions:

a. to provide mediation services for the resolution of international disputes;

b. to promote the use of mediation in dispute resolution, to develop the culture of mediation, and to explore and promote best practices of mediation;

c. to organize international, regional, national and local forums and conferences on mediation, building a platform for communication and information sharing;

d. to promote cooperation for capacity building in the area of mediation, recognizing and giving priority to the needs of developing countries; and

e. to cooperate and communicate with other international organizations and dispute resolution agencies.

Article 6 Legal status

1. The Organization is hereby conferred international legal personality and shall have full legal capacity:

a. to contract;

b. to acquire, and dispose of, immovable and movable property;

c. to take legal actions, including instituting and responding to legal proceedings; and

d. to take such other action as may be necessary or useful for its purposes, objectives and functions.

2. The Organization may exercise its functions and powers, as provided in this Convention, on the territory of any Contracting State and, by special agreement, on the territory of any other State.

Article 7 Membership

1. The Organization shall be open and inclusive for membership of all States and regional integration organizations.

2. States having signed or endorsed the Joint Statement on the Future Establishment of the International Organization for Mediation shall be entitled to be Founding Members if they have consented to be bound by this Convention within five years after the entry into force of this Convention.

3. Other States shall be entitled to be Founding Members if they have consented to be bound by this Convention within two years after the entry into force of this Convention.

Article 8 Headquarters

1. The Headquarters of the Organization shall be at the Hong Kong Special Administrative Region of the People's Republic of China.

2. The Organization may establish regional offices elsewhere

as necessary.

Article 9 Structure

1. The Organization shall have a Governing Council and a Secretariat.

2. The Organization shall maintain Panels of Mediators.

3. The Organization may establish such subsidiary institutions or advisory bodies as it deems necessary for the performance and fulfillment of its purposes, objectives and functions.

Chapter II

The Governing Council

Article 10 General provision

The Governing Council shall be the decision-making body which shall make policy decisions and set the overall strategy of the Organization.

Article 11 Composition

1. The Governing Council shall be composed of one representative of each Contracting State. An alternate designated by a Contracting State may act as representative in case of his or her principal's absence from a meeting or inability to act.

2. At each of its annual meetings, the Governing Council shall elect a Chairperson who shall hold office until the election of the next Chairperson. One or more Vice Chairpersons may also be elected, whose term of office shall be the same as that of the Chairperson.

Article 12 Powers and functions

1. Without prejudice to the powers and functions vested in it by other provisions of this Convention, the Governing Council shall:

a. adopt its own rules of procedure;

b. adopt the administrative and financial regulations of the Organization;

c. adopt the selection and appointment procedure of the Secretary-General and Deputy Secretaries-General;

d. adopt the annual budget of revenues and expenditures of the Organization;

e. adopt the rules of procedure for the institution of mediation proceedings;

f. adopt the rules of procedure for mediation proceedings;

g. adopt the code of conduct for mediators;

h. review and approve the annual report on the operation of the Organization;

i. appoint the Secretary-General and Deputy Secretaries-General;

j. determine the conditions of service of the Secretary-General and Deputy Secretaries-General; and

k. establish subsidiary institutions or advisory bodies of the Organization.

2. The Governing Council shall also exercise such other powers and perform such other functions as it shall determine to

be necessary for the implementation of the provisions of this Convention.

3. The Governing Council shall not intervene in any ongoing mediation proceedings conducted under this Convention, nor shall it intervene in the conclusion of any settlement agreement by the parties.

Article 13 Meetings

1. The Governing Council shall hold an annual meeting and such other meetings as may be determined by the Governing Council, or convened by the Chairperson or by the Secretary-General at the request of not less than three members of the Governing Council.

2. The meetings shall be held at the Headquarters of the Organization, unless the Governing Council decides otherwise.

3. A quorum for any meeting of the Governing Council shall be a majority of its members.

4. The Governing Council may, by a majority of two-thirds of its members, allow members to participate in meetings by videoconference or other virtual means.

Article 14 Decision-making

1. The Governing Council shall, to the furthest extent possible, operate on the basis of consensus.

2. In case consensus cannot be reached on a particular matter after every effort has been exhausted, except as otherwise provided in this Convention or in the selection and appointment procedure of the Secretary-General and Deputy Secretaries-General, the Governing Council shall move to decide on the matter by a majority of its members present and

voting. The decision referred to in sub-paragraphs (a) to (g) and (k) of paragraph 1 of Article 12 shall be adopted by a majority of two-thirds of the members of the Governing Council.

3. Each member of the Governing Council shall have one vote.

Chapter III

The Secretariat

Article 15 Composition

1. The Secretariat shall consist of the Secretary-General, one or more Deputy Secretaries-General and such other officials and staff as may be considered necessary.

2. The Secretary-General shall be appointed by the Governing Council, from among the nationals of the Contracting States.

3. One or more Deputy Secretaries-General shall be appointed by the Governing Council on the recommendation of the Secretary-General, from among the nationals of the Contracting States.

Article16 Functions

1. The Secretariat shall be responsible for implementing the decisions of the Governing Council.

2. The Secretariat shall prepare an annual budget of revenues and expenditures, and an annual report on the operation of the Organization, for the Governing Council to review and approve.

3. The Secretariat shall establish channels of communication with the Contracting States.

Article 17 Secretary-General

1. The Secretary-General shall be the legal representative and the chief official of the Organization and shall be responsible for its administration, including the appointment of officials, in accordance with the provisions of this Convention and the rules and regulations adopted by the Governing Council.

2. The Secretary-General shall be appointed for a term of five years and be eligible for re-appointment once.

3. The Secretary-General may participate in meetings of the Governing Council but shall have no vote.

4. The Secretary-General shall perform the function of Registrar and shall have the power to authenticate mediation reports made or settlement agreements concluded pursuant to this Convention, and to certify copies thereof.

5. The Secretary-General may act as the appointing authority under the rules adopted pursuant to this Convention or other mediation rules if so designated by a mediation clause, a subsequent agreement of the parties, or otherwise.

6. The Secretary-General shall manage the communication with Contracting States and promote the Organization on the international stage.

7. The office of the Secretary-General shall be incompatible with the exercise of any political function. Neither the Secretary-General nor any Deputy Secretary-General may hold any other employment or engage in any other occupation except with the approval of the Governing Council.

Article 18 International character

1. The Secretary-General, officials and staff of the Secretariat, in the discharge of their offices, owe their duty entirely to the Organization and to no other authority.

2. Each Contracting State shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

Chapter IV

Panels of Mediators

Article 19 Maintenance of Panels of Mediators

1. The Organization shall maintain two Panels of Mediators, one Panel for mediating disputes set forth in Article 25 (hereinafter individually referred to as the Panel of State-to-State Mediators), and the other Panel for mediating other disputes set forth in Articles 27 and 28 (hereinafter individually referred to as the General Panel of Mediators).

2. The Panels shall consist of qualified persons, designated as hereinafter provided, who are willing to serve thereon.

3. The Organization may maintain other special Panels of Mediators as necessary.

Article 20 Designation by Contracting States

1. Each Contracting State may designate up to five persons from among its nationals to the Panel of State-to-State Mediators, and designate up to twenty persons from among its nationals to the General Panel of Mediators.

2. Each Founding Member may designate up to ten extra persons from among its nationals to the General Panel of Mediators.

3. All designations shall be notified to the Secretary-General and shall take effect from the date on which the notification is received.

Article 21 Qualifications

1. Persons designated to the Panels of Mediators shall be persons of high moral character and recognized competence in specialized fields such as law, commerce, industry or finance, who may be relied upon to conduct mediation.

2. In addition to the qualifications referred to in paragraph 1, persons designated to the Panel of State-to-State Mediators shall also be persons of known competency in questions of international law, diplomacy, international relations or international political and economic affairs and with extensive political skill and judgment.

Article 22 Designation by the Governing Council

1. The Governing Council may designate up to ten persons to the Panel of State-to-State Mediators and up to twenty persons to the General Panel of Mediators.

2. Subject to Article 21, due regard shall be paid additionally to the importance of assuring representation of principal legal systems, geographical diversity and gender balance on the Panels as a whole when the Governing Council designates persons to serve on the Panels.

Article23 Term of office

1. Persons designated to the Panels shall serve for renewable periods of five years.

2. In case of death, resignation or withdrawal of the

designation of a person designated to a Panel, the Contracting States or the Governing Council which designated the person shall have the right to designate another person to serve for the remainder of the term.

Chapter V

Scope of Cases

Article 24 General provision

1. The Organization shall provide mediation services for the settlement of the following international disputes submitted by the parties by mutual consent expressed before or after the dispute arises:

a. disputes between States;

b. disputes between a State and a national of another State; and

c. international commercial disputes between private parties.

2. Consent to mediation may be withdrawn by a party unilaterally at any time during the mediation proceedings, except as the parties otherwise agree or any applicable treaty or agreement provides otherwise.

Article 25 Disputes between States

1. The Organization shall provide mediation services upon the request of Contracting States which agree to mediation with respect to legal and factual disputes, disagreements or any issues of concern between them.

2. The Organization may also provide mediation services for

Non-Contracting States or international organizations if they wish to submit their dispute to the Organization, subject to such rules as may be adopted by the Governing Council.

3. The Organization shall not provide mediation services to a State with respect to disputes which have been excluded by that State through a declaration in accordance with Article 29, such as disputes concerning territorial sovereignty, maritime delimitation, maritime interests or other issues as deemed by that State unsuitable to resort to mediation.

Article 26 Disputes involving a third State

1. In case of a dispute submitted by States involving a third State, the Organization shall not provide mediation services with respect to such dispute unless prior consent is given by the third State concerned.

2. For the purposes of paragraph 1, the States to the dispute shall inform the Organization of such circumstance when instituting mediation proceedings in accordance with this Convention. The Organization may also be informed by the third State in this regard.

Article 27 Disputes between a State and a national of another State

1. The Organization shall provide mediation services with respect to commercial or investment disputes between a Contracting State and a national of another State.

2. The Organization may also provide mediation services with respect to commercial or investment disputes involving a Non-Contracting State or an international organization if the parties wish to submit their dispute to the Organization, subject to such conditions as may be adopted by the Governing Council.

3. For the purposes of this Convention, reference to a State or an international organization includes a constituent subdivision or agency of the State, designated to the Organization by that State, or an agency of the international organization.

4. Consent by a constituent subdivision or agency of a Contracting State shall require the approval of that State unless that State notifies the Organization that no such approval is required.

5. For the purposes of this Convention, reference to a national means a natural person or a legal person.

Article 28 International commercial disputes between private parties

1. The Organization shall provide mediation services with respect to disputes arising out of or relating to international commercial relationships between private parties, subject to such conditions as may be adopted by the Governing Council.

2. Disputes arising out of transactions engaged in by one of the private parties for personal, family or household purposes shall be excluded from the scope of this Article.

3. For the purposes of this Convention, reference to private party includes individual, and entity constituted or organized under applicable law, whether or not for profit, whether privately owned or governmentally owned, such as corporation, trust, partnership, sole proprietorship, joint venture or other association and a branch of any such entity.

Article 29 Declarations

1. Any State may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, notify the depositary of the type or types of disputes

set out in Articles 25 and 27 which it would not consider submitting to the Organization. The depositary shall forthwith transmit such notification to all Contracting States.

2. Such notification shall not constitute the consent required by paragraph 1 of Article 24 and is without prejudice to Contracting States submitting a particular dispute to the Organization by specific consent.

3. Such notification may be amended or withdrawn at any time.

Chapter VI

Mediation Procedure

Article 30 Mediation principles

Mediation under this Convention shall be conducted in accordance with the principles of voluntariness, impartiality, independence, good faith, efficiency and cost-effectiveness.

Article 31 Registration of cases

1. The parties to a dispute wishing to institute mediation proceedings shall submit a request to the Secretary-General in accordance with the rules of procedure for the institution of mediation proceedings.

2. The Secretary-General shall register the request unless he or she finds that the dispute is manifestly outside the scope of this Convention or involving a third State while no prior consent is given by that State. The Secretary-General shall forthwith notify the parties of registration or refusal to register.

Article 32 Conduct of mediation

1. Mediation proceedings shall be conducted in accordance with the provisions of this Convention and, except as the parties otherwise agree, in accordance with the rules of procedure for mediation proceedings adopted by the Governing Council.

2. The mediator shall disclose any potential conflicts of interest to the parties.

3. The mediator shall seek to maintain fair treatment of the parties and promote the settlement of the issues in dispute between the parties in accordance with the code of conduct for mediators.

Article 33 Confidentiality

All information relating to the mediation proceedings conducted under this Convention, and all documents generated in or obtained during the mediation proceedings, shall be confidential, unless the parties agree otherwise, the information or document is already publicly available, or disclosure of information is required by law with an exception for disputes referred to in Article 25.

Article 34 Introduction as evidence in other proceedings

Unless otherwise agreed by the parties, no party shall be entitled in any other proceedings, whether before arbitrators or in a court of law or otherwise, to invoke or rely on any views expressed or statements, admissions, or offers of settlement made by any other party in the mediation proceedings, or the report or any recommendations made by the mediator.

Article 35 Limitations on the role of the mediator

Unless otherwise agreed by the parties or required by applicable law, the mediator shall not act in any other capacity whatsoever in any pending or future proceedings, whether

judicial, arbitral or otherwise, relating to the same subject matter of the dispute.

Article 36 Termination of mediation

1. The mediation shall be terminated:

a. by the conclusion of a settlement agreement by the parties covering any or all of the issues in dispute between the parties;

b. by a written declaration of a party at any time; or

c. by any other method or under some circumstances agreed by the parties or specified in applicable rules.

2. Upon the termination of the mediation, the Secretary-General shall be promptly notified that the mediation is terminated by the mediator and/or the parties, who shall indicate the date on which it terminated, whether or not the mediation resulted in a settlement of the dispute and, if so, whether the settlement was full or partial.

Article 37 Cost of proceedings

1. The charges payable by the parties for the use of the mediation services and facilities of the Organization shall be determined by the Secretary-General in accordance with the rules and regulations adopted by the Governing Council.

2. The fees and expenses of mediators shall be determined within limits established from time to time by the Governing Council.

3. The fees and expenses of mediators as well as the charges for the use of the mediation services and facilities of the Organization shall be borne equally by the parties unless

otherwise agreed. Each party shall bear any other expenses it incurs in connection with the proceedings.

Article 38 Relations with other dispute settlement proceedings

1. Mediation under this Convention shall remain available to the parties at any time, regardless of whether other dispute settlement proceedings have been already instituted.

2. Mediation may continue while other dispute settlement proceedings proceed, if the parties so agree.

3. The parties may agree that, to the extent permitted by applicable law, the running of the limitation period under any applicable law of limitations or an equivalent rule shall be suspended in relation to the dispute that is the subject of the mediation from the date of the commencement of the mediation until the date of the termination of the mediation.

4. Mediation conducted under this Convention is without prejudice to the rights of the parties to resolve their dispute under any other dispute settlement mechanism that is available to them.

Chapter VII

Settlement Agreements

Article 39 Conclusion of settlement agreements

1. When the parties agree on the terms of a settlement to resolve all or part of the dispute through mediation under this Convention, they should sign a settlement agreement resulting from mediation (hereinafter referred to as settlement agreement) in writing, including in the form of electronic communications.

2. The settlement agreement signed by the parties shall be authenticated by the Secretary-General to prove the agreement resulted from mediation under this Convention, unless otherwise agreed by the parties.

Article 40 Legal effect of settlement agreements

1. Any settlement agreement duly concluded between parties to the dispute is binding upon them and shall be performed by them in good faith.

2. By signing the settlement agreement, the parties agree that the settlement agreement can be used as evidence that it results from mediation, and that it can be relied upon for seeking relief under applicable law.

3. Signing by a party of the settlement agreement in no way implies any admission by it of the considerations of law or of fact which may have inspired the terms thereof.

Article 41 Enforcement of settlement agreements

1. A settlement agreement concluded by the parties to resolve an international commercial dispute pursuant to Article 28 may be enforced by a Contracting State in accordance with its applicable law.

2. A Protocol to this Convention should be negotiated by the Contracting States to specify the conditions under which a Contracting State shall enforce the said settlement agreements in paragraph 1. Such Protocol shall be adopted and enter into force in the same procedure as is required for the adoption and entry into force of an amendment to this Convention in accordance with Article 56.

Chapter VIII

Capacity Building

Article 42 Capacity building activities

1. The Organization shall, subject to the availability of resources, undertake and strengthen capacity building activities.

2. In undertaking capacity building activities, the Organization may coordinate and cooperate with governments, international organizations or other entities.

3. The Secretariat shall prepare for consideration and approval by the Governing Council a workplan annually to promote capacity building.

4. The Secretariat may also propose and implement, with the approval of the Governing Council, a mediation fellowship program for training and capacity building of young professionals and diplomats.

Article43 Capacity Building Committee

1. A Capacity Building Committee shall be established and act under the overall direction of the Governing Council, with administrative support provided by the Secretariat.

2. The mandate of the Committee shall be to advise the Governing Council on the strategies and priorities in capacity building activities.

Article 44 Mediation Fund

For the purposes of this Convention, a Mediation Fund may be established to promote and encourage the use of mediation and enhance capacity building. The Fund shall be composed of donations received and be managed in accordance with the financial regulations or rules adopted by the Governing Council.

Chapter IX

Financing

Article 45 Financial regulations

All financial matters related to the Organization shall be governed by this Convention and the financial regulations or rules adopted by the Governing Council.

Article 46 Financial resources

1. The Secretariat shall be provided with the necessary financial resources to perform its functions effectively.

2. The basic financial resources of the Organization shall include annual contributions from Contracting States and the income of the Organization.

3. Without prejudice to the preceding paragraph, the Organization may receive and utilize, as additional financial resources, voluntary contributions from governments, international organizations, individuals, corporations and other entities, in accordance with the financial regulations or rules adopted by the Governing Council. However, the Organization shall not accept any contributions or assistance that may in any way prejudice, limit, deflect or otherwise alter its purposes, objectives or functions.

Article 47 Assessment of contributions

Annual contributions from Contracting States shall be assessed in accordance with an agreed scale of assessment, with reference to their class of contribution in the system of the Universal Postal Union. The economic development level of Contracting States and their capacity to pay may also be

considered.

Chapter X

Privileges and Immunities

Article 48 General principles

1. The Organization shall enjoy in the territories of Contracting States such privileges and immunities as necessary for the performance and fulfilment of its purposes, objectives and functions.

2. Representatives of Contracting States and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

Article 49 Property, funds and assets

1. The Organization, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. Any waiver given is not to be understood as extending to any immunity from measure of execution, unless such immunity has been expressly and separately waived by the Organization.

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

3. The archives of the Organization, and in general all documents belonging to it or held by it, shall be inviolable

wherever located.

4. Without being restricted by financial controls, regulations or moratoria of any kind,

a. the Organization may hold any kind of funds, currency or other assets, and may open and operate accounts in any convertible currency;

b. the Organization shall be free to transfer its funds, currency or other assets from one country to another or within any country and to convert any currency held by it into any other currency.

5. The Organization, its assets, income and other property shall be:

a. exempt from all direct taxes; it is understood, however, that the Organization will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

b. exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Organization for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the government of that country; and

c. exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

6. While the Organization will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the Organization is making important purchases for official use of property on which such

duties and taxes have been charged or are chargeable, Contracting States will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article 50 Facilities in respect of communications

Official communications of the Organization shall be accorded by each Contracting State the same treatment that it accords to the official communications of any other State.

Article 51 Representatives of Contracting States

1. Representatives of Contracting States to the Governing Council and to meetings convened by the Organization, shall, while exercising their functions and during the journey to and from the place of meeting, enjoy the following privileges and immunities:

a. immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;

b. inviolability for all papers and documents;

c. the right to use codes and to receive papers or correspondence by courier or in sealed bags;

d. exemption in respect of themselves and their spouses from immigration restrictions, alien registration or national service obligations in the Contracting State they are visiting or through which they are passing in the exercise of their functions;

e. the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

f. the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys; and

g. such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

2. In order to secure, for representatives of Contracting States to the Governing Council and to meetings convened by the Organization, freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer representatives of Contracting States.

3. Where the incidence of any form of taxation depends upon residence, periods during which representatives of Contracting States to the Governing Council and to meetings convened by the Organization are present in a Contracting State for the discharge of their duties shall not be considered as periods of residence.

4. Privileges and immunities are accorded to the representatives of Contracting States not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Organization. Consequently, a Contracting State not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Contracting State the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

5. The provisions of paragraphs 1 to 3 are not applicable as between a representative and the authorities of the Contracting State of which he or she is a national or of which he or she is or has been the representative.

6. In this Article, the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

Article 52 Officials

1. The Secretary-General will specify the categories of officials to which the provisions of this Article shall apply, and shall submit these categories to the Governing Council for consideration and approval. Thereafter these categories shall be communicated to the governments of all Contracting States. The names of the officials included in these categories shall from time to time be made known to the governments of Contracting States.

2. Officials of the Organization shall:

a. be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

b. be exempt from taxation on the salaries and emoluments paid to them by the Organization;

c. be immune from national service obligations;

d. be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;

e. be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks

forming part of diplomatic missions to the government concerned;

f. be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys; and

g. have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

3. In addition to the immunities and privileges specified in paragraph 2, the Secretary-General and any Deputy Secretary-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

4. Privileges and immunities are granted to officials in the interests of the Organization and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his or her opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Organization. In the case of the Secretary-General, the Governing Council shall have the right to waive immunity.

5. The Organization shall cooperate at all times with the appropriate authorities of Contracting States to facilitate the proper administration of justice, secure the observance of the laws and regulations on public security and public order, and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

Article 53 Mediators and participants in mediation proceedings

1. Persons appearing in mediation proceedings in respect of disputes under Articles 25 and 27 as mediators, parties, agents, counsel, witnesses or experts shall be accorded:

a. immunity from personal arrest or detention and from seizure of their personal baggage while exercising their functions;

b. immunity from legal process in respect of words spoken or written and all acts performed by them in the course of their participation in mediation proceedings;

c. inviolability of all papers, documents in whatever form and materials relating to their participation in mediation proceedings;

d. for purposes of their communications in relation to mediation proceedings, the right to receive and send papers and documents in whatever form by duly identified couriers or in sealed bags; and

e. not being local nationals, the same immunities from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of travelling facilities as are accorded by Contracting States to officials of the Organization.

The immunities referred to in sub-paragraphs (a) and (e) shall only apply in connection with their travel to and from, and their stay at, the place where the proceedings are held.

2. Persons acting as mediators in mediation proceedings under this Convention shall be exempt from taxation on any fees and expense allowances paid to them by or through the Organization for the work conducted in their capacity as

mediators.

3. Privileges and immunities are granted to the said persons in the interests of the Organization and not for the personal benefit of the individuals themselves. The Organization shall have the right and the duty to waive the immunity of any person in any case where, in its opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the Organization.

Article 54 Exception to immunities

The immunities provided in paragraph 1(a) of Article 51, paragraph 2(a) of Article 52, and paragraph 1(b) of Article 53 shall not apply to civil liability either in the case of damage from a road traffic accident, or in the case of other personal injury or death.

Chapter XI

Final Clauses

Article 55 Resolution of differences concerning the interpretation or application

Any difference concerning the interpretation or application of this Convention which is not resolved by negotiation shall, at the request of the Contracting State concerned, be referred to the Governing Council for recommendation.

Article 56 Amendments

1. Any Contracting State may propose an amendment to the present Convention by submitting it to the Secretary-General. The Secretary-General shall thereupon communicate the proposed amendment to Contracting States.

2. Any proposed amendment to this Convention shall be adopted by the Contracting States by consensus to the furthest extent possible. If consensus cannot be reached after every effort has been exhausted, the amendment shall as a last resort be adopted by a two-thirds majority of Contracting States.

3. An amendment adopted in accordance with paragraph 2 is subject to ratification, acceptance or approval by Contracting States.

4. An amendment adopted in accordance with paragraph 2 shall enter into force on the thirtieth day after the date of deposit of the third instrument of ratification, acceptance or approval. When an amendment enters into force, it shall be binding on those Contracting States that have expressed consent to be bound by it. Other Contracting States shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

5. When a Contracting State ratifies, accepts or approves an amendment following the deposit of the third instrument of ratification, acceptance or approval, the amendment shall enter into force in respect of that Contracting State on the thirtieth day after the date of the deposit of its instrument of ratification, acceptance or approval.

6. No amendments shall affect the rights and obligations of any party to a dispute arising out of consent to mediation under this Convention given before the date of entry into force of the amendment.

Article 57 Declarations with respect to non-unified legal systems

1. If a State has two or more territorial units in which different systems of law apply in relation to matters dealt with in this Convention, it may at the time of signature, ratification,

acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. A declaration shall be notified to the depositary and shall state expressly the territorial units to which this Convention applies.

3. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention:

a. any reference to the law or rule of procedure of a State shall be construed as referring, where appropriate, to the law or rule of procedure in force in the relevant territorial unit;

b. reference to dispute in Article 28 shall be construed to include disputes arising out of or relating to commercial relationship between parties in different territorial units of that State.

4. If a State makes no declaration under this Article, this Convention shall extend to all territorial units of that State.

5. This Article shall not apply to regional integration organizations.

Article 58 Participation by regional integration organizations

1. A regional integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional integration organization shall in that case have the rights and obligations of a Contracting State, to the extent that that organization has

competence over matters governed by this Convention, which shall be declared in the instrument of ratification, acceptance, approval or accession. Subsequently, such organization shall inform the depositary of any substantial modification in the extent of its competence.

2. Reference to "Contracting State" or "Contracting States" in this Convention shall apply to such organization within the limits of its competence.

3. For the purposes of paragraph 4 of Article 56 and paragraph 1 of Article 60, any instrument deposited by a regional integration organization shall not be counted additional to those deposited by member States of such organization.

4. A regional integration organization, in matters within its competence, may exercise its right to vote in the Governing Council, with a number of votes equal to the number of its member States that are Contracting States to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 59 Signature, ratification, acceptance, approval and accession

1. This Convention is open for signature by all States and regional integration organizations in the Hong Kong Special Administrative Region of the People's Republic of China from 1 January 2025 to 31 December 2025. Thereafter, it shall remain open for signature in Beijing at the Ministry of Foreign Affairs of the People's Republic of China until three years after the entry into force of this Convention.

2. This Convention is subject to ratification, acceptance or approval by the signatory States and regional integration organizations.

3. This Convention shall be open to accession by all States and regional integration organizations that are not signatories as from the date it is open for signature.

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

Article 60 Entry into force

1. This Convention shall enter into force on the thirtieth day after the date of deposit of the third instrument of ratification, acceptance, approval or accession.

2. For each State or regional integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or regional integration organization of its instrument of ratification, acceptance, approval or accession.

Article 61 Denunciation

1. A Contracting State may denounce this Convention by written notification to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.

2. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

3. Notice by a Contracting State pursuant to this Article shall not affect the rights and obligations of any party to a dispute arising out of consent to mediation under this Convention given before such notice was received by the depositary.

Article 62 Depositary

1. The Government of the People's Republic of China shall be the depositary of this Convention.

2. The depositary shall notify all Contracting States, other signatories and the Secretary-General, in particular, of the following:

a. the signatures, ratifications, acceptances, approvals and accessions referred to in Articles 56, 58 and 59;

b. the date on which this Convention enters into force in accordance with Article 60;

c. the date on which any amendment of this Convention enters into force in accordance with Article 56;

d. the declarations and notifications referred to in Articles 25, 29, 57 and 58; and

e. the denunciations referred to in Article 61.

Article 63 Authentic texts

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

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at the Hong Kong Special Administrative Region of the People's Republic of China, this May 30, 2025.

WORLD TRADE ORGANIZATION

WT/MIN(22)/33
WT/L/1144

22 June 2022

(22-4789)

Ministerial Conference
Twelfth Session
Geneva, 12-15 June 2022

AGREEMENT ON FISHERIES SUBSIDIES

MINISTERIAL DECISION OF 17 JUNE 2022

The *Ministerial Conference*;

Having regard to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement");

Recalling the mandate given to Members at the Eleventh WTO Ministerial Conference in 2017 in Buenos Aires that the next Ministerial Conference should adopt an agreement on comprehensive and effective disciplines that prohibits certain forms of fisheries subsidies that contribute to overcapacity and overfishing, and eliminates subsidies that contribute to IUU-fishing recognizing that appropriate and effective special and differential treatment for developing country Members and least developed country Members should be an integral part of these negotiations.

Decides as follows:

1. The Protocol amending the WTO Agreement attached to this Decision is hereby adopted and submitted to the Members for acceptance.

2. The Protocol shall hereby be open for acceptance by Members.

3. The Protocol shall enter into force in accordance with the provisions of paragraph 3 of Article X of the WTO Agreement.

4. Notwithstanding Article 9.4 of the Agreement on Fisheries Subsidies, the Negotiating Group on Rules shall continue negotiations based on the outstanding issues in documents WT/MIN(21)/W/5 and WT/MIN(22)/W/20 with a view to making recommendations to the Thirteenth WTO Ministerial Conference for additional provisions that would achieve a comprehensive agreement on fisheries subsidies, including through further disciplines on certain forms of fisheries subsidies that contribute to overcapacity and overfishing, recognizing that appropriate and effective special and differential treatment for developing country Members and least developed country Members should be an integral part of these negotiations.

ATTACHMENT

PROTOCOL AMENDING THE MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION

AGREEMENT ON FISHERIES SUBSIDIES

Members of the World Trade Organization;

Having regard to the Decision of the Ministerial Conference in document WT/MIN(22)/33 – WT/L/1144 adopted pursuant to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization ("the WTO Agreement");

Hereby agree as follows:

1. Annex 1A to the WTO Agreement shall, upon entry into force of this Protocol pursuant to paragraph 4, be amended by the insertion of the Agreement on Fisheries Subsidies, as set out in the Annex to this Protocol, to be placed after the Agreement on Subsidies and Countervailing Measures.

2. No reservations may be made in respect of any of the provisions of this Protocol.

3. This Protocol is hereby open for acceptance by Members.

4. This Protocol shall enter into force in accordance with paragraph 3 of Article X of the WTO Agreement.[1]

5. This Protocol shall be deposited with the Director-General of the World Trade Organization who shall promptly furnish to each Member a certified copy thereof and a notification of each acceptance thereof pursuant to paragraph 3.

6. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this seventeenth day of June two thousand and twenty-two, in a single copy in the English, French and Spanish languages, each text being authentic.

[1] For the purposes of calculation of acceptances under Article X:3 of the WTO Agreement, an instrument of acceptance by the European Union for itself and in respect of its Member States shall be counted as acceptance by a number of Members equal to the number of Member States of the European Union which are Members to the WTO.

ANNEX

AGREEMENT ON FISHERIES SUBSIDIES

ARTICLE 1: SCOPE

This Agreement applies to subsidies, within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) that are specific within the meaning of Article 2 of that Agreement, to marine wild capture fishing and fishing related activities at sea.[1, 2, 3]

ARTICLE 2: DEFINITIONS

For the purpose of this Agreement:

(a) "fish" means all species of living marine resources, whether processed or not;

(b) "fishing" means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;

(c) "fishing related activities" means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;

(d) "vessel" means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities;

(e) "operator" means the owner of a vessel, or any person, who is in charge of or directs or controls the vessel.

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[1] For greater certainty, aquaculture and inland fisheries are excluded from the scope of this Agreement.

[2] For greater certainty, government-to-government payments under fisheries access agreements shall not be deemed to be subsidies within the meaning of this Agreement.

[3] For greater certainty, for the purposes of this Agreement, a subsidy shall be attributable to the Member conferring it, regardless of the flag or registry of any vessel involved or the nationality of the recipient.

ARTICLE 3: SUBSIDIES CONTRIBUTING TO ILLEGAL, UNREPORTED AND UNREGULATED FISHING[4]

3.1 No Member shall grant or maintain any subsidy to a vessel or operator[5] engaged in illegal, unreported and unregulated (IUU) fishing or fishing related activities in support of IUU fishing.

3.2 For purposes of Article 3.1, a vessel or operator shall be considered to be engaged in IUU fishing if an affirmative determination thereof is made by any of the following[6,7]:

(a) a coastal Member, for activities in areas under its jurisdiction; or

(b) a flag State Member, for activities by vessels flying its flag; or

(c) a relevant Regional Fisheries Management Organization or Arrangement (RFMO/A), in accordance with the rules and procedures of the RFMO/A and relevant international law, including through the provision of timely notification and relevant information, in areas and for species under its competence.

3.3 (a) An affirmative determination[8] under Article 3.2 refers to the final finding by a Member and/or the final listing by an RFMO/A that a vessel or operator has engaged in IUU fishing.

(b) For purposes of Article 3.2(a), the prohibition under Article 3.1 shall apply where the determination by the coastal Member is based on relevant factual information and the coastal Member has provided to the flag State Member and, if known, the subsidizing Member, the following:

(i) timely notification, through appropriate channels, that a vessel or operator has been temporarily detained pending further investigation for engagement in, or that the coastal Member has initiated an investigation for, IUU fishing including reference to any relevant factual information, applicable laws, regulations, administrative procedures, or other relevant measures;

(ii) an opportunity to exchange relevant information[9] prior to a determination, so as to allow such information to be considered in the final determination. The coastal Member may specify the manner and time period in which such information exchange should be carried out; and

(iii) notification of the final determination, and of any sanctions applied, including, if applicable, their duration.

The coastal Member shall notify an affirmative determination to the Committee provided for in Article 9.1 (referred to in this Agreement as "the Committee").

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[4] "Illegal, unreported and unregulated (IUU) fishing" refers to activities set out in paragraph 3 of the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* adopted by the UN Food and Agriculture Organization (FAO) in 2001.

[5] For the purpose of Article 3, the term "operator" means the operator within the meaning of Article 2(e) at the time of the IUU fishing infraction. For greater certainty, the prohibition on granting or maintaining subsidies to operators engaged in IUU fishing applies to subsidies provided to fishing and fishing related activities at sea.

[6] Nothing in this Article shall be interpreted to obligate Members to initiate IUU fishing investigations or make IUU fishing determinations.

[7] Nothing in this Article shall be interpreted as affecting the competence of the listed entities under relevant international instruments or granting new rights to the listed entities in making IUU fishing determinations.

[8] Nothing in this Article shall be interpreted to delay, or affect the validity or enforceability of, an IUU fishing determination.

[9] For example, this may include an opportunity to dialogue or for written exchange of information if requested by the flag State or subsidizing Member.

3.4 The subsidizing Member shall take into account the nature, gravity, and repetition of IUU fishing committed by a vessel or operator when setting the duration of application of the prohibition in Article 3.1. The prohibition in Article 3.1 shall apply at least as long as the sanction[10] resulting from the determination triggering the prohibition remains in force, or at least as long as the vessel or operator is listed by an RFMO/A, whichever is the longer.

3.5 The subsidizing Member shall notify the measures taken pursuant to Article 3.1 to the Committee in accordance with Article 8.3.

3.6 Where a port State Member notifies a subsidizing Member that it has clear grounds to believe that a vessel in one of its ports has engaged in IUU fishing, the subsidizing Member shall give due regard to the information received and take such actions in respect of its subsidies as it deems appropriate.

3.7 Each Member shall have laws, regulations and/or administrative procedures in place to ensure that subsidies referred to in Article 3.1, including such subsidies existing at the entry into force of this Agreement, are not granted or maintained.

3.8 For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including least-developed country (LDC) Members, up to and within the exclusive economic zone (EEZ) shall be exempt from actions based on Articles 3.1 and 10 of this Agreement.

ARTICLE 4: SUBSIDIES REGARDING OVERFISHED STOCKS

4.1 No Member shall grant or maintain subsidies for fishing or fishing related activities regarding an overfished stock.

4.2 For the purpose of this Article, a fish stock is overfished if it is recognized as overfished by the coastal Member under whose jurisdiction the fishing is taking place or by a relevant RFMO/A in areas and for species under its competence, based on best scientific evidence available to it.

4.3 Notwithstanding Article 4.1, a Member may grant or maintain subsidies referred to in Article 4.1 if such subsidies or other measures are implemented to rebuild the stock to a biologically sustainable level.[11]

4.4 For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including LDC Members, up to and within the EEZ shall be exempt from actions based on Articles 4.1 and 10 of this Agreement.

ARTICLE 5: OTHER SUBSIDIES

5.1 No Member shall grant or maintain subsidies provided to fishing or fishing related activities outside of the jurisdiction of a coastal Member or a coastal non-Member and outside the competence of a relevant RFMO/A.

5.2 A Member shall take special care and exercise due restraint when granting subsidies to vessels not flying that Member's flag.

5.3 A Member shall take special care and exercise due restraint when granting subsidies to fishing or fishing related activities regarding stocks the status of which is unknown.

[10] Termination of sanctions is as provided for under the laws or procedures of the authority having made the determination referred to in Article 3.2.

[11] For the purpose of this paragraph, a biologically sustainable level is the level determined by a coastal Member having jurisdiction over the area where the fishing or fishing related activity is taking place, using reference points such as maximum sustainable yield (MSY) or other reference points, commensurate with the data available for the fishery; or by a relevant RFMO/A in areas and for species under its competence.

ARTICLE 6: SPECIFIC PROVISIONS FOR LDC MEMBERS

A Member shall exercise due restraint in raising matters involving an LDC Member and solutions explored shall take into consideration the specific situation of the LDC Member involved, if any.

ARTICLE 7: TECHNICAL ASSISTANCE AND CAPACITY BUILDING

Targeted technical assistance and capacity building assistance to developing country Members, including LDC Members, shall be provided for the purpose of implementation of the disciplines under this Agreement. In support of this assistance, a voluntary WTO funding mechanism shall be established in cooperation with relevant international organizations such as the Food and Agriculture Organization of the United Nations (FAO) and International Fund for Agricultural Development. The contributions of WTO Members to the mechanism shall be exclusively on a voluntary basis and shall not utilize regular budget resources.

ARTICLE 8: NOTIFICATION AND TRANSPARENCY

8.1 Without prejudice to Article 25 of the SCM Agreement and in order to strengthen and enhance notifications of fisheries subsidies, and to enable more effective surveillance of the implementation of fisheries subsidies commitments, each Member shall

(a) provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement[12,13]: type or kind of fishing activity for which the subsidy is provided;

(b) to the extent possible, provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement[12,13]:

(i) status of the fish stocks in the fishery for which the subsidy is provided (e.g. overfished, maximally sustainably fished, or underfished) and the reference points used, and whether such stocks are shared[14] with any other Member or are managed by an RFMO/A;

(ii) conservation and management measures in place for the relevant fish stock;

(iii) fleet capacity in the fishery for which the subsidy is provided;

(iv) name and identification number of the fishing vessel or vessels benefitting from the subsidy; and

(v) catch data by species or group of species in the fishery for which the subsidy is provided.[15]

8.2 Each Member shall notify the Committee in writing on an annual basis of a list of vessels and operators that it has affirmatively determined as having been engaged in IUU fishing.

[12] For the purpose of Article 8.1, Members shall provide this information in addition to all the information required under Article 25 of the SCM Agreement and as stipulated in any questionnaire utilized by the SCM Committee, for example G/SCM/6/Rev.1.

[13] For LDC Members, and developing country Members with an annual share of the global volume of marine capture production not exceeding 0.8 per cent as per the most recent published FAO data as circulated by the WTO Secretariat, the notification of the additional information in this subparagraph may be made every four years.

[14] The term "shared stocks" refers to stocks that occur within the EEZs of two or more coastal Members, or both within the EEZ and in an area beyond and adjacent to it.

[15] For multispecies fisheries, a Member instead may provide other relevant and available catch data.

8.3 Each Member shall, within one year of the date of entry into force of this Agreement, inform the Committee of measures in existence or taken to ensure the implementation and administration of this Agreement, including the steps taken to implement prohibitions set out in Articles 3, 4 and 5. Each Member shall also promptly inform the Committee of any changes to such measures thereafter, and new measures taken to implement the prohibitions set out in Article 3.

8.4 Each Member shall, within one year of the date of entry into force of this Agreement, provide to the Committee a description of its fisheries regime with references to its laws, regulations and administrative procedures relevant to this Agreement, and promptly inform the Committee of any modifications thereafter. A Member may meet this obligation by providing to the Committee an up-to-date electronic link to the Member's or other appropriate official web page that sets out this information.

8.5 A Member may request additional information from the notifying Member regarding the notifications and information provided under this Article. The notifying Member shall respond to that request as quickly as possible in writing and in a comprehensive manner. If a Member considers that a notification or information under this Article has not been provided, the Member may bring the matter to the attention of such other Member or to the Committee.

8.6 Members shall notify to the Committee in writing, upon entry into force of this Agreement, any RFMO/A to which they are parties. This notification shall consist of, at least, the text of the legal instrument instituting the RFMO/A, the area and species under its competence, the information on the status of the managed fish stocks, a description of its conservation and management measures, the rules and procedures governing its IUU fishing determinations, and the updated lists of vessels and/or operators that it has determined as having been engaged in IUU fishing. This notification may be presented either individually or by a group of Members.[16] Any changes to this information shall be notified promptly to the Committee. The Secretariat to the Committee shall maintain a list of RFMO/As notified pursuant to this Article.

8.7 Members recognize that notification of a measure does not prejudge (a) its legal status under GATT 1994, the SCM Agreement, or this Agreement; (b) the effects of the measure under the SCM Agreement; or (c) the nature of the measure itself.

8.8 Nothing in this Article requires the provision of confidential information.

ARTICLE 9: INSTITUTIONAL ARRANGEMENTS

9.1 There is hereby established a Committee on Fisheries Subsidies composed of representatives from each of the Members. The Committee shall elect its own Chair and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matter relating to the operation of this Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.

9.2 The Committee shall examine all information provided pursuant to Articles 3 and 8 and this Article not less than every two years.

9.3 The Committee shall review annually the implementation and operation of this Agreement, taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

[16] This obligation can be met by providing an up-to-date electronic link to the notifying Member's or other appropriate official web page that sets out this information.

9.4 Not later than five years after the date of entry into force of this Agreement and every three years thereafter, the Committee shall review the operation of this Agreement with a view to identifying all necessary modifications to improve the operation of this Agreement, taking into account the objectives thereof. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this Agreement having regard, inter alia, to the experience gained in its implementation.

9.5 The Committee shall maintain close contact with the FAO and with other relevant international organizations in the field of the fisheries management, including relevant RFMO/As.

ARTICLE 10: DISPUTE SETTLEMENT

10.1 The provisions of Articles XXII and XXIII of the GATT 1994 as elaborated and applied by the Dispute Settlement Understanding (DSU) shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.[17]

10.2 Without prejudice to paragraph 1, the provisions of Article 4 of the SCM Agreement[18] shall apply to consultations and the settlement of disputes under Articles 3, 4 and 5 of this Agreement.

ARTICLE 11: FINAL PROVISIONS

11.1 Except as provided in Articles 3 and 4, nothing in this Agreement shall prevent a Member from granting a subsidy for disaster[19] relief, provided that the subsidy is:

(a) limited to the relief of a particular disaster;

(b) limited to the affected geographic area;

(c) time-limited; and

(d) in the case of reconstruction subsidies, limited to restoring the affected fishery, and/or the affected fleet to its pre-disaster level.

11.2 (a) This Agreement, including any findings, recommendations, and awards with respect to this Agreement, shall have no legal implications regarding territorial claims or delimitation of maritime boundaries.

(b) A panel established pursuant to Article 10 of this Agreement shall make no findings with respect to any claim that would require it to base its findings on any asserted territorial claims or delimitation of maritime boundaries.[20]

11.3 Nothing in this Agreement shall be construed or applied in a manner which will prejudice the jurisdiction, rights and obligations of Members, arising under international law, including the law of the sea.[21]

11.4 Except as otherwise provided, nothing in this Agreement shall imply that a Member is bound by measures or decisions of, or recognizes, any RFMO/As of which it is not a party or a cooperating non-party.

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[17] Subparagraphs 1(b) and 1(c) of Article XXIII of the GATT 1994 and Article 26 of the DSU shall not apply to the settlement of disputes under this Agreement.

[18] For purposes of this Article, the term "prohibited subsidy" in Article 4 of the SCM Agreement refers to subsidies subject to prohibition in Article 3, Article 4 or Article 5 of this Agreement.

[19] For greater certainty, this provision does not apply to economic or financial crises.

[20] This limitation shall also apply to an arbitrator established pursuant to Article 25 of the Dispute Settlement Understanding.

[21] Including rules and procedures of RFMO/As.

11.5 This Agreement does not modify or nullify any rights and obligations as provided by the SCM Agreement.

ARTICLE 12: TERMINATION OF AGREEMENT IF COMPREHENSIVE DISCIPLINES ARE NOT ADOPTED

If comprehensive disciplines are not adopted within four years of the entry into force of this Agreement, and unless otherwise decided by the General Council, this Agreement shall stand immediately terminated.

GENEVA ACT OF THE LISBON AGREEMENT ON APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS

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Chapter I
Introductory and General Provisions

Article 1
Abbreviated Expressions

For the purposes of this Act, unless expressly stated otherwise:

(i) “Lisbon Agreement” means the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958;

(ii) “1967 Act” means the Lisbon Agreement as revised at Stockholm on July 14, 1967, and amended on September 28, 1979;

(iii) “this Act” means the Lisbon Agreement on Appellations of Origin and Geographical Indications, as established by the present Act;

(iv) “Regulations” means the Regulations as referred to in Article 25;

(v) “Paris Convention” means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised and amended;

(vi) “appellation of origin” means a denomination as referred to in Article 2(1)(i);

(vii) “geographical indication” means an indication as referred to in Article 2(1)(ii);

(viii) “International Register” means the International Register maintained by the International Bureau in accordance with Article 4 as the official collection of data concerning international registrations of appellations of origin and geographical indications, regardless of the medium in which such data are maintained;

(ix) “international registration” means an international registration recorded in the International Register;

(x) “application” means an application for international registration;

(xi) “registered” means entered in the International Register in accordance with this Act;

(xii) “geographical area of origin” means a geographical area as referred to in Article 2(2);

(xiii) “trans-border geographical area” means a geographical area situated in, or covering, adjacent Contracting Parties;

(xiv) “Contracting Party” means any State or intergovernmental organization party to this Act;

(xv) “Contracting Party of Origin” means the Contracting Party where the geographical area of origin is situated or the Contracting Parties where the trans-border geographical area of origin is situated;

(xvi) “Competent Authority” means an entity designated in accordance with Article 3;

(xvii) “beneficiaries” means the natural persons or legal entities entitled under the law of the Contracting Party of Origin to use an appellation of origin or a geographical indication;

(xviii) “intergovernmental organization” means an intergovernmental organization eligible to become party to this Act in accordance with Article 28(1)(iii);

(xix) “Organization” means the World Intellectual Property Organization;

(xx) “Director General” means the Director General of the Organization;

(xxi) “International Bureau” means the International Bureau of the Organization.

Article 2
Subject-Matter

(1) *[Appellations of Origin and Geographical Indications]* This Act applies in respect of:

(i) any denomination protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another denomination known as referring to such area, which serves to designate a good as originating in that geographical area, where the quality or characteristics of the good are due exclusively or essentially to the geographical environment, including natural and human factors, and which has given the good its reputation; as well as

(ii) any indication protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

(2) *[Possible Geographical Areas of Origin]* A geographical area of origin as described in paragraph (1) may consist of the entire territory of the Contracting Party of Origin or a region, locality or place in the Contracting Party of Origin. This does not exclude the application of this Act in respect of a geographical area of origin, as described in paragraph (1), consisting of a trans-border geographical area, or a part thereof.

Article 3
Competent Authority

Each Contracting Party shall designate an entity which shall be responsible for the administration of this Act in its territory and for communications with the International Bureau under this Act and the Regulations. The Contracting Party shall notify the name and contact details of such Competent Authority to the International Bureau, as specified in the Regulations.

Article 4
International Register

The International Bureau shall maintain an International Register recording international registrations effected under this Act, under the Lisbon Agreement and the 1967 Act, or under both, and data relating to such international registrations.

Chapter II
Application and International Registration

Article 5
Application

(1) *[Place of Filing]* Applications shall be filed with the International Bureau.

(2) *[Application Filed by Competent Authority]* Subject to paragraph (3), the application for the international registration of an appellation of origin or a geographical indication shall be filed by the Competent Authority in the name of:

(i) the beneficiaries; or

(ii) a natural person or legal entity having legal standing under the law of the Contracting Party of Origin to assert the rights of the beneficiaries or other rights in the appellation of origin or geographical indication.

(3) *[Application Filed Directly]* (a) Without prejudice to paragraph (4), if the legislation of the Contracting Party of Origin so permits, the application may be filed by the beneficiaries or by a natural person or legal entity referred to in paragraph (2)(ii).

(b) Subparagraph (a) applies subject to a declaration from the Contracting Party that its legislation so permits. Such declaration may be made by the Contracting Party at the time of deposit of its instrument of ratification or accession or at any later time. Where the declaration is made at the time of the deposit of its instrument of ratification or accession, it shall take effect upon the entry into force of this Act with respect to that Contracting Party. Where the declaration is made after the entry into force of this Act with respect to the Contracting Party, it shall take effect three months after the date on which the Director General has received the declaration.

(4) *[Possible Joint Application in the Case of a Trans-border Geographical Area]* In case of a geographical area of origin consisting of a trans-border geographical area, the adjacent Contracting Parties may, in accordance with their agreement, file an application jointly through a commonly designated Competent Authority.

(5) *[Mandatory Contents]* The Regulations shall specify the mandatory particulars that must be included in the application, in addition to those specified in Article 6(3).

(6) *[Optional Contents]* The Regulations may specify the optional particulars that may be included in the application.

Article 6
International Registration

(1) *[Formal Examination by the International Bureau]* Upon receipt of an application for the international registration of an appellation of origin or a geographical indication in due form, as specified in the Regulations, the International Bureau shall register the appellation of origin, or the geographical indication, in the International Register.

(2) *[Date of International Registration]* Subject to paragraph (3), the date of the international registration shall be the date on which the application was received by the International Bureau.

(3) *[Date of International Registration Where Particulars Missing]* Where the application does not contain all the following particulars:

(i) the identification of the Competent Authority or, in the case of Article 5(3), the applicant or applicants;

(ii) the details identifying the beneficiaries and, where applicable, the natural person or legal entity referred to in Article 5(2)(ii);

(iii) the appellation of origin, or the geographical indication, for which international registration is sought;

(iv) the good or goods to which the appellation of origin, or the geographical indication, applies;

the date of the international registration shall be the date on which the last of the missing particulars is received by the International Bureau.

(4) *[Publication and Notification of International Registrations]* The International Bureau shall, without delay, publish each international registration and notify the Competent Authority of each Contracting Party of the international registration.

(5) *[Date of Effect of International Registration]* (a) Subject to subparagraph (b), a registered appellation of origin or geographical indication shall, in each Contracting Party that has not refused protection in accordance with Article 15, or that has sent to the International Bureau a notification of grant of protection in accordance with Article 18, be protected from the date of the international registration.

(b) A Contracting Party may, in a declaration, notify the Director General that, in accordance with its national or regional legislation, a registered appellation of origin or geographical indication is protected from a date that is mentioned in the declaration, which date shall however not be later than the date of expiry of the time limit for refusal specified in the Regulations in accordance with Article 15(1)(a).

Article 7
Fees

(1) *[International Registration Fee]* International registration of each appellation of origin, and each geographical indication, shall be subject to payment of the fee specified in the Regulations.

(2) *[Fees for Other Entries in the International Register]* The Regulations shall specify the fees to be paid in respect of other entries in the International Register and for the supply of extracts, attestations, or other information concerning the contents of the international registration.

(3) *[Fee Reductions]* Reduced fees shall be established by the Assembly in respect of certain international registrations of appellations of origin, and in respect of certain international registrations of geographical indications, in particular those in respect of which the Contracting Party of Origin is a developing country or a least-developed country.

(4) *[Individual Fee]* (a) Any Contracting Party may, in a declaration, notify the Director General that the protection resulting from international registration shall extend to it only if a fee is paid to cover its cost of substantive examination of the international registration. The amount

of such individual fee shall be indicated in the declaration and can be changed in further declarations. The said amount may not be higher than the equivalent of the amount required under the national or regional legislation of the Contracting Party diminished by the savings resulting from the international procedure. Additionally, the Contracting Party may, in a declaration, notify the Director General that it requires an administrative fee relating to the use by the beneficiaries of the appellation of origin or the geographical indication in that Contracting Party.

(b) Non-payment of an individual fee shall, in accordance with the Regulations, have the effect that protection is renounced in respect of the Contracting Party requiring the fee.

Article 8
Period of Validity of International Registrations

(1) *[Dependency]* International registrations shall be valid indefinitely, on the understanding that the protection of a registered appellation of origin or geographical indication shall no longer be required if the denomination constituting the appellation of origin, or the indication constituting the geographical indication, is no longer protected in the Contracting Party of Origin.

(2) *[Cancellation]* (a) The Competent Authority of the Contracting Party of Origin, or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, may at any time request the International Bureau to cancel the international registration concerned.

(b) In case the denomination constituting a registered appellation of origin, or the indication constituting a registered geographical indication, is no longer protected in the Contracting Party of Origin, the Competent Authority of the Contracting Party of Origin shall request cancellation of the international registration.

Chapter III
Protection

Article 9
Commitment to Protect

Each Contracting Party shall protect registered appellations of origin and geographical indications on its territory, within its own legal system and practice but in accordance with the terms of this Act, subject to any refusal, renunciation, invalidation or cancellation that may become effective with respect to its territory, and on the understanding that Contracting Parties that do not distinguish in their national or regional legislation as between appellations of origin and geographical indications shall not be required to introduce such a distinction into their national or regional legislation.

Article 10
Protection Under Laws of Contracting Parties or Other Instruments

(1) *[Form of Legal Protection]* Each Contracting Party shall be free to choose the type of legislation under which it establishes the protection stipulated in this Act, provided that such legislation meets the substantive requirements of this Act.

(2) *[Protection Under Other Instruments]* The provisions of this Act shall not in any way affect any other protection a Contracting Party may accord in respect of registered appellations of origin or registered geographical indications under its national or regional legislation, or under other international instruments.

(3) *[Relation to Other Instruments]* Nothing in this Act shall derogate from any obligations that Contracting Parties have to each other under any other international instruments, nor shall it prejudice any rights that a Contracting Party has under any other international instruments.

Article 11
Protection in Respect of Registered Appellations of Origin and Geographical Indications

(1) *[Content of Protection]* Subject to the provisions of this Act, in respect of a registered appellation of origin or a registered geographical indication, each Contracting Party shall provide the legal means to prevent:

(a) use of the appellation of origin or the geographical indication

(i) in respect of goods of the same kind as those to which the appellation of origin or the geographical indication applies, not originating in the geographical area of origin or not complying with any other applicable requirements for using the appellation of origin or the geographical indication;

(ii) in respect of goods that are not of the same kind as those to which the appellation of origin or geographical indication applies or services, if such use would indicate or suggest a connection between those goods or services and the beneficiaries of the appellation of origin or the geographical indication, and would be likely to damage their interests, or, where applicable, because of the reputation of the appellation of origin or geographical indication in the Contracting Party concerned, such use would be likely to impair or dilute in an unfair manner, or take unfair advantage of, that reputation;

(b) any other practice liable to mislead consumers as to the true origin, provenance or nature of the goods.

(2) *[Content of Protection in Respect of Certain Uses]* Paragraph (1)(a) shall also apply to use of the appellation of origin or geographical indication amounting to its imitation, even if the true origin of the goods is indicated, or if the appellation of origin or the geographical indication is used in translated form or is accompanied by terms such as “style”, “kind”, “type”, “make”, “imitation”, “method”, “as produced in”, “like”, “similar” or the like[1].

(3) *[Use in a Trademark]* Without prejudice to Article 13(1), a Contracting Party shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a later trademark if use of the trademark would result in one of the situations covered by paragraph (1).

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[1] Agreed Statement concerning Article 11(2): For the purposes of this Act, it is understood that where certain elements of the denomination or indication constituting the appellation of origin or geographical indication have a generic character in the Contracting Party of Origin, their protection under this paragraph shall not be required in the other Contracting Parties. For greater certainty, a refusal or invalidation of a trademark, or a finding of infringement, in the Contracting Parties under the terms of Article 11 cannot be based on the component that has a generic character.

Article 12
Protection Against Becoming Generic

Subject to the provisions of this Act, registered appellations of origin and registered geographical indications cannot be considered to have become generic[2] in a Contracting Party.

Article 13
Safeguards in Respect of Other Rights

(1) *[Prior Trademark Rights]* The provisions of this Act shall not prejudice a prior trademark applied for or registered in good faith, or acquired through use in good faith, in a Contracting Party. Where the law of a Contracting Party provides a limited exception to the rights conferred by a trademark to the effect that such a prior trademark in certain circumstances may not entitle its owner to prevent a registered appellation of origin or geographical indication from being granted protection or used in that Contracting Party, protection of the registered appellation of origin or geographical indication shall not limit the rights conferred by that trademark in any other way.

(2) *[Personal Name Used in Business]* The provisions of this Act shall not prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

(3) *[Rights Based on a Plant Variety or Animal Breed Denomination]* The provisions of this Act shall not prejudice the right of any person to use a plant variety or animal breed denomination in the course of trade, except where such plant variety or animal breed denomination is used in such a manner as to mislead the public.

(4) *[Safeguards in the Case of Notification of Withdrawal of Refusal or a Grant of Protection]* Where a Contracting Party that has refused the effects of an international registration under Article 15 on the ground of use under a prior trademark or other right, as referred to in this Article, notifies the withdrawal of that refusal under Article 16 or a grant of protection under Article 18, the resulting protection of the appellation of origin or geographical indication shall not prejudice that right or its use, unless the protection was granted following the cancellation, non-renewal, revocation or invalidation of the right.

Article 14
Enforcement Procedures and Remedies

Each Contracting Party shall make available effective legal remedies for the protection of registered appellations of origin and registered geographical indications and provide that legal proceedings for ensuring their protection may be brought by a public authority or by any interested party, whether a natural person or a legal entity and whether public or private, depending on its legal system and practice.

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[2] Agreed Statement concerning Article 12: For the purposes of this Act, it is understood that Article 12 is without prejudice to the application of the provisions of this Act concerning prior use, as, prior to international registration, the denomination or indication constituting the appellation of origin or geographical indication may already, in whole or in part, be generic in a Contracting Party other than the Contracting Party of Origin, for example, because the denomination or indication, or part of it, is identical with a term customary in common language as the common name of a good or service in such Contracting Party, or is identical with the customary name of a grape variety in such Contracting Party.

Chapter IV
Refusal and Other Actions in Respect of International Registrations

Article 15
Refusal

(1) *[Refusal of Effects of International Registration]* (a) Within the time limit specified in the Regulations, the Competent Authority of a Contracting Party may notify the International Bureau of the refusal of the effects of an international registration in its territory. The notification of refusal may be made by the Competent Authority *ex officio*, if its legislation so permits, or at the request of an interested party.

(b) The notification of refusal shall set out the grounds on which the refusal is based.

(2) *[Protection Under Other Instruments]* The notification of a refusal shall not be detrimental to any other protection that may be available, in accordance with Article 10(2), to the denomination or indication concerned in the Contracting Party to which the refusal relates.

(3) *[Obligation to Provide Opportunity for Interested Parties]* Each Contracting Party shall provide a reasonable opportunity, for anyone whose interests would be affected by an international registration, to request the Competent Authority to notify a refusal in respect of the international registration.

(4) *[Registration, Publication and Communication of Refusals]* The International Bureau shall record the refusal and the grounds for the refusal in the International Register. It shall publish the refusal and the grounds for the refusal and shall communicate the notification of refusal to the Competent Authority of the Contracting Party of Origin or, where the application has been filed directly in accordance with Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

(5) *[National Treatment]* Each Contracting Party shall make available to interested parties affected by a refusal the same judicial and administrative remedies that are available to its own nationals in respect of the refusal of protection for an appellation of origin or a geographical indication.

Article 16
Withdrawal of Refusal

A refusal may be withdrawn in accordance with the procedures specified in the Regulations. A withdrawal shall be recorded in the International Register.

Article 17
Transitional Period

(1) *[Option to Grant Transitional Period]* Without prejudice to Article 13, where a Contracting Party has not refused the effects of an international registration on the ground of prior use by a third party or has withdrawn such refusal or has notified a grant of protection, it may, if its legislation so permits, grant a defined period as specified in the Regulations, for terminating such use.

(2) *[Notification of a Transitional Period]* The Contracting Party shall notify the International Bureau of any such period, in accordance with the procedures specified in the Regulations.

Article 18
Notification of Grant of Protection

The Competent Authority of a Contracting Party may notify the International Bureau of the grant of protection to a registered appellation of origin or geographical indication. The International Bureau shall record any such notification in the International Register and publish it.

Article 19
Invalidation

(1) *[Opportunity to Defend Rights]* Invalidation of the effects, in part or in whole, of an international registration in the territory of a Contracting Party may be pronounced only after having given the beneficiaries an opportunity to defend their rights. Such opportunity shall also be given to the natural person or legal entity referred to in Article 5(2)(ii).

(2) *[Notification, Recordal and Publication]* The Contracting Party shall notify the invalidation of the effects of an international registration to the International Bureau, which shall record the invalidation in the International Register and publish it.

(3) *[Protection Under Other Instruments]* Invalidation shall not be detrimental to any other protection that may be available, in accordance with Article 10(2), to the denomination or indication concerned in the Contracting Party that invalidated the effects of the international registration.

Article 20
Modifications and Other Entries in the International Register

Procedures for the modification of international registrations and other entries in the International Register shall be specified in the Regulations.

Chapter V
Administrative Provisions

Article 21
Membership of the Lisbon Union

The Contracting Parties shall be members of the same Special Union as the States party to the Lisbon Agreement or the 1967 Act, whether or not they are party to the Lisbon Agreement or the 1967 Act.

Article 22
Assembly of the Special Union

(1) *[Composition]* (a) The Contracting Parties shall be members of the same Assembly as the States party to the 1967 Act.

(b) Each Contracting Party shall be represented by one delegate, who may be assisted by alternate delegates, advisors and experts.

(c) Each delegation shall bear its own expenses.

(2) *[Tasks]* (a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of this Act;

(ii) give directions to the Director General concerning the preparation of revision conferences referred to in Article 26(1), due account being taken of any comments made by those members of the Special Union which have not ratified or acceded to this Act;

(iii) amend the Regulations;

(iv) review and approve the reports and activities of the Director General concerning the Special Union, and give him or her all necessary instructions concerning matters within the competence of the Special Union;

(v) determine the program and adopt the biennial budget of the Special Union, and approve its final accounts;

(vi) adopt the financial Regulations of the Special Union;

(vii) establish such committees and working groups as it deems appropriate to achieve the objectives of the Special Union;

(viii) determine which States, intergovernmental and non-governmental organizations shall be admitted to its meetings as observers;

(ix) adopt amendments to Articles 22 to 24 and 27;

(x) take any other appropriate action to further the objectives of the Special Union and perform any other functions as are appropriate under this Act.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) *[Quorum]* (a) One-half of the members of the Assembly which have the right to vote on a given matter shall constitute a quorum for the purposes of the vote on that matter.

(b) Notwithstanding the provisions of subparagraph (a), if, in any session, the number of the members of the Assembly which are States, have the right to vote on a given matter and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States and have the right to vote on that matter, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau

shall communicate the said decisions to the members of the Assembly which are States, have the right to vote on the said matter and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(4) *[Taking Decisions in the Assembly]* (a) The Assembly shall endeavor to take its decisions by consensus.

(b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case,

(i) each Contracting Party that is a State shall have one vote and shall vote only in its own name; and

(ii) any Contracting Party that is an intergovernmental organization may vote, in place of its member States, with a number of votes equal to the number of its member States which are party to this Act. No such intergovernmental organization shall participate in the vote if any one of its member States exercises its right to vote, and *vice versa*.

(c) On matters concerning only States that are bound by the 1967 Act, Contracting Parties that are not bound by the 1967 Act shall not have the right to vote, whereas, on matters concerning only Contracting Parties, only the latter shall have the right to vote.

(5) *[Majorities]* (a) Subject to Articles 25(2) and 27(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) Abstentions shall not be considered as votes.

(6) *[Sessions]* (a) The Assembly shall meet upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, either at the request of one-fourth of the members of the Assembly or on the Director General's own initiative.

(c) The agenda of each session shall be prepared by the Director General.

(7) *[Rules of Procedure]* The Assembly shall adopt its own rules of procedure.

Article 23
International Bureau

(1) *[Administrative Tasks]* (a) International registration and related duties, as well as all other administrative tasks concerning the Special Union, shall be performed by the International Bureau.

(b) In particular, the International Bureau shall prepare the meetings and provide the Secretariat of the Assembly and of such committees and working groups as may have been established by the Assembly.

(c) The Director General shall be the Chief Executive of the Special Union and shall represent the Special Union.

(2) *[Role of the International Bureau in the Assembly and Other Meetings]* The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly. The Director General, or a staff member designated by him, shall be *ex officio* Secretary of such a body.

(3) *[Conferences]* (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any revision conferences.

(b) The International Bureau may consult with intergovernmental and international and national non-governmental organizations concerning the said preparations.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conferences.

(4) *[Other Tasks]* The International Bureau shall carry out any other tasks assigned to it in relation to this Act.

Article 24
Finances

(1) *[Budget]* The income and expenses of the Special Union shall be reflected in the budget of the Organization in a fair and transparent manner.

(2) *[Sources of Financing of the Budget]* The income of the Special Union shall be derived from the following sources:

(i) fees collected under Article 7(1) and (2);

(ii) proceeds from the sale of, or royalties on, the publications of the International Bureau;

(iii) gifts, bequests, and subventions;

(iv) rent, investment revenue, and other, including miscellaneous, income;

(v) special contributions of the Contracting Parties or any alternative source derived from the Contracting Parties or beneficiaries, or both, if and to the extent to which receipts from the sources indicated in items (i) to (iv) do not suffice to cover the expenses, as decided by the Assembly.

(3) *[Fixing of Fees; Level of the Budget]* (a) The amounts of the fees referred to in paragraph (2) shall be fixed by the Assembly on the proposal of the Director General and shall be so fixed that, together with the income derived from other sources under paragraph (2), the revenue of the Special Union should, under normal circumstances, be sufficient to cover the expenses of the International Bureau for maintaining the international registration service.

(b) If the Program and Budget of the Organization is not adopted before the beginning of a new financial period, the authorization to the Director General to incur obligations and make payments shall be at the same level as it was in the previous financial period.

(4) *[Establishing the Special Contributions Referred to in Paragraph (2)(v)]* For the purpose of establishing its contribution, each Contracting Party shall belong to the same class as it belongs to in the context of the Paris Convention or, if it is not a Contracting Party of the Paris Convention, as it would belong to if it were a Contracting Party of the Paris Convention. Intergovernmental organizations shall be considered to belong to contribution class I (one), unless otherwise unanimously decided by the Assembly. The contribution shall be partially weighted according to the number of registrations originating in the Contracting Party, as decided by the Assembly.

(5) *[Working Capital Fund]* The Special Union shall have a working capital fund, which shall be constituted by payments made by way of advance by each member of the Special Union when the Special Union so decides. If the fund becomes insufficient, the Assembly may decide to increase it. The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General. Should the Special Union record a surplus of income over expenditure in any financial period, the Working Capital Fund advances may be repaid to each member proportionate to their initial payments upon proposal by the Director General and decision by the Assembly.

(6) *[Advances by Host State]* (a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such State shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(7) *[Auditing of Accounts]* The auditing of the accounts shall be effected by one or more of the States members of the Special Union or by external auditors, as provided in the Financial Regulations of the Organization. They shall be designated, with their agreement, by the Assembly.

Article 25
Regulations

(1) *[Subject-Matter]* The details for carrying out this Act shall be established in the Regulations.

(2) *[Amendment of Certain Provisions of the Regulations]* (a) The Assembly may decide that certain provisions of the Regulations may be amended only by unanimity or only by a three-fourths majority.

(b) In order for the requirement of unanimity or a three-fourths majority no longer to apply in the future to the amendment of a provision of the Regulations, unanimity shall be required.

(c) In order for the requirement of unanimity or a three-fourths majority to apply in the future to the amendment of a provision of the Regulations, a three-fourths majority shall be required.

(3) *[Conflict Between This Act and the Regulations]* In the case of conflict between the provisions of this Act and those of the Regulations, the former shall prevail.

Chapter VI
Revision and Amendment

Article 26
Revision

(1) *[Revision Conferences]* This Act may be revised by Diplomatic Conferences of the Contracting Parties. The convocation of any Diplomatic Conference shall be decided by the Assembly.

(2) *[Revision or Amendment of Certain Articles]* Articles 22 to 24 and 27 may be amended either by a revision conference or by the Assembly according to the provisions of Article 27.

Article 27
Amendment of Certain Articles by the Assembly

(1) *[Proposals for Amendment]* (a) Proposals for the amendment of Articles 22 to 24, and the present Article, may be initiated by any Contracting Party or by the Director General.

(b) Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.

(2) *[Majorities]* Adoption of any amendment to the Articles referred to in paragraph (1) shall require a three-fourths majority, except that adoption of any amendment to Article 22, and to the present paragraph, shall require a four-fifths majority.

(3) *[Entry into Force]* (a) Except where subparagraph (b) applies, any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of those Contracting Parties which, at the time the amendment was adopted, were members of the Assembly and had the right to vote on that amendment.

(b) Any amendment to Article 22(3) or (4) or to this subparagraph shall not enter into force if, within six months of its adoption by the Assembly, any Contracting Party notifies the Director General that it does not accept such amendment.

(c) Any amendment which enters into force in accordance with the provisions of this paragraph shall bind all the States and intergovernmental organizations which are Contracting Parties at the time the amendment enters into force, or which become Contracting Parties at a subsequent date.

Chapter VII
Final Provisions

Article 28
Becoming Party to This Act

(1) *[Eligibility]* Subject to Article 29 and paragraphs (2) and (3) of the present Article,

(i) any State which is party to the Paris Convention may sign and become party to this Act;

(ii) any other State member of the Organization may sign and become party to this Act if it declares that its legislation complies with the provisions of the Paris Convention concerning appellations of origin, geographical indications and trademarks;

(iii) any intergovernmental organization may sign and become party to this Act, provided that at least one member State of that intergovernmental organization is party to the Paris Convention and provided that the intergovernmental organization declares that it has been duly authorized, in accordance with its internal procedures, to become party to this Act and that, under the constituting treaty of the intergovernmental organization, legislation applies under which regional titles of protection can be obtained in respect of geographical indications.

(2) *[Ratification or Accession]* Any State or intergovernmental organization referred to in paragraph (1) may deposit

(i) an instrument of ratification, if it has signed this Act; or

(ii) an instrument of accession, if it has not signed this Act.

(3) *[Effective Date of Deposit]* (a) Subject to subparagraph (b), the effective date of the deposit of an instrument of ratification or accession shall be the date on which that instrument is deposited.

(b) The effective date of the deposit of the instrument of ratification or accession of any State that is a member State of an intergovernmental organization and in respect of which the protection of appellations of origin or geographical indications can only be obtained on the basis of legislation applying between the member States of the intergovernmental organization shall be the date on which the instrument of ratification or accession of that intergovernmental organization is deposited, if that date is later than the date on which the instrument of the said State has been deposited. However, this subparagraph does not apply with regard to States that are party to the Lisbon Agreement or the 1967 Act and shall be without prejudice to the application of Article 31 with regard to such States.

Article 29
Effective Date of Ratifications and Accessions

(1) *[Instruments to Be Taken into Consideration]* For the purposes of this Article, only instruments of ratification or accession that are deposited by States or intergovernmental organizations referred to in Article 28(1) and that have an effective date according to Article 28(3) shall be taken into consideration.

(2) *[Entry into Force of This Act]* This Act shall enter into force three months after five eligible parties referred to in Article 28 have deposited their instruments of ratification or accession.

(3) *[Entry into Force of Ratifications and Accessions]* (a) Any State or intergovernmental organization that has deposited its instrument of ratification or accession three months or more before the date of entry into force of this Act shall become bound by this Act on the date of the entry into force of this Act.

(b) Any other State or intergovernmental organization shall become bound by this Act three months after the date on which it has deposited its instrument of ratification or accession or at any later date indicated in that instrument.

(4) *[International Registrations Effected Prior to Accession]* In the territory of the acceding State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies, the provisions of this Act shall apply in respect of appellations of origin and geographical indications already registered under this Act at the time the accession becomes effective, subject to Article 7(4) as well as the provisions of Chapter IV, which shall apply *mutatis mutandis*. The acceding State or intergovernmental organization may also specify, in a declaration attached to its instrument of ratification or accession, an extension of the time limit referred to in Article 15(1), and the periods referred to in Article 17, in accordance with the procedures specified in the Regulations in that respect.

Article 30
Prohibition of Reservations

No reservations to this Act are permitted.

Article 31
Application of the Lisbon Agreement and the 1967 Act

(1) *[Relations Between States Party to Both This Act and the Lisbon Agreement or the 1967 Act]* This Act alone shall be applicable as regards the mutual relations of States party to both this Act and the Lisbon Agreement or the 1967 Act. However, with regard to international registrations of appellations of origin effective under the Lisbon Agreement or the 1967 Act, the States shall accord no lower protection than is required by the Lisbon Agreement or the 1967 Act.

(2) *[Relations Between States Party to Both This Act and the Lisbon Agreement or the 1967 Act and States Party to the Lisbon Agreement or the 1967 Act Without Being Party to This Act]* Any State party to both this Act and the Lisbon Agreement or the 1967 Act shall continue to apply the Lisbon Agreement or the 1967 Act, as the case may be, in its relations with States party to the Lisbon Agreement or the 1967 Act that are not party to this Act.

Article 32
Denunciation

(1) *[Notification]* Any Contracting Party may denounce this Act by notification addressed to the Director General.

(2) *[Effective Date]* Denunciation shall take effect one year after the date on which the Director General has received the notification or at any later date indicated in the notification. It shall not affect the application of this Act to any application pending and any international registration in force in respect of the denouncing Contracting Party at the time of the coming into effect of the denunciation.

Article 33
Languages of this Act; Signature

(1) *[Original Texts; Official Texts]* (a) This Act shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

(2) *[Time Limit for Signature]* This Act shall remain open for signature at the headquarters of the Organization for one year after its adoption.

Article 34
Depositary

The Director General shall be the depositary of this Act.

Geneva Act of July 2, 1999

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INTRODUCTORY PROVISIONS

Article 1
Abbreviated Expressions

For the purposes of this Act:

(i) "the Hague Agreement" means the Hague Agreement Concerning the International Deposit of Industrial Designs, henceforth renamed the Hague Agreement Concerning the International Registration of Industrial Designs;

(ii) "this Act" means the Hague Agreement as established by the present Act;

(iii) "Regulations" means the Regulations under this Act;

(iv) "prescribed" means prescribed in the Regulations;

(v) "Paris Convention" means the Paris Convention for the Protection of Industrial Property, signed at Paris on March 20, 1883, as revised and amended;

(vi) "international registration" means the international registration of an industrial design effected according to this Act;

(vii) "international application" means an application for international registration;

(viii) "International Register" means the official collection of data concerning international registrations maintained by the International Bureau, which data this Act or the Regulations require or permit to be recorded, regardless of the medium in which such data are stored;

(ix) "person" means a natural person or a legal entity;

(x) "applicant" means the person in whose name an international application is filed;

(xi) "holder" means the person in whose name an international registration is recorded in the International Register;

(xii) "intergovernmental organization" means an intergovernmental organization eligible to become party to this Act in accordance with Article 27(1)(ii);

(xiii) "Contracting Party" means any State or intergovernmental organization party to this Act;

(xiv) "applicant's Contracting Party" means the Contracting Party or one of the Contracting Parties from which the applicant derives its entitlement to file an international application by virtue of satisfying, in relation to that Contracting Party, at least one of the conditions specified in Article 3; where there are two or more Contracting Parties from which the applicant may, under Article 3, derive its entitlement to file an international application, "applicant's Contracting Party" means the one which, among those Contracting Parties, is indicated as such in the international application;

(xv) "territory of a Contracting Party" means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituent treaty of that intergovernmental organization applies;

(xvi) "Office" means the agency entrusted by a Contracting Party with the grant of protection for industrial designs with effect in the territory of that Contracting Party;

(xvii) "Examining Office" means an Office which *ex officio* examines applications filed with it for the protection of industrial designs at least to determine whether the industrial designs satisfy the condition of novelty;

(xviii) "designation" means a request that an international registration have effect in a Contracting Party; it also means the recording, in the International Register, of that request;

(xix) "designated Contracting Party" and "designated Office" means the Contracting Party and the Office of the Contracting Party, respectively, to which a designation applies;

(xx) "1934 Act" means the Act signed at London on June 2, 1934, of the Hague Agreement;

(xxi) "1960 Act" means the Act signed at The Hague on November 28, 1960, of the Hague Agreement;

(xxii) "1961 Additional Act" means the Act signed at Monaco on November 18, 1961, additional to the 1934 Act;

(xxiii) "Complementary Act of 1967" means the Complementary Act signed at Stockholm on July 14, 1967, as amended, of the Hague Agreement;

(xxiv) "Union" means the Hague Union established by the Hague Agreement of November 6, 1925, and maintained by the 1934 and 1960 Acts, the 1961 Additional Act, the Complementary Act of 1967 and this Act;

(xxv) "Assembly" means the Assembly referred to in Article 21(1)(a) or any body replacing that Assembly;

(xxvi) "Organization" means the World Intellectual Property Organization;

(xxvii) "Director General" means the Director General of the Organization;

(xxviii) "International Bureau" means the International Bureau of the Organization;

(xxix) "instrument of ratification" shall be construed as including instruments of acceptance or approval.

Article 2
Applicability of Other Protection Accorded by Laws of Contracting Parties and by Certain International Treaties

(1) [*Laws of Contracting Parties and Certain International Treaties*] The provisions of this Act shall not affect the application of any greater protection which may be accorded by the law of a Contracting Party, nor shall they affect in any way the protection accorded to works of art and works of applied art by international copyright treaties and conventions, or the protection accorded to industrial designs under the Agreement on Trade-Related Aspects of Intellectual Property Rights annexed to the Agreement Establishing the World Trade Organization.

(2) [*Obligation to Comply with the Paris Convention*] Each Contracting Party shall comply with the provisions of the Paris Convention which concern industrial designs.

CHAPTER I

INTERNATIONAL APPLICATION AND INTERNATIONAL REGISTRATION

Article 3
Entitlement to File an International Application

Any person that is a national of a State that is a Contracting Party or of a State member of an intergovernmental organization that is a Contracting Party, or that has a domicile, a habitual residence or a real and effective industrial or commercial establishment in the territory of a Contracting Party, shall be entitled to file an international application.

Article 4

Procedure for Filing the International Application

(1) [*Direct or Indirect Filing*] (a) The international application may be filed, at the option of the applicant, either directly with the International Bureau or through the Office of the applicant's Contracting Party.

(b) Notwithstanding subparagraph (a), any Contracting Party may, in a declaration, notify the Director General that international applications may not be filed through its Office.

(2) [*Transmittal Fee in Case of Indirect Filing*] The Office of any Contracting Party may require that the applicant pay a transmittal fee to it, for its own benefit, in respect of any international application filed through it.

Article 5
Contents of the International Application

(1) [*Mandatory Contents of the International Application*] The international application shall be in the prescribed language or one of the prescribed languages and shall contain or be accompanied by

(i) a request for international registration under this Act;

(ii) the prescribed data concerning the applicant;

(iii) the prescribed number of copies of a reproduction or, at the choice of the applicant, of several different reproductions of the industrial design that is the subject of the international application, presented in the prescribed manner; however, where the industrial design is two-dimensional and a request for deferment of publication is made in accordance with paragraph (5), the international application may, instead of containing reproductions, be accompanied by the prescribed number of specimens of the industrial design;

(iv) an indication of the product or products which constitute the industrial design or in relation to which the industrial design is to be used, as prescribed;

(v) an indication of the designated Contracting Parties;

(vi) the prescribed fees;

(vii) any other prescribed particulars.

(2) [*Additional Mandatory Contents of the International Application*] (a) Any Contracting Party whose Office is an Examining Office and whose law, at the time it becomes party to this Act, requires that an application for the grant of protection to an industrial design contain any of the elements specified in subparagraph (b) in order for that application to be accorded a filing date under that law may, in a declaration, notify the Director General of those elements.

(b) The elements that may be notified pursuant to subparagraph (a) are the following:

(i) indications concerning the identity of the creator of the industrial design that is the subject of that application;

(ii) a brief description of the reproduction or of the characteristic features of the industrial design that is the subject of that application;

(iii) a claim.

(c) Where the international application contains the designation of a Contracting Party that has made a notification under subparagraph (a), it shall also contain, in the prescribed manner, any element that was the subject of that notification.

(3) [*Other Possible Contents of the International Application*] The international application may contain or be accompanied by such other elements as are specified in the Regulations.

(4) [*Several Industrial Designs in the Same International Application*] Subject to such conditions as may be prescribed, an international application may include two or more industrial designs.

(5) [*Request for Deferred Publication*] The international application may contain a request for deferment of publication.

Article 6
Priority

(1) [*Claiming of Priority*] (a) The international application may contain a declaration claiming, under Article 4 of the Paris Convention, the priority of one or more earlier applications filed in or for any country party to that Convention or any Member of the World Trade Organization.

(b) The Regulations may provide that the declaration referred to in subparagraph (a) may be made after the filing of the international application. In such case, the Regulations shall prescribe the latest time by which such declaration may be made.

(2) [*International Application Serving as a Basis for Claiming Priority*] The international application shall, as from its filing date and whatever may be its subsequent fate, be equivalent to a regular filing within the meaning of Article 4 of the Paris Convention.

Article 7
Designation Fees

(1) [*Prescribed Designation Fee*] The prescribed fees shall include, subject to paragraph (2), a designation fee for each designated Contracting Party.

(2)[1] [*Individual Designation Fee*] Any Contracting Party whose Office is an Examining Office and any Contracting Party that is an intergovernmental organization may, in a declaration, notify the Director General that, in connection with any international application in which it is designated, and in connection with the renewal of any international registration resulting from such an international application, the prescribed designation fee referred to in paragraph (1) shall be replaced by an individual designation fee, whose amount shall be indicated in the declaration and can be changed in further declarations. The said amount may be fixed by the said Contracting Party for the initial term of protection and for each term of renewal or for the maximum period of protection allowed by the Contracting Party concerned. However, it may not be higher than the equivalent of the amount which the Office of that Contracting Party would be entitled to receive from an applicant for a grant of protection for an equivalent period to the same number of industrial designs, that amount being diminished by the savings resulting from the international procedure.

(3) [*Transfer of Designation Fees*] The designation fees referred to in paragraphs (1) and (2) shall be transferred by the International Bureau to the Contracting Parties in respect of which those fees were paid.

Article 8
Correction of Irregularities

(1) [*Examination of the International Application*] If the International Bureau finds that the international application does not, at the time of its receipt by the International Bureau, fulfill the requirements of this Act and the Regulations, it shall invite the applicant to make the required corrections within the prescribed time limit.

(2) [*Irregularities Not Corrected*] (a) If the applicant does not comply with the invitation within the prescribed time limit, the international application shall, subject to subparagraph (b), be considered abandoned.

(b) In the case of an irregularity which relates to Article 5(2) or to a special requirement notified to the Director General by a Contracting Party in accordance with the Regulations, if the applicant does not comply with the invitation within the prescribed time limit, the international application shall be deemed not to contain the designation of that Contracting Party.

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[1] [WIPO Note]: Recommendation adopted by the Assembly of the Hague Union:

"Contracting Parties that make, or that have made, a declaration under Article 7(2) of the 1999 Act or under Rule 36(1) of the Common Regulations are encouraged to indicate, in that declaration or in a new declaration, that for international applications filed by applicants whose sole entitlement is a connection with a Least Developed Country, in accordance with the list established by the United Nations, or with an intergovernmental organization the majority of whose member States are Least Developed Countries, the individual fee payable with respect to their designation is reduced to 10% of the fixed amount (rounded, where appropriate, to the nearest full figure). Those Contracting Parties are further encouraged to indicate that the reduction also applies in respect of an international application filed by an applicant whose entitlement is not solely a connection with such an intergovernmental organization, provided that any other entitlement of the applicant is a connection with a Contracting Party which is a Least Developed Country or, if not a Least Developed Country, is a member State of that intergovernmental organization and the international application is governed exclusively by the 1999 Act."

Article 9
Filing Date of the International Application

(1) [*International Application Filed Directly*] Where the international application is filed directly with the International Bureau, the filing date shall, subject to paragraph (3), be the date on which the International Bureau receives the international application.

(2) [*International Application Filed Indirectly*] Where the international application is filed through the Office of the applicant's Contracting Party, the filing date shall be determined as prescribed.

(3) [*International Application with Certain Irregularities*] Where the international application has, on the date on which it is received by the International Bureau, an irregularity which is prescribed as an irregularity entailing a postponement of the filing date of the international application, the filing date shall be the date on which the correction of such irregularity is received by the International Bureau.

Article 10[2]
International Registration, Date of the International Registration, Publication and Confidential Copies of the International Registration

(1) [*International Registration*] The International Bureau shall register each industrial design that is the subject of an international application immediately upon receipt by it of the international application or, where corrections are invited under Article 8, immediately upon receipt of the required corrections. The registration shall be effected whether or not publication is deferred under Article 11.

(2) [*Date of the International Registration*] (a) Subject to subparagraph (b), the date of the international registration shall be the filing date of the international application.

(b) Where the international application has, on the date on which it is received by the International Bureau, an irregularity which relates to Article 5(2), the date of the international registration shall be the date on which the correction of such irregularity is received by the International Bureau or the filing date of the international application, whichever is the later.

(3) [*Publication*] (a) The international registration shall be published by the International Bureau. Such publication shall be deemed in all Contracting Parties to be sufficient publicity, and no other publicity may be required of the holder.

(b) The International Bureau shall send a copy of the publication of the international registration to each designated Office.

[2] When adopting Article 10, the Diplomatic Conference understood that nothing in this Article precludes access to the international application or the international registration by the applicant or the holder or a person having the consent of the applicant or the holder.

(4) [*Maintenance of Confidentiality Before Publication*] Subject to paragraph (5) and Article 11(4)(b), the International Bureau shall keep in confidence each international application and each international registration until publication.

(5) [*Confidential Copies*] (a) The International Bureau shall, immediately after registration has been effected, send a copy of the international registration, along with any relevant statement, document or specimen accompanying the international application, to each Office that has notified the International Bureau that it wishes to receive such a copy and has been designated in the international application.

(b) The Office shall, until publication of the international registration by the International Bureau, keep in confidence each international registration of which a copy has been sent to it by the International Bureau and may use the said copy only for the purpose of the examination of the international registration and of applications for the protection of industrial designs filed in or for the Contracting Party for which the Office is competent. In particular, it may not divulge the contents of any such international registration to any person outside the Office other than the holder of that international registration, except for the purposes of an administrative or legal proceeding involving a conflict over entitlement to file the international application on which the international registration is based. In the case of such an administrative or legal proceeding, the contents of the international registration may only be disclosed in confidence to the parties involved in the proceeding who shall be bound to respect the confidentiality of the disclosure.

Article 11
Deferment of Publication

(1) [*Provisions of Laws of Contracting Parties Concerning Deferment of Publication*] (a) Where the law of a Contracting Party provides for the deferment of the publication of an industrial design for a period which is less than the prescribed period, that Contracting Party shall, in a declaration, notify the Director General of the allowable period of deferment.

(b) Where the law of a Contracting Party does not provide for the deferment of the publication of an industrial design, the Contracting Party shall, in a declaration, notify the Director General of that fact.

(2) [*Deferment of Publication*] Where the international application contains a request for deferment of publication, the publication shall take place,

(i) where none of the Contracting Parties designated in the international application has made a declaration under paragraph (1), at the expiry of the prescribed period or,

(ii) where any of the Contracting Parties designated in the international application has made a declaration under paragraph (1)(a), at the expiry of the period notified in such declaration or, where there is more than one such designated Contracting Party, at the expiry of the shortest period notified in their declarations.

(3) [*Treatment of Requests for Deferment Where Deferment Is Not Possible Under Applicable Law*] Where deferment of publication has been requested and any of the Contracting Parties designated in the international application has made a declaration under paragraph (1)(b) that deferment of publication is not possible under its law,

(i) subject to item (ii), the International Bureau shall notify the applicant accordingly; if, within the prescribed period, the applicant does not, by notice in writing to the International Bureau, withdraw the designation of the said Contracting Party, the International Bureau shall disregard the request for deferment of publication;

(ii) where, instead of containing reproductions of the industrial design, the international application was accompanied by specimens of the industrial design, the International Bureau shall disregard the designation of the said Contracting Party and shall notify the applicant accordingly.

(4) [*Request for Earlier Publication or for Special Access to the International Registration*] (a) At any time during the period of deferment applicable under paragraph (2), the holder may request publication of any or all of the industrial designs that are the subject of the international registration, in which case the period of deferment in respect of such industrial design or designs shall be considered to have expired on the date of receipt of such request by the International Bureau.

(b) The holder may also, at any time during the period of deferment applicable under paragraph (2), request the International Bureau to provide a third party specified by the holder with an extract from, or to allow such a party access to, any or all of the industrial designs that are the subject of the international registration.

(5) [*Renunciation and Limitation*] (a) If, at any time during the period of deferment applicable under paragraph (2), the holder renounces the international registration in respect of all the designated Contracting Parties, the industrial design or designs that are the subject of the international registration shall not be published.

(b) If, at any time during the period of deferment applicable under paragraph (2), the holder limits the international registration, in respect of all of the designated Contracting Parties, to one or some of the industrial designs that are the subject of the international registration, the other industrial design or designs that are the subject of the international registration shall not be published.

(6) [*Publication and Furnishing of Reproductions*] (a) At the expiration of any period of deferment applicable under the provisions of this Article, the International Bureau shall, subject to the payment of the prescribed fees, publish the international registration. If such fees are not paid as prescribed, the international registration shall be canceled and publication shall not take place.

(b) Where the international application was accompanied by one or more specimens of the industrial design in accordance with Article 5(1)(iii), the holder shall submit the prescribed number of copies of a reproduction of each industrial design that is the subject of that application to the International Bureau within the prescribed time limit. To the extent that the holder does not do so, the international registration shall be canceled and publication shall not take place.

Article 12
Refusal

(1) [*Right to Refuse*] The Office of any designated Contracting Party may, where the conditions for the grant of protection under the law of that Contracting Party are not met in respect of any or all of the industrial designs that are the subject of an international registration, refuse the effects, in part or in whole, of the international registration in the territory of the said Contracting Party, provided that no Office may refuse the effects, in part or in whole, of any international registration on the ground that requirements relating to the form or contents of the international application that are provided for in this Act or the Regulations or are additional to, or different from, those requirements have not been satisfied under the law of the Contracting Party concerned.

(2) [*Notification of Refusal*] (a) The refusal of the effects of an international registration shall be communicated by the Office to the International Bureau in a notification of refusal within the prescribed period.

(b) Any notification of refusal shall state all the grounds on which the refusal is based.

(3) [*Transmission of Notification of Refusal; Remedies*] (a) The International Bureau shall, without delay, transmit a copy of the notification of refusal to the holder.

(b) The holder shall enjoy the same remedies as if any industrial design that is the subject of the international registration had been the subject of an application for the grant of protection under the law applicable to the Office that communicated the refusal. Such remedies shall at least consist of the possibility of a re-examination or a review of the refusal or an appeal against the refusal.

(4)[3] [*Withdrawal of Refusal*] Any refusal may be withdrawn, in part or in whole, at any time by the Office that communicated it.

Article 13
Special Requirements Concerning Unity of Design

(1) [*Notification of Special Requirements*] Any Contracting Party whose law, at the time it becomes party to this Act, requires that designs that are the subject of the same application conform to a requirement of unity of design, unity of production or unity of use, or belong to the same set or composition of items, or that only one independent and distinct design may be claimed in a single application, may, in a declaration, notify the Director General accordingly.

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[3] When adopting Article 12(4), Article 14(2)(b) and Rule 18(4), the Diplomatic Conference understood that a withdrawal of refusal by an Office that has communicated a notification of refusal may take the form of a statement to the effect that the Office concerned has decided to accept the effects of the international registration in respect of the industrial designs, or some of the industrial designs, to which the notification of refusal related. It was also understood that an Office may, within the period allowed for communicating a notification of refusal, send a statement to the effect that it has decided to accept the effects of the international registration even where it has not communicated such a notification of refusal.

However, no such declaration shall affect the right of an applicant to include two or more industrial designs in an international application in accordance with Article 5(4), even if the application designates the Contracting Party that has made the declaration.

(2) [*Effect of Declaration*] Any such declaration shall enable the Office of the Contracting Party that has made it to refuse the effects of the international registration pursuant to Article 12(1) pending compliance with the requirement notified by that Contracting Party.

(3) [*Further Fees Payable on Division of Registration*] Where, following a notification of refusal in accordance with paragraph (2), an international registration is divided before the Office concerned in order to overcome a ground of refusal stated in the notification, that Office shall be entitled to charge a fee in respect of each additional international application that would have been necessary in order to avoid that ground of refusal.

Article 14
Effects of the International Registration

(1) [*Effect as Application Under Applicable Law*] The international registration shall, from the date of the international registration, have at least the same effect in each designated Contracting Party as a regularly-filed application for the grant of protection of the industrial design under the law of that Contracting Party.

(2) [*Effect as Grant of Protection Under Applicable Law*] (a) In each designated Contracting Party the Office of which has not communicated a refusal in accordance with Article 12, the international registration shall have the same effect as a grant of protection for the industrial design under the law of that Contracting Party at the latest from the date of expiration of the period allowed for it to communicate a refusal or, where a Contracting Party has made a corresponding declaration under the Regulations, at the latest at the time specified in that declaration.

(b)[4] Where the Office of a designated Contracting Party has communicated a refusal and has subsequently withdrawn, in part or in whole, that refusal, the international registration shall, to the extent that the refusal is withdrawn, have the same effect in that Contracting Party as a grant of protection for the industrial design under the law of the said Contracting Party at the latest from the date on which the refusal was withdrawn.

(c) The effect given to the international registration under this paragraph shall apply to the industrial design or designs that are the subject of that registration as received from the International Bureau by the designated Office or, where applicable, as amended in the procedure before that Office.

(3) [*Declaration Concerning Effect of Designation of Applicant's Contracting Party*] (a) Any Contracting Party whose Office is an Examining Office may, in a declaration, notify the Director General that, where it is the applicant's Contracting Party, the designation of that Contracting Party in an international registration shall have no effect.

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4 See footnote on page 20.

(b) Where a Contracting Party having made the declaration referred to in subparagraph (a) is indicated in an international application both as the applicant's Contracting Party and as a designated Contracting Party, the International Bureau shall disregard the designation of that Contracting Party.

Article 15
Invalidation

(1) [*Requirement of Opportunity of Defense*] Invalidation, by the competent authorities of a designated Contracting Party, of the effects, in part or in whole, in the territory of that Contracting Party, of the international registration may not be pronounced without the holder having, in good time, been afforded the opportunity of defending his rights.

(2) [*Notification of Invalidation*] The Office of the Contracting Party in whose territory the effects of the international registration have been invalidated shall, where it is aware of the invalidation, notify it to the International Bureau.

Article 16
Recording of Changes and Other Matters Concerning International Registrations

(1) [*Recording of Changes and Other Matters*] The International Bureau shall, as prescribed, record in the International Register

(i) any change in ownership of the international registration, in respect of any or all of the designated Contracting Parties and in respect of any or all of the industrial designs that are the subject of the international registration, provided that the new owner is entitled to file an international application under Article 3,

(ii) any change in the name or address of the holder,

(iii) the appointment of a representative of the applicant or holder and any other relevant fact concerning such representative,

(iv) any renunciation, by the holder, of the international registration, in respect of any or all of the designated Contracting Parties,

(v) any limitation, by the holder, of the international registration, in respect of any or all of the designated Contracting Parties, to one or some of the industrial designs that are the subject of the international registration,

(vi) any invalidation, by the competent authorities of a designated Contracting Party, of the effects, in the territory of that Contracting Party, of the international registration in respect of any or all of the industrial designs that are the subject of the international registration,

(vii) any other relevant fact, identified in the Regulations, concerning the rights in any or all of the industrial designs that are the subject of the international registration.

(2) [*Effect of Recording in International Register*] Any recording referred to in items (i), (ii), (iv), (v), (vi) and (vii) of paragraph (1) shall have the same effect as if it had been made in the Register of the Office of each of the Contracting Parties concerned, except that a Contracting Party may, in a declaration, notify the Director General that a recording referred to in item (i) of paragraph (1) shall not have that effect in that Contracting Party until the Office of that Contracting Party has received the statements or documents specified in that declaration.

(3) [*Fees*] Any recording made under paragraph (1) may be subject to the payment of a fee.

(4) [*Publication*] The International Bureau shall publish a notice concerning any recording made under paragraph (1). It shall send a copy of the publication of the notice to the Office of each of the Contracting Parties concerned.

Article 17
Initial Term and Renewal of the International Registration and Duration of Protection

(1) [*Initial Term of the International Registration*] The international registration shall be effected for an initial term of five years counted from the date of the international registration.

(2) [*Renewal of the International Registration*] The international registration may be renewed for additional terms of five years, in accordance with the prescribed procedure and subject to the payment of the prescribed fees.

(3) [*Duration of Protection in Designated Contracting Parties*] (a) Provided that the international registration is renewed, and subject to subparagraph (b), the duration of protection shall, in each of the designated Contracting Parties, be 15 years counted from the date of the international registration.

(b) Where the law of a designated Contracting Party provides for a duration of protection of more than 15 years for an industrial design for which protection has been granted under that law, the duration of protection shall, provided that the international registration is renewed, be the same as that provided for by the law of that Contracting Party.

(c) Each Contracting Party shall, in a declaration, notify the Director General of the maximum duration of protection provided for by its law.

(4) [*Possibility of Limited Renewal*] The renewal of the international registration may be effected for any or all of the designated Contracting Parties and for any or all of the industrial designs that are the subject of the international registration.

(5) [*Recording and Publication of Renewal*] The International Bureau shall record renewals in the International Register and publish a notice to that effect. It shall send a copy of the publication of the notice to the Office of each of the Contracting Parties concerned.

Article 18
Information Concerning Published International Registrations

(1) [*Access to Information*] The International Bureau shall supply to any person applying therefor, upon the payment of the prescribed fee, extracts from the International Register, or information concerning the contents of the International Register, in respect of any published international registration.

(2) [*Exemption from Legalization*] Extracts from the International Register supplied by the International Bureau shall be exempt from any requirement of legalization in each Contracting Party.

CHAPTER II

ADMINISTRATIVE PROVISIONS

Article 19
Common Office of Several States

(1) [*Notification of Common Office*] If several States intending to become party to this Act have effected, or if several States party to this Act agree to effect, the unification of their domestic legislation on industrial designs, they may notify the Director General

(i) that a common Office shall be substituted for the national Office of each of them, and

(ii) that the whole of their respective territories to which the unified legislation applies shall be deemed to be a single Contracting Party for the purposes of the application of Articles 1, 3 to 18 and 31 of this Act.

(2) [*Time at Which Notification Is to Be Made*] The notification referred to in paragraph (1) shall be made,

(i) in the case of States intending to become party to this Act, at the time of the deposit of the instruments referred to in Article 27(2);

(ii) in the case of States party to this Act, at any time after the unification of their domestic legislation has been effected.

(3) [*Date of Entry into Effect of the Notification*] The notification referred to in paragraphs (1) and (2) shall take effect,

(i) in the case of States intending to become party to this Act, at the time such States become bound by this Act;

(ii) in the case of States party to this Act, three months after the date of the communication thereof by the Director General to the other Contracting Parties or at any later date indicated in the notification.

Article 20
Membership of the Hague Union

The Contracting Parties shall be members of the same Union as the States party to the 1934 Act or the 1960 Act.

Article 21
Assembly

(1) [*Composition*] (a) The Contracting Parties shall be members of the same Assembly as the States bound by Article 2 of the Complementary Act of 1967.

(b) Each member of the Assembly shall be represented in the Assembly by one delegate, who may be assisted by alternate delegates, advisors and experts, and each delegate may represent only one Contracting Party.

(c) Members of the Union that are not members of the Assembly shall be admitted to the meetings of the Assembly as observers.

(2) [*Tasks*] (a) The Assembly shall

(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Act;

(ii) exercise such rights and perform such tasks as are specifically conferred upon it or assigned to it under this Act or the Complementary Act of 1967;

(iii) give directions to the Director General concerning the preparations for conferences of revision and decide the convocation of any such conference;

(iv) amend the Regulations;

(v) review and approve the reports and activities of the Director General concerning the Union, and give the Director General all necessary instructions concerning matters within the competence of the Union;

(vi) determine the program and adopt the biennial budget of the Union, and approve its final accounts;

(vii) adopt the financial regulations of the Union;

(viii) establish such committees and working groups as it deems appropriate to achieve the objectives of the Union;

(ix) subject to paragraph (1)(c), determine which States, intergovernmental organizations and non-governmental organizations shall be admitted to its meetings as observers;

(x) take any other appropriate action to further the objectives of the Union and perform any other functions as are appropriate under this Act.

(b) With respect to matters which are also of interest to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) [*Quorum*] (a) One-half of the members of the Assembly which are States and have the right to vote on a given matter shall constitute a quorum for the purposes of the vote on that matter.

(b) Notwithstanding the provisions of subparagraph (a), if, in any session, the number of the members of the Assembly which are States, have the right to vote on a given matter and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States and have the right to vote on that matter, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States, have the right to vote on the said matter and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(4) [*Taking Decisions in the Assembly*] (a) The Assembly shall endeavor to take its decisions by consensus.

(b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case,

(i) each Contracting Party that is a State shall have one vote and shall vote only in its own name, and

(ii) any Contracting Party that is an intergovernmental organization may vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Act, and no such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote, and *vice versa*.

(c) On matters concerning only States that are bound by Article 2 of the Complementary Act of 1967, Contracting Parties that are not bound by the said Article shall not have the right to vote, whereas, on matters concerning only Contracting Parties, only the latter shall have the right to vote.

(5) [*Majorities*] (a) Subject to Articles 24(2) and 26(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) Abstentions shall not be considered as votes.

(6) [*Sessions*] (a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, either at the request of one-fourth of the members of the Assembly or on the Director General's own initiative.

(c) The agenda of each session shall be prepared by the Director General.

(7) [*Rules of Procedure*] The Assembly shall adopt its own rules of procedure.

Article 22
International Bureau

(1) [*Administrative Tasks*] (a) International registration and related duties, as well as all other administrative tasks concerning the Union, shall be performed by the International Bureau.

(b) In particular, the International Bureau shall prepare the meetings and provide the secretariat of the Assembly and of such committees of experts and working groups as may be established by the Assembly.

(2) [*Director General*] The Director General shall be the chief executive of the Union and shall represent the Union.

(3) [*Meetings Other than Sessions of the Assembly*] The Director General shall convene any committee and working group established by the Assembly and all other meetings dealing with matters of concern to the Union.

(4) [*Role of the International Bureau in the Assembly and Other Meetings*] (a) The Director General and persons designated by the Director General shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly, and any other meetings convened by the Director General under the aegis of the Union.

(b) The Director General or a staff member designated by the Director General shall be *ex officio* secretary of the Assembly, and of the committees, working groups and other meetings referred to in subparagraph (a).

(5) [*Conferences*] (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any revision conferences.

(b) The International Bureau may consult with intergovernmental organizations and international and national non-governmental organizations concerning the said preparations.

(c) The Director General and persons designated by the Director General shall take part, without the right to vote, in the discussions at revision conferences.

(6) [*Other Tasks*] The International Bureau shall carry out any other tasks assigned to it in relation to this Act.

Article 23
Finances

(1) [*Budget*] (a) The Union shall have a budget.

(b) The budget of the Union shall include the income and expenses proper to the Union and its contribution to the budget of expenses common to the Unions administered by the Organization.

(c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered to be expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.

(2) [*Coordination with Budgets of Other Unions*] The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) [*Sources of Financing of the Budget*] The budget of the Union shall be financed from the following sources:

(i) fees relating to international registrations;

(ii) charges due for other services rendered by the International Bureau in relation to the Union;

(iii) sale of, or royalties on, the publications of the International Bureau concerning the Union;

(iv) gifts, bequests and subventions;

(v) rents, interests and other miscellaneous income.

(4) [*Fixing of Fees and Charges; Level of the Budget*] (a) The amounts of the fees referred to in paragraph (3)(i) shall be fixed by the Assembly on the proposal of the Director General. Charges referred to in paragraph 3(ii) shall be established by the Director General and shall be provisionally applied subject to approval by the Assembly at its next session.

(b) The amounts of the fees referred to in paragraph (3)(i) shall be so fixed that the revenues of the Union from fees and other sources shall be at least sufficient to cover all the expenses of the International Bureau concerning the Union.

(c) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the financial regulations.

(5) [*Working Capital Fund*] The Union shall have a working capital fund which shall be constituted by the excess receipts and, if such excess does not suffice, by a single payment made by each member of the Union. If the fund becomes insufficient, the Assembly shall decide to increase it. The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General.

(6) [*Advances by Host State*] (a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such State shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(7) [*Auditing of Accounts*] The auditing of the accounts shall be effected by one or more of the States members of the Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 24
Regulations

(1) [*Subject Matter*] The Regulations shall govern the details of the implementation of this Act. They shall, in particular, include provisions concerning

(i) matters which this Act expressly provides are to be prescribed;

(ii) further details concerning, or any details useful in the implementation of, the provisions of this Act;

(iii) any administrative requirements, matters or procedures.

(2) [*Amendment of Certain Provisions of the Regulations*] (a) The Regulations may specify that certain provisions of the Regulations may be amended only by unanimity or only by a four-fifths majority.

(b) In order for the requirement of unanimity or a four-fifths majority no longer to apply in the future to the amendment of a provision of the Regulations, unanimity shall be required.

(c) In order for the requirement of unanimity or a four-fifths majority to apply in the future to the amendment of a provision of the Regulations, a four-fifths majority shall be required.

(3) [*Conflict Between This Act and the Regulations*] In the case of conflict between the provisions of this Act and those of the Regulations, the former shall prevail.

CHAPTER III

REVISION AND AMENDMENT

Article 25
Revision of This Act

(1) [*Revision Conferences*] This Act may be revised by a conference of the Contracting Parties.

(2) [*Revision or Amendment of Certain Articles*] Articles 21, 22, 23 and 26 may be amended either by a revision conference or by the Assembly according to the provisions of Article 26.

Article 26
Amendment of Certain Articles by the Assembly

(1) [*Proposals for Amendment*] (a) Proposals for the amendment by the Assembly of Articles 21, 22, 23 and this Article may be initiated by any Contracting Party or by the Director General.

(b) Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.

(2) [*Majorities*] Adoption of any amendment to the Articles referred to in paragraph (1) shall require a three-fourths majority, except that adoption of any amendment to Article 21 or to the present paragraph shall require a four-fifths majority.

(3) [*Entry into Force*] (a) Except where subparagraph (b) applies, any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of those Contracting Parties which, at the time the amendment was adopted, were members of the Assembly and had the right to vote on that amendment.

(b) Any amendment to Article 21(3) or (4) or to this subparagraph shall not enter into force if, within six months of its adoption by the Assembly, any Contracting Party notifies the Director General that it does not accept such amendment.

(c) Any amendment which enters into force in accordance with the provisions of this paragraph shall bind all the States and intergovernmental organizations which are Contracting Parties at the time the amendment enters into force, or which become Contracting Parties at a subsequent date.

CHAPTER IV

FINAL PROVISIONS

Article 27
Becoming Party to This Act

(1) [*Eligibility*] Subject to paragraphs (2) and (3) and Article 28,

(i) any State member of the Organization may sign and become party to this Act;

(ii) any intergovernmental organization which maintains an Office in which protection of industrial designs may be obtained with effect in the territory in which the constituting treaty of the intergovernmental organization applies may sign and become party to this Act, provided that at least one of the member States of the intergovernmental organization is a member of the Organization and provided that such Office is not the subject of a notification under Article 19.

(2) [*Ratification or Accession*] Any State or intergovernmental organization referred to in paragraph (1) may deposit

(i) an instrument of ratification if it has signed this Act, or

(ii) an instrument of accession if it has not signed this Act.

(3) [*Effective Date of Deposit*] (a) Subject to subparagraphs (b) to (d), the effective date of the deposit of an instrument of ratification or accession shall be the date on which that instrument is deposited.

(b) The effective date of the deposit of the instrument of ratification or accession of any State in respect of which protection of industrial designs may be obtained only through the Office maintained by an intergovernmental organization of which that State is a member shall be the date on which the instrument of that intergovernmental organization is deposited if that date is later than the date on which the instrument of the said State has been deposited.

(c) The effective date of the deposit of any instrument of ratification or accession containing or accompanied by the notification referred to in Article 19 shall be the date on which the last of the instruments of the States members of the group of States having made the said notification is deposited.

(d) Any instrument of ratification or accession of a State may contain or be accompanied by a declaration making it a condition to its being considered as deposited that the instrument of one other State or one intergovernmental organization, or the instruments of two other States, or the instruments of one other State and one intergovernmental organization, specified by name and eligible to become party to this Act, is or are also deposited. The instrument containing or accompanied by such a declaration shall be considered to have been deposited on the day on which the condition indicated in the declaration is fulfilled. However, when an instrument specified in the declaration itself contains, or is itself accompanied by, a declaration of the said kind, that instrument shall be considered as deposited on the day on which the condition specified in the latter declaration is fulfilled.

(e) Any declaration made under subparagraph (d) may be withdrawn, in its entirety or in part, at any time. Any such withdrawal shall become effective on the date on which the notification of withdrawal is received by the Director General.

Article 28
Effective Date of Ratifications and Accessions

(1) [*Instruments to Be Taken into Consideration*] For the purposes of this Article, only instruments of ratification or accession that are deposited by States or intergovernmental organizations referred to in Article 27(1) and that have an effective date according to Article 27(3) shall be taken into consideration.

(2) [*Entry into Force of This Act*] This Act shall enter into force three months after six States have deposited their instruments of ratification or accession, provided that, according to the most recent annual statistics collected by the International Bureau, at least three of those States fulfill at least one of the following conditions:

(i) at least 3,000 applications for the protection of industrial designs have been filed in or for the State concerned, or

(ii) at least 1,000 applications for the protection of industrial designs have been filed in or for the State concerned by residents of States other than that State.

(3) [*Entry into Force of Ratifications and Accessions*] (a) Any State or intergovernmental organization that has deposited its instrument of ratification or accession three months or more before the date of entry into force of this Act shall become bound by this Act on the date of entry into force of this Act.

(b) Any other State or intergovernmental organization shall become bound by this Act three months after the date on which it has deposited its instrument of ratification or accession or at any later date indicated in that instrument.

Article 29
Prohibition of Reservations

No reservations to this Act are permitted.

Article 30
Declarations Made by Contracting Parties

(1) [*Time at Which Declarations May Be Made*] Any declaration under Articles 4(1)(b), 5(2)(a), 7(2), 11(1), 13(1), 14(3), 16(2) or 17(3)(c) may be made

(i) at the time of the deposit of an instrument referred to in Article 27(2), in which case it shall become effective on the date on which the State or intergovernmental organization having made the declaration becomes bound by this Act, or

(ii) after the deposit of an instrument referred to in Article 27(2), in which case it shall become effective three months after the date of its receipt by the Director General or at any later date indicated in the declaration but shall apply only in respect of any international registration whose date of international registration is the same as, or is later than, the effective date of the declaration.

(2) [*Declarations by States Having a Common Office*] Notwithstanding paragraph (1), any declaration referred to in that paragraph that has been made by a State which has, with another State or other States, notified the Director General under Article 19(1) of the substitution of a common Office for their national Offices shall become effective only if that other State or those other States makes or make a corresponding declaration or corresponding declarations.

(3) [*Withdrawal of Declarations*] Any declaration referred to in paragraph (1) may be withdrawn at any time by notification addressed to the Director General. Such withdrawal shall take effect three months after the date on which the Director General has received the notification or at any later date indicated in the notification. In the case of a declaration made under Article 7(2), the withdrawal shall not affect international applications filed prior to the coming into effect of the said withdrawal.

Article 31
Applicability of the 1934 and 1960 Acts

(1) [*Relations Between States Party to Both This Act and the 1934 or 1960 Acts*] This Act alone shall be applicable as regards the mutual relations of States party to both this Act and the 1934 Act or the 1960 Act. However, such States shall, in their mutual relations, apply the 1934 Act or the 1960 Act, as the case may be, to industrial designs deposited at the International Bureau prior to the date on which this Act becomes applicable as regards their mutual relations.

(2) [*Relations Between States Party to Both This Act and the 1934 or 1960 Acts and States Party to the 1934 or 1960 Acts Without Being Party to This Act*] (a) Any State that is party to both this Act and the 1934 Act shall continue to apply the 1934 Act in its relations with States that are party to the 1934 Act without being party to the 1960 Act or this Act.

(b) Any State that is party to both this Act and the 1960 Act shall continue to apply the 1960 Act in its relations with States that are party to the 1960 Act without being party to this Act.

Article 32
Denunciation of This Act

(1) [*Notification*] Any Contracting Party may denounce this Act by notification addressed to the Director General.

(2) [*Effective Date*] Denunciation shall take effect one year after the date on which the Director General has received the notification or at any later date indicated in the notification. It shall not affect the application of this Act to any international application pending and any international registration in force in respect of the denouncing Contracting Party at the time of the coming into effect of the denunciation.

Article 33
Languages of This Act; Signature

(1) [*Original Texts; Official Texts*] (a) This Act shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

(2) [*Time Limit for Signature*] This Act shall remain open for signature at the headquarters of the Organization for one year after its adoption.

Article 34
Depositary

The Director General shall be the depositary of this Act.

International Labour Conference
Conférence internationale du Travail

CONVENTION 190

CONVENTION
CONCERNING THE ELIMINATION OF VIOLENCE
AND HARASSMENT IN THE WORLD OF WORK,
ADOPTED BY THE CONFERENCE
AT ITS ONE HUNDRED AND EIGHTH SESSION,
GENEVA, 21 JUNE 2019

CONVENTION 190

CONVENTION
CONCERNANT L'ÉLIMINATION DE LA VIOLENCE
ET DU HARCÈLEMENT DANS LE MONDE DU TRAVAIL,
ADOPTÉE PAR LA CONFÉRENCE
À SA CENT HUITIÈME SESSION,
GENÈVE, 21 JUIN 2019

CONSOLIDATED TEXT
TEXTE CONSOLIDÉ

Convention 190

CONVENTION CONCERNING THE ELIMINATION OF VIOLENCE AND HARASSMENT IN THE WORLD OF WORK

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 108th (Centenary) Session on 10 June 2019, and

Recalling that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and

Reaffirming the relevance of the fundamental Conventions of the International Labour Organization, and

Recalling other relevant international instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention on the Rights of Persons with Disabilities, and

Recognizing the right of everyone to a world of work free from violence and harassment, including gender-based violence and harassment, and

Recognizing that violence and harassment in the world of work can constitute a human rights violation or abuse, and that violence and harassment is a threat to equal opportunities, is unacceptable and incompatible with decent work, and

Recognizing the importance of a work culture based on mutual respect and dignity of the human being to prevent violence and harassment, and

Recalling that Members have an important responsibility to promote a general environment of zero tolerance to violence and harassment in order to facilitate the prevention of such behaviours and practices, and that all actors in the world of work must refrain from, prevent and address violence and harassment, and

Acknowledging that violence and harassment in the world of work affects a person's psychological, physical and sexual health, dignity, and family and social environment, and

CONVENTION CONCERNANT L'ÉLIMINATION DE LA VIOLENCE ET DU HARCÈLEMENT DANS LE MONDE DU TRAVAIL

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 10 juin 2019, en sa cent huitième session (session du centenaire);

Rappelant que la Déclaration de Philadelphie affirme que tous les êtres humains, quels que soient leur race, leur croyance ou leur sexe, ont le droit de poursuivre leur progrès matériel et leur développement spirituel dans la liberté et la dignité, dans la sécurité économique et avec des chances égales;

Réaffirmant la pertinence des conventions fondamentales de l'Organisation internationale du Travail;

Rappelant d'autres instruments internationaux pertinents tels que la Déclaration universelle des droits de l'homme, le Pacte international relatif aux droits civils et politiques, le Pacte international relatif aux droits économiques, sociaux et culturels, la Convention internationale sur l'élimination de toutes les formes de discrimination raciale, la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes, la Convention internationale sur la protection des droits de tous les travailleurs migrants et des membres de leur famille et la Convention relative aux droits des personnes handicapées;

Reconnaissant le droit de toute personne à un monde du travail exempt de violence et de harcèlement, y compris de violence et de harcèlement fondés sur le genre;

Reconnaissant que la violence et le harcèlement dans le monde du travail peuvent constituer une violation des droits humains ou une atteinte à ces droits, et que la violence et le harcèlement mettent en péril l'égalité des chances et sont inacceptables et incompatibles avec le travail décent;

Reconnaissant l'importance d'une culture du travail fondée sur le respect mutuel et la dignité de l'être humain aux fins de la prévention de la violence et du harcèlement;

Rappelant que les Membres ont l'importante responsabilité de promouvoir un environnement général de tolérance zéro à l'égard de la violence et du harcèlement pour faciliter la prévention de tels comportements et pratiques, et que tous les acteurs du monde du travail doivent s'abstenir de recourir à la violence et au harcèlement, les prévenir et les combattre;

Reconnaissant que la violence et le harcèlement dans le monde du travail nuisent à la santé psychologique, physique et sexuelle, à la dignité et à l'environnement familial et social de la personne;

Recognizing that violence and harassment also affects the quality of public and private services, and may prevent persons, particularly women, from accessing, and remaining and advancing in the labour market, and

Noting that violence and harassment is incompatible with the promotion of sustainable enterprises and impacts negatively on the organization of work, workplace relations, worker engagement, enterprise reputation, and productivity, and

Acknowledging that gender-based violence and harassment disproportionately affects women and girls, and recognizing that an inclusive, integrated and gender-responsive approach, which tackles underlying causes and risk factors, including gender stereotypes, multiple and intersecting forms of discrimination, and unequal gender-based power relations, is essential to ending violence and harassment in the world of work, and

Noting that domestic violence can affect employment, productivity and health and safety, and that governments, employers' and workers' organizations and labour market institutions can help, as part of other measures, to recognize, respond to and address the impacts of domestic violence, and

Having decided upon the adoption of certain proposals concerning violence and harassment in the world of work, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-first day of June of the year two thousand and nineteen the following Convention, which may be cited as the Violence and Harassment Convention, 2019:

I. Definitions

Article 1

1. For the purposes of this Convention:

(a) the term "violence and harassment" in the world of work refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment;

(b) the term "gender-based violence and harassment" means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.

Reconnaissant que la violence et le harcèlement nuisent aussi à la qualité des services publics et des services privés et peuvent empêcher des personnes, en particulier les femmes, d'entrer, de rester et de progresser sur le marché du travail;

Notant que la violence et le harcèlement sont incompatibles avec la promotion d'entreprises durables et ont un impact négatif sur l'organisation du travail, les relations sur le lieu de travail, la motivation des travailleurs, la réputation de l'entreprise et la productivité;

Reconnaissant que la violence et le harcèlement fondés sur le genre touchent de manière disproportionnée les femmes et les filles, et reconnaissant également qu'une approche inclusive, intégrée et tenant compte des considérations de genre, qui s'attaque aux causes sous-jacentes et aux facteurs de risque, y compris aux stéréotypes de genre, aux formes multiples et intersectionnelles de discrimination et aux rapports de pouvoir inégaux fondés sur le genre, est essentielle pour mettre fin à la violence et au harcèlement dans le monde du travail;

Notant que la violence domestique peut se répercuter sur l'emploi, la productivité ainsi que sur la santé et la sécurité, et que les gouvernements, les organisations d'employeurs et de travailleurs et les institutions du marché du travail peuvent contribuer, dans le cadre d'autres mesures, à faire reconnaître les répercussions de la violence domestique, à y répondre et à y remédier;

Après avoir décidé d'adopter diverses propositions concernant la violence et le harcèlement dans le monde du travail, question qui constitue le cinquième point à l'ordre du jour de la session;

Après avoir décidé que ces propositions prendraient la forme d'une convention internationale,

adopte, ce vingt et unième jour de juin deux mille dix-neuf, la convention ci-après, qui sera dénommée Convention sur la violence et le harcèlement, 2019:

I. Définitions

Article 1

1. Aux fins de la présente convention:

a) l'expression «violence et harcèlement» dans le monde du travail s'entend d'un ensemble de comportements et de pratiques inacceptables, ou de menaces de tels comportements et pratiques, qu'ils se produisent à une seule occasion ou de manière répétée, qui ont pour but de causer, causent ou sont susceptibles de causer un dommage d'ordre physique, psychologique, sexuel ou économique, et comprend la violence et le harcèlement fondés sur le genre;

b) l'expression «violence et harcèlement fondés sur le genre» s'entend de la violence et du harcèlement visant une personne en raison de son sexe ou de son genre ou ayant un effet disproportionné sur les personnes d'un sexe ou d'un genre donné, et comprend le harcèlement sexuel.

2. Without prejudice to subparagraphs (a) and (b) of paragraph 1 of this Article, definitions in national laws and regulations may provide for a single concept or separate concepts.

II. Scope

Article 2

1. This Convention protects workers and other persons in the world of work, including employees as defined by national law and practice, as well as persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer.

2. This Convention applies to all sectors, whether private or public, both in the formal and informal economy, and whether in urban or rural areas.

Article 3

This Convention applies to violence and harassment in the world of work occurring in the course of, linked with or arising out of work:

(a) in the workplace, including public and private spaces where they are a place of work;

(b) in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities;

(c) during work-related trips, travel, training, events or social activities;

(d) through work-related communications, including those enabled by information and communication technologies;

(e) in employer-provided accommodation; and

(f) when commuting to and from work.

III. Core principles

Article 4

1. Each Member which ratifies this Convention shall respect, promote and realize the right of everyone to a world of work free from violence and harassment.

2. Each Member shall adopt, in accordance with national law and circumstances and in consultation with representative employers' and workers' organizations, an inclusive, integrated and gender-responsive approach for the prevention and elimination of violence and harassment in the world of work. Such an approach should take into account violence and harassment involving third parties, where applicable, and includes:

(a) prohibiting in law violence and harassment;

2. Sans préjudice des dispositions des alinéas *a)* et *b)* du paragraphe 1 du présent article, les définitions figurant dans la législation nationale peuvent énoncer un concept unique ou des concepts distincts.

II. Champ d'application

Article 2

1. La présente convention protège les travailleurs et autres personnes dans le monde du travail, y compris les salariés tels que définis par la législation et la pratique nationales, ainsi que les personnes qui travaillent, quel que soit leur statut contractuel, les personnes en formation, y compris les stagiaires et les apprentis, les travailleurs licenciés, les personnes bénévoles, les personnes à la recherche d'un emploi, les candidats à un emploi et les individus exerçant l'autorité, les fonctions ou les responsabilités d'un employeur.

2. La présente convention s'applique à tous les secteurs, public ou privé, dans l'économie formelle ou informelle, en zone urbaine ou rurale.

Article 3

La présente convention s'applique à la violence et au harcèlement dans le monde du travail s'exerçant à l'occasion, en lien avec ou du fait du travail:

a) sur le lieu de travail, y compris les espaces publics et les espaces privés lorsqu'ils servent de lieu de travail;

b) sur les lieux où le travailleur est payé, prend ses pauses ou ses repas ou utilise des installations sanitaires, des salles d'eau ou des vestiaires;

c) à l'occasion de déplacements, de voyages, de formations, d'événements ou d'activités sociales liés au travail;

d) dans le cadre de communications liées au travail, y compris celles effectuées au moyen de technologies de l'information et de la communication;

e) dans le logement fourni par l'employeur;

f) pendant les trajets entre le domicile et le lieu de travail.

III. Principes fondamentaux

Article 4

1. Tout Membre qui ratifie la présente convention doit respecter, promouvoir et réaliser le droit de toute personne à un monde du travail exempt de violence et de harcèlement.

2. Tout Membre doit adopter, conformément à la législation et à la situation nationales et en consultation avec les organisations représentatives d'employeurs et de travailleurs, une approche inclusive, intégrée et tenant compte des considérations de genre, qui vise à prévenir et à éliminer la violence et le harcèlement dans le monde du travail. Cette approche devrait prendre en compte la violence et le harcèlement impliquant des tiers, le cas échéant, et consiste notamment à:

a) interdire en droit la violence et le harcèlement;

(b) ensuring that relevant policies address violence and harassment;

(c) adopting a comprehensive strategy in order to implement measures to prevent and combat violence and harassment;

(d) establishing or strengthening enforcement and monitoring mechanisms;

(e) ensuring access to remedies and support for victims;

(f) providing for sanctions;

(g) developing tools, guidance, education and training, and raising awareness, in accessible formats as appropriate; and

(h) ensuring effective means of inspection and investigation of cases of violence and harassment, including through labour inspectorates or other competent bodies.

3. In adopting and implementing the approach referred to in paragraph 2 of this Article, each Member shall recognize the different and complementary roles and functions of governments, and employers and workers and their respective organizations, taking into account the varying nature and extent of their respective responsibilities.

Article 5

With a view to preventing and eliminating violence and harassment in the world of work, each Member shall respect, promote and realize the fundamental principles and rights at work, namely freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, the elimination of discrimination in respect of employment and occupation, and a safe and healthy working environment, as well as promote decent work.

Article 6

Each Member shall adopt laws, regulations and policies ensuring the right to equality and non-discrimination in employment and occupation, including for women workers, as well as for workers and other persons belonging to one or more vulnerable groups or groups in situations of vulnerability that are disproportionately affected by violence and harassment in the world of work.

IV. Protection and prevention

Article 7

Without prejudice to and consistent with Article 1, each Member shall adopt laws and regulations to define and prohibit violence and harassment in the world of work, including gender-based violence and harassment.

b) garantir que des politiques pertinentes traitent de la violence et du harcèlement;

c) adopter une stratégie globale afin de mettre en œuvre des mesures pour prévenir et combattre la violence et le harcèlement;

d) établir des mécanismes de contrôle de l'application et de suivi ou renforcer les mécanismes existants;

e) garantir l'accès à des moyens de recours et de réparation ainsi qu'à un soutien pour les victimes;

f) prévoir des sanctions;

g) élaborer des outils, des orientations et des activités d'éducation et de formation et sensibiliser, sous des formes accessibles selon le cas;

h) garantir l'existence de moyens d'inspection et d'enquête efficaces pour les cas de violence et de harcèlement, y compris par le biais de l'inspection du travail ou d'autres organismes compétents.

3. Lorsqu'il adopte et met en œuvre l'approche visée au paragraphe 2 du présent article, tout Membre doit reconnaître les fonctions et rôles différents et complémentaires des gouvernements, et des employeurs et travailleurs et de leurs organisations respectives, en tenant compte de la nature et de l'étendue variables de leurs responsabilités respectives.

Article 5

En vue de prévenir et d'éliminer la violence et le harcèlement dans le monde du travail, tout Membre doit respecter, promouvoir et réaliser les principes et droits fondamentaux au travail, à savoir la liberté d'association et la reconnaissance effective du droit de négociation collective, l'élimination de toute forme de travail forcé ou obligatoire, l'abolition effective du travail des enfants, l'élimination de la discrimination en matière d'emploi et de profession et un milieu de travail sûr et salubre, et aussi promouvoir le travail décent.

Article 6

Tout Membre doit adopter une législation et des politiques garantissant le droit à l'égalité et à la non-discrimination dans l'emploi et la profession, notamment aux travailleuses, ainsi qu'aux travailleurs et autres personnes appartenant à un ou plusieurs groupes vulnérables ou groupes en situation de vulnérabilité qui sont touchés de manière disproportionnée par la violence et le harcèlement dans le monde du travail.

IV. Protection et prévention

Article 7

Sans préjudice des dispositions de l'article 1 et conformément à celles-ci, tout Membre doit adopter une législation définissant et interdisant la

Article 8

Each Member shall take appropriate measures to prevent violence and harassment in the world of work, including:

(a) recognizing the important role of public authorities in the case of informal economy workers;

(b) identifying, in consultation with the employers' and workers' organizations concerned and through other means, the sectors or occupations and work arrangements in which workers and other persons concerned are more exposed to violence and harassment; and

(c) taking measures to effectively protect such persons.

Article 9

Each Member shall adopt laws and regulations requiring employers to take appropriate steps commensurate with their degree of control to prevent violence and harassment in the world of work, including gender-based violence and harassment, and in particular, so far as is reasonably practicable, to:

(a) adopt and implement, in consultation with workers and their representatives, a workplace policy on violence and harassment;

(b) take into account violence and harassment and associated psychosocial risks in the management of occupational safety and health;

(c) identify hazards and assess the risks of violence and harassment, with the participation of workers and their representatives, and take measures to prevent and control them; and

(d) provide to workers and other persons concerned information and training, in accessible formats as appropriate, on the identified hazards and risks of violence and harassment and the associated prevention and protection measures, including on the rights and responsibilities of workers and other persons concerned in relation to the policy referred to in subparagraph (a) of this Article.

V. Enforcement and remedies

Article 10

Each Member shall take appropriate measures to:

(a) monitor and enforce national laws and regulations regarding violence and harassment in the world of work;

(b) ensure easy access to appropriate and effective remedies and safe, fair and effective reporting and dispute resolution mechanisms and procedures in cases of violence and harassment in the world of work, such as:

violence et le harcèlement dans le monde du travail, y compris la violence et le harcèlement fondés sur le genre.

Article 8

Tout Membre doit prendre des mesures appropriées pour prévenir la violence et le harcèlement dans le monde du travail, notamment:

a) reconnaître le rôle important des pouvoirs publics en ce qui concerne les travailleurs de l'économie informelle;

b) identifier, en consultation avec les organisations d'employeurs et de travailleurs concernées et par d'autres moyens, les secteurs ou professions et les modalités de travail qui exposent davantage les travailleurs et autres personnes concernées à la violence et au harcèlement;

c) prendre des mesures pour protéger ces personnes de manière efficace.

Article 9

Tout Membre doit adopter une législation prescrivant aux employeurs de prendre des mesures appropriées correspondant à leur degré de contrôle pour prévenir la violence et le harcèlement dans le monde du travail, y compris la violence et le harcèlement fondés sur le genre, et en particulier, dans la mesure où cela est raisonnable et pratiquement réalisable:

a) d'adopter et de mettre en œuvre, en consultation avec les travailleurs et leurs représentants, une politique du lieu de travail relative à la violence et au harcèlement;

b) de tenir compte de la violence et du harcèlement, et des risques psychosociaux qui y sont associés, dans la gestion de la sécurité et de la santé au travail;

c) d'identifier les dangers et d'évaluer les risques de violence et de harcèlement, en y associant les travailleurs et leurs représentants, et de prendre des mesures destinées à prévenir et à maîtriser ces dangers et ces risques;

d) de fournir aux travailleurs et autres personnes concernées, sous des formes accessibles selon le cas, des informations et une formation sur les dangers et les risques de violence et de harcèlement identifiés et sur les mesures de prévention et de protection correspondantes, y compris sur les droits et responsabilités des travailleurs et autres personnes concernées en lien avec la politique visée à l'alinéa *a)* du présent article.

V. Contrôle de l'application et moyens de recours et de réparation

Article 10

Tout Membre doit prendre des mesures appropriées pour:

a) suivre et faire appliquer la législation nationale relative à la violence et au harcèlement dans le monde du travail;

b) garantir un accès aisé à des moyens de recours et de réparation appropriés et efficaces ainsi qu'à des mécanismes et procédures de

(i) complaint and investigation procedures, as well as, where appropriate, dispute resolution mechanisms at the workplace level;
(ii) dispute resolution mechanisms external to the workplace;
(iii) courts or tribunals;
(iv) protection against victimization of or retaliation against complainants, victims, witnesses and whistle-blowers; and
(v) legal, social, medical and administrative support measures for complainants and victims;

(c) protect the privacy of those individuals involved and confidentiality, to the extent possible and as appropriate, and ensure that requirements for privacy and confidentiality are not misused;

(d) provide for sanctions, where appropriate, in cases of violence and harassment in the world of work;

(e) provide that victims of gender-based violence and harassment in the world of work have effective access to gender-responsive, safe and effective complaint and dispute resolution mechanisms, support, services and remedies;

(f) recognize the effects of domestic violence and, so far as is reasonably practicable, mitigate its impact in the world of work;

(g) ensure that workers have the right to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to life, health or safety due to violence and harassment, without suffering retaliation or other undue consequences, and the duty to inform management; and

(h) ensure that labour inspectorates and other relevant authorities, as appropriate, are empowered to deal with violence and harassment in the world of work, including by issuing orders requiring measures with immediate executory force, and orders to stop work in cases of an imminent danger to life, health or safety, subject to any right of appeal to a judicial or administrative authority which may be provided by law.

VI. Guidance, training and awareness-raising

Article 11

Each Member, in consultation with representative employers' and workers' organizations, shall seek to ensure that:

(a) violence and harassment in the world of work is addressed in relevant national policies, such as those concerning occupational safety and health, equality and non-discrimination, and migration;

(b) employers and workers and their organizations, and relevant authorities, are provided with guidance, resources, training or

signalement et de règlement des différends en matière de violence et de harcèlement dans le monde du travail, qui soient sûrs, équitables et efficaces, tels que:

i) des procédures de plainte et d'enquête et, s'il y a lieu, des mécanismes de règlement des différends au niveau du lieu de travail;

ii) des mécanismes de règlement des différends extérieurs au lieu de travail;

iii) des tribunaux et autres juridictions;

iv) des mesures de protection des plaignants, des victimes, des témoins et des lanceurs d'alerte contre la victimisation et les représailles;

v) des mesures d'assistance juridique, sociale, médicale ou administrative pour les plaignants et les victimes;

c) protéger la vie privée des personnes concernées et la confidentialité, dans la mesure du possible et selon qu'il convient, et veiller à ce que les exigences en la matière ne soient pas appliquées abusivement;

d) prévoir des sanctions, s'il y a lieu, en cas de violence et de harcèlement dans le monde du travail;

e) prévoir que les victimes de violence et de harcèlement fondés sur le genre dans le monde du travail auront effectivement accès à des mécanismes de plainte et de règlement des différends, à un soutien, à des services et à des moyens de recours et de réparation tenant compte des considérations de genre, sûrs et efficaces;

f) reconnaître les effets de la violence domestique et, dans la mesure où cela est raisonnable et pratiquement réalisable, atténuer son impact dans le monde du travail;

g) garantir que tout travailleur a le droit de se retirer d'une situation de travail dont il a des motifs raisonnables de penser qu'elle présente un danger imminent et grave pour sa vie, sa santé ou sa sécurité, en raison de violence et de harcèlement, sans subir de représailles ni autres conséquences indues, et le devoir d'en informer la direction;

h) veiller à ce que l'inspection du travail et d'autres autorités compétentes, le cas échéant, soient habilitées à traiter la question de la violence et du harcèlement dans le monde du travail, notamment en ordonnant des mesures immédiatement exécutoires ou l'arrêt du travail lorsqu'il existe un danger imminent pour la vie, la santé ou la sécurité, sous réserve de tout droit de recours judiciaire ou administratif qui pourrait être prévu par la législation.

VI. Orientations, formation et sensibilisation

Article 11

Tout Membre doit, en consultation avec les organisations représentatives d'employeurs et de travailleurs, s'efforcer de garantir que:

a) la question de la violence et du harcèlement dans le monde du travail est traitée dans les politiques nationales pertinentes, comme celles

other tools, in accessible formats as appropriate, on violence and harassment in the world of work, including on gender-based violence and harassment; and

(c) initiatives, including awareness-raising campaigns, are undertaken.

VII. Methods of application

Article 12

The provisions of this Convention shall be applied by means of national laws and regulations, as well as through collective agreements or other measures consistent with national practice, including by extending or adapting existing occupational safety and health measures to cover violence and harassment and developing specific measures where necessary.

VIII. Final provisions

Article 13

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 14

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification is registered.

Article 15

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention within the first year of each new period of ten years under the terms provided for in this Article.

relatives à la sécurité et à la santé au travail, à l'égalité et à la non-discrimination et aux migrations;

b) des orientations, des ressources, des formations ou d'autres outils concernant la violence et le harcèlement dans le monde du travail, y compris la violence et le harcèlement fondés sur le genre, sont mis à la disposition des employeurs et des travailleurs et de leurs organisations ainsi que des autorités compétentes, sous des formes accessibles selon le cas;

c) des initiatives sont prises en la matière, notamment des campagnes de sensibilisation.

VII. Méthodes d'application

Article 12

Les dispositions de la présente convention doivent être appliquées par voie de législation nationale ainsi que par des conventions collectives ou d'autres mesures conformes à la pratique nationale, y compris en étendant, ou en adaptant, les mesures existantes de sécurité et de santé au travail à la question de la violence et du harcèlement et en élaborant des mesures spécifiques si nécessaire.

VIII. Dispositions finales

Article 13

Les ratifications formelles de la présente convention sont communiquées au Directeur général du Bureau international du Travail aux fins d'enregistrement.

Article 14

1. La présente convention ne lie que les Membres de l'Organisation internationale du Travail dont la ratification a été enregistrée par le Directeur général du Bureau international du Travail.

2. Elle entre en vigueur douze mois après que les ratifications de deux Membres ont été enregistrées par le Directeur général.

3. Par la suite, cette convention entre en vigueur pour chaque Membre douze mois après la date de l'enregistrement de sa ratification.

Article 15

1. Tout Membre ayant ratifié la présente convention peut la dénoncer à l'expiration d'une période de dix années après la date de la mise en vigueur initiale de la convention, par un acte communiqué au Directeur général du Bureau international du Travail aux fins d'enregistrement. La dénonciation prend effet une année après avoir été enregistrée.

2. Tout Membre ayant ratifié la présente convention qui, dans l'année après l'expiration de la période de dix années mentionnée au paragraphe

Article 16

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations that have been communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification that has been communicated, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

Article 17

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and denunciations that have been registered in accordance with the provisions of the preceding Articles.

Article 18

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 19

1. Should the Conference adopt a new Convention revising this Convention, then, unless the new Convention otherwise provides:

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 15 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 20

The English and French versions of the text of this Convention are equally authoritative.

précédent, ne se prévaut pas de la faculté de dénonciation prévue par le présent article sera lié pour une nouvelle période de dix années et, par la suite, pourra dénoncer la présente convention dans la première année de chaque nouvelle période de dix années dans les conditions prévues au présent article.

Article 16

1. Le Directeur général du Bureau international du Travail notifie à tous les Membres de l'Organisation internationale du Travail l'enregistrement de toutes les ratifications et dénonciations qui lui sont communiquées par les Membres de l'Organisation.

2. En notifiant aux Membres de l'Organisation l'enregistrement de la deuxième ratification communiquée, le Directeur général appelle l'attention des Membres de l'Organisation sur la date à laquelle la présente convention entrera en vigueur.

Article 17

Le Directeur général du Bureau international du Travail communique au Secrétaire général des Nations Unies, aux fins d'enregistrement, conformément à l'article 102 de la Charte des Nations Unies, des renseignements complets au sujet de toutes ratifications et dénonciations enregistrées conformément aux articles précédents.

Article 18

Chaque fois qu'il le juge nécessaire, le Conseil d'administration du Bureau international du Travail présente à la Conférence générale un rapport sur l'application de la présente convention et examine s'il y a lieu d'inscrire à l'ordre du jour de la Conférence la question de sa révision totale ou partielle.

Article 19

1. Au cas où la Conférence adopte une nouvelle convention portant révision de la présente convention, et à moins que la nouvelle convention n'en dispose autrement:

a) la ratification par un Membre de la nouvelle convention portant révision entraîne de plein droit, nonobstant l'article 15 ci-dessus, la dénonciation immédiate de la présente convention, sous réserve que la nouvelle convention portant révision soit entrée en vigueur;

b) à partir de la date de l'entrée en vigueur de la nouvelle convention portant révision, la présente convention cesse d'être ouverte à la ratification des Membres.

2. La présente convention demeure en tout cas en vigueur dans sa forme et teneur pour les Membres qui l'auraient ratifiée et qui ne ratifieraient pas la convention portant révision.

Article 20

Les versions française et anglaise du texte de la présente convention font également foi.

The text of the Convention as here presented is the consolidated version prepared by the Office of the Convention as modified by the Safe and Healthy Working Environment (Consequential Amendments) Convention, 2023 (No. 191).

Le texte de la convention présenté ici est la version consolidée préparée par le Bureau de la convention telle qu'elle a été modifiée par la Convention (n° 191) sur un milieu de travail sûr et salubre (amendements corrélatifs), 2023.

International Labour Conference
Conférence internationale du Travail
Conferencia Internacional del Trabajo

CONVENTION 191

Convention concerning Amendments to Standards Consequential to the Recognition of a Safe and Healthy Working Environment as a Fundamental Principle
Adopted by the Conference at its 111th Session,
Geneva, 12 June 2023

CONVENTION 191

Convention concernant les amendements aux normes corrélatifs à la reconnaissance d'un milieu de travail sûr et salubre comme principe fondamental
Adoptée par la Conférence à sa 111e session,
Genève, 12 juin 2023

CONVENIO 191

Convenio sobre las enmiendas a ciertas normas consiguientes al reconocimiento de un entorno de trabajo seguro y saludable como principio fundamental
Adoptado por la Conferencia en su 111.ª reunión,
Ginebra, 12 de junio de 2023

AUTHENTIC TEXT
TEXTE AUTHENTIQUE
TEXTO AUTÉNTICO

CONVENTION 191

Convention concerning Amendments to Standards Consequential to the Recognition of a Safe and Healthy Working Environment as a Fundamental Principle

The General Conference of the International Labour Organization,

Having been convened in Geneva by the Governing Body of the International Labour Office, and having met at its 111th Session on 5 June 2023,

Recalling the resolution on the inclusion of a safe and healthy working environment in the ILO's framework of fundamental principles and rights at work, adopted at its 110th Session (June 2022),

Having decided to adopt certain proposals with regard to the amendment of the Worst Forms of Child Labour Convention, 1999 (No. 182), the Maternity Protection Convention, 2000 (No. 183), the Maritime Labour Convention, 2006, as amended, the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), the Work in Fishing Convention, 2007 (No. 188), the Domestic Workers Convention, 2011 (No. 189), the Violence and Harassment Convention, 2019 (No. 190), and the Protocol of 2014 to the Forced Labour Convention, 1930, for the purpose of introducing therein certain amendments consequential upon the adoption of the resolution on the inclusion of a safe and healthy working environment in the ILO's framework of fundamental principles and rights at work,

Considering that these proposals must take the form of an international Convention,

adopts this 12 June 2023 the following Convention, which may be cited as the Safe and Healthy Working Environment (Consequential Amendments) Convention, 2023:

Article 1

1. The words "the ILO Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022" shall be substituted for the words "the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998" or any variant contained in the Preamble of the Worst Forms of Child Labour Convention, 1999 (No. 182), the Maternity Protection Convention, 2000 (No. 183), the Maritime Labour Convention, 2006, as amended, the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), the Work in Fishing Convention, 2007 (No. 188), the Domestic Workers

CONVENTION 191

Convention concernant les amendements aux normes corrélatifs à la reconnaissance d'un milieu de travail sûr et salubre comme principe fondamental

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 5 juin 2023, en sa 111e session,

Rappelant la Résolution concernant l'inclusion d'un milieu de travail sûr et salubre dans le cadre des principes et droits fondamentaux au travail de l'OIT, adoptée à sa 110e session (juin 2022),

Ayant décidé d'adopter certaines propositions relatives à la modification de la convention (nº 182) sur les pires formes de travail des enfants, 1999, de la convention (nº 183) sur la protection de la maternité, 2000, de la convention du travail maritime, 2006, telle qu'amendée, de la convention nº 187) sur le cadre promotionnel pour la sécurité et la santé au travail, 2006, de la convention (nº 188) sur le travail dans la pêche, 2007, de la convention (nº 189) sur les travailleuses et travailleurs domestiques, 2011, de la convention (nº 190) sur la violence et le harcèlement, 2019, et du protocole de 2014 relatif à la convention sur le travail forcé, 1930, en vue d'y introduire certains amendements découlant de l'adoption de la Résolution concernant l'inclusion d'un milieu de travail sûr et salubre dans le cadre des principes et droits fondamentaux au travail de l'OIT,

Considérant que ces propositions doivent prendre la forme d'une convention internationale,

adopte, ce 12 juin 2023, la convention ci-après, qui sera dénommée Convention sur un milieu de travail sûr et salubre (amendements corrélatifs), 2023:

Article 1

1. Les mots «la Déclaration de l'OIT relative aux principes et droits fondamentaux au travail (1998), telle qu'amendée en 2022» remplacent les mots «la Déclaration de l'OIT relative aux principes et droits fondamentaux au travail et son suivi, 1998» ou toute formule similaire figurant dans le préambule de la convention (nº 182) sur les pires formes de travail des enfants, 1999, de la convention (nº 183) sur la protection de la maternité, 2000, de la convention du travail maritime, 2006, telle qu'amendée, de la convention (nº 187) sur le cadre promotionnel pour la sécurité et la santé au travail, 2006, de la convention (nº 188) sur le

CONVENIO 191

Convenio sobre las enmiendas a ciertas normas consiguientes al reconocimiento de un entorno de trabajo seguro y saludable como principio fundamental

La Conferencia General de la Organización Internacional del Trabajo,

Convocada en Ginebra por el Consejo de Administración de la Oficina Internacional del Trabajo, y congregada en dicha ciudad el 5 de junio de 2023 en su 111.ª reunión,

Recordando la Resolución sobre la inclusión de un entorno de trabajo seguro y saludable en el marco de la OIT relativo a los principios y derechos fundamentales en el trabajo adoptada en su 110.ª reunión (junio de 2022),

Después de haber decidido adoptar diversas proposiciones relativas a la enmienda del Convenio sobre las peores formas de trabajo infantil, 1999 (núm. 182), el Convenio sobre la protección de la maternidad, 2000 (núm. 183), el Convenio sobre el trabajo marítimo, 2006, en su versión enmendada (MLC, 2006), el Convenio sobre el marco promocional para la seguridad y salud en el trabajo, 2006 (núm. 187), el Convenio sobre el trabajo en la pesca, 2007 (núm. 188), el Convenio sobre las trabajadoras y los trabajadores domésticos, 2011 (núm. 189), el Convenio sobre la violencia y el acoso, 2019 (núm. 190) y el Protocolo de 2014 relativo al Convenio sobre el trabajo forzoso, 1930, a fin de introducir en ellos las consiguientes enmiendas derivadas de la adopción de la Resolución sobre la inclusión de un entorno de trabajo seguro y saludable en el marco de la OIT relativo a los principios y derechos fundamentales en el trabajo,

Considerando que dichas proposiciones deben revestir la forma de un convenio internacional,

adopta, con fecha 12 de junio de 2023, el siguiente convenio, que podrá ser citado como el Convenio sobre un entorno de trabajo seguro y saludable (consiguientes enmiendas), 2023:

Artículo 1

1. Las palabras «la Declaración de la OIT relativa a los principios y derechos fundamentales en el trabajo (1998), en su versión enmendada en 2022» sustituirán a las palabras «la Declaración de la OIT relativa a los principios y derechos fundamentales en el trabajo y su seguimiento, 1998» y a todas las variantes de esta fórmula contenidas en el preámbulo del Convenio sobre las peores formas de trabajo infantil, 1999 (núm. 182), del Convenio sobre la protección de la maternidad, 2000 (núm. 183), del Convenio sobre el trabajo marítimo, 2006, en su versión enmendada (MLC, 2006), del Convenio sobre el marco promocional para la seguridad y salud

Convention, 2011 (No. 189), and the Protocol of 2014 to the Forced Labour Convention, 1930.

2. The words "the Occupational Safety and Health Convention, 1981 (No. 155)" and "the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)" shall be added in chronological order in the third preambular paragraph of the Maritime Labour Convention, 2006, as amended, the fifth preambular paragraph of the Work in Fishing Convention, 2007 (No. 188), and the twelfth preambular paragraph of the Protocol of 2014 to the Forced Labour Convention, 1930.

3. The words "a safe and healthy working environment" shall be added as a new subparagraph (e) of Article III of the Maritime Labour Convention, 2006, as amended; as a new subparagraph (e) of Article 3(2) of the Domestic Workers Convention, 2011 (No. 189); and in Article 5 of the Violence and Harassment Convention, 2019 (No. 190), after the words "employment and occupation".

4. The words "the ILO Declaration on Social Justice for a Fair Globalization (2008), as amended in 2022" shall be substituted for the words "the ILO Declaration on Social Justice for a Fair Globalization" or any variant contained in the Preamble to the Domestic Workers Convention, 2011 (No. 189), and the Protocol of 2014 to the Forced Labour Convention, 1930.

Article 2

1. Any Member of the International Labour Organization which, after the date of entry into force of this Convention, communicates to the Director-General of the International Labour Office its formal ratification of any of the Conventions, or of the Protocol, referred to in Article 1 shall be considered to have ratified that Convention or the Protocol as amended by this Convention.

2. Upon ratifying this Convention, each Member recognizes that it shall continue to be bound by the provisions of any of the Conventions or the Protocol referred to in Article 1 that it has previously ratified, as amended by this Convention.

Article 3

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

travail dans la pêche, 2007, de la convention (n° 189) sur les travailleuses et travailleurs domestiques, 2011, et du protocole de 2014 relatif à la convention sur le travail forcé, 1930.

2. Les mots «la convention (n° 155) sur la sécurité et la santé des travailleurs, 1981» et «la convention (n° 187) sur le cadre promotionnel pour la sécurité et la santé au travail, 2006» sont ajoutés, dans l'ordre chronologique, au troisième alinéa du préambule de la convention du travail maritime, 2006, telle qu'amendée, au cinquième alinéa du préambule de la convention (n° 188) sur le travail dans la pêche, 2007, et au douzième alinéa du préambule du protocole de 2014 relatif à la convention sur le travail forcé, 1930.

3. Les mots «un milieu de travail sûr et salubre» sont ajoutés à l'article III de la convention du travail maritime, 2006, telle qu'amendée, moyennant l'insertion d'un alinéa supplémentaire *e)*, au paragraphe 2 de l'article 3 de la convention (n° 189) sur les travailleuses et travailleurs domestiques, 2011, moyennant l'insertion d'un alinéa supplémentaire *e)*, et à l'article 5 de la convention (n° 190) sur la violence et le harcèlement, 2019, après les mots «en matière d'emploi et de profession».

4. Les mots «la Déclaration de l'OIT sur la justice sociale pour une mondialisation équitable (2008), telle qu'amendée en 2022» remplacent les mots «la Déclaration de l'OIT sur la justice sociale pour une mondialisation équitable» ou toute formule similaire figurant dans le préambule de la convention (n° 189) sur les travailleuses et travailleurs domestiques, 2011, et du protocole de 2014 relatif à la convention sur le travail forcé, 1930.

Article 2

1. Tout Membre de l'Organisation qui, après la date d'entrée en vigueur de la présente convention, communique au Directeur général du Bureau international du Travail sa ratification formelle de l'une quelconque des conventions ou du protocole mentionnés à l'article 1 est considéré comme ayant ratifié ladite convention ou ledit protocole que modifie la présente convention.

2. En ratifiant la présente convention, tout Membre de l'Organisation reconnaît qu'il continue d'être lié par les dispositions des conventions ou du protocole mentionnés à l'article 1 qu'il aura ratifiés précédemment, tels que modifiés par la présente convention.

Article 3

Les ratifications formelles de la présente convention seront communiquées au Directeur général du Bureau international du Travail et par lui enregistrées.

en el trabajo, 2006 (núm. 187), del Convenio sobre el trabajo en la pesca, 2007 (núm. 188), del Convenio sobre las trabajadoras y los trabajadores domésticos, 2011 (núm. 189), y del Protocolo de 2014 relativo al Convenio sobre el trabajo forzoso, 1930.

2. Las palabras «el Convenio sobre seguridad y salud de los trabajadores, 1981 (núm. 155)» y «el Convenio sobre el marco promocional para la seguridad y salud en el trabajo, 2006 (núm. 187)» se añadirán, por orden cronológico, al tercer párrafo del preámbulo del Convenio sobre el trabajo marítimo, 2006, en su versión enmendada (MLC, 2006), al quinto párrafo del preámbulo del Convenio sobre el trabajo en la pesca, 2007 (núm. 188) y al duodécimo párrafo del preámbulo del Protocolo de 2014 relativo al Convenio sobre el trabajo forzoso, 1930.

3. Las palabras «un entorno de trabajo seguro y saludable» se añadirán como un nuevo apartado *e)* del artículo III del Convenio sobre el trabajo marítimo, 2006, en su versión enmendada (MLC, 2006), como un nuevo apartado *e)* del párrafo 2 del artículo 3 del Convenio sobre las trabajadoras y los trabajadores domésticos, 2011 (núm. 189) y al artículo 5 del Convenio sobre la violencia y el acoso, 2019 (núm. 190), después de las palabras «en materia de empleo y ocupación».

4. Las palabras «la Declaración de la OIT sobre la justicia social para una globalización equitativa (2008), en su versión enmendada en 2022» sustituirán a las palabras «la Declaración de la OIT sobre la justicia social para una globalización equitativa» y a todas las variantes de esta fórmula contenidas en el preámbulo del Convenio sobre las trabajadoras y los trabajadores domésticos, 2011 (núm. 189) y del Protocolo de 2014 relativo al Convenio sobre el trabajo forzoso, 1930.

Artículo 2

1. Se considerará que todo Miembro de la Organización Internacional del Trabajo que comunique al Director General de la Oficina Internacional del Trabajo, después de la fecha en que entre en vigor este convenio, la ratificación formal de cualquiera de los convenios o del protocolo mencionados en el artículo 1 ha ratificado ese convenio o protocolo tal como ha quedado modificado por el presente convenio.

2. Al ratificar el presente convenio, todo Miembro que haya ratificado previamente cualquiera de los convenios o el protocolo mencionados en el artículo 1 reconoce que seguirá sujeto a la obligación de cumplir las disposiciones establecidas en él tal como ha quedado modificado por el presente convenio.

Artículo 3

Las ratificaciones formales del presente convenio serán comunicadas, para su registro, al Director General de la Oficina Internacional del Trabajo.

Article 4

1. Subject to paragraph 3 of this Article, this Convention shall come into force on the date on which the ratifications of two Members of the International Labour Organization have been registered with the Director-General of the International Labour Office.

2. Thereafter, this Convention shall come into force for any Member on the date on which its ratification is registered.

3. This Convention shall come into force for the Maritime Labour Convention, 2006, as amended, in accordance with Article XIV of the latter.

Article 5

The entry into force of this Convention shall close any of the Conventions, or the Protocol, referred to in Article 1 to further ratification in their non-amended version.

Article 6

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and declarations that have been communicated by the Members of the Organization.

2. The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and declarations that have been registered in accordance with the provisions of the preceding Articles.

Article 7

1. Should the Conference adopt a new Convention revising this Convention, then, unless the new Convention otherwise provides:

   (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, if and when the new revising Convention shall have come into force;

   (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

Article 4

1. Sous réserve du paragraphe 3 du présent article, la présente convention entre en vigueur à la date où les ratifications de deux Membres sont enregistrées par le Directeur général du Bureau international du Travail.

2. Par la suite, la présente convention entre en vigueur pour chaque Membre à la date de l'enregistrement de sa ratification.

3. La présente convention entre en vigueur au regard de la convention du travail maritime, 2006, telle qu'amendée, conformément à l'article XIV de celle-ci.

Artículo 4

1. A reserva de lo dispuesto en el párrafo 3 de este artículo, el presente convenio entrará en vigor en la fecha en que las ratificaciones de dos Miembros de la Organización Internacional del Trabajo hayan sido registradas por el Director General de la Oficina Internacional del Trabajo.

2. Desde dicho momento, el presente convenio entrará en vigor, para cada Miembro, en la fecha en que su ratificación haya sido registrada.

3. El presente convenio entrará en vigor para el Convenio sobre el trabajo marítimo, 2006, en su versión enmendada (MLC, 2006), de conformidad con lo dispuesto en el artículo XIV de este último.

Article 5

L'entrée en vigueur de la présente convention a pour effet de fermer les conventions et le protocole mentionnés à l'article 1 à toute nouvelle ratification dans leur version non modifiée.

Artículo 5

La entrada en vigor del presente convenio impedirá que cualquiera de los convenios o el protocolo mencionados en el artículo 1 pueda ser posteriormente ratificado en su forma no enmendada.

Article 6

1. Le Directeur général du Bureau international du Travail notifie à tous les Membres de l'Organisation internationale du Travail l'enregistrement de toutes les ratifications et dénonciations qui lui sont communiquées par les Membres de l'Organisation.

2. Le Directeur général du Bureau international du Travail communique au Secrétaire général des Nations Unies, aux fins d'enregistrement, conformément à l'article 102 de la Charte des Nations Unies, des renseignements complets au sujet de toutes ratifications et dénonciations enregistrées conformément aux articles précédents.

Artículo 6

1. El Director General de la Oficina Internacional del Trabajo notificará a todos los Miembros de la Organización Internacional del Trabajo el registro de todas las ratificaciones y declaraciones que le comuniquen los Miembros de la Organización.

2. El Director General de la Oficina Internacional del Trabajo comunicará al Secretario General de las Naciones Unidas, para su registro de conformidad con el artículo 102 de la Carta de las Naciones Unidas, información completa sobre todas las ratificaciones y declaraciones que haya registrado de acuerdo con los artículos precedentes.

Article 7

1. Au cas où la Conférence adopterait une nouvelle convention portant révision de la présente convention, et à moins que la nouvelle convention ne dispose autrement:

   a) la ratification par un Membre de la nouvelle convention portant révision entraînerait de plein droit dénonciation immédiate de la présente convention, sous réserve que la nouvelle convention portant révision soit entrée en vigueur;

   b) à partir de la date de l'entrée en vigueur de la nouvelle convention portant révision, la présente convention cesserait d'être ouverte à la ratification des Membres.

Artículo 7

1. En caso de que la Conferencia adopte un nuevo convenio que implique una revisión del presente convenio, y a menos que en el nuevo convenio se disponga otra cosa:

   a) la ratificación, por un Miembro, del nuevo convenio revisor implicará, *ipso jure*, la denuncia inmediata del presente convenio, siempre que el nuevo convenio revisor haya entrado en vigor;

   b) a partir de la fecha en que entre en vigor el nuevo convenio revisor, el presente convenio cesará de estar abierto a la ratificación por los Miembros.

2. La présente convention demeurerait en tout cas en vigueur dans sa forme et teneur pour les Membres qui l'auraient ratifiée et qui ne ratifieraient pas la convention portant révision.

Article 8

Les versions anglaise, espagnole et française du texte de la présente convention font également foi.

2. El presente convenio continuará en vigor en todo caso, en su forma y contenido actuales, para los Miembros que lo hayan ratificado y no ratifiquen el convenio revisor.

Artículo 8

Las versiones española, francesa e inglesa del texto del presente convenio son igualmente auténticas.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 8

The English, French and Spanish versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organization during its 111th Session which was held in Geneva and declared closed on 16 June 2023.

IN FAITH WHEREOF we have appended our signatures this 16 June 2023:

Le texte qui précède est le texte authentique de la convention dûment adoptée par la Conférence générale de l'Organisation internationale du Travail dans sa 111e session qui s'est tenue à Genève et qui a été déclarée close le 16 juin 2023.

El texto precedente es el texto auténtico del convenio debidamente adoptado por la Conferencia General de la Organización Internacional del Trabajo en su 111.ª reunión congregada en Ginebra y declarada clausurada el 16 de junio de 2023.

EN FOI DE QUOI ont apposé leurs signatures ce 16 juin 2023:

EN FE DE LO CUAL subscriben el presente el 16 de junio de 2023:

The President of the Conference,
Le Président de la Conférence,
El Presidente de la Conferencia,

ALI BIN SAMIKH AL MARRI

The Director-General of the International Labour Office,
Le Directeur général du Bureau international du Travail,
El Director General de la Oficina Internacional del Trabajo,

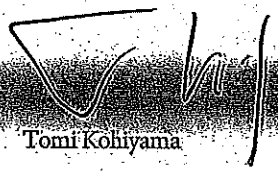
GILBERT F. HOUNGBO

The text of the Convention as here presented is a true copy of the text authenticated by the signatures of the President of the International Labour Conference and of the Director-General of the International Labour Office.

Le texte de la convention présenté ici est une copie exacte du texte authentiqué par les signatures du Président de la Conférence internationale du Travail et du Directeur général du Bureau international du Travail.

El texto del convenio aquí presentado es una copia fiel del texto autenticado con las firmas del Presidente de la Conferencia Internacional del Trabajo y del Director General de la Oficina Internacional del Trabajo.

For the Director-General of the International Labour Office:
Pour le Directeur général du Bureau international du Travail:
Por el Director General de la Oficina Internacional del Trabajo:



Tomi Kohiyama
Legal Adviser of the International Labour Office
Conseillère juridique du Bureau International du Travail
Consejera Jurídica de la Oficina Internacional del Trabajo

SPREP

Secretariat of the Pacific Regional Environment Programme

NOUMEA CONVENTION

FOR THE PROTECTION OF THE NATURAL RESOURCES AND ENVIRONMENT OF THE SOUTH PACIFIC REGION

TEXT AND PROTOCOLS

Noumea

11 November 1985

CONVENTION FOR THE PROTECTION OF THE NATURAL RESOURCES AND ENVIRONMENT OF THE SOUTH PACIFIC REGION AND RELATED PROTOCOLS

Adopted at Noumea on 24 November 1986
Entered into force 22 August 1990

The Parties,

Fully aware of the economic and social value of the natural resources of the environment of the South Pacific Region;

Taking into account the traditions and cultures of the Pacific people as expressed in accepted customs and practices;

Conscious of their responsibility to preserve their natural heritage for the benefit and enjoyment of present and future generations;

Recognizing the special hydrological, geological and ecological characteristics of the region which requires special care and responsible management;

Recognizing further the threat to the marine and coastal environment, its ecological equilibrium, resources and legitimate uses posed by pollution and by the insufficient integration of an environmental dimension into the development process;

Seeking to ensure that resource development shall be in harmony with the maintenance of the unique environmental quality of the region and the evolving principles of sustained resource management;

Realizing fully the need for co-operation amongst themselves and with competent international, regional and sub-regional organizations in order to ensure a co-ordinated and comprehensive development of the natural resources of the region;

Recognizing the desirability for the wider acceptance and national implementation of international agreements already in existence concerning the marine and coastal environment;

Noting, however, that existing international agreements concerning the marine and coastal environment do not cover, in spite of the progress achieved, all aspects and sources of marine pollution and environmental degradation and do not entirely meet the special requirements of the South Pacific Region;

Desirous to adopt the regional convention to strengthen the implementation of the general objective of the Action Plan for Managing the Natural Resources and Environment of the South Pacific Region adopted at Rarotonga, Cook Islands, on 11 March 1982;

Have agreed as follows:

Article 1 GEOGRAPHICAL COVERAGE

1. This Convention shall apply to the South Pacific Region, hereinafter referred to as "the Convention Area" as defined in paragraph (a) of Article 2.

2. Except as may be otherwise provided in any Protocol to this Convention, the Convention Area shall not include internal waters or archipelagic waters of the Parties as defined in accordance with international law.

Article 2 DEFINITIONS

For the purposes of this Convention and its Protocols unless otherwise defined in any such Protocol:

(a) the "Convention Area" shall comprise:

(i) the 200 nautical mile zones established in accordance with international law off:

American Samoa
Australia (East coast and Islands to eastward including Macquarie Island)
Cook Islands
Federated States of Micronesia
French Polynesia
Guam
Kiribati
Marshall Islands
Nauru
New Caledonia and Dependencies
New Zealand
Niue
Northern Mariana Islands
Palau
Papua New Guinea
Pitcairn Islands
Solomon Islands
Tokelau
Tonga
Tuvalu
Vanuatu
Wallis and Futuna
Western Samoa

(ii) those areas of high seas which are enclosed from all sides by the 200 nautical mile zones referred to in sub-paragraph (i);

(iii) areas of the Pacific Ocean which have been included in the Convention Area pursuant to Article 3;

(b) "dumping" means:

- any deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures;

- any deliberate disposal at sea of vessels, aircraft, platforms or other man-made structures at sea;

"dumping" does not include:

- the disposal of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of treatment of such wastes or other matter on such vessels, aircraft, platforms or structures;

- placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention;

(c) "wastes or other matter" means material and substances of any kind, form or description;

(d) the following wastes or other matter shall be considered to be non-radioactive: sewage sludge, dredge spoil, fly ash, agricultural wastes, construction materials, vessels, artificial reef building materials and other such materials provided that they have not been contaminated with radio nuclides of anthropogenic origin (except dispersed global fallout from nuclear weapons testing), nor are potential sources of naturally occurring radio nuclides for commercial purposes, nor have been enriched in natural or artificial radio nuclides;
If there is a question as to whether the material to be dumped should be considered non-radioactive, for the purposes of this Convention, such material shall not be dumped unless the appropriate national authority of the proposed dumper confirms that such dumping would not exceed the individual and collective dose limits of the International Atomic Energy Agency general principles for the exemption of radiation sources and practices

from regulatory control. The national authority shall also take into account the relevant recommendations, standards and guidelines developed by the International Atomic Energy Agency.

(e) "vessels" and "aircraft" means waterborne or airborne craft of any type whatsoever. This expression includes air cushioned craft and floating craft, whether self-propelled or not;

(f) "pollution" means the introduction by man, directly or indirectly, of substances or energy into the marine environment (including estuaries) which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;

In applying this definition to the Convention obligations, the Parties shall use their best endeavours to comply with the appropriate standards and recommendations established by competent international organizations, including the International Atomic Energy Agency;

(g) "Organisation" means the South Pacific Commission; [*will be amended to be SPREP*]

(h) "Director" means the Director of the South Pacific Bureau for Economic Co-operation.*[will be amended to be Secretary-General of the South Pacific Forum Secretariat*]

Article 3 ADDITION TO THE CONVENTION AREA

Any Party may add areas under its jurisdiction within the Pacific Ocean between the Tropic of Cancer and 60 degrees South latitude and between 130 degrees East longitude and 120 degrees West longitude to the Convention Area. Such addition shall be notified to the Depositary who shall promptly notify the other Parties and the Organisation. Such areas shall be incorporated within the Convention Area ninety days after notification to the Parties by the Depositary provided there has been no objection to the proposal to add new areas by any Party affected by that proposal. If there is any such objection the Parties concerned will consult with a view to resolving the matter.

Article 4 GENERAL PROVISIONS

1. The Parties shall endeavour to conclude bilateral or multilateral agreements, including regional or sub-regional agreements, for the protection, development and management of the marine and coastal environment of the Convention Area. Such agreements shall be consistent with this Convention and in accordance with international law. Copies of such agreements shall be communicated to the Organisation and through it to all Parties to this Convention .

2. Nothing in this Convention or its Protocols shall be deemed to affect obligations assumed by a Party under agreements previously concluded.

3. Nothing in this Convention and its Protocols shall be construed to prejudice or affect the interpretation and application of any provision or term in the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972.

4. This Convention and its Protocols shall be construed in accordance with international law relating to their subject matter.

5. Nothing in this Convention and its Protocols shall prejudice the present or future claims and legal views of any Party concerning the nature and extent of maritime jurisdiction.

6. Nothing in this Convention shall affect the sovereign right of States to exploit, develop and manage their own natural resources pursuant to their own policies, taking into account their duty to protect and preserve the environment. Each Party shall ensure that activities within its jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of its national jurisdiction.

Article 5 GENERAL OBLIGATIONS

1. The Parties shall endeavour, either individually or jointly, to take all appropriate measures in conformity with international law and in accordance with this Convention and those Protocols in force to which they are party to prevent, reduce and control pollution of the Convention Area, from any source, and to ensure sound environmental management and development of natural resources, using for this purpose the best practicable means at their disposal, and in accordance with their capabilities. In doing so the Parties shall endeavour to harmonize their policies at the regional level.

2. The Parties shall use their best endeavours to ensure that the implementation of this Convention shall not result in an increase in pollution in the marine environment outside the Convention Area.

3. In addition to the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping and the Protocol Concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region, the Parties shall co-operate in the formulation and adoption of other Protocols prescribing agreed measures, procedures and standards to prevent, reduce and control pollution from all sources or in promoting environmental management in conformity with the objectives of this Convention .

4. The Parties shall, taking into account existing internationally recognized rules, standards, practices and procedures, co-operate with competent global regional and sub-regional organisations to establish and adopt recommended practices, procedures and measures to prevent, reduce and control pollution from all sources and to promote sustained resource management and to ensure the sound development of natural resources in conformity with the objectives of this Convention and its Protocols. and to assist each other in fulfilling their obligations under this Convention and its Protocols.

5. The Parties shall endeavour to establish laws and regulations for the effective discharge of the obligations prescribed in this Convention. Such laws and regulations shall be no less effective than international rules, standards and recommended practices and procedures.

Article 6 POLLUTION FROM VESSELS

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area caused by discharges from vessels, and to ensure the effective application in the Convention Area of the generally accepted international rules and standards established through the competent international organisation or general diplomatic conference relating to the control of pollution from vessels.

Article 7 POLLUTION FROM LAND-BASED SOURCES

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area caused by coastal disposal or by discharges emanating from rivers, estuaries, coastal establishments, outfall structures, or any other sources in their territory.

Article 8 POLLUTION FROM SEABED ACTIVITIES

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area resulting directly or indirectly from exploration and exploitation of the seabed and its subsoil.

Article 9 AIRBORNE POLLUTION

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area resulting from discharges into the atmosphere from activities under their jurisdiction.

Article 10 DISPOSAL OF WASTES

1. The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area caused by dumping from vessels, aircraft, or man-made structures at sea, including the effective application of the relevant internationally recognized rules and procedures relating to the control of dumping of wastes and other matter. The Parties agree to prohibit the dumping of radioactive wastes or other radioactive matter in the Convention Area. Without prejudice to whether or not disposal into the seabed and

subsoil of wastes or other matter is "dumping", the Parties agree to prohibit the disposal into the seabed and subsoil of the Convention Area of radioactive wastes or other radioactive matter.

2. This article shall also apply to the continental shelf of a Party where it extends, in accordance with international law, outward beyond the Convention Area .

Article 11 STORAGE OF TOXIC AND HAZARDOUS WASTES

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area resulting from the storage of toxic and hazardous wastes. In particular, the Parties shall prohibit the storage of radioactive wastes or other radioactive matter in the Convention Area.

Article 12 TESTING OF NUCLEAR DEVICES

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area which might result from the testing of nuclear devices.

Article 13 MINING AND COASTAL EROSION

The Parties shall take all appropriate measures to prevent, reduce and control environmental damage in the Convention Area, in particular coastal erosion caused by coastal engineering, mining activities, sand removal, land reclamation and dredging.

Article 14 SPECIALLY PROTECTED AREAS AND PROTECTION OF WILD FLORA AND FAUNA

The Parties shall, individually or jointly, take all appropriate measures to protect and preserve rare or fragile ecosystems and depleted, threatened or endangered flora and fauna as well as their habitat in the Convention Area. To this end, the Parties shall, as appropriate, establish protected areas, such as parks and reserves, and prohibit or regulate any activity likely to have adverse effects on the species, ecosystems or biological processes that such areas are designed to protect. The establishment of such areas shall not affect the rights of other Parties or third States under international law. In addition, the Parties shall exchange information concerning the administration and management of such areas.

Article 15 CO-OPERATION IN COMBATING POLLUTION IN CASES OF EMERGENCY

1. The Parties shall co-operate in taking all necessary measures to deal with pollution emergencies in the Convention Area, whatever the cause of such emergencies, and to prevent, reduce and control pollution or the threat of pollution resulting therefrom. To this end, the Parties shall develop and promote individual contingency plans and joint contingency plans for responding to incidents involving pollution or the threat thereof in the Convention Area.

2. When a Party becomes aware of a case in which the Convention Area is in imminent danger of being polluted or has been polluted, it shall immediately notify other countries and territories it deems likely to be affected by such pollution, as well as the Organisation. Furthermore it shall inform as soon as feasible, such other countries and territories and the Organisation of any measures it has itself taken to reduce or control pollution or the threat thereof.

Article 16 ENVIRONMENTAL IMPACT ASSESSMENT

1. The Parties agree to develop and maintain, with the assistance of competent global, regional and subregional organisations as requested, technical guidelines and legislation giving adequate emphasis to environmental and social factors to facilitate balanced development of their natural resources and planning of their major projects which might affect the marine environment in such a way as to prevent or minimise harmful impacts on the Convention Area.

2. Each Party shall, within its capabilities, assess the potential effects of such projects on the marine environment, so that appropriate measures can be taken to prevent any substantial pollution of, or significant and harmful changes within, the Convention Area.

3. With respect to the assessment referred to in paragraph 2, each Party shall, where appropriate, invite:

(a) public comment according to its national procedures;

(b) other Parties that may be affected to consult with it and submit comments.

The results of these assessments shall be communicated to the Organisation, which shall make them available to interested Parties.

Article 17 SCIENTIFIC AND TECHNICAL CO-OPERATION

1. The Parties shall co-operate, either directly or with the assistance of competent global, regional and sub-regional organisations, in scientific research, environmental monitoring, and the exchange of data and other scientific and technical information related to the purposes of the Convention.

2. In addition, the Parties shall, for the purposes of this Convention, develop and co-ordinate research and monitoring programmes relating to the Convention Area and co-operate, as far as practicable. in the establishment and implementation of regional, sub-regional and international research programmes.

Article 18 TECHNICAL AND OTHER ASSISTANCE

The Parties undertake to co-operate, directly and when appropriate through the competent global, regional and sub-regional organisations, in the provision to other Parties of technical and other assistance in fields relating to pollution and sound environmental management of the Convention Area, taking into account the special needs of the island developing countries and territories.

Article 19 TRANSMISSION OF INFORMATION

The Parties shall transmit to the Organisation information on the measures adopted by them in the implementation of this Convention and of Protocols to which they are Parties, in such form and at such intervals as the Parties may determine.

Article 20 LIABILITY AND COMPENSATION

The Parties shall co-operate in the formulation and adoption of appropriate rules and procedures in conformity with international law in respect of liability and compensation for damage resulting from pollution of the Convention Area.

Article 21 INSTITUTIONAL ARRANGEMENTS

1. The Organisation shall be responsible for carrying out the following secretariat functions:

(a) to prepare and convene the meetings of Parties;

(b) to transmit to the Parties notifications, reports and other information received in accordance with this Convention and its Protocols;

(c) to perform the functions assigned to it by the Protocols to this Convention;

(d) to consider enquiries by, and information from, the Parties and to consult with them on questions relating to this Convention and the Protocols;

(e) to co-ordinate the implementation of cooperative activities agreed upon by the Parties;

(f) to ensure the necessary co-ordination with other competent global, regional and sub-regional bodies;

(g) to enter into such administrative arrangements as may be required for the effective discharge of the secretariat functions;

(h) to perform such other functions as may be assigned to it by the Parties; and

(i) to transmit to the South Pacific Conference and the South Pacific Forum the reports of ordinary and extraordinary meetings of the Parties.

2. Each Party shall designate an appropriate national authority to serve as the channel of communication with the Organisation for the purposes of this Convention.

Article 22 MEETINGS OF THE PARTIES

1. The Parties shall hold ordinary meetings once every two years. Ordinary meetings shall review the implementation of this Convention and its Protocols and, in particular, shall:

(a) assess periodically the state of the environment in the Convention Area;

(b) consider the information submitted by the Parties under Article 19;

(c) adopt, review and amend as required annexes to this Convention and to its Protocols, in accordance with the provisions of Article 25;

(d) make recommendations regarding the adoption of any Protocols or any amendments to this Convention or its Protocols in accordance with the provisions of Articles 23 and 24;

(e) establish working groups as required to consider any matters concerning this Convention and its Protocols;

(f) consider co-operative activities to be undertaken within the framework of this Convention and its Protocols, including their financial and institutional implications and to adopt decisions relating thereto;

(g) consider and undertake any additional action that may be required for the achievement of the purposes of this Convention and its Protocols; and

(h) adopt by consensus financial rules and budget prepared in consultation with the Organisation, to determine, inter alia, the financial participation of the Parties under this Convention and those Protocols to which they are party.

2. The Organisation shall convene the first ordinary meeting of the Parties not later than one year after the date on which the Convention enters into force in accordance with Article 31.

3. Extraordinary meetings shall be convened at the request of any Party or upon the request of the Organisation, provided that such requests are supported by at least two-thirds of the Parties. It shall be the function of an extraordinary meeting of the Parties to consider those items proposed in the request for the holding of the extraordinary meeting and any other items agreed to by all the Parties attending the meeting.

4. The Parties shall adopt by consensus at their first ordinary meeting, rules of procedure for their meetings.

Article 23 ADOPTION OF PROTOCOLS

1. The Parties may, at a conference of plenipotentiaries, adopt Protocols to this Convention pursuant to paragraph 3 of Article 5.

2. If so requested by a majority of the Parties, the Organisation shall convene a conference of plenipotentiaries for the purpose of adopting Protocols to this Convention.

Article 24 AMENDMENT OF THE CONVENTION AND ITS PROTOCOLS

1. Any Party may propose amendments to this Convention. Amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the Organisation at the request of two-thirds of the Parties.

2. Any Party to this Convention may propose amendments to any Protocol. Such amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the Organisation at the request of two-thirds of the Parties to the Protocol concerned.

3. A proposed amendment to the Convention or any Protocol shall be communicated to the Organisation which shall promptly transmit such proposal for consideration to all the other Parties.

4. A conference of plenipotentiaries to consider a proposed amendment to the Convention or any Protocol shall be convened not less than ninety days after the requirements for the convening of the Conference have been met pursuant to paragraphs 1 or 2, as the case may be.

5. Any amendment to this Convention shall be adopted by a three-fourths majority vote of the Parties to the Convention which are represented at the conference of plenipotentiaries and shall be submitted by the Depositary for acceptance by all Parties to the Convention. Amendments to any Protocol shall be adopted by a three-fourths majority vote of the Parties to the Protocol which are represented at the conference of plenipotentiaries and shall be submitted by the Depositary for acceptance by all Parties to the Protocol.

6. Instruments of ratification, acceptance or approval of amendments shall be deposited with the Depositary. Amendments shall enter into force between Parties having accepted such amendments of the instruments on the thirtieth day following the date of receipt by the Depositary of the instruments of at least three-fourths of the Parties to this Convention or to the Protocol concerned, as the case may be. Thereafter the amendments shall enter into force for any other Party on the thirtieth day after the date on which that Party deposits its instrument.

7. After the entry into force of an amendment to this Convention or to a Protocol, any new Party to the Convention or such Protocol shall become a Party to the Convention or Protocol as amended.

Article 25 ANNEXES AND AMENDMENT OF ANNEXES

1. Annexes to this Convention or to any Protocol shall form an integral part of the Convention or such Protocol respectively.

2. Except as may be otherwise provided in any Protocol with respect to its annexes, the following procedures shall apply to the adoption and entry into force of any amendments to annexes to this Convention or to annexes to any Protocol:

(a) any Party may propose amendments to the annexes to this Convention or annexes to any Protocol;

(b) any proposed amendment shall be notified by the Organisation to the Parties not less than sixty days before the convening of a meeting of the Parties unless this requirement is waived by the meeting;

(c) such amendments shall be adopted at a meeting of the Parties by a three-fourths majority vote of the Parties to the instrument in question;

(d) the Depositary shall without delay communicate the amendments so adopted to all Parties;

(e) any Party that is unable to approve an amendment to the annexes to this Convention or to annexes to any Protocol shall so notify in writing to the Depositary within one hundred days from the date of the communication of the amendment by the Depositary. A Party may at any time substitute an acceptance for a previous declaration of objection, and the amendment shall thereupon enter into force for that Party;

(f) the Depositary shall without delay notify all Parties of any notification received pursuant to the preceding sub-paragraph; and(g) on expiry of the period referred to in subparagraph (e) above, the amendment to the annex shall become effective for all Parties to this Convention or to the Protocol concerned which have not submitted a notification in accordance with the provisions of that sub-paragraph.

3. The adoption and entry into force of a new annex shall be subject to the same procedure as that for the adoption and entry into force of an amendment to an annex as set out in the provisions of paragraph 2, provided that, if any amendment to the Convention or the Protocol concerned is involved, the new annex shall not enter into force until such time as that amendment enters into force.

4. Amendments to the Annex on Arbitration shall be considered to be amendments to this Convention or its Protocols and shall be proposed and adopted in accordance with the procedures set out in Article 24.

Article 26 SETTLEMENT OF DISPUTES

1. In case of a dispute between Parties as to the interpretation or application of this Convention or its Protocols, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice. If the Parties concerned cannot reach agreement, they should seek the good offices of, or jointly request mediation by, a third Party.

2. If the Parties concerned cannot settle their dispute through the means mentioned in paragraph 1, the dispute shall, upon common agreement except as may be otherwise provided in any Protocol to this Convention, be submitted to arbitration under conditions laid down in the Annex on Arbitration to this Convention. However, failure to reach common agreement on submission of the dispute to arbitration shall not absolve the Parties from the responsibility of continuing to seek to resolve it by means referred to in paragraph 1.

3. A Party may at any time declare that it recognizes as compulsory ipso facto and without special agreement, in relation to any other Party accepting the same obligation, the application of the arbitration procedure set out in the Annex on Arbitration. Such declaration shall be notified in writing to the Depositary who shall promptly communicate it to the other Parties.

Article 27 RELATIONSHIP BETWEEN THIS CONVENTION AND ITS PROTOCOLS

1. No State may become a Party to this Convention unless it becomes at the same time a Party to one or more Protocols. No State may become a Party to a Protocol unless it is, or becomes at the same time, a Party to this Convention.

2. Decisions concerning any Protocol pursuant to Articles 22, 24 and 25 of this Convention shall be taken only by the Parties to the Protocol concerned.

Article 28 SIGNATURE

This Convention, the Protocol Concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region, and the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping shall be open for signature at the South Pacific Commission Headquarters in Noumea, New Caledonia on 25 November 1986 and at the South Pacific Bureau for Economic Co-operation Headquarters, Suva, Fiji from 26 November 1986 to 25 November 1987 by States which were invited to participate in the Plenipotentiary Meeting of the High Level Conference on the Protection of the Natural Resources and Environment of the South Pacific Region held at Noumea, New Caledonia from 24 November 1986 to 25 November 1986.

Article 29 RATIFICATION, ACCEPTANCE OR APPROVAL

This Convention and any Protocol thereto shall be subject to ratification, acceptance or approval by States referred to in Article 28. Instruments of ratification, acceptance or approval shall be deposited with the Director who shall be the Depositary.

Article 30 ACCESSION

1. This Convention and any Protocol hereto shall be open to accession by the States referred to in Article 28 as from the day following the date on which the Convention or Protocol concerned was closed for signature.

2. Any State not referred to in paragraph 1 may accede to the Convention and to any Protocol subject to prior approval by three-fourths of the Parties to the Convention or the Protocol concerned.

3. Instruments of accession shall be deposited with the Depositary.

Article 31 ENTRY INTO FORCE

1. This Convention shall enter into force on the thirtieth day following the date of deposit of at least ten instruments of ratification, acceptance, approval or accession.

2. Any Protocol to this Convention, except as otherwise provided in such Protocol, shall enter into force on the thirtieth day following the date of deposit of at least five instruments of ratification, acceptance or approval of such Protocol, or of accession thereto, provided that no Protocol shall enter into force before the Convention. Should the requirements for entry into force of a Protocol be met prior to those for entry into force of the Convention pursuant to paragraph 1, such Protocol shall enter into force on the same date as the Convention.

3. Thereafter, this Convention and any Protocol shall enter into force with respect to any State referred to in Articles 28 or 30 on the thirtieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 32 DENUNCIATION

1. At any time after two years from the date of entry into force of this Convention with respect to a Party, that Party may denounce the Convention by giving written notification to the Depositary.

2. Except as may be otherwise provided in any Protocol to this Convention, any Party may, at any time after two years from the date of entry into force of such Protocol with respect to that Party, denounce the Protocol by giving written notification to the Depositary.

3. Denunciation shall take effect ninety days after the date on which notification of denunciation is received by the Depositary.

4. Any Party which denounces this Convention shall be considered as also having denounced any Protocol to which it was a Party.

5. Any Party which, upon its denunciation of a Protocol is no longer a Party to any Protocol to this Convention, shall be considered as also having denounced this Convention.

Article 33 RESPONSIBILITIES OF THE DEPOSITARY

1. The Depositary shall inform the Parties, as well as the Organisation

(a) of the signature of this Convention and of any Protocol thereto and of the deposit of instruments of ratification, acceptance, approval, or accession in accordance with Articles 29 and 30;

(b) of the date on which the Convention and any Protocol will come into force in accordance with the provisions of Article 31;

(c) of notification of denunciation made in accordance with Article 32;

(d) of notification of any addition to the Convention Area in accordance with Article 3;

(e) of the amendments adopted with respect to the Convention and to any Protocol, their acceptance by the Parties and the date of their entry into force in accordance with the Provisions of Article 24; and

(f) of the adoption of new annexes and of the amendments of any annex in accordance with Article 25.

2. The original of this Convention and of any Protocol thereto shall be deposited with the Depositary who shall send certified copies thereof to the Signatories, the Parties, to the Organisation and to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the United Nations Charter.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Convention.

DONE at Noumea, New Caledonia on the twenty-fourth day of November in the year one thousand nine hundred and eighty-six in a single copy in the English and French languages, the two texts being equally authentic.

ANNEX ON ARBITRATION

Article 1

Unless the agreement referred to in Article 26 of the Convention provides otherwise, the arbitration procedure shall be in accordance with the rules set out in this Annex.

Article 2

The claimant Party shall notify the Organisation that the Parties have agreed to submit the dispute to arbitration pursuant to paragraph 2, or that paragraph 3 of Article 26 of the Convention is applicable. The notification shall state the subject matter of the arbitration and include the provisions of the Convention or any Protocol thereto, the interpretation or application of which is the subject of disagreement. The Organisation shall transmit this information to all Parties to the Convention or Protocol concerned.

Article 3

1. The Tribunal shall consist of a single arbitrator if so agreed between the Parties to the dispute within thirty days from the date of receipt of the notification for arbitration.

2. In the case of the death, disability or default of the arbitrator, the Parties to a dispute may agree upon a replacement within thirty days of such death, disability or default.

Article 4

1. Where the Parties to a dispute do not agree upon a Tribunal in accordance with Article 3 of this Annex, the Tribunal shall consist of three members:

(i) one arbitrator nominated by each Party to the dispute,

(ii) a third arbitrator who shall be nominated by agreement between the two first named and who shall act as its Chairman.

2. If the Chairman of a Tribunal is not nominated within thirty days of nomination of the second arbitrator, the Parties to a dispute shall, upon the request of one Party, submit to the Secretary-General of the Organisation within a further period of thirty days, an agreed list of qualified persons. The Secretary-General shall select the Chairman from such list as soon as possible. He shall not select a Chairman who is, or has been, a national of one Party to the dispute except with the consent of the other Party to the dispute.

3. If one Party to a dispute fails to nominate an arbitrator as provided in subparagraph l(i) within sixty days from the date of receipt of the notification for arbitration, the other Party may request the submission to the Secretary-General of the Organisation within a period of thirty days of an agreed list of qualified persons. The Secretary-General shall select the Chairman of the Tribunal from such list as soon as possible. The Chairman shall then request the Party which has not nominated an arbitrator to do so. If this Party does not nominate an arbitrator within fifteen days of such request, the Secretary-General shall, upon request of the Chairman, nominate the arbitrator from the agreed list of qualified persons.

4. In the case of the death, disability or default of an arbitrator, the Party to the dispute who nominated him shall nominate a replacement within thirty days of such death, disability or default. If the Party does not nominate a replacement, the arbitration shall proceed with the remaining arbitrators. In the case of the death, disability or default of the Chairman, a replacement shall be nominated in accordance with paragraphs 1(ii) and 2 within ninety days of such death, disability or default.

5. A list of arbitrators shall be maintained by the Secretary-General of the Organisation and composed of qualified persons nominated by the Parties. Each Party may designate for inclusion in the list four persons who shall not necessarily be its nationals. If the Parties to the dispute have failed within the specified time limits to submit to the Secretary-General an agreed list of qualified persons as provided for in paragraphs 2, 3 and 4, the Secretary-General shall select from the list maintained by him the arbitrator or arbitrators not yet nominated.

Article 5

The Tribunal may hear and determine counter-claims arising directly out of the subject matter of the dispute.

Article 6

The Tribunal may, at the request of one of the Parties to the dispute, recommend interim measures of protection.

Article 7

Each Party to the dispute shall be responsible for the costs entailed by the preparation of its own case. The remuneration of the members of the Tribunal and of all general expenses incurred by the arbitration shall be borne equally by the Parties to the dispute. The Tribunal shall keep a record of all its expenses and shall furnish a final statement thereof to the Parties.

Article 8

Any Party which has an interest of a legal nature which may be affected by the decision in the case may, after giving written notice to the Parties to the dispute which have originally initiated the procedure, intervene in the arbitration procedure with the consent of the Tribunal which should be freely given. Any intervenor shall participate at its own expense. Any such intervenor shall have the right to present evidence, briefs and oral arguments on the matter giving rise to its intervention, in accordance with procedures established pursuant to Article 9 of this Annex but shall have no rights with respect to the composition of the Tribunal.

Article 9

A Tribunal established under the provisions of this Annex shall decide its own rules of procedure.

Article 10

1. Unless a Tribunal consists of a single arbitrator, decisions of the Tribunal as to its procedure, its place of meeting, and any question related to the dispute laid before it, shall be taken by majority vote of its members. However, the absence or abstention of any member of the Tribunal who was nominated by a Party to the dispute shall not constitute an impediment to the Tribunal reaching a decision. In case of equal voting, the vote of the Chairman shall be decisive.

2. The Parties to the dispute shall facilitate the work of the Tribunal and in particular shall, in accordance with their legislation and using all means at their disposal:

(i) provide the Tribunal with all necessary documents and information; and

(ii) enable the Tribunal to enter their territory to hear witnesses or experts, and to visit the scene of the subject matter of the arbitration.

3. The failure of a Party to the dispute to comply with the provisions of paragraph 2 or to defend its case shall not preclude the Tribunal from reaching a decision and rendering an award.

Article 11

The Tribunal shall render its award within five months from the time it is established unless it finds it necessary to extend that time limit for a period not to exceed five months. The award of the Tribunal shall be accompanied by a statement of reasons for the decision. It shall be final and without appeal and shall be communicated to the Secretary-General of the Organisation who shall inform the Parties. The Parties to the dispute shall immediately comply with the award.

PROTOCOL FOR THE PREVENTION OF POLLUTION OF THE SOUTH PACIFIC REGION BY DUMPING

The Parties to the Protocol,

Being Parties to the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, adopted in Noumea, New Caledonia on the twenty-fourth day of November in the year one thousand nine hundred and eighty-six;

Recognizing the danger posed to the marine environment by pollution caused by the dumping of waste or other matter;

Considering that they have a common interest to protect the South Pacific Region from this danger, taking into account the unique environmental quality of the region;

Desiring to enter into a regional agreement consistent with the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 as provided in Article VIII thereof according to which the Contracting Parties to that Convention have undertaken to endeavour to act consistently with the objectives and provisions of such regional agreement;

Have agreed as follows:

Article 1 DEFINITIONS

For the purpose of this Protocol "Convention" means the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region adopted in Noumea, New Caledonia on the twenty-fourth day of November in the year one thousand nine hundred and eighty-six.

Article 2 GEOGRAPHICAL COVERAGE

The area to which this Protocol applies, hereinafter referred to as the "Protocol Area", shall be the Convention Area as defined in Article 2 of the Convention together with the continental shelf of a Party where it extends, in accordance with international law, outward beyond the Convention Area.

Article 3 GENERAL OBLIGATIONS

1. The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Protocol Area by dumping.

2. Dumping within the territorial sea and the exclusive economic zone or onto the continental shelf of a Party as defined in international law shall not be carried out without the express prior approval of that Party, which has the right to permit, regulate and control such dumping taking fully into account the provisions of this Protocol, and after due consideration of the matter with other Parties which by reason of their geographical situation may be adversely affected thereby.

3. National laws, regulations and measures adopted by the Parties shall be no less effective in preventing, reducing and controlling pollution by dumping than the relevant internationally recognized rules and procedures relating to the control of dumping established within the framework of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972.

Article 4 PROHIBITED SUBSTANCES

1. The dumping in the Protocol Area of wastes or other matter listed in Annex I to this Protocol is prohibited except as provided in this Protocol.

2. No provision of this Protocol is to be interpreted as preventing a Party from prohibiting, insofar as that Party is concerned the dumping of wastes or other matter not mentioned in Annex I. That Party shall notify such measures to the Organisation.

Article 5 SPECIAL PERMITS

The dumping in the Protocol Area of wastes or other matter listed in Annex II to this Protocol requires, in each case, a prior special permit.

Article 6 GENERAL PERMITS

The dumping in the Protocol Area of all wastes or other matter not listed in Annexes I and II to this Protocol requires a prior general permit.

Article 7 FACTORS GOVERNING THE ISSUE OF PERMITS

The permits referred to in Articles 5 and 6 shall be issued only after careful consideration of all the factors set forth in Annex III to this Protocol. The Organisation shall receive records of such permits.

Article 8 ALLOCATION OF SUBSTANCES TO ANNEXES

Substances are allocated to Annexes I and II of this Protocol in accordance with Annex IV.

Article 9 FORCE MAJEURE

The provisions of Articles 4, 5 and 6 shall not apply when it is necessary to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of force majeure caused by stress of weather, or in any case which constitutes adanger to human life or a real threat to vessels, aircraft, platforms, or other man-made structures at sea, if dumping appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping will be less than would otherwise occur. Such dumping shall be so conducted as to minimise the likelihood of damage to human or marine life. Such dumping shall immediately be reported to the Organisation and, either through the Organisation or directly, to any Party or Parties likely to be affected, together with full details of the circumstances and of the nature and quantities of the wastes or other matter dumped.

Article 10 EMERGENCIES

1. A Party may issue a special permit as an exception to Article 4, in emergencies arising in the Protocol Area, posing unacceptable risk relating to human health and admitting no other feasible solution. Before doing so the Party shall consult any other country or countries that are likely to be affected and the Organisation which, after consulting other Parties, and international organisations as appropriate, shall in accordance with Article 15 promptly recommend to the Party the most appropriate procedures to adopt. The Party shall follow these recommendations to the maximum extent feasible consistent with the time within which action must be taken and with the general obligation to avoid damage to the marine environment and shall inform the Organisation of the action it takes. The Parties pledge themselves to assist one another in such situations.

2. This article does not apply with respect to materials in whatever form produced for biological and chemical warfare referred to in paragraph 6 of Section A of Annex I.

3. Any Party may waive its rights under paragraph 1 at the time of, or subsequent to, ratification, acceptance or approval of, or accession to this Protocol.

Article 11 ISSUANCE OF PERMITS

1. Each Party shall designate an appropriate authority or authorities to:

(a) issue the special permits provided for in Article 5 and in the emergency circumstances provided for in Article 10;

(b) issue the general permits provided for in Article 6;

(c) keep records of the nature and quantities of the wastes or other matter permitted to be dumped and of the location, date and method of dumping; and

(d) monitor individually, or in collaboration with other Parties, and competent international organisations, the condition of the Protocol Area for the purposes of this Protocol.

2. The appropriate authority or authorities of each Party shall issue the permits provided for in Articles 5 and 6 and in the emergency circumstances provided for in Article 10 in respect of the wastes or other matter intended for dumping:

(a) loaded in its territory or at its offshore terminals; or

(b) loaded by vessels flying its flag or vessels or aircraft of its registry when the loading occurs in the territory or at the offshore terminals of a State not Party to this Protocol.

3. In issuing permits under paragraphs 1 (a) and (b) the appropriate authority or authorities shall comply with Annex III together with such additional criteria, measures and requirements as they may consider relevant.

Article 12 IMPLEMENTATION AND ENFORCEMENT

1. Each Party shall apply the measures required to implement this Protocol to all:

(a) vessels flying its flag and vessels and aircraft of its registry;

(b) vessels and aircraft loading in its territory or at its offshore terminals wastes or other matter which are to be dumped; and

(c) vessels, aircraft and fixed or floating platforms believed to be engaged in dumping in areas under its jurisdiction.

2. Each Party shall take in its territory appropriate measures to prevent and punish conduct in contravention of the provisions of this Protocol.

3. The Parties agree to co-operate in the development of procedures for the effective application of this Protocol particularly on the high seas, including procedures for the reporting of vessels and aircraft observed dumping in contravention of the Protocol.

4. This Protocol shall not apply to those vessels and aircraft entitled to sovereign immunity under international law. However, each Party shall ensure by the adoption of appropriate measures that such vessels and aircraft owned or operated by it act in a manner consistent with the object and purpose of this Protocol and shall inform the Organisation accordingly.

Article 13 ADOPTION OF OTHER MEASURES

Nothing in this Protocol shall affect the right of each Party to adopt other measures, in accordance with the principles of international law, to prevent dumping.

Article 14 REPORTING OF DUMPING INCIDENTS

Each Party undertakes to issue instructions to its maritime inspection vessels and aircraft and to other appropriate services to report to its authorities any incidents or conditions in the Protocol Area which give rise

to suspicions that dumping in contravention of the provisions of this Protocol has occurred or is about to occur. That Party shall, if it considers it appropriate, report accordingly to the Organisation and to any other Party concerned.

Article 15 INSTITUTIONAL ARRANGEMENTS

The Parties designate the Organisation to carry out the following functions:

(a)to assist the Parties, upon request, in the communication of reports in accordance with Articles 9 and 14;

(b) to convey to the Parties concerned all notifications received by the Organisation in accordance with Articles 4(2) and 10;

(c) to transmit to the International Maritime Organisation as the organisation responsible for the secretariat functions under the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 records and any other information received in accordance with Article 7;

(d) to keep itself informed on evolving international standards and the results of research and investigation, and to advise meetings of Parties to this Protocol of such developments and any modification of the Annexes which may become desirable; and

(e) to carry out other duties assigned to it by the Parties.

Article 16 MEETING OF THE PARTIES

1. Ordinary meetings of the Parties to this Protocol shall be held in conjunction with ordinary meetings of the Parties to the Convention held pursuant to Article 22 of the Convention. The Parties to this Protocol may also hold extraordinary meetings in conformity with Article 22 of the Convention.

2. It shall be the function of the meetings of the Parties to this Protocol to:

(a) keep under review the implementation of this Protocol, and to consider the efficacy of the measures adopted and the need for any other measures, in particular in the form of Annexes.
(b) study and consider the records of the permits issued in accordance with Articles 5, 6, 7 and the emergency situation in Article 10, and of the dumping which has taken place;

(c) review and amend as required any Annex to this Protocol taking into account Annex IV;

(d) adopt as necessary guidelines for the preparation of records and procedures to be followed in submitting such records for the purposes of Article 7;

(e) develop, adopt and implement in consultation with the Organisation and other competent international organisations procedures pursuant to Article 10 including basic criteria for determining emergency circumstances and procedures for consultative advice and the safe disposal, storage or destruction of matter in such circumstances.

(f) invite, as necessary, the appropriate scientific body or bodies to collaborate with and to advise the Parties and the Organisation on any scientific or technical aspects relevant to this Protocol, including particularly the content and applicability of the Annexes; and

(g) perform such other functions as may be appropriate for the implementation of this Protocol.

3. The adoption of amendments to the Annexes to this Protocol pursuant to Article 25 of the Convention shall require a three-fourths majority vote of the Parties to this Protocol.

Article 17 RELATIONSHIP BETWEEN THIS PROTOCOL AND THE CONVENTION

1. The provisions of the Convention relating to any Protocol shall apply with respect to the present Protocol.

2. The rules of procedures and the financial rules adopted pursuant to Article 22 of the Convention shall apply with respect to this Protocol, unless the Parties to this Protocol agree otherwise.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Protocol.

DONE at Noumea, New Caledonia on the twenty-fifth day of November in the year one thousand nine hundred and eighty-six, in a single copy in the English and French languages, the two texts being equally authentic.

ANNEX I

A

The following substances and materials are listed for the purposes of Article 4 of this Protocol:

1. Organohalogen compounds.

2. Mercury and mercury compounds.

3. Cadmium and cadmium compounds.

4. Persistent plastics and other persistent synthetic materials, for example, netting and ropes, which may remain in suspension in the sea in such a manner as to interfere materially with fishing, navigation or other legitimate uses of the sea.

5. Crude oil and its wastes, refined petroleum products, petroleum distillate residues and any mixtures containing any of these taken on board for the purpose of dumping.
6. Materials in whatever form (e.g. solids, liquids, semi-liquids, gases, or in a living state) produced for biological and chemical warfare.

7. Organosphosphorous compounds.

B

Section A does not apply to substances, other than substances produced for biological or chemical warfare, which are rapidly rendered harmless by physical, chemical or biological processes in the sea provided they do not:

- make edible marine organisms unpalatable, or
- endanger human health or that of marine biota.

The consultative procedure provided for under Article 10 shall be followed by a Party if there is doubt about the harmlessness of the substance.

C

This Annex does not apply to wastes or other materials, such as sewage sludges and dredged spoils, containing the matters referred to in paragraphs 1-5 of Section A as trace contaminants. The dumping of such wastes shall be subject to the provisions of Annexes II and III as appropriate.

ANNEX II

The following substances and materials requiring special care are listed for the purposes of Article 5 of this Protocol.

A

Wastes containing a significant amount of the matters listed below:

arsenic)
lead) and their compounds
copper)
zinc)

organosilicon compounds
cyanides
fluorides
pesticides and their by-products not covered in Annex I.

B

In the issue of permits for the dumping of acids and alkalis, consideration shall be given to the possiblepresence in such wastes of the substances listed in section A and to the following additional substances:

beryllium)
chromium) and their compounds
nickel)
vanadium)

C

Containers, scrap metal and other bulky wastes liable to sink to the sea bottom which may present a serious obstacle to fishing or navigation.

D

Substances which, though of a non-toxic nature, may become harmful due to the quantities in which they are dumped, or which are liable to seriously reduce amenities.

ANNEX III

Provisions to be considered in establishing criteria governing the issue of permits for the dumping of matter at sea, taking into account Article 7 of this Protocol, include:

A. CHARACTERISTICS AND COMPOSITION OF THE MATTER

1. Total amount and average composition of matter dumped (e.g. per year).

2. Form (e.g. solid, sludge, liquid, or gaseous).
3. Properties: physical (e.g. solubility and density), chemical and biochemical (e.g. oxygen demand, nutrients) and biological (e.g. presence of viruses, bacteria, yeasts, parasites).

4. Toxicity.

5. Persistence: physical, chemical and biological.

6. Accumulation and biotransformation in biological materials or sediments.

7. Susceptibility to physical, chemical and biochemical changes and interaction in the aquatic environment with other dissolved organic and inorganic materials.

8. Probability of production of taints or other changes reducing marketability of resources (e.g. fish, shellfish, etc.).

9. In issuing a permit for dumping, Parties should consider whether an adequate scientific basis and sufficient knowledge of the composition and characteristics of the wastes or other matter proposed for dumping exist for assessing the impact of such material on the marine environment and human health.

B. CHARACTERISTICS OF DUMPING SITE AND METHOD OF DEPOSIT

1. Location (e.g. co-ordinates of the dumping area, depth and distance from the coast), location in relation to other areas (e.g. amenity areas, spawning, nursery and fishing areas and exploitable resources).

2. Rate of disposal per specific period (e.g. quantity per day, per week, per month).

3 Methods of packaging and containment, if any.4. Initial dilution achieved by proposed methods of release.

5. Dispersal characteristics (e.g. effects of currents, tides and wind on horizontal transport and vertical mixing).

6. Water characteristics (e.g. temperature, pH, salinity, stratification, oxygen indices of pollution, dissolved oxygen (DO), chemical oxygen demand (COD), biochemical oxygen demand (BOD), nitrogen present in organic and mineral form including ammonia, suspended matter, other nutrients and productivity).

7. Bottom characteristics (e.g. topography, geochemical and geological characteristics and biological productivity).

8. Existence and effects of other dumpings which have been made in the dumping area (e.g. heavy metal background reading and organic carbon content).

9. In issuing a permit for dumping, Parties should consider whether an adequate scientific basis exists for assessing the consequences of such dumping, as outlined in this Annex taking into account seasonal variations.

C. GENERAL CONSIDERATIONS AND CONDITIONS

1. Possible effects on amenities (e.g. presence of floating or stranded materials, turbidity, objectionable odour, discolouration and foaming).

2. Possible effects on marine life, fish and shellfish culture, fish stocks and fisheries, seaweed harvesting and culture.

3. Possible effects on other uses of the sea (e.g. impairment of water quality for industrial use, underwater corrosion of structure, interference with ship operations from floating materials, interference with fishing or navigation through deposit of waste or solid objects on the sea floor and protection of areas of special importance of scientific or conservation purposes).

4. The practical availability of alternative land-based methods of treatment, disposal or elimination, or of treatment to render the matter less harmful for dumping at sea.

D. REFERENCES

Reference should also be made to "Guidelines for the Implementation and Uniform Interpretation of Annex III" as adopted by the Consultative Meeting of Contracting Parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972.

ANNEX IV

ALLOCATION OF SUBSTANCES TO ANNEXES

1. Substances are allocated to Annexes I and II on the ground of any combination of the following criteria:

Persistence and degradability,
Bioaccumulation potential,
Toxicity to marine life,
Toxicity to man, domestic animals, marine mammals and birds
preying on marine organisms,
Carcinogenicity and mutagenicity,
Ability to interfere with other legitimate uses of the sea.

2. Annex I substances are those which have a high degree of persistence coupled with:

(a) the ability to accumulate to harmful levels in terms of toxicity to marine organisms and their predators, to domestic animals or to man; or

(b) the ability to accumulate through marine pathways to levels harmful in terms of carcinogenicity or mutagenicity to domestic animals or to man; or

(c) the ability to cause interference with fisheries, amenities or other legitimate uses of the sea.

3. Annex II substances are all those considered suitable for inclusion in Annexes except for those allocated to Annex I.

PROTOCOL CONCERNING CO-OPERATION IN COMBATING POLLUTION EMERGENCIES IN THE SOUTH PACIFIC REGION

The Parties to this Protocol,

Being Parties to the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region adopted in Noumea, New Caledonia on the twenty-fourth day of November in the year one thousand nine hundred and eighty-six;

Conscious that the exploration, development and use of offshore and near shore minerals and the use of hazardous substances, as well as related vessel traffic, pose the threat of significant pollution emergencies in the South Pacific Region;

Aware that the islands of the region are particularly vulnerable to damage resulting from significant pollution due to the sensitivity of their ecosystems and their economic reliance on the continuous utilization of their coastal areas;

Recognizing that in the event of a pollution emergency or threat thereof, prompt and effective action should be taken initially at the national level to organise and co-ordinate prevention, mitigation and cleanup activities;

Recognizing further the importance of rational preparation and mutual co-operation and assistance in responding effectively to pollution emergencies or the threat thereof;

Determined to avert ecological damage to the marine environment and coastal areas of the South Pacific Region through the adoption of national contingency plans to be co-ordinated with appropriate bilateral and sub-regional contingency plans;

Have agreed as follows:

Article 1 DEFINITIONS

For the purposes of this Protocol:

(a) "Convention" means the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region adopted in Noumea, New Caledonia on twenty-fourth day of November in the year one thousand nine hundred and eighty-six;

(b) "South Pacific Region" means the Convention Area as defined in Article 2 of the Convention and adjacent coastal areas;

(c) "related interests" of a Party refer, inter alia, to:

(i) maritime, coastal, port, or estuarine activities;

(ii) fishing activities and the management and conservation of living and non-living marine resources, including coastal ecosystems;

(iii) the cultural value of the area concerned and the exercise of traditional customary rights therein;

(iv) the health of the coastal population;

(v) tourist and recreational activities;

(d) "pollution incident" means a discharge or significant threat of a discharge of oil or other hazardous substance, however caused, resulting in pollution or an imminent threat of pollution to the marine and coastal environment or which adversely affects the related interests of one or more of the Parties and of a magnitude that requires emergency action or other immediate response for the purpose of minimizing its effects or eliminating its threat.

Article 2 APPLICATION

This Protocol applies to pollution incidents in the South Pacific Region.

Article 3 GENERAL PROVISIONS

1. The Parties to this Protocol shall, within their respective capabilities, co-operate in taking all necessary measures for the protection of the South Pacific Region from the threat and effects of pollution incidents.

2. The Parties shall, within their respective capabilities, establish and maintain, or ensure the establishment and maintenance of, the means of preventing and combating pollution incidents, and reducing the risk thereof. Such means shall include the enactment, as necessary, of relevant legislation, the preparation of contingency plans, the development or strengthening of the capability to respond to a pollution incident and the designation of a national authority responsible for the implementation of this Protocol.

Article 4 EXCHANGE OF INFORMATION

Each Party shall periodically exchange with other Parties, either directly or through the Organisation, current information relating to the implementation of this Protocol, including the identification of the officials charged with carrying out the activities covered by it, and information on its laws, regulations, institutions and operational procedures relating to the prevention and the means of reducing and combating the harmful effects of pollution incidents.

Article 5 COMMUNICATION OF INFORMATION CONCERNING, AND REPORTING OF, POLLUTION INCIDENTS

1. Each Party shall establish appropriate procedures to ensure that information regarding pollution incidents is reported as rapidly as possible and shall, inter alia:

(a) require appropriate officials of its government to report to
it the occurrence of any pollution incident which comes to their attention;

(b) require masters of vessels flying its flag and persons in charge of offshore facilities operating under its jurisdiction to report to it the existence of any pollution incident involving their vessel or facilities;

(c) establish procedures to encourage masters of vessels flying its flag or of its registry to report, to the extent practicable, the existence of any pollution incident involving their vessel to any coastal State in the South Pacific Region which they deem likely to be seriously affected;

(d) request masters of all vessels and pilots of all aircraft operating in the vicinity of its coasts to report to it any pollution incident of which they are aware.

2. In the event of receiving a report regarding a pollution incident, each Party shall promptly inform all other Parties whose interests are likely to be affected by such incident as well as the flag State of any vessel involved in it. Each Party shall also inform the Organisation and, directly or through the Organisation, the competent international organisations. Furthermore, it shall inform, as soon as feasible, such other Parties and organisations of any measures it has itself taken to minimize or reduce pollution or the threat thereof.

Article 6 MUTUAL ASSISTANCE

1. Each Party requiring assistance to deal with a pollution incident may request, either directly or through the Organisation, the assistance of the other Parties. The Party requesting assistance shall specify the type of assistance it requires. The Parties whose assistance is requested under this article shall, within their capabilities,

provide this assistance based on an agreement with the requesting Party or Parties and taking into account, in particular in the case of pollution by hazardous substances other than oil, the technological means available to them. If the Parties responding jointly within the framework of this article so request, the Organisation may co-ordinate the activities undertaken as a result.2. Each Party shall facilitate the movement of technical personnel, equipment and material necessary for responding to a pollution incident, into, out of and through its territory.

Article 7 OPERATIONAL MEASURES

Each Party shall, within its capabilities, take steps including those outlined below in responding to a pollution incident:

(a) make a preliminary assessment of the incident,including the type and extent of existing or likely pollution effects;

(b) promptly communicate information concerning the situation to other Parties and the Organisation pursuant to article 5;

(c) promptly determine its ability to take effective measures to respond to the pollution incident and the assistance that might be required and to communicate any request for such assistance to the Party or Parties concerned or the Organisation in accordance with article 6;

(d) consult, as appropriate, with other affected or concerned Parties or the Organisation in determining the necessary response to a pollution incident;

(e) carry out the necessary measures to prevent, eliminate or control the effects of the pollution incident, including surveillance and monitoring of the situation.

Article 8 SUB-REGIONAL ARRANGEMENTS

1. The Parties should develop and maintain appropriate sub-regional arrangements, bilateral or multilateral, in particular to facilitate the steps provided for in articles 6 and 7 and taking into account the general provisions of this Protocol.

2. The Parties to any arrangements shall notify the other Parties to this Protocol as well as the Organisation of the conclusion of such sub-regional arrangements and the provisions thereof.

Article 9 INSTITUTIONAL ARRANGEMENTS

The Parties designate the Organisation to carry out the following functions:

(a) assisting Parties, upon request, in the communication of reports of pollution incidents in accordance with article 5;

(b) assisting Parties, upon request, in the organisation of a response action to a pollution incident, in accordance with article 6;

(c) assisting Parties, upon request, in the following areas:

(i) the preparation, periodic review, and updating of the contingency plans, referred to in paragraph 2 of Article 3, with a view, inter alia, to promoting the compatibility of the plans of the Parties; and

(ii) the identification of training courses and programmes;

(d) assisting the Parties upon request, on a regional or sub-regional basis, in the following areas:

(i) the co-ordination of emergency response activities; and

(ii) the provision of a forum for discussions concerning emergency response and other related topics;

(e) establishing and maintaining liaison with:

(i) appropriate regional and international organisations; and

(ii) appropriate private organisations, including producers and transporters of substances which could give rise to a pollution incident in the South Pacific Region and clean-up contractors and cooperatives;

(f) maintaining an appropriate current inventory of available emergency response equipment;

(g) disseminating information related to the prevention and control of pollution incidents and the removal of pollutants resulting therefrom;

(h) identifying or maintaining emergency response communications systems;

(i) encouraging research by the Parties, as well as by appropriate international and private organisations, on the environmental effects of pollution incidents, the environmental effects of pollution incident control materials and other matters related to pollution incidents;

(j) assisting Parties in the exchange of information pursuant to article 4; and

(k) preparing reports and carrying out other duties assigned to it by the Parties.

Article 10 MEETINGS OF THE PARTIES

1. Ordinary meetings of the Parties to this Protocol shall be held in conjunction with ordinary meetings of the Parties to the Convention, held pursuant to article 22 of the Convention. The Parties to this Protocol may also hold extraordinary meetings as provided for in article 22 of the Convention.

2. It shall be the function of the meetings of the Parties:

(a) to review the operation of this Protocol and to consider special technical arrangements and other measures to improve its effectiveness;

(b) to consider any measures to improve cooperation under this Protocol including, in accordance with article 24 of the Convention, amendments to this Protocol.

Article 11 RELATIONSHIP BETWEEN THIS PROTOCOL AND THE CONVENTION

1. The provisions of the Convention relating to any Protocol shall apply with respect to the present Protocol.

2. The rules of procedure and the financial rules adopted pursuant to article 22 of the Convention shall apply with respect to this Protocol, unless the Parties to this Protocol agree otherwise.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

DONE at Noumea, New Caledonia on the twenty-fifth day of November in the year one thousand nine hundred and eighty-six, in a single copy in the English and French languages, the two texts being equally authentic.

Patent Cooperation Treaty (PCT)

Done at Washington on June 19, 1970,
amended on September 28, 1979,
modified on February 3, 1984, and on October 3, 2001

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Editor's Note: For details concerning amendments and modifications to the Patent Cooperation Treaty (PCT), and for access to decisions of the Assembly of the International Patent Cooperation Union (PCT Assembly) concerning their entry into force and transitional arrangements, reference should be made to the relevant reports of the PCT Assembly available from the International Bureau or via the WIPO website at:
www.wipo.int/pct/en/meetings/assemblies/reports.html.

Patent Cooperation Treaty

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The Contracting States,

Desiring to make a contribution to the progress of science and technology,

Desiring to perfect the legal protection of inventions,

Desiring to simplify and render more economical the obtaining of protection for inventions where protection is sought in several countries,

Desiring to facilitate and accelerate access by the public to the technical information contained in documents describing new inventions,

Desiring to foster and accelerate the economic development of developing countries through the adoption of measures designed to increase the efficiency of their legal systems, whether national or regional, instituted for the protection of inventions by providing easily accessible information on the availability of technological solutions applicable to their special needs and by facilitating access to the ever expanding volume of modern technology,

Convinced that cooperation among nations will greatly facilitate the attainment of these aims,

Have concluded the present Treaty.

INTRODUCTORY PROVISIONS

Article 1
Establishment of a Union

(1) The States party to this Treaty (hereinafter called "the Contracting States") constitute a Union for cooperation in the filing, searching, and examination, of applications for the protection of inventions, and for rendering special technical services. The Union shall be known as the International Patent Cooperation Union.

(2) No provision of this Treaty shall be interpreted as diminishing the rights under the Paris Convention for the Protection of Industrial Property of any national or resident of any country party to that Convention.

Article 2
Definitions

For the purposes of this Treaty and the Regulations and unless expressly stated otherwise:

(i) "application" means an application for the protection of an invention; references to an "application" shall be construed as references to applications for patents for inventions, inventors' certificates, utility certificates, utility models, patents or certificates of addition, inventors' certificates of addition, and utility certificates of addition;

(ii) references to a "patent" shall be construed as references to patents for inventions, inventors' certificates, utility certificates, utility models, patents or certificates of addition, inventors' certificates of addition, and utility certificates of addition;

(iii) "national patent" means a patent granted by a national authority;

(iv) "regional patent" means a patent granted by a national or an intergovernmental authority having the power to grant patents effective in more than one State;

(v) "regional application" means an application for a regional patent;

(vi) references to a "national application" shall be construed as references to applications for national patents and regional patents, other than applications filed under this Treaty;

(vii) "international application" means an application filed under this Treaty;

(viii) references to an “application” shall be construed as references to international applications and national applications;

(ix) references to a “patent” shall be construed as references to national patents and regional patents;

(x) references to “national law” shall be construed as references to the national law of a Contracting State or, where a regional application or a regional patent is involved, to the treaty providing for the filing of regional applications or the granting of regional patents;

(xi) “priority date,” for the purposes of computing time limits, means:

(a) where the international application contains a priority claim under Article 8, the filing date of the application whose priority is so claimed;

(b) where the international application contains several priority claims under Article 8, the filing date of the earliest application whose priority is so claimed;

(c) where the international application does not contain any priority claim under Article 8, the international filing date of such application;

(xii) “national Office” means the government authority of a Contracting State entrusted with the granting of patents; references to a “national Office” shall be construed as referring also to any intergovernmental authority which several States have entrusted with the task of granting regional patents, provided that at least one of those States is a Contracting State, and provided that the said States have authorized that authority to assume the obligations and exercise the powers which this Treaty and the Regulations provide for in respect of national Offices;

(xiii) “designated Office” means the national Office of or acting for the State designated by the applicant under Chapter I of this Treaty;

(xiv) “elected Office” means the national Office of or acting for the State elected by the applicant under Chapter II of this Treaty;

(xv) “receiving Office” means the national Office or the intergovernmental organization with which the international application has been filed;

(xvi) “Union” means the International Patent Cooperation Union;

(xvii) “Assembly” means the Assembly of the Union;

(xviii) “Organization” means the World Intellectual Property Organization;

(xix) “International Bureau” means the International Bureau of the Organization and, as long as it subsists, the United International Bureaux for the Protection of Intellectual Property (BIRPI);

(xx) “Director General” means the Director General of the Organization and, as long as BIRPI subsists, the Director of BIRPI.

CHAPTER I
INTERNATIONAL APPLICATION AND INTERNATIONAL SEARCH

Article 3
The International Application

(1) Applications for the protection of inventions in any of the Contracting States may be filed as international applications under this Treaty.

(2) An international application shall contain, as specified in this Treaty and the Regulations, a request, a description, one or more claims, one or more drawings (where required), and an abstract.

(3) The abstract merely serves the purpose of technical information and cannot be taken into account for any other purpose, particularly not for the purpose of interpreting the scope of the protection sought.

(4) The international application shall:

(i) be in a prescribed language;

(ii) comply with the prescribed physical requirements;

(iii) comply with the prescribed requirement of unity of invention;

(iv) be subject to the payment of the prescribed fees.

Article 4
The Request

(1) The request shall contain:

(i) a petition to the effect that the international application be processed according to this Treaty;

(ii) the designation of the Contracting State or States in which protection for the invention is desired on the basis of the international application (“designated States”); if for any designated State a regional patent is available and the applicant wishes to obtain a regional patent rather than a national patent, the request shall so indicate; if, under a treaty concerning a regional patent, the applicant cannot limit his application to certain of the States party to that treaty, designation of one

of those States and the indication of the wish to obtain the regional patent shall be treated as designation of all the States party to that treaty; if, under the national law of the designated State, the designation of that State has the effect of an application for a regional patent, the designation of the said State shall be treated as an indication of the wish to obtain the regional patent;

(iii) the name of and other prescribed data concerning the applicant and the agent (if any);

(iv) the title of the invention;

(v) the name of and other prescribed data concerning the inventor where the national law of at least one of the designated States requires that these indications be furnished at the time of filing a national application. Otherwise, the said indications may be furnished either in the request or in separate notices addressed to each designated Office whose national law requires the furnishing of the said indications but allows that they be furnished at a time later than that of the filing of a national application.

(2) Every designation shall be subject to the payment of the prescribed fee within the prescribed time limit.

(3) Unless the applicant asks for any of the other kinds of protection referred to in Article 43, designation shall mean that the desired protection consists of the grant of a patent by or for the designated State. For the purposes of this paragraph, Article 2(ii) shall not apply.

(4) Failure to indicate in the request the name and other prescribed data concerning the inventor shall have no consequence in any designated State whose national law requires the furnishing of the said indications but allows that they be furnished at a time later than that of the filing of a national application. Failure to furnish the said indications in a separate notice shall have no consequence in any designated State whose national law does not require the furnishing of the said indications.

Article 5
The Description

The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

Article 6
The Claims

The claim or claims shall define the matter for which protection is sought. Claims shall be clear and concise. They shall be fully supported by the description.

Article 7
The Drawings

(1) Subject to the provisions of paragraph (2)(ii), drawings shall be required when they are necessary for the understanding of the invention.

(2) Where, without being necessary for the understanding of the invention, the nature of the invention admits of illustration by drawings:

(i) the applicant may include such drawings in the international application when filed,

(ii) any designated Office may require that the applicant file such drawings with it within the prescribed time limit.

Article 8
Claiming Priority

(1) The international application may contain a declaration, as prescribed in the Regulations, claiming the priority of one or more earlier applications filed in or for any country party to the Paris Convention for the Protection of Industrial Property.

(2)(a) Subject to the provisions of subparagraph (b), the conditions for, and the effect of, any priority claim declared under paragraph (1) shall be as provided in Article 4 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property.

(b) The international application for which the priority of one or more earlier applications filed in or for a Contracting State is claimed may contain the designation of that State. Where, in the international application, the priority of one or more national applications filed in or for a designated State is claimed, or where the priority of an international application having designated only one State is claimed, the conditions for, and the effect of, the priority claim in that State shall be governed by the national law of that State.

Article 9
The Applicant

(1) Any resident or national of a Contracting State may file an international application.

(2) The Assembly may decide to allow the residents and the nationals of any country party to the Paris Convention for the Protection of Industrial Property which is not party to this Treaty to file international applications.

(3) The concepts of residence and nationality, and the application of those concepts in cases where there are several applicants or where the applicants are not the same for all the designated States, are defined in the Regulations.

Article 10
The Receiving Office

The international application shall be filed with the prescribed receiving Office, which will check and process it as provided in this Treaty and the Regulations.

Article 11
Filing Date and Effects of the International Application

(1) The receiving Office shall accord as the international filing date the date of receipt of the international application, provided that that Office has found that, at the time of receipt:

(i) the applicant does not obviously lack, for reasons of residence or nationality, the right to file an international application with the receiving Office,

(ii) the international application is in the prescribed language,

(iii) the international application contains at least the following elements:

(a) an indication that it is intended as an international application,

(b) the designation of at least one Contracting State,

(c) the name of the applicant, as prescribed,

(d) a part which on the face of it appears to be a description,

(e) a part which on the face of it appears to be a claim or claims.

(2)(a) If the receiving Office finds that the international application did not, at the time of receipt, fulfill the requirements listed in paragraph (1), it

shall, as provided in the Regulations, invite the applicant to file the required correction.

(b) If the applicant complies with the invitation, as provided in the Regulations, the receiving Office shall accord as the international filing date the date of receipt of the required correction.

(3) Subject to Article 64(4), any international application fulfilling the requirements listed in items (i) to (iii) of paragraph (1) and accorded an international filing date shall have the effect of a regular national application in each designated State as of the international filing date, which date shall be considered to be the actual filing date in each designated State.

(4) Any international application fulfilling the requirements listed in items (i) to (iii) of paragraph (1) shall be equivalent to a regular national filing within the meaning of the Paris Convention for the Protection of Industrial Property.

Article 12
Transmittal of the International Application to the International Bureau and the International Searching Authority

(1) One copy of the international application shall be kept by the receiving Office (“home copy”), one copy (“record copy”) shall be transmitted to the International Bureau, and another copy (“search copy”) shall be transmitted to the competent International Searching Authority referred to in Article 16, as provided in the Regulations.

(2) The record copy shall be considered the true copy of the international application.

(3) The international application shall be considered withdrawn if the record copy has not been received by the International Bureau within the prescribed time limit.

Article 13
Availability of Copy of the International Application to Designated Offices

(1) Any designated Office may ask the International Bureau to transmit to it a copy of the international application prior to the communication provided for in Article 20, and the International Bureau shall transmit such copy to the designated Office as soon as possible after the expiration of one year from the priority date.

(2)(a) The applicant may, at any time, transmit a copy of his international application to any designated Office.

(b) The applicant may, at any time, ask the International Bureau to transmit a copy of his international application to any designated Office, and the International Bureau shall transmit such copy to the designated Office as soon as possible.

(c) Any national Office may notify the International Bureau that it does not wish to receive copies as provided for in subparagraph (b), in which case that subparagraph shall not be applicable in respect of that Office.

Article 14
Certain Defects in the International Application

(1)(a) The receiving Office shall check whether the international application contains any of the following defects, that is to say:

(i) it is not signed as provided in the Regulations;

(ii) it does not contain the prescribed indications concerning the applicant;

(iii) it does not contain a title;

(iv) it does not contain an abstract;

(v) it does not comply to the extent provided in the Regulations with the prescribed physical requirements.

(b) If the receiving Office finds any of the said defects, it shall invite the applicant to correct the international application within the prescribed time limit, failing which that application shall be considered withdrawn and the receiving Office shall so declare.

(2) If the international application refers to drawings which, in fact, are not included in that application, the receiving Office shall notify the applicant accordingly and he may furnish them within the prescribed time limit and, if he does, the international filing date shall be the date on which the drawings are received by the receiving Office. Otherwise, any reference to the said drawings shall be considered non-existent.

(3)(a) If the receiving Office finds that, within the prescribed time limits, the fees prescribed under Article 3(4)(iv) have not been paid, or no fee prescribed under Article 4(2) has been paid in respect of any of the designated States, the international application shall be considered withdrawn and the receiving Office shall so declare.

(b) If the receiving Office finds that the fee prescribed under Article 4(2) has been paid in respect of one or more (but less than all) designated States within the prescribed time limit, the designation of those States in respect of which it has not been paid within the prescribed time limit shall be considered withdrawn and the receiving Office shall so declare.

(4) If, after having accorded an international filing date to the international application, the receiving Office finds, within the prescribed time limit, that any of the requirements listed in items (i) to (iii) of Article 11(1) was not complied with at that date, the said application shall be considered withdrawn and the receiving Office shall so declare.

Article 15
The International Search

(1) Each international application shall be the subject of international search.

(2) The objective of the international search is to discover relevant prior art.

(3) International search shall be made on the basis of the claims, with due regard to the description and the drawings (if any).

(4) The International Searching Authority referred to in Article 16 shall endeavor to discover as much of the relevant prior art as its facilities permit, and shall, in any case, consult the documentation specified in the Regulations.

(5)(a) If the national law of the Contracting State so permits, the applicant who files a national application with the national Office of or acting for such State may, subject to the conditions provided for in such law, request that a search similar to an international search (“international-type search”) be carried out on such application.

(b) If the national law of the Contracting State so permits, the national Office of or acting for such State may subject any national application filed with it to an international-type search.

(c) The international-type search shall be carried out by the International Searching Authority referred to in Article 16 which would be competent for an international search if the national application were an international application and were filed with the Office referred to in subparagraphs (a) and (b). If the national application is in a language which the International Searching Authority considers it is not equipped to handle, the international-type search shall be carried out on a translation

prepared by the applicant in a language prescribed for international applications and which the International Searching Authority has undertaken to accept for international applications. The national application and the translation, when required, shall be presented in the form prescribed for international applications.

Article 16
The International Searching Authority

(1) International search shall be carried out by an International Searching Authority, which may be either a national Office or an intergovernmental organization, such as the International Patent Institute, whose tasks include the establishing of documentary search reports on prior art with respect to inventions which are the subject of applications.

(2) If, pending the establishment of a single International Searching Authority, there are several International Searching Authorities, each receiving Office shall, in accordance with the provisions of the applicable agreement referred to in paragraph (3)(b), specify the International Searching Authority or Authorities competent for the searching of international applications filed with such Office.

(3)(a) International Searching Authorities shall be appointed by the Assembly. Any national Office and any intergovernmental organization satisfying the requirements referred to in subparagraph (c) may be appointed as International Searching Authority.

(b) Appointment shall be conditional on the consent of the national Office or intergovernmental organization to be appointed and the conclusion of an agreement, subject to approval by the Assembly, between such Office or organization and the International Bureau. The agreement shall specify the rights and obligations of the parties, in particular, the formal undertaking by the said Office or organization to apply and observe all the common rules of international search.

(c) The Regulations prescribe the minimum requirements, particularly as to manpower and documentation, which any Office or organization must satisfy before it can be appointed and must continue to satisfy while it remains appointed.

(d) Appointment shall be for a fixed period of time and may be extended for further periods.

(e) Before the Assembly makes a decision on the appointment of any national Office or intergovernmental organization, or on the extension of its appointment, or before it allows any such appointment to lapse, the

Assembly shall hear the interested Office or organization and seek the advice of the Committee for Technical Cooperation referred to in Article 56 once that Committee has been established.

Article 17
Procedure before the International Searching Authority

(1) Procedure before the International Searching Authority shall be governed by the provisions of this Treaty, the Regulations, and the agreement which the International Bureau shall conclude, subject to this Treaty and the Regulations, with the said Authority.

(2)(a) If the International Searching Authority considers

(i) that the international application relates to a subject matter which the International Searching Authority is not required, under the Regulations, to search, and in the particular case decides not to search, or

(ii) that the description, the claims, or the drawings, fail to comply with the prescribed requirements to such an extent that a meaningful search could not be carried out,

the said Authority shall so declare and shall notify the applicant and the International Bureau that no international search report will be established.

(b) If any of the situations referred to in subparagraph (a) is found to exist in connection with certain claims only, the international search report shall so indicate in respect of such claims, whereas, for the other claims, the said report shall be established as provided in Article 18.

(3)(a) If the International Searching Authority considers that the international application does not comply with the requirement of unity of invention as set forth in the Regulations, it shall invite the applicant to pay additional fees. The International Searching Authority shall establish the international search report on those parts of the international application which relate to the invention first mentioned in the claims (“main invention”) and, provided the required additional fees have been paid within the prescribed time limit, on those parts of the international application which relate to inventions in respect of which the said fees were paid.

(b) The national law of any designated State may provide that, where the national Office of that State finds the invitation, referred to in subparagraph (a), of the International Searching Authority justified and where the applicant has not paid all additional fees, those parts of the international application which consequently have not been searched shall, as far as effects in that State are concerned, be considered

withdrawn unless a special fee is paid by the applicant to the national Office of that State.

Article 18
The International Search Report

(1) The international search report shall be established within the prescribed time limit and in the prescribed form.

(2) The international search report shall, as soon as it has been established, be transmitted by the International Searching Authority to the applicant and the International Bureau.

(3) The international search report or the declaration referred to in Article 17(2)(a) shall be translated as provided in the Regulations. The translations shall be prepared by or under the responsibility of the International Bureau.

Article 19
Amendment of the Claims before the International Bureau

(1) The applicant shall, after having received the international search report, be entitled to one opportunity to amend the claims of the international application by filing amendments with the International Bureau within the prescribed time limit. He may, at the same time, file a brief statement, as provided in the Regulations, explaining the amendments and indicating any impact that such amendments might have on the description and the drawings.

(2) The amendments shall not go beyond the disclosure in the international application as filed.

(3) If the national law of any designated State permits amendments to go beyond the said disclosure, failure to comply with paragraph (2) shall have no consequence in that State.

Article 20
Communication to Designated Offices

(1)(a) The international application, together with the international search report (including any indication referred to in Article 17(2)(b)) or the declaration referred to in Article 17(2)(a), shall be communicated to each designated Office, as provided in the Regulations, unless the designated Office waives such requirement in its entirety or in part.

(b) The communication shall include the translation (as prescribed) of the said report or declaration.

(2) If the claims have been amended by virtue of Article 19(1), the communication shall either contain the full text of the claims both as filed and as amended or shall contain the full text of the claims as filed and specify the amendments, and shall include the statement, if any, referred to in Article 19(1).

(3) At the request of the designated Office or the applicant, the International Searching Authority shall send to the said Office or the applicant, respectively, copies of the documents cited in the international search report, as provided in the Regulations.

Article 21
International Publication

(1) The International Bureau shall publish international applications.

(2)(a) Subject to the exceptions provided for in subparagraph (b) and in Article 64(3), the international publication of the international application shall be effected promptly after the expiration of 18 months from the priority date of that application.

(b) The applicant may ask the International Bureau to publish his international application any time before the expiration of the time limit referred to in subparagraph (a). The International Bureau shall proceed accordingly, as provided in the Regulations.

(3) The international search report or the declaration referred to in Article 17(2)(a) shall be published as prescribed in the Regulations.

(4) The language and form of the international publication and other details are governed by the Regulations.

(5) There shall be no international publication if the international application is withdrawn or is considered withdrawn before the technical preparations for publication have been completed.

(6) If the international application contains expressions or drawings which, in the opinion of the International Bureau, are contrary to morality or public order, or if, in its opinion, the international application contains disparaging statements as defined in the Regulations, it may omit such expressions, drawings, and statements, from its publications, indicating the place and number of words or drawings omitted, and furnishing, upon request, individual copies of the passages omitted.

Article 22
Copy, Translation, and Fee, to Designated Offices

(1) The applicant shall furnish a copy of the international application (unless the communication provided for in Article 20 has already taken place) and a translation thereof (as prescribed), and pay the national fee (if any), to each designated Office not later than at the expiration of 30[1] months from the priority date. Where the national law of the designated State requires the indication of the name of and other prescribed data concerning the inventor but allows that these indications be furnished at a time later than that of the filing of a national application, the applicant shall, unless they were contained in the request, furnish the said indications to the national Office of or acting for the State not later than at the expiration of 30[1] months from the priority date.

(2) Where the International Searching Authority makes a declaration, under Article 17(2)(a), that no international search report will be established, the time limit for performing the acts referred to in paragraph (1) of this Article shall be the same as that provided for in paragraph (1).

(3) Any national law may, for performing the acts referred to in paragraphs (1) or (2), fix time limits which expire later than the time limit provided for in those paragraphs.

Article 23
Delaying of National Procedure

(1) No designated Office shall process or examine the international application prior to the expiration of the applicable time limit under Article 22.

(2) Notwithstanding the provisions of paragraph (1), any designated Office may, on the express request of the applicant, process or examine the international application at any time.

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[1] *Editor's Note:* The 30-month time limit, as in force from April 1, 2002, does not apply in respect of any designated Office which has notified the International Bureau of incompatibility with the national law applied by that Office. The 20-month time limit, as in force until March 31, 2002, continues to apply after that date in respect of any such designated Office for as long as Article 22(1), as modified, continues not to be compatible with the applicable national law. Information received by the International Bureau concerning any such incompatibility is published in the Gazette and on the WIPO website at: www.wipo.int/pct/en/texts/reservations/res_incomp.html.

Article 24
Possible Loss of Effect in Designated States

(1) Subject, in case (ii) below, to the provisions of Article 25, the effect of the international application provided for in Article 11(3) shall cease in any designated State with the same consequences as the withdrawal of any national application in that State:

(i) if the applicant withdraws his international application or the designation of that State;

(ii) if the international application is considered withdrawn by virtue of Articles 12(3), 14(1)(b), 14(3)(a), or 14(4), or if the designation of that State is considered withdrawn by virtue of Article 14(3)(b);

(iii) if the applicant fails to perform the acts referred to in Article 22 within the applicable time limit.

(2) Notwithstanding the provisions of paragraph (1), any designated Office may maintain the effect provided for in Article 11(3) even where such effect is not required to be maintained by virtue of Article 25(2).

Article 25
Review by Designated Offices

(1)(a) Where the receiving Office has refused to accord an international filing date or has declared that the international application is considered withdrawn, or where the International Bureau has made a finding under Article 12(3), the International Bureau shall promptly send, at the request of the applicant, copies of any document in the file to any of the designated Offices named by the applicant.

(b) Where the receiving Office has declared that the designation of any given State is considered withdrawn, the International Bureau shall promptly send, at the request of the applicant, copies of any document in the file to the national Office of such State.

(c) The request under subparagraphs (a) or (b) shall be presented within the prescribed time limit.

(2)(a) Subject to the provisions of subparagraph (b), each designated Office shall, provided that the national fee (if any) has been paid and the appropriate translation (as prescribed) has been furnished within the prescribed time limit, decide whether the refusal, declaration, or finding, referred to in paragraph (1) was justified under the provisions of this Treaty and the Regulations, and, if it finds that the refusal or declaration was the result of an error or omission on the part of the receiving Office or that the finding was the result of an error or omission on the part of the International

Bureau, it shall, as far as effects in the State of the designated Office are concerned, treat the international application as if such error or omission had not occurred.

(b) Where the record copy has reached the International Bureau after the expiration of the time limit prescribed under Article 12(3) on account of any error or omission on the part of the applicant, the provisions of subparagraph (a) shall apply only under the circumstances referred to in Article 48(2).

Article 26
Opportunity to Correct before Designated Offices

No designated Office shall reject an international application on the grounds of non-compliance with the requirements of this Treaty and the Regulations without first giving the applicant the opportunity to correct the said application to the extent and according to the procedure provided by the national law for the same or comparable situations in respect of national applications.

Article 27
National Requirements

(1) No national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations.

(2) The provisions of paragraph (1) neither affect the application of the provisions of Article 7(2) nor preclude any national law from requiring, once the processing of the international application has started in the designated Office, the furnishing:

(i) when the applicant is a legal entity, of the name of an officer entitled to represent such legal entity,

(ii) of documents not part of the international application but which constitute proof of allegations or statements made in that application, including the confirmation of the international application by the signature of the applicant when that application, as filed, was signed by his representative or agent.

(3) Where the applicant, for the purposes of any designated State, is not qualified according to the national law of that State to file a national application because he is not the inventor, the international application may be rejected by the designated Office.

(4) Where the national law provides, in respect of the form or contents of national applications, for requirements which, from the viewpoint of applicants, are more favorable than the requirements provided for by this Treaty and the Regulations in respect of international applications, the national Office, the courts and any other competent organs of or acting for the designated State may apply the former requirements, instead of the latter requirements, to international applications, except where the applicant insists that the requirements provided for by this Treaty and the Regulations be applied to his international application.

(5) Nothing in this Treaty and the Regulations is intended to be construed as prescribing anything that would limit the freedom of each Contracting State to prescribe such substantive conditions of patentability as it desires. In particular, any provision in this Treaty and the Regulations concerning the definition of prior art is exclusively for the purposes of the international procedure and, consequently, any Contracting State is free to apply, when determining the patentability of an invention claimed in an international application, the criteria of its national law in respect of prior art and other conditions of patentability not constituting requirements as to the form and contents of applications.

(6) The national law may require that the applicant furnish evidence in respect of any substantive condition of patentability prescribed by such law.

(7) Any receiving Office or, once the processing of the international application has started in the designated Office, that Office may apply the national law as far as it relates to any requirement that the applicant be represented by an agent having the right to represent applicants before the said Office and/or that the applicant have an address in the designated State for the purpose of receiving notifications.

(8) Nothing in this Treaty and the Regulations is intended to be construed as limiting the freedom of any Contracting State to apply measures deemed necessary for the preservation of its national security or to limit, for the protection of the general economic interests of that State, the right of its own residents or nationals to file international applications.

Article 28
Amendment of the Claims, the Description, and the Drawings, before Designated Offices

(1) The applicant shall be given the opportunity to amend the claims, the description, and the drawings, before each designated Office within the prescribed time limit. No designated Office shall grant a patent, or refuse the grant of a patent, before such time limit has expired except with the express consent of the applicant.

(2) The amendments shall not go beyond the disclosure in the international application as filed unless the national law of the designated State permits them to go beyond the said disclosure.

(3) The amendments shall be in accordance with the national law of the designated State in all respects not provided for in this Treaty and the Regulations.

(4) Where the designated Office requires a translation of the international application, the amendments shall be in the language of the translation.

Article 29
Effects of the International Publication

(1) As far as the protection of any rights of the applicant in a designated State is concerned, the effects, in that State, of the international publication of an international application shall, subject to the provisions of paragraphs (2) to (4), be the same as those which the national law of the designated State provides for the compulsory national publication of unexamined national applications as such.

(2) If the language in which the international publication has been effected is different from the language in which publications under the national law are effected in the designated State, the said national law may provide that the effects provided for in paragraph (1) shall be applicable only from such time as:

(i) a translation into the latter language has been published as provided by the national law, or

(ii) a translation into the latter language has been made available to the public, by laying open for public inspection as provided by the national law, or

(iii) a translation into the latter language has been transmitted by the applicant to the actual or prospective unauthorized user of the invention claimed in the international application, or

(iv) both the acts described in (i) and (iii), or both the acts described in (ii) and (iii), have taken place.

(3) The national law of any designated State may provide that, where the international publication has been effected, on the request of the applicant, before the expiration of 18 months from the priority date, the effects provided for in paragraph (1) shall be applicable only from the expiration of 18 months from the priority date.

(4) The national law of any designated State may provide that the effects provided for in paragraph (1) shall be applicable only from the date on which a copy of the international application as published under Article 21 has been received in the national Office of or acting for such State. The said Office shall publish the date of receipt in its gazette as soon as possible.

Article 30
Confidential Nature of the International Application

(1)(a) Subject to the provisions of subparagraph (b), the International Bureau and the International Searching Authorities shall not allow access by any person or authority to the international application before the international publication of that application, unless requested or authorized by the applicant.

(b) The provisions of subparagraph (a) shall not apply to any transmittal to the competent International Searching Authority, to transmittals provided for under Article 13, and to communications provided for under Article 20.

(2)(a) No national Office shall allow access to the international application by third parties, unless requested or authorized by the applicant, before the earliest of the following dates:

(i) date of the international publication of the international application,

(ii) date of the receipt of the communication of the international application under Article 20,

(iii) date of the receipt of a copy of the international application under Article 22.

(b) The provisions of subparagraph (a) shall not prevent any national Office from informing third parties that it has been designated, or from publishing that fact. Such information or publication may, however, contain only the following data: identification of the receiving Office, name

of the applicant, international filing date, international application number, and title of the invention.

(c) The provisions of subparagraph (a) shall not prevent any designated Office from allowing access to the international application for the purposes of the judicial authorities.

(3) The provisions of paragraph (2)(a) shall apply to any receiving Office except as far as transmittals provided for under Article 12(1) are concerned.

(4) For the purposes of this Article, the term “access” covers any means by which third parties may acquire cognizance, including individual communication and general publication, provided, however, that no national Office shall generally publish an international application or its translation before the international publication or, if international publication has not taken place by the expiration of 20 months from the priority date, before the expiration of 20 months from the said priority date.

CHAPTER II
INTERNATIONAL PRELIMINARY EXAMINATION

Article 31
Demand for International Preliminary Examination

(1) On the demand of the applicant, his international application shall be the subject of an international preliminary examination as provided in the following provisions and the Regulations.

(2)(a) Any applicant who is a resident or national, as defined in the Regulations, of a Contracting State bound by Chapter II, and whose international application has been filed with the receiving Office of or acting for such State, may make a demand for international preliminary examination.

(b) The Assembly may decide to allow persons entitled to file international applications to make a demand for international preliminary examination even if they are residents or nationals of a State not party to this Treaty or not bound by Chapter II.

(3) The demand for international preliminary examination shall be made separately from the international application. The demand shall contain the prescribed particulars and shall be in the prescribed language and form.

(4)(a) The demand shall indicate the Contracting State or States in which the applicant intends to use the results of the international preliminary examination ("elected States"). Additional Contracting States may be elected later. Election may relate only to Contracting States already designated under Article 4.

(b) Applicants referred to in paragraph (2)(a) may elect any Contracting State bound by Chapter II. Applicants referred to in paragraph (2)(b) may elect only such Contracting States bound by Chapter II as have declared that they are prepared to be elected by such applicants.

(5) The demand shall be subject to the payment of the prescribed fees within the prescribed time limit.

(6)(a) The demand shall be submitted to the competent International Preliminary Examining Authority referred to in Article 32.

(b) Any later election shall be submitted to the International Bureau.

(7) Each elected Office shall be notified of its election.

Article 32
The International Preliminary Examining Authority

(1) International preliminary examination shall be carried out by the International Preliminary Examining Authority.

(2) In the case of demands referred to in Article 31(2)(a), the receiving Office, and, in the case of demands referred to in Article 31(2)(b), the Assembly, shall, in accordance with the applicable agreement between the interested International Preliminary Examining Authority or Authorities and the International Bureau, specify the International Preliminary Examining Authority or Authorities competent for the preliminary examination.

(3) The provisions of Article 16(3) shall apply, *mutatis mutandis*, in respect of International Preliminary Examining Authorities.

Article 33
The International Preliminary Examination

(1) The objective of the international preliminary examination is to formulate a preliminary and non-binding opinion on the questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), and to be industrially applicable.

(2) For the purposes of the international preliminary examination, a claimed invention shall be considered novel if it is not anticipated by the prior art as defined in the Regulations.

(3) For the purposes of the international preliminary examination, a claimed invention shall be considered to involve an inventive step if, having regard to the prior art as defined in the Regulations, it is not, at the prescribed relevant date, obvious to a person skilled in the art.

(4) For the purposes of the international preliminary examination, a claimed invention shall be considered industrially applicable if, according to its nature, it can be made or used (in the technological sense) in any kind of industry. "Industry" shall be understood in its broadest sense, as in the Paris Convention for the Protection of Industrial Property.

(5) The criteria described above merely serve the purposes of international preliminary examination. Any Contracting State may apply additional or different criteria for the purpose of deciding whether, in that State, the claimed invention is patentable or not.

(6) The international preliminary examination shall take into consideration all the documents cited in the international search report. It may take into consideration any additional documents considered to be relevant in the particular case.

Article 34
Procedure before the International Preliminary Examining Authority

(1) Procedure before the International Preliminary Examining Authority shall be governed by the provisions of this Treaty, the Regulations, and the agreement which the International Bureau shall conclude, subject to this Treaty and the Regulations, with the said Authority.

(2)(a) The applicant shall have a right to communicate orally and in writing with the International Preliminary Examining Authority.

(b) The applicant shall have a right to amend the claims, the description, and the drawings, in the prescribed manner and within the prescribed time limit, before the international preliminary examination report is established. The amendment shall not go beyond the disclosure in the international application as filed.

(c) The applicant shall receive at least one written opinion from the International Preliminary Examining Authority unless such Authority considers that all of the following conditions are fulfilled:

(i) the invention satisfies the criteria set forth in Article 33(1),

(ii) the international application complies with the requirements of this Treaty and the Regulations in so far as checked by that Authority,

(iii) no observations are intended to be made under Article 35(2), last sentence.

(d) The applicant may respond to the written opinion.

(3)(a) If the International Preliminary Examining Authority considers that the international application does not comply with the requirement of unity of invention as set forth in the Regulations, it may invite the applicant, at his option, to restrict the claims so as to comply with the requirement or to pay additional fees.

(b) The national law of any elected State may provide that, where the applicant chooses to restrict the claims under subparagraph (a), those parts of the international application which, as a consequence of the restriction, are not to be the subject of international preliminary examination shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to the national Office of that State.

(c) If the applicant does not comply with the invitation referred to in subparagraph (a) within the prescribed time limit, the International Preliminary Examining Authority shall establish an international preliminary examination report on those parts of the international application which relate to what appears to be the main invention and shall indicate the relevant facts in the said report. The national law of any elected State may provide that, where its national Office finds the invitation of the International Preliminary Examining Authority justified, those parts of the international application which do not relate to the main invention shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to that Office.

(4)(a) If the International Preliminary Examining Authority considers

(i) that the international application relates to a subject matter on which the International Preliminary Examining Authority is not required, under the Regulations, to carry out an international preliminary examination, and in the particular case decides not to carry out such examination, or

(ii) that the description, the claims, or the drawings, are so unclear, or the claims are so inadequately supported by the description, that no meaningful opinion can be formed on the

novelty, inventive step (non-obviousness), or industrial applicability, of the claimed invention,

the said Authority shall not go into the questions referred to in Article 33(1) and shall inform the applicant of this opinion and the reasons therefor.

(b) If any of the situations referred to in subparagraph (a) is found to exist in, or in connection with, certain claims only, the provisions of that subparagraph shall apply only to the said claims.

Article 35
The International Preliminary Examination Report

(1) The international preliminary examination report shall be established within the prescribed time limit and in the prescribed form.

(2) The international preliminary examination report shall not contain any statement on the question whether the claimed invention is or seems to be patentable or unpatentable according to any national law. It shall state, subject to the provisions of paragraph (3), in relation to each claim, whether the claim appears to satisfy the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined for the purposes of the international preliminary examination in Article 33(1) to (4). The statement shall be accompanied by the citation of the documents believed to support the stated conclusion with such explanations as the circumstances of the case may require. The statement shall also be accompanied by such other observations as the Regulations provide for.

(3)(a) If, at the time of establishing the international preliminary examination report, the International Preliminary Examining Authority considers that any of the situations referred to in Article 34(4)(a) exists, that report shall state this opinion and the reasons therefor. It shall not contain any statement as provided in paragraph (2).

(b) If a situation under Article 34(4)(b) is found to exist, the international preliminary examination report shall, in relation to the claims in question, contain the statement as provided in subparagraph (a), whereas, in relation to the other claims, it shall contain the statement as provided in paragraph (2).

Article 36
Transmittal, Translation, and Communication, of the International Preliminary Examination Report

(1) The international preliminary examination report, together with the prescribed annexes, shall be transmitted to the applicant and to the International Bureau.

(2)(a) The international preliminary examination report and its annexes shall be translated into the prescribed languages.

(b) Any translation of the said report shall be prepared by or under the responsibility of the International Bureau, whereas any translation of the said annexes shall be prepared by the applicant.

(3)(a) The international preliminary examination report, together with its translation (as prescribed) and its annexes (in the original language), shall be communicated by the International Bureau to each elected Office.

(b) The prescribed translation of the annexes shall be transmitted within the prescribed time limit by the applicant to the elected Offices.

(4) The provisions of Article 20(3) shall apply, *mutatis mutandis*, to copies of any document which is cited in the international preliminary examination report and which was not cited in the international search report.

Article 37
Withdrawal of Demand or Election

(1) The applicant may withdraw any or all elections.

(2) If the election of all elected States is withdrawn, the demand shall be considered withdrawn.

(3)(a) Any withdrawal shall be notified to the International Bureau.

(b) The elected Offices concerned and the International Preliminary Examining Authority concerned shall be notified accordingly by the International Bureau.

(4)(a) Subject to the provisions of subparagraph (b), withdrawal of the demand or of the election of a Contracting State shall, unless the national law of that State provides otherwise, be considered to be withdrawal of the international application as far as that State is concerned.

(b) Withdrawal of the demand or of the election shall not be considered to be withdrawal of the international application if such withdrawal is effected prior to the expiration of the applicable time limit

under Article 22; however, any Contracting State may provide in its national law that the aforesaid shall apply only if its national Office has received, within the said time limit, a copy of the international application, together with a translation (as prescribed), and the national fee.

Article 38
Confidential Nature of the International Preliminary Examination

(1) Neither the International Bureau nor the International Preliminary Examining Authority shall, unless requested or authorized by the applicant, allow access within the meaning, and with the proviso, of Article 30(4) to the file of the international preliminary examination by any person or authority at any time, except by the elected Offices once the international preliminary examination report has been established.

(2) Subject to the provisions of paragraph (1) and Articles 36(1) and (3) and 37(3)(b), neither the International Bureau nor the International Preliminary Examining Authority shall, unless requested or authorized by the applicant, give information on the issuance or nonissuance of an international preliminary examination report and on the withdrawal or nonwithdrawal of the demand or of any election.

Article 39
Copy, Translation, and Fee, to Elected Offices

(1)(a) If the election of any Contracting State has been effected prior to the expiration of the 19th month from the priority date, the provisions of Article 22 shall not apply to such State and the applicant shall furnish a copy of the international application (unless the communication under Article 20 has already taken place) and a translation thereof (as prescribed), and pay the national fee (if any), to each elected Office not later than at the expiration of 30 months from the priority date.

(b) Any national law may, for performing the acts referred to in subparagraph (a), fix time limits which expire later than the time limit provided for in that subparagraph.

(2) The effect provided for in Article 11(3) shall cease in the elected State with the same consequences as the withdrawal of any national application in that State if the applicant fails to perform the acts referred to in paragraph (1)(a) within the time limit applicable under paragraph (1)(a) or (b).

(3) Any elected Office may maintain the effect provided for in Article 11(3) even where the applicant does not comply with the requirements provided for in paragraph (1)(a) or (b).

Article 40
Delaying of National Examination and Other Processing

(1) If the election of any Contracting State has been effected prior to the expiration of the 19th month from the priority date, the provisions of Article 23 shall not apply to such State and the national Office of or acting for that State shall not proceed, subject to the provisions of paragraph (2), to the examination and other processing of the international application prior to the expiration of the applicable time limit under Article 39.

(2) Notwithstanding the provisions of paragraph (1), any elected Office may, on the express request of the applicant, proceed to the examination and other processing of the international application at any time.

Article 41
Amendment of the Claims, the Description, and the Drawings, before Elected Offices

(1) The applicant shall be given the opportunity to amend the claims, the description, and the drawings, before each elected Office within the prescribed time limit. No elected Office shall grant a patent, or refuse the grant of a patent, before such time limit has expired, except with the express consent of the applicant.

(2) The amendments shall not go beyond the disclosure in the international application as filed, unless the national law of the elected State permits them to go beyond the said disclosure.

(3) The amendments shall be in accordance with the national law of the elected State in all respects not provided for in this Treaty and the Regulations.

(4) Where an elected Office requires a translation of the international application, the amendments shall be in the language of the translation.

Article 42
Results of National Examination in Elected Offices

No elected Office receiving the international preliminary examination report may require that the applicant furnish copies, or information on the contents, of any papers connected with the examination relating to the same international application in any other elected Office.

CHAPTER III
COMMON PROVISIONS

Article 43
Seeking Certain Kinds of Protection

In respect of any designated or elected State whose law provides for the grant of inventors' certificates, utility certificates, utility models, patents or certificates of addition, inventors' certificates of addition, or utility certificates of addition, the applicant may indicate, as prescribed in the Regulations, that his international application is for the grant, as far as that State is concerned, of an inventor's certificate, a utility certificate, or a utility model, rather than a patent, or that it is for the grant of a patent or certificate of addition, an inventor's certificate of addition, or a utility certificate of addition, and the ensuing effect shall be governed by the applicant's choice. For the purposes of this Article and any Rule thereunder, Article 2(ii) shall not apply.

Article 44
Seeking Two Kinds of Protection

In respect of any designated or elected State whose law permits an application, while being for the grant of a patent or one of the other kinds of protection referred to in Article 43, to be also for the grant of another of the said kinds of protection, the applicant may indicate, as prescribed in the Regulations, the two kinds of protection he is seeking, and the ensuing effect shall be governed by the applicant's indications. For the purposes of this Article, Article 2(ii) shall not apply.

Article 45
Regional Patent Treaties

(1) Any treaty providing for the grant of regional patents ("regional patent treaty"), and giving to all persons who, according to Article 9, are entitled to file international applications the right to file applications for such patents, may provide that international applications designating or electing a State party to both the regional patent treaty and the present Treaty may be filed as applications for such patents.

(2) The national law of the said designated or elected State may provide that any designation or election of such State in the international application shall have the effect of an indication of the wish to obtain a regional patent under the regional patent treaty.

Article 46
Incorrect Translation of the International Application

If, because of an incorrect translation of the international application, the scope of any patent granted on that application exceeds the scope of the international application in its original language, the competent authorities of the Contracting State concerned may accordingly and retroactively limit the scope of the patent, and declare it null and void to the extent that its scope has exceeded the scope of the international application in its original language.

Article 47
Time Limits

(1) The details for computing time limits referred to in this Treaty are governed by the Regulations.

(2)(a) All time limits fixed in Chapters I and II of this Treaty may, outside any revision under Article 60, be modified by a decision of the Contracting States.

(b) Such decisions shall be made in the Assembly or through voting by correspondence and must be unanimous.

(c) The details of the procedure are governed by the Regulations.

Article 48
Delay in Meeting Certain Time Limits

(1) Where any time limit fixed in this Treaty or the Regulations is not met because of interruption in the mail service or unavoidable loss or delay in the mail, the time limit shall be deemed to be met in the cases and subject to the proof and other conditions prescribed in the Regulations.

(2)(a) Any Contracting State shall, as far as that State is concerned, excuse, for reasons admitted under its national law, any delay in meeting any time limit.

(b) Any Contracting State may, as far as that State is concerned, excuse, for reasons other than those referred to in subparagraph (a), any delay in meeting any time limit.

Article 49
Right to Practice before International Authorities

Any attorney, patent agent, or other person, having the right to practice before the national Office with which the international application was filed, shall be entitled to practice before the International Bureau and the

competent International Searching Authority and competent International Preliminary Examining Authority in respect of that application.

CHAPTER IV
TECHNICAL SERVICES

Article 50
Patent Information Services

(1) The International Bureau may furnish services by providing technical and any other pertinent information available to it on the basis of published documents, primarily patents and published applications (referred to in this Article as “the information services”).

(2) The International Bureau may provide these information services either directly or through one or more International Searching Authorities or other national or international specialized institutions, with which the International Bureau may reach agreement.

(3) The information services shall be operated in a way particularly facilitating the acquisition by Contracting States which are developing countries of technical knowledge and technology, including available published know-how.

(4) The information services shall be available to Governments of Contracting States and their nationals and residents. The Assembly may decide to make these services available also to others.

(5)(a) Any service to Governments of Contracting States shall be furnished at cost, provided that, when the Government is that of a Contracting State which is a developing country, the service shall be furnished below cost if the difference can be covered from profit made on services furnished to others than Governments of Contracting States or from the sources referred to in Article 51(4).

(b) The cost referred to in subparagraph (a) is to be understood as cost over and above costs normally incident to the performance of the services of a national Office or the obligations of an International Searching Authority.

(6) The details concerning the implementation of the provisions of this Article shall be governed by decisions of the Assembly and, within the limits to be fixed by the Assembly, such working groups as the Assembly may set up for that purpose.

(7) The Assembly shall, when it considers it necessary, recommend methods of providing financing supplementary to those referred to in paragraph (5).

Article 51
Technical Assistance

(1) The Assembly shall establish a Committee for Technical Assistance (referred to in this Article as “the Committee”).

(2)(a) The members of the Committee shall be elected among the Contracting States, with due regard to the representation of developing countries.

(b) The Director General shall, on his own initiative or at the request of the Committee, invite representatives of intergovernmental organizations concerned with technical assistance to developing countries to participate in the work of the Committee.

(3)(a) The task of the Committee shall be to organize and supervise technical assistance for Contracting States which are developing countries in developing their patent systems individually or on a regional basis.

(b) The technical assistance shall comprise, among other things, the training of specialists, the loaning of experts, and the supply of equipment both for demonstration and for operational purposes.

(4) The International Bureau shall seek to enter into agreements, on the one hand, with international financing organizations and intergovernmental organizations, particularly the United Nations, the agencies of the United Nations, and the Specialized Agencies connected with the United Nations concerned with technical assistance, and, on the other hand, with the Governments of the States receiving the technical assistance, for the financing of projects pursuant to this Article.

(5) The details concerning the implementation of the provisions of this Article shall be governed by decisions of the Assembly and, within the limits to be fixed by the Assembly, such working groups as the Assembly may set up for that purpose.

Article 52
Relations with Other Provisions of the Treaty

Nothing in this Chapter shall affect the financial provisions contained in any other Chapter of this Treaty. Such provisions are not applicable to the present Chapter or to its implementation.

CHAPTER V
ADMINISTRATIVE PROVISIONS

Article 53
Assembly

(1)(a) The Assembly shall, subject to Article 57(8), consist of the Contracting States.

(b) The Government of each Contracting State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(2)(a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Treaty;

(ii) perform such tasks as are specifically assigned to it under other provisions of this Treaty;

(iii) give directions to the International Bureau concerning the preparation for revision conferences;

(iv) review and approve the reports and activities of the Director General concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;

(v) review and approve the reports and activities of the Executive Committee established under paragraph (9), and give instructions to such Committee;

(vi) determine the program and adopt the triennial[2] budget of the Union, and approve its final accounts;

(vii) adopt the financial regulations of the Union;

(viii) establish such committees and working groups as it deems appropriate to achieve the objectives of the Union;

(ix) determine which States other than Contracting States and, subject to the provisions of paragraph (8), which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(x) take any other appropriate action designed to further the objectives of the Union and perform such other functions as are appropriate under this Treaty.

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[2] *Editor's Note:* Since 1980, the program and budget of the Union have been biennial.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) A delegate may represent, and vote in the name of, one State only.

(4) Each Contracting State shall have one vote.

(5)(a) One-half of the Contracting States shall constitute a quorum.

(b) In the absence of the quorum, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the quorum and the required majority are attained through voting by correspondence as provided in the Regulations.

(6)(a) Subject to the provisions of Articles 47(2)(b), 58(2)(b), 58(3) and 61(2)(b), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) Abstentions shall not be considered as votes.

(7) In connection with matters of exclusive interest to States bound by Chapter II, any reference to Contracting States in paragraphs (4), (5), and (6), shall be considered as applying only to States bound by Chapter II.

(8) Any intergovernmental organization appointed as International Searching or Preliminary Examining Authority shall be admitted as observer to the Assembly.

(9) When the number of Contracting States exceeds forty, the Assembly shall establish an Executive Committee. Any reference to the Executive Committee in this Treaty and the Regulations shall be construed as references to such Committee once it has been established.

(10) Until the Executive Committee has been established, the Assembly shall approve, within the limits of the program and triennial[3] budget, the annual programs and budgets prepared by the Director General.

(11)(a) The Assembly shall meet in every second calendar year in ordinary session upon convocation by the Director General and, in the

[3] *Editor's Note:* Since 1980, the program and budget of the Union have been biennial.

absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee, or at the request of one-fourth of the Contracting States.

(12) The Assembly shall adopt its own rules of procedure.

Article 54
Executive Committee

(1) When the Assembly has established an Executive Committee, that Committee shall be subject to the provisions set forth hereinafter.

(2)(a) The Executive Committee shall, subject to Article 57(8), consist of States elected by the Assembly from among States members of the Assembly.

(b) The Government of each State member of the Executive Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(3) The number of States members of the Executive Committee shall correspond to one-fourth of the number of States members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.

(4) In electing the members of the Executive Committee, the Assembly shall have due regard to an equitable geographical distribution.

(5)(a) Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.

(b) Members of the Executive Committee may be re-elected but only up to a maximum of two-thirds of such members.

(c) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.

(6)(a) The Executive Committee shall:

(i) prepare the draft agenda of the Assembly;

(ii) submit proposals to the Assembly in respect of the draft program and biennial budget of the Union prepared by the Director General;

(iii) *[deleted]*

(iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;

(v) take all necessary measures to ensure the execution of the program of the Union by the Director General, in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly;

(vi) perform such other functions as are allocated to it under this Treaty.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(7)(a) The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.

(b) The Executive Committee shall meet in extraordinary session upon convocation by the Director General, either on his own initiative or at the request of its Chairman or one-fourth of its members.

(8)(a) Each State member of the Executive Committee shall have one vote.

(b) One-half of the members of the Executive Committee shall constitute a quorum.

(c) Decisions shall be made by a simple majority of the votes cast.

(d) Abstentions shall not be considered as votes.

(e) A delegate may represent, and vote in the name of, one State only.

(9) Contracting States not members of the Executive Committee shall be admitted to its meetings as observers, as well as any intergovernmental organization appointed as International Searching or Preliminary Examining Authority.

(10) The Executive Committee shall adopt its own rules of procedure.

Article 55
International Bureau

(1) Administrative tasks concerning the Union shall be performed by the International Bureau.

(2) The International Bureau shall provide the secretariat of the various organs of the Union.

(3) The Director General shall be the chief executive of the Union and shall represent the Union.

(4) The International Bureau shall publish a Gazette and other publications provided for by the Regulations or required by the Assembly.

(5) The Regulations shall specify the services that national Offices shall perform in order to assist the International Bureau and the International Searching and Preliminary Examining Authorities in carrying out their tasks under this Treaty.

(6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee and any other committee or working group established under this Treaty or the Regulations. The Director General, or a staff member designated by him, shall be *ex officio* secretary of these bodies.

(7)(a) The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the revision conferences.

(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for revision conferences.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conferences.

(8) The International Bureau shall carry out any other tasks assigned to it.

Article 56
Committee for Technical Cooperation

(1) The Assembly shall establish a Committee for Technical Cooperation (referred to in this Article as “the Committee”).

(2)(a) The Assembly shall determine the composition of the Committee and appoint its members, with due regard to an equitable representation of developing countries.

(b) The International Searching and Preliminary Examining Authorities shall be *ex officio* members of the Committee. In the case where such an Authority is the national Office of a Contracting State, that State shall not be additionally represented on the Committee.

(c) If the number of Contracting States so allows, the total number of members of the Committee shall be more than double the number of *ex officio* members.

(d) The Director General shall, on his own initiative or at the request of the Committee, invite representatives of interested organizations to participate in discussions of interest to them.

(3) The aim of the Committee shall be to contribute, by advice and recommendations:

(i) to the constant improvement of the services provided for under this Treaty,

(ii) to the securing, so long as there are several International Searching Authorities and several International Preliminary Examining Authorities, of the maximum degree of uniformity in their documentation and working methods and the maximum degree of uniformly high quality in their reports, and

(iii) on the initiative of the Assembly or the Executive Committee, to the solution of the technical problems specifically involved in the establishment of a single International Searching Authority.

(4) Any Contracting State and any interested international organization may approach the Committee in writing on questions which fall within the competence of the Committee.

(5) The Committee may address its advice and recommendations to the Director General or, through him, to the Assembly, the Executive Committee, all or some of the International Searching and Preliminary Examining Authorities, and all or some of the receiving Offices.

(6)(a) In any case, the Director General shall transmit to the Executive Committee the texts of all the advice and recommendations of the Committee. He may comment on such texts.

(b) The Executive Committee may express its views on any advice, recommendation, or other activity of the Committee, and may invite the Committee to study and report on questions falling within its competence.

The Executive Committee may submit to the Assembly, with appropriate comments, the advice, recommendations and report of the Committee.

(7) Until the Executive Committee has been established, references in paragraph (6) to the Executive Committee shall be construed as references to the Assembly.

(8) The details of the procedure of the Committee shall be governed by the decisions of the Assembly.

Article 57
Finances

(1)(a) The Union shall have a budget.

(b) The budget of the Union shall include the income and expenses proper to the Union and its contribution to the budget of expenses common to the Unions administered by the Organization.

(c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.

(2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) Subject to the provisions of paragraph (5), the budget of the Union shall be financed from the following sources:

(i) fees and charges due for services rendered by the International Bureau in relation to the Union;

(ii) sale of, or royalties on, the publications of the International Bureau concerning the Union;

(iii) gifts, bequests, and subventions;

(iv) rents, interests, and other miscellaneous income.

(4) The amounts of fees and charges due to the International Bureau and the prices of its publications shall be so fixed that they should, under normal circumstances, be sufficient to cover all the expenses of the International Bureau connected with the administration of this Treaty.

(5)(a) Should any financial year close with a deficit, the Contracting States shall, subject to the provisions of subparagraphs (b) and (c), pay contributions to cover such deficit.

(b) The amount of the contribution of each Contracting State shall be decided by the Assembly with due regard to the number of international applications which has emanated from each of them in the relevant year.

(c) If other means of provisionally covering any deficit or any part thereof are secured, the Assembly may decide that such deficit be carried forward and that the Contracting States should not be asked to pay contributions.

(d) If the financial situation of the Union so permits, the Assembly may decide that any contributions paid under subparagraph (a) be reimbursed to the Contracting States which have paid them.

(e) A Contracting State which has not paid, within two years of the due date as established by the Assembly, its contribution under subparagraph (b) may not exercise its right to vote in any of the organs of the Union. However, any organ of the Union may allow such a State to continue to exercise its right to vote in that organ so long as it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

(6) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the financial regulations.

(7)(a) The Union shall have a working capital fund which shall be constituted by a single payment made by each Contracting State. If the fund becomes insufficient, the Assembly shall arrange to increase it. If part of the fund is no longer needed, it shall be reimbursed.

(b) The amount of the initial payment of each Contracting State to the said fund or of its participation in the increase thereof shall be decided by the Assembly on the basis of principles similar to those provided for under paragraph (5)(b).

(c) The terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(d) Any reimbursement shall be proportionate to the amounts paid by each Contracting State, taking into account the dates at which they were paid.

(8)(a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such State shall grant advances. The amount of these advances and the conditions

on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization. As long as it remains under the obligation to grant advances, such State shall have an *ex officio* seat in the Assembly and on the Executive Committee.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(9) The auditing of the accounts shall be effected by one or more of the Contracting States or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 58
Regulations

(1) The Regulations annexed to this Treaty provide Rules:

(i) concerning matters in respect of which this Treaty expressly refers to the Regulations or expressly provides that they are or shall be prescribed,

(ii) concerning any administrative requirements, matters, or procedures,

(iii) concerning any details useful in the implementation of the provisions of this Treaty.

(2)(a) The Assembly may amend the Regulations.

(b) Subject to the provisions of paragraph (3), amendments shall require three-fourths of the votes cast.

(3)(a) The Regulations specify the Rules which may be amended

(i) only by unanimous consent, or

(ii) only if none of the Contracting States whose national Office acts as an International Searching or Preliminary Examining Authority dissents, and, where such Authority is an intergovernmental organization, if the Contracting State member of that organization authorized for that purpose by the other member States within the competent body of such organization does not dissent.

(b) Exclusion, for the future, of any such Rules from the applicable requirement shall require the fulfillment of the conditions referred to in subparagraph (a)(i) or (a)(ii), respectively.

(c) Inclusion, for the future, of any Rule in one or the other of the requirements referred to in subparagraph (a) shall require unanimous consent.

(4) The Regulations provide for the establishment, under the control of the Assembly, of Administrative Instructions by the Director General.

(5) In the case of conflict between the provisions of the Treaty and those of the Regulations, the provisions of the Treaty shall prevail.

CHAPTER VI
DISPUTES

Article 59
Disputes

Subject to Article 64(5), any dispute between two or more Contracting States concerning the interpretation or application of this Treaty or the Regulations, not settled by negotiation, may, by any one of the States concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the States concerned agree on some other method of settlement. The Contracting State bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other Contracting States.

CHAPTER VII
REVISION AND AMENDMENT

Article 60
Revision of the Treaty

(1) This Treaty may be revised from time to time by a special conference of the Contracting States.

(2) The convocation of any revision conference shall be decided by the Assembly.

(3) Any intergovernmental organization appointed as International Searching or Preliminary Examining Authority shall be admitted as observer to any revision conference.

(4) Articles 53(5), (9) and (11), 54, 55(4) to (8), 56, and 57, may be amended either by a revision conference or according to the provisions of Article 61.

Article 61
Amendment of Certain Provisions of the Treaty

(1)(a) Proposals for the amendment of Articles 53(5), (9) and (11), 54, 55(4) to (8), 56, and 57, may be initiated by any State member of the Assembly, by the Executive Committee, or by the Director General.

(b) Such proposals shall be communicated by the Director General to the Contracting States at least six months in advance of their consideration by the Assembly.

(2)(a) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly.

(b) Adoption shall require three-fourths of the votes cast.

(3)(a) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the States members of the Assembly at the time it adopted the amendment.

(b) Any amendment to the said Articles thus accepted shall bind all the States which are members of the Assembly at the time the amendment enters into force, provided that any amendment increasing the financial obligations of the Contracting States shall bind only those States which have notified their acceptance of such amendment.

(c) Any amendment accepted in accordance with the provisions of subparagraph (a) shall bind all States which become members of the Assembly after the date on which the amendment entered into force in accordance with the provisions of subparagraph (a).

CHAPTER VIII
FINAL PROVISIONS

Article 62
Becoming Party to the Treaty

(1) Any State member of the International Union for the Protection of Industrial Property may become party to this Treaty by:

(i) signature followed by the deposit of an instrument of ratification, or

(ii) deposit of an instrument of accession.

(2) Instruments of ratification or accession shall be deposited with the Director General.

(3) The provisions of Article 24 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property shall apply to this Treaty.

(4) Paragraph (3) shall in no way be understood as implying the recognition or tacit acceptance by a Contracting State of the factual situation concerning a territory to which this Treaty is made applicable by another Contracting State by virtue of the said paragraph.

Article 63
Entry into Force of the Treaty

(1)(a) Subject to the provisions of paragraph (3), this Treaty shall enter into force three months after eight States have deposited their instruments of ratification or accession, provided that at least four of those States each fulfill any of the following conditions:

(i) the number of applications filed in the State has exceeded 40,000 according to the most recent annual statistics published by the International Bureau,

(ii) the nationals or residents of the State have filed at least 1,000 applications in one foreign country according to the most recent annual statistics published by the International Bureau,

(iii) the national Office of the State has received at least 10,000 applications from nationals or residents of foreign countries according to the most recent annual statistics published by the International Bureau.

(b) For the purposes of this paragraph, the term “applications” does not include applications for utility models.

(2) Subject to the provisions of paragraph (3), any State which does not become party to this Treaty upon entry into force under paragraph (1) shall become bound by this Treaty three months after the date on which such State has deposited its instrument of ratification or accession.

(3) The provisions of Chapter II and the corresponding provisions of the Regulations annexed to this Treaty shall become applicable, however, only on the date on which three States each of which fulfill at least one of the three requirements specified in paragraph (1) have become party to this Treaty without declaring, as provided in Article 64(1), that they do not intend to be bound by the provisions of Chapter II. That date shall not, however, be prior to that of the initial entry into force under paragraph (1).

Article 64
Reservations[4]

(1)(a) Any State may declare that it shall not be bound by the provisions of Chapter II.

(b) States making a declaration under subparagraph (a) shall not be bound by the provisions of Chapter II and the corresponding provisions of the Regulations.

(2)(a) Any State not having made a declaration under paragraph (1)(a) may declare that:

(i) it shall not be bound by the provisions of Article 39(1) with respect to the furnishing of a copy of the international application and a translation thereof (as prescribed),

(ii) the obligation to delay national processing, as provided for under Article 40, shall not prevent publication, by or through its national Office, of the international application or a translation thereof, it being understood, however, that it is not exempted from the limitations provided for in Articles 30 and 38.

(b) States making such a declaration shall be bound accordingly.

(3)(a) Any State may declare that, as far as it is concerned, international publication of international applications is not required.

(b) Where, at the expiration of 18 months from the priority date, the international application contains the designation only of such States as have made declarations under subparagraph (a), the international application shall not be published by virtue of Article 21(2).

(c) Where the provisions of subparagraph (b) apply, the international application shall nevertheless be published by the International Bureau:

(i) at the request of the applicant, as provided in the Regulations,

(ii) when a national application or a patent based on the international application is published by or on behalf of the national Office of any designated State having made a declaration under subparagraph (a), promptly after such publication but not before the expiration of 18 months from the priority date.

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[4] *Editor's Note:* Information received by the International Bureau concerning reservations made under Article 64(1) to (5) is published in the Gazette and on the WIPO website at: www.wipo.int/pct/en/texts/reservations/res_incomp.html.

(4)(a) Any State whose national law provides for prior art effect of its patents as from a date before publication, but does not equate for prior art purposes the priority date claimed under the Paris Convention for the Protection of Industrial Property to the actual filing date in that State, may declare that the filing outside that State of an international application designating that State is not equated to an actual filing in that State for prior art purposes.

(b) Any State making a declaration under subparagraph (a) shall to that extent not be bound by the provisions of Article 11(3).

(c) Any State making a declaration under subparagraph (a) shall, at the same time, state in writing the date from which, and the conditions under which, the prior art effect of any international application designating that State becomes effective in that State. This statement may be modified at any time by notification addressed to the Director General.

(5) Each State may declare that it does not consider itself bound by Article 59. With regard to any dispute between any Contracting State having made such a declaration and any other Contracting State, the provisions of Article 59 shall not apply.

(6)(a) Any declaration made under this Article shall be made in writing. It may be made at the time of signing this Treaty, at the time of depositing the instrument of ratification or accession, or, except in the case referred to in paragraph (5), at any later time by notification addressed to the Director General. In the case of the said notification, the declaration shall take effect six months after the day on which the Director General has received the notification, and shall not affect international applications filed prior to the expiration of the said six-month period.

(b) Any declaration made under this Article may be withdrawn at any time by notification addressed to the Director General. Such withdrawal shall take effect three months after the day on which the Director General has received the notification and, in the case of the withdrawal of a declaration made under paragraph (3), shall not affect international applications filed prior to the expiration of the said three-month period.

(7) No reservations to this Treaty other than the reservations under paragraphs (1) to (5) are permitted.

Article 65
Gradual Application

(1) If the agreement with any International Searching or Preliminary Examining Authority provides, transitionally, for limits on the number or

kind of international applications that such Authority undertakes to process, the Assembly shall adopt the measures necessary for the gradual application of this Treaty and the Regulations in respect of given categories of international applications. This provision shall also apply to requests for an international-type search under Article 15(5).

(2) The Assembly shall fix the dates from which, subject to the provision of paragraph (1), international applications may be filed and demands for international preliminary examination may be submitted. Such dates shall not be later than six months after this Treaty has entered into force according to the provisions of Article 63(1), or after Chapter II has become applicable under Article 63(3), respectively.

Article 66
Denunciation

(1) Any Contracting State may denounce this Treaty by notification addressed to the Director General.

(2) Denunciation shall take effect six months after receipt of the said notification by the Director General. It shall not affect the effects of the international application in the denouncing State if the international application was filed, and, where the denouncing State has been elected, the election was made, prior to the expiration of the said six-month period.

Article 67
Signature and Languages

(1)(a) This Treaty shall be signed in a single original in the English and French languages, both texts being equally authentic.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in the German, Japanese, Portuguese, Russian and Spanish languages, and such other languages as the Assembly may designate.

(2) This Treaty shall remain open for signature at Washington until December 31, 1970.

Article 68
Depositary Functions

(1) The original of this Treaty, when no longer open for signature, shall be deposited with the Director General.

(2) The Director General shall transmit two copies, certified by him, of this Treaty and the Regulations annexed hereto to the Governments of all

States party to the Paris Convention for the Protection of Industrial Property and, on request, to the Government of any other State.

(3) The Director General shall register this Treaty with the Secretariat of the United Nations.

(4) The Director General shall transmit two copies, certified by him, of any amendment to this Treaty and the Regulations to the Governments of all Contracting States and, on request, to the Government of any other State.

Article 69
Notifications

The Director General shall notify the Governments of all States party to the Paris Convention for the Protection of Industrial Property of:

(i) signatures under Article 62,

(ii) deposits of instruments of ratification or accession under Article 62,

(iii) the date of entry into force of this Treaty and the date from which Chapter II is applicable in accordance with Article 63(3),

(iv) any declarations made under Article 64(1) to (5),

(v) withdrawals of any declarations made under Article 64(6)(b),

(vi) denunciations received under Article 66, and

(vii) any declarations made under Article 31(4).

ANNEX 1C

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS AS AMENDED BY THE 2005 PROTOCOL AMENDING THE TRIPS AGREEMENT[a]

PART I GENERAL PROVISIONS AND BASIC PRINCIPLES

PART II STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

1. Copyright and Related Rights
2. Trademarks
3. Geographical Indications
4. Industrial Designs
5. Patents
6. Layout-Designs (Topographies) of Integrated Circuits
7. Protection of Undisclosed Information
8. Control of Anti-Competitive Practices in Contractual Licences

PART III ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

1. General Obligations
2. Civil and Administrative Procedures and Remedies
3. Provisional Measures
4. Special Requirements Related to Border Measures
5. Criminal Procedures

PART IV ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED *INTER-PARTES* PROCEDURES

PART V DISPUTE PREVENTION AND SETTLEMENT

PART VI TRANSITIONAL ARRANGEMENTS

PART VII INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

ANNEX AND APPENDIX TO THE TRIPS AGREEMENT

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

Members,

Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

Recognizing, to this end, the need for new rules and disciplines concerning:

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[a] **Editorial note:** The TRIPS Agreement was amended through the Protocol Amending the TRIPS Agreement, done at Geneva on 6 December 2005, which entered into force on 23 January 2017. The amendment inserted a new Article 31bis into the TRIPS Agreement as well as an Annex and Appendix. The amended TRIPS Agreement is only binding on the Members that have accepted it. In respect of each Member that accepts the Protocol after its entry into force, it will take effect for that member upon acceptance, in accordance with Article X:3 of the WTO Agreement. This file reproduces the amended version.

(a) the applicability of the basic principles of GATT 1994 and of relevant international intellectual property agreements or conventions;

(b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;

(c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems;

(d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and

(e) transitional arrangements aiming at the fullest participation in the results of the negotiations;

Recognizing the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods;

Recognizing that intellectual property rights are private rights;

Recognizing the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives;

Recognizing also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base;

Emphasizing the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures;

Desiring to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (referred to in this Agreement as "WIPO") as well as other relevant international organizations;

Hereby agree as follows:

PART I

GENERAL PROVISIONS AND BASIC PRINCIPLES

Article 1

Nature and Scope of Obligations

1. Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

2. For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.

3. Members shall accord the treatment provided for in this Agreement to the nationals of other Members.[2] In respect of the relevant intellectual property right, the nationals of other Members shall be understood as those natural or legal persons that would meet the criteria for eligibility for

[2] When "nationals" are referred to in this Agreement, they shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all Members of the WTO members of those conventions.[3] Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS").

Article 2

Intellectual Property Conventions[a]

1. In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967).

2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

Article 3

National Treatment

1. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection[5] of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.

2. Members may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

Article 4

Most-Favoured-Nation Treatment

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Member:

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[3] In this Agreement, "Paris Convention" refers to the Paris Convention for the Protection of Industrial Property; "Paris Convention (1967)" refers to the Stockholm Act of this Convention of 14 July 1967. "Berne Convention" refers to the Berne Convention for the Protection of Literary and Artistic Works; "Berne Convention (1971)" refers to the Paris Act of this Convention of 24 July 1971. "Rome Convention" refers to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961. "Treaty on Intellectual Property in Respect of Integrated Circuits" (IPIC Treaty) refers to the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989. "WTO Agreement" refers to the Agreement Establishing the WTO.

[a] **Editorial note:** The relevant text of these conventions is not reproduced in this publication.

[5] For the purposes of Articles 3 and 4, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Agreement.

(a) deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;

(b) granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country;

(c) in respect of the rights of performers, producers of phonograms and broadcasting organizations not provided under this Agreement;

(d) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.

Article 5

Multilateral Agreements on Acquisition or Maintenance of Protection

The obligations under Articles 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article 6

Exhaustion

For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

Article 7

Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 8

Principles

1. Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.

2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

PART II

STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: COPYRIGHT AND RELATED RIGHTS

Article 9

Relation to the Berne Convention

1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6*bis* of that Convention or of the rights derived therefrom.

2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

Article 10

Computer Programs and Compilations of Data

1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).

2. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

Article 11

Rental Rights

In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

Article 12

Term of Protection

Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

Article 13

Limitations and Exceptions

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

Article 14

Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.

2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).

4. The provisions of Article 11 in respect of computer programs shall apply *mutatis mutandis* to producers of phonograms and any other right holders in phonograms as determined in a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.

5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.

6. Any Member may, in relation to the rights conferred under paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, *mutatis mutandis*, to the rights of performers and producers of phonograms in phonograms.

SECTION 2: TRADEMARKS

Article 15

Protectable Subject Matter

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

2. Paragraph 1 shall not be understood to prevent a Member from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).

3. Members may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.

4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.

Article 16

Rights Conferred

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.

2. Article 6*bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.

3. Article 6*bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.

Article 17

Exceptions

Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 18

Term of Protection

Initial registration, and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.

Article 19

Requirement of Use

1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently

of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.

2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

Article 20

Other Requirements

The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

Article 21

Licensing and Assignment

Members may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the business to which the trademark belongs.

SECTION 3: GEOGRAPHICAL INDICATIONS

Article 22

Protection of Geographical Indications

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:

(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

(b) any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention (1967).

3. A Member shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.

4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

Article 23

Additional Protection for Geographical Indications for Wines and Spirits

1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.[6]

2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, *ex officio* if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.

3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.

Article 24

International Negotiations; Exceptions

1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.

2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.

3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement.

4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (*a*) for at least 10 years preceding 15 April 1994 or (*b*) in good faith preceding that date.

[6] Notwithstanding the first sentence of Article 42, Members may, with respect to these obligations, instead provide for enforcement by administrative action.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

(a) before the date of application of these provisions in that Member as defined in Part VI; or

(b) before the geographical indication is protected in its country of origin;

measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.

7. A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Member or after the date of registration of the trademark in that Member provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

9. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

SECTION 4: INDUSTRIAL DESIGNS

Article 25

Requirements for Protection

1. Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

2. Each Member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. Members shall be free to meet this obligation through industrial design law or through copyright law.

Article 26

Protection

1. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design

which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

2. Members may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

3. The duration of protection available shall amount to at least 10 years.

SECTION 5: PATENTS

Article 27

Patentable Subject Matter

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.[7] Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

3. Members may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

Article 28

Rights Conferred

1. A patent shall confer on its owner the following exclusive rights:

(a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing[8] for these purposes that product;

(b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

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[7] For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a Member to be synonymous with the terms "non-obvious" and "useful" respectively.

[8] This right, like all other rights conferred under this Agreement in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Article 6.

2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

Article 29

Conditions on Patent Applicants

1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.

2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.

Article 30

Exceptions to Rights Conferred

Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Article 31

Other Use Without Authorization of the Right Holder

Where the law of a Member allows for other use[9] of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

(a) authorization of such use shall be considered on its individual merits;

(b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;

(c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;

(d) such use shall be non-exclusive;

(e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;

(f) any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;

[9] "Other use" refers to use other than that allowed under Article 30.

(g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;

(h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;

(i) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(k) Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;

(l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:

(i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;

(ii) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and

(iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

Article 31bis

1. The obligations of an exporting Member under Article 31(f) shall not apply with respect to the grant by it of a compulsory licence to the extent necessary for the purposes of production of a pharmaceutical product(s) and its export to an eligible importing Member(s) in accordance with the terms set out in paragraph 2 of the Annex to this Agreement.

2. Where a compulsory licence is granted by an exporting Member under the system set out in this Article and the Annex to this Agreement, adequate remuneration pursuant to Article 31(h) shall be paid in that Member taking into account the economic value to the importing Member of the use that has been authorized in the exporting Member. Where a compulsory licence is granted for the same products in the eligible importing Member, the obligation of that Member under Article 31(h) shall not apply in respect of those products for which remuneration in accordance with the first sentence of this paragraph is paid in the exporting Member.

3. With a view to harnessing economies of scale for the purposes of enhancing purchasing power for, and facilitating the local production of, pharmaceutical products: where a developing or least-developed country WTO Member is a party to a regional trade agreement within the meaning of Article XXIV of the GATT 1994 and the Decision of 28 November 1979 on Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries (L/4903), at least

half of the current membership of which is made up of countries presently on the United Nations list of least-developed countries, the obligation of that Member under Article 31(f) shall not apply to the extent necessary to enable a pharmaceutical product produced or imported under a compulsory licence in that Member to be exported to the markets of those other developing or least-developed country parties to the regional trade agreement that share the health problem in question. It is understood that this will not prejudice the territorial nature of the patent rights in question.

4. Members shall not challenge any measures taken in conformity with the provisions of this Article and the Annex to this Agreement under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994.

5. This Article and the Annex to this Agreement are without prejudice to the rights, obligations and flexibilities that Members have under the provisions of this Agreement other than paragraphs (f) and (h) of Article 31, including those reaffirmed by the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2), and to their interpretation. They are also without prejudice to the extent to which pharmaceutical products produced under a compulsory licence can be exported under the provisions of Article 31(f).

Article 32

Revocation/Forfeiture

An opportunity for judicial review of any decision to revoke or forfeit a patent shall be available.

Article 33

Term of Protection

The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.[10]

Article 34

Process Patents: Burden of Proof

1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in paragraph 1(b) of Article 28, if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process. Therefore, Members shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

(a) if the product obtained by the patented process is new;

(b) if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

2. Any Member shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition referred to in subparagraph (a) is fulfilled or only if the condition referred to in subparagraph (b) is fulfilled.

3. In the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

[10] It is understood that those Members which do not have a system of original grant may provide that the term of protection shall be computed from the filing date in the system of original grant.

SECTION 6: LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

Article 35

Relation to the IPIC Treaty

Members agree to provide protection to the layout-designs (topographies) of integrated circuits (referred to in this Agreement as "layout-designs") in accordance with Articles 2 through 7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits and, in addition, to comply with the following provisions.

Article 36

Scope of the Protection

Subject to the provisions of paragraph 1 of Article 37, Members shall consider unlawful the following acts if performed without the authorization of the right holder:[11] importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only in so far as it continues to contain an unlawfully reproduced layout-design.

Article 37

Acts Not Requiring the Authorization of the Right Holder

1. Notwithstanding Article 36, no Member shall consider unlawful the performance of any of the acts referred to in that Article in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. Members shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, that person may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such a layout-design.

2. The conditions set out in subparagraphs (a) through (k) of Article 31 shall apply *mutatis mutandis* in the event of any non-voluntary licensing of a layout-design or of its use by or for the government without the authorization of the right holder.

Article 38

Term of Protection

1. In Members requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.

2. In Members not requiring registration as a condition for protection, layout-designs shall be protected for a term of no less than 10 years from the date of the first commercial exploitation wherever in the world it occurs.

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[11] The term "right holder" in this Section shall be understood as having the same meaning as the term "holder of the right" in the IPIC Treaty.

3. Notwithstanding paragraphs 1 and 2, a Member may provide that protection shall lapse 15 years after the creation of the layout-design.

SECTION 7: PROTECTION OF UNDISCLOSED INFORMATION

Article 39

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices[12] so long as such information:

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) has commercial value because it is secret; and

(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

SECTION 8: CONTROL OF ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES

Article 40

1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

2. Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.

3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall

[12] For the purpose of this provision, "a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member.

4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3.

PART III

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: GENERAL OBLIGATIONS

Article 41

1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

SECTION 2: CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES

Article 42

Fair and Equitable Procedures

Members shall make available to right holders[13] civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement. Defendants shall have

[13] For the purpose of this Part, the term "right holder" includes federations and associations having legal standing to assert such rights.

the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

Article 43

Evidence

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Member may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

Article 44

Injunctions

1. The judicial authorities shall have the authority to order a party to desist from an infringement, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available against such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.

Article 45

Damages

1. The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person’s intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Article 46

Other Remedies

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

Article 47

Right of Information

Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

Article 48

Indemnification of the Defendant

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.

Article 49

Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 3: PROVISIONAL MEASURES

Article 50

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:

(a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;

(b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 4: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES[14]

Article 51

Suspension of Release by Customs Authorities

Members shall, in conformity with the provisions set out below, adopt procedures[15] to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods[16] may take place, to lodge an application in writing with competent

[14] Where a Member has dismantled substantially all controls over movement of goods across its border with another Member with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

[15] It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

[16] For the purposes of this Agreement:

(a) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;

authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

Article 52

Application

Any right holder initiating the procedures under Article 51 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

Article 53

Security or Equivalent Assurance

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

2. Where pursuant to an application under this Section the release of goods involving industrial designs, patents, layout-designs or undisclosed information into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and the period provided for in Article 55 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue the right of action within a reasonable period of time.

Article 54

Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 51.

Article 55

Duration of Suspension

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation

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(b) "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 50 shall apply.

Article 56

Indemnification of the Importer and of the Owner of the Goods

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55.

Article 57

Right of Inspection and Information

Without prejudice to the protection of confidential information, Members shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, Members may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Article 58

Ex Officio Action

Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired *prima facie* evidence that an intellectual property right is being infringed:

(a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;

(b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, *mutatis mutandis*, set out at Article 55;

(c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article 59

Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46. In regard to counterfeit trademark goods, the authorities shall not allow the re-

exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

Article 60

De Minimis Imports

Members may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

SECTION 5: CRIMINAL PROCEDURES

Article 61

Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

PART IV

ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED *INTER-PARTES* PROCEDURES

Article 62

1. Members may require, as a condition of the acquisition or maintenance of the intellectual property rights provided for under Sections 2 through 6 of Part II, compliance with reasonable procedures and formalities. Such procedures and formalities shall be consistent with the provisions of this Agreement.

2. Where the acquisition of an intellectual property right is subject to the right being granted or registered, Members shall ensure that the procedures for grant or registration, subject to compliance with the substantive conditions for acquisition of the right, permit the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.

3. Article 4 of the Paris Convention (1967) shall apply *mutatis mutandis* to service marks.

4. Procedures concerning the acquisition or maintenance of intellectual property rights and, where a Member's law provides for such procedures, administrative revocation and *inter partes* procedures such as opposition, revocation and cancellation, shall be governed by the general principles set out in paragraphs 2 and 3 of Article 41.

5. Final administrative decisions in any of the procedures referred to under paragraph 4 shall be subject to review by a judicial or quasi-judicial authority. However, there shall be no obligation to provide an opportunity for such review of decisions in cases of unsuccessful opposition or administrative revocation, provided that the grounds for such procedures can be the subject of invalidation procedures.

PART V

DISPUTE PREVENTION AND SETTLEMENT

Article 63

Transparency

1. Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them. Agreements concerning the subject matter of this Agreement which are in force between the government or a governmental agency of a Member and the government or a governmental agency of another Member shall also be published.

2. Members shall notify the laws and regulations referred to in paragraph 1 to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement. The Council shall attempt to minimize the burden on Members in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Council if consultations with WIPO on the establishment of a common register containing these laws and regulations are successful. The Council shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6*ter* of the Paris Convention (1967).

3. Each Member shall be prepared to supply, in response to a written request from another Member, information of the sort referred to in paragraph 1. A Member, having reason to believe that a specific judicial decision or administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Agreement, may also request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions or administrative rulings or bilateral agreements.

4. Nothing in paragraphs 1, 2 and 3 shall require Members to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 64

Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.

2. Subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement.

3. During the time period referred to in paragraph 2, the Council for TRIPS shall examine the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process.

PART VI

TRANSITIONAL ARRANGEMENTS

Article 65

Transitional Arrangements

1. Subject to the provisions of paragraphs 2, 3 and 4, no Member shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the WTO Agreement.

2. A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1, of the provisions of this Agreement other than Articles 3, 4 and 5.

3. Any other Member which is in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws and regulations, may also benefit from a period of delay as foreseen in paragraph 2.

4. To the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protectable in its territory on the general date of application of this Agreement for that Member, as defined in paragraph 2, it may delay the application of the provisions on product patents of Section 5 of Part II to such areas of technology for an additional period of five years.

5. A Member availing itself of a transitional period under paragraphs 1, 2, 3 or 4 shall ensure that any changes in its laws, regulations and practice made during that period do not result in a lesser degree of consistency with the provisions of this Agreement.

Article 66

Least-Developed Country Members

1. In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.

2. Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

Article 67

Technical Cooperation

In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

PART VII

INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

Article 68

Council for Trade-Related Aspects of Intellectual Property Rights

The Council for TRIPS shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Council for TRIPS may consult with and seek information from any source it deems appropriate. In consultation with WIPO, the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization.

Article 69

International Cooperation

Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.

Article 70

Protection of Existing Subject Matter

1. This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement for the Member in question.

2. Except as otherwise provided for in this Agreement, this Agreement gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Member in question, and which is protected in that Member on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Agreement. In respect of this paragraph and paragraphs 3 and 4, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention (1971), and obligations with respect to the rights of producers of phonograms and performers in existing phonograms shall be determined solely under Article 18 of the Berne Convention (1971) as made applicable under paragraph 6 of Article 14 of this Agreement.

3. There shall be no obligation to restore protection to subject matter which on the date of application of this Agreement for the Member in question has fallen into the public domain.

4. In respect of any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation in conformity with this Agreement, and which were commenced, or in respect of which a significant investment was made, before the date of acceptance of the WTO Agreement by that Member, any Member may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of this Agreement for that Member. In such cases the Member shall, however, at least provide for the payment of equitable remuneration.

5. A Member is not obliged to apply the provisions of Article 11 and of paragraph 4 of Article 14 with respect to originals or copies purchased prior to the date of application of this Agreement for that Member.

6. Members shall not be required to apply Article 31, or the requirement in paragraph 1 of Article 27 that patent rights shall be enjoyable without discrimination as to the field of technology,

to use without the authorization of the right holder where authorization for such use was granted by the government before the date this Agreement became known.

7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection which are pending on the date of application of this Agreement for the Member in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.

8. Where a Member does not make available as of the date of entry into force of the WTO Agreement patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27, that Member shall:

(a) notwithstanding the provisions of Part VI, provide as from the date of entry into force of the WTO Agreement a means by which applications for patents for such inventions can be filed;

(b) apply to these applications, as of the date of application of this Agreement, the criteria for patentability as laid down in this Agreement as if those criteria were being applied on the date of filing in that Member or, where priority is available and claimed, the priority date of the application; and

(c) provide patent protection in accordance with this Agreement as from the grant of the patent and for the remainder of the patent term, counted from the filing date in accordance with Article 33 of this Agreement, for those of these applications that meet the criteria for protection referred to in subparagraph (b).

9. Where a product is the subject of a patent application in a Member in accordance with paragraph 8(a), exclusive marketing rights shall be granted, notwithstanding the provisions of Part VI, for a period of five years after obtaining marketing approval in that Member or until a product patent is granted or rejected in that Member, whichever period is shorter, provided that, subsequent to the entry into force of the WTO Agreement, a patent application has been filed and a patent granted for that product in another Member and marketing approval obtained in such other Member.

Article 71

Review and Amendment

1. The Council for TRIPS shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. The Council shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals thereafter. The Council may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.

2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted under those agreements by all Members of the WTO may be referred to the Ministerial Conference for action in accordance with paragraph 6 of Article X of the WTO Agreement on the basis of a consensus proposal from the Council for TRIPS.

Article 72

Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Article 73

Security Exceptions

Nothing in this Agreement shall be construed:

(a) to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent a Member from taking any action which it considers necessary for the protection of its essential security interests;

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent a Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

ANNEX TO THE TRIPS AGREEMENT

1. For the purposes of Article 31*bis* and this Annex:

(a) "pharmaceutical product" means any patented product, or product manufactured through a patented process, of the pharmaceutical sector needed to address the public health problems as recognized in paragraph 1 of the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2). It is understood that active ingredients necessary for its manufacture and diagnostic kits needed for its use would be included[1];

(b) "eligible importing Member" means any least-developed country Member, and any other Member that has made a notification[2] to the Council for TRIPS of its intention to use the system set out in Article 31*bis* and this Annex ("system") as an importer, it being understood that a Member may notify at any time that it will use the system in whole or in a limited way, for example only in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. It is noted that some Members will not use the system as importing Members[3] and that some other Members have stated that, if they use the system, it would be in no more than situations of national emergency or other circumstances of extreme urgency;

(c) "exporting Member" means a Member using the system to produce pharmaceutical products for, and export them to, an eligible importing Member.

2. The terms referred to in paragraph 1 of Article 31*bis* are that:

(a) the eligible importing Member(s)[4] has made a notification[2] to the Council for TRIPS, that:

(i) specifies the names and expected quantities of the product(s) needed[5];

(ii) confirms that the eligible importing Member in question, other than a least-developed country Member, has established that it has insufficient or no manufacturing capacities in the pharmaceutical sector for the product(s) in question in one of the ways set out in the Appendix to this Annex; and

(iii) confirms that, where a pharmaceutical product is patented in its territory, it has granted or intends to grant a compulsory licence in accordance with Articles 31 and 31*bis* of this Agreement and the provisions of this Annex[6];

(b) the compulsory licence issued by the exporting Member under the system shall contain the following conditions:

(i) only the amount necessary to meet the needs of the eligible importing Member(s) may be manufactured under the licence and the entirety of this

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[1] This subparagraph is without prejudice to subparagraph 1(b).

[2] It is understood that this notification does not need to be approved by a WTO body in order to use the system.

[3] Australia, Canada, the European Communities with, for the purposes of Article 31*bis* and this Annex, its member States, Iceland, Japan, New Zealand, Norway, Switzerland, and the United States.

[4] Joint notifications providing the information required under this subparagraph may be made by the regional organizations referred to in paragraph 3 of Article 31*bis* on behalf of eligible importing Members using the system that are parties to them, with the agreement of those parties.

[5] The notification will be made available publicly by the WTO Secretariat through a page on the WTO website dedicated to the system.

[6] This subparagraph is without prejudice to Article 66.1 of this Agreement.

production shall be exported to the Member(s) which has notified its needs to the Council for TRIPS;

(ii) products produced under the licence shall be clearly identified as being produced under the system through specific labelling or marking. Suppliers should distinguish such products through special packaging and/or special colouring/shaping of the products themselves, provided that such distinction is feasible and does not have a significant impact on price; and

(iii) before shipment begins, the licensee shall post on a website[7] the following information:

- the quantities being supplied to each destination as referred to in indent (i) above; and
- the distinguishing features of the product(s) referred to in indent (ii) above;

(c) the exporting Member shall notify[8] the Council for TRIPS of the grant of the licence, including the conditions attached to it.[9] The information provided shall include the name and address of the licensee, the product(s) for which the licence has been granted, the quantity(ies) for which it has been granted, the country(ies) to which the product(s) is (are) to be supplied and the duration of the licence. The notification shall also indicate the address of the website referred to in subparagraph (b)(iii) above.

3. In order to ensure that the products imported under the system are used for the public health purposes underlying their importation, eligible importing Members shall take reasonable measures within their means, proportionate to their administrative capacities and to the risk of trade diversion to prevent re-exportation of the products that have actually been imported into their territories under the system. In the event that an eligible importing Member that is a developing country Member or a least-developed country Member experiences difficulty in implementing this provision, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in order to facilitate its implementation.

4. Members shall ensure the availability of effective legal means to prevent the importation into, and sale in, their territories of products produced under the system and diverted to their markets inconsistently with its provisions, using the means already required to be available under this Agreement. If any Member considers that such measures are proving insufficient for this purpose, the matter may be reviewed in the Council for TRIPS at the request of that Member.

5. With a view to harnessing economies of scale for the purposes of enhancing purchasing power for, and facilitating the local production of, pharmaceutical products, it is recognized that the development of systems providing for the grant of regional patents to be applicable in the Members described in paragraph 3 of Article 31*bis* should be promoted. To this end, developed country Members undertake to provide technical cooperation in accordance with Article 67 of this Agreement, including in conjunction with other relevant intergovernmental organizations.

6. Members recognize the desirability of promoting the transfer of technology and capacity building in the pharmaceutical sector in order to overcome the problem faced by Members with insufficient or no manufacturing capacities in the pharmaceutical sector. To this end, eligible importing Members and exporting Members are encouraged to use the system in a way which would promote this objective. Members undertake to cooperate in paying special attention to the transfer of technology and capacity building in the pharmaceutical sector in the work to be undertaken pursuant to Article 66.2 of this Agreement, paragraph 7 of the Declaration on the TRIPS Agreement and Public Health and any other relevant work of the Council for TRIPS.

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[7] The licensee may use for this purpose its own website or, with the assistance of the WTO Secretariat, the page on the WTO website dedicated to the system.

[8] It is understood that this notification does not need to be approved by a WTO body in order to use the system.

[9] The notification will be made available publicly by the WTO Secretariat through a page on the WTO website dedicated to the system.

7. The Council for TRIPS shall review annually the functioning of the system with a view to ensuring its effective operation and shall annually report on its operation to the General Council.

APPENDIX TO THE ANNEX TO THE TRIPS AGREEMENT

Assessment of Manufacturing Capacities in the Pharmaceutical Sector

Least-developed country Members are deemed to have insufficient or no manufacturing capacities in the pharmaceutical sector.

For other eligible importing Members insufficient or no manufacturing capacities for the product(s) in question may be established in either of the following ways:

(i) the Member in question has established that it has no manufacturing capacity in the pharmaceutical sector;

or

(ii) where the Member has some manufacturing capacity in this sector, it has examined this capacity and found that, excluding any capacity owned or controlled by the patent owner, it is currently insufficient for the purposes of meeting its needs. When it is established that such capacity has become sufficient to meet the Member's needs, the system shall no longer apply.

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Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks

adopted at Madrid on June 27, 1989,
as amended on October 3, 2006,
and on November 12, 2007

List of the Articles of the Protocol

Article 1:	Membership in the Madrid Union
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Article 3:	International Application
Article 3*bis*:	Territorial Effect
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Article 9*quinquies*: Transformation of an International Registration into National or Regional Applications

Article 9*sexies*: Relations Between States Party to both this Protocol and the Madrid (Stockholm) Agreement

Article 10: Assembly

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Article 13: Amendment of Certain Articles of the Protocol

Article 14: Becoming Party to the Protocol; Entry into Force

Article 15: Denunciation

Article 16: Signature; Languages; Depositary Functions

Article 1
Membership in the Madrid Union

The States party to this Protocol (hereinafter referred to as "the Contracting States"), even where they are not party to the Madrid Agreement Concerning the International Registration of Marks as revised at Stockholm in 1967 and as amended in 1979 (hereinafter referred to as "the Madrid (Stockholm) Agreement"), and the organizations referred to in Article 14(1)(b) which are party to this Protocol (hereinafter referred to as "the Contracting Organizations") shall be members of the same Union of which countries party to the Madrid (Stockholm) Agreement are members[1]. Any reference in this Protocol to "Contracting Parties" shall be construed as a reference to both Contracting States and Contracting Organizations.

Article 2
Securing Protection through International Registration

(1) Where an application for the registration of a mark has been filed with the Office of a Contracting Party, or where a mark has been registered in the register of the Office of a Contracting Party, the person in whose name that application (hereinafter referred to as "the basic application") or that registration (hereinafter referred to as "the basic registration") stands may, subject to the provisions of this Protocol, secure protection for his mark in the territory of the Contracting Parties, by obtaining the registration of that mark in the register of the International Bureau of the World Intellectual Property Organization (hereinafter referred to as "the international registration," "the International Register," "the International Bureau" and "the Organization," respectively), provided that,

(i) where the basic application has been filed with the Office of a Contracting State or where the basic registration has been made by such an Office, the person in whose name that application or registration stands is a national of that Contracting State, or is domiciled, or has a real and effective industrial or commercial establishment, in the said Contracting State,

(ii) where the basic application has been filed with the Office of a Contracting Organization or where the basic registration has been made by such an Office, the person in whose name that application or registration stands is a national of a State member of that Contracting Organization, or is domiciled, or has a real and effective industrial or commercial establishment, in the territory of the said Contracting Organization.

(2) The application for international registration (hereinafter referred to as "the international application") shall be filed with the International Bureau through the intermediary of the Office with which the basic application was filed or by which the basic registration was made (hereinafter referred to as "the Office of origin"), as the case may be.

(3) Any reference in this Protocol to an "Office" or an "Office of a Contracting Party" shall be construed as a reference to the office that is in charge, on behalf of a Contracting Party, of the registration of marks, and any reference in this Protocol to "marks" shall be construed as a reference to trademarks and service marks.

(4) For the purposes of this Protocol, "territory of a Contracting Party" means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies.

Article 3
International Application

(1) Every international application under this Protocol shall be presented on the form prescribed by the Regulations. The Office of origin shall certify that the particulars appearing in the international application correspond to the particulars appearing, at the time of the certification, in the basic application or basic registration, as the case may be. Furthermore, the said Office shall indicate,

(i) in the case of a basic application, the date and number of that application,

(ii) in the case of a basic registration, the date and number of that registration as well as the date and number of the application from which the basic registration resulted.

The Office of origin shall also indicate the date of the international application.

(2) The applicant must indicate the goods and services in respect of which protection of the mark is claimed and also, if possible, the corresponding class or classes according to the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. If the applicant does not give such indication, the International Bureau shall classify the goods and services in the appropriate classes of the said classification. The indication of classes given by the applicant shall be subject to control by the International Bureau, which shall exercise the said control in association with the Office of origin. In the event of disagreement between the said Office and the International Bureau, the opinion of the latter shall prevail.

(3) If the applicant claims color as a distinctive feature of his mark, he shall be required

(i) to state the fact, and to file with his international application a notice specifying the color or the combination of colors claimed;

(ii) to append to his international application copies in color of the said mark, which shall be attached to the notifications given by the International Bureau; the number of such copies shall be fixed by the Regulations.

(4) The International Bureau shall register immediately the marks filed in accordance with Article 2. The international registration shall bear the date on which the international application was received in the Office of origin, provided that the international application has been received by the International Bureau within a period of two months from that date. If the international application has not been received within that period, the international registration shall bear the date on which the said international application was received by the International Bureau. The International Bureau shall notify the international registration without delay to the Offices concerned. Marks registered in the International Register shall be published in a periodical gazette issued by the International Bureau, on the basis of the particulars contained in the international application.

(5) With a view to the publicity to be given to marks registered in the International Register, each Office shall receive from the International Bureau a number of copies of the said gazette free of charge and a number of copies at a reduced price, under the conditions fixed by the Assembly referred to in Article 10 (hereinafter referred to as "the Assembly"). Such publicity shall be deemed to be sufficient for the purposes of all the Contracting Parties, and no other publicity may be required of the holder of the international registration.

Article 3*bis*
Territorial Effect

The protection resulting from the international registration shall extend to any Contracting Party only at the request of the person who files the international application or who is the holder of the international registration. However, no such request can be made with respect to the Contracting Party whose Office is the Office of origin.

Article 3*ter*
Request for "Territorial Extension"

(1) Any request for extension of the protection resulting from the international registration to any Contracting Party shall be specially mentioned in the international application.

(2) A request for territorial extension may also be made subsequently to the international registration. Any such request shall be presented on the form prescribed by the Regulations. It shall be immediately recorded by the International Bureau, which shall notify such recordal without delay to the Office or Offices concerned. Such recordal shall be published in the periodical gazette of the International Bureau. Such territorial extension shall be effective from the date on which it has been recorded in the International Register; it shall cease to be valid on the expiry of the international registration to which it relates.

Article 4
Effects of International Registration

(1) (a) From the date of the registration or recordal effected in accordance with the provisions of Articles 3 and 3*ter*, the protection of the mark in each of the Contracting Parties concerned shall be the same as if the mark had been deposited direct with the Office of that Contracting Party. If no refusal has been notified to the International Bureau in accordance with Article 5(1) and (2) or if a refusal notified in accordance with the said Article has been withdrawn subsequently, the protection of the mark in the Contracting Party concerned shall, as from the said date, be the same as if the mark had been registered by the Office of that Contracting Party.

(b) The indication of classes of goods and services provided for in Article 3 shall not bind the Contracting Parties with regard to the determination of the scope of the protection of the mark.

(2) Every international registration shall enjoy the right of priority provided for by Article 4 of the Paris Convention for the Protection of Industrial Property, without it being necessary to comply with the formalities prescribed in Section D of that Article.

Article 4*bis*
Replacement of a National or Regional Registration by an International Registration

(1) Where a mark that is the subject of a national or regional registration in the Office of a Contracting Party is also the subject of an international registration and both registrations stand in the name of the same person, the international registration is deemed to replace the national or regional registration, without prejudice to any rights acquired by virtue of the latter, provided that

(i) the protection resulting from the international registration extends to the said Contracting Party under Article 3*ter*(1) or (2),

(ii) all the goods and services listed in the national or regional registration are also listed in the international registration in respect of the said Contracting Party,

(iii) such extension takes effect after the date of the national or regional registration.

(2) The Office referred to in paragraph (1) shall, upon request, be required to take note in its register of the international registration.

Article 5
Refusal and Invalidation of Effects of International Registration in Respect of Certain Contracting Parties

(1) Where the applicable legislation so authorizes, any Office of a Contracting Party which has been notified by the International Bureau of an extension to that Contracting Party, under Article 3*ter*(1) or (2), of the protection resulting from the international registration shall have the right to declare in a notification of refusal that protection cannot be granted in the said Contracting Party to the mark which is the subject of such extension. Any such refusal can be based only on the grounds which would apply, under the Paris Convention for the Protection of Industrial Property, in the case of a mark deposited direct with the Office which notifies the refusal. However, protection may not be refused, even partially, by reason only that the applicable legislation would permit registration only in a limited number of classes or for a limited number of goods or services.

(2) (a) Any Office wishing to exercise such right shall notify its refusal to the International Bureau, together with a statement of all grounds, within the period prescribed by the law applicable to that Office and at the latest, subject to subparagraphs (b) and (c), before the expiry of one year from the date on which the notification of the extension referred to in paragraph (1) has been sent to that Office by the International Bureau.

(b) Notwithstanding subparagraph (a), any Contracting Party may declare that, for international registrations made under this Protocol, the time limit of one year referred to in subparagraph (a) is replaced by 18 months.

(c) Such declaration may also specify that, when a refusal of protection may result from an opposition to the granting of protection, such refusal may be notified by the Office of the said Contracting Party to the International Bureau after the expiry of the 18 month time limit. Such an Office may, with respect to any given international registration, notify a refusal of protection after the expiry of the 18–month time limit, but only if

(i) it has, before the expiry of the 18-month time limit, informed the International Bureau of the possibility that oppositions may be filed after the expiry of the 18-month time limit, and

(ii) the notification of the refusal based on an opposition is made within a time limit of one month from the expiry of the opposition period and, in any case, not later than seven months from the date on which the opposition period begins.

(d) Any declaration under subparagraphs (b) or (c) may be made in the instruments referred to in Article 14(2), and the effective date of the declaration shall be the same as the date of entry into force of this Protocol with respect to the State or intergovernmental organization having made the declaration. Any such declaration may also be made later, in which case the declaration shall have effect three months after its receipt by the Director General of the Organization (hereinafter referred to as "the Director General"), or at any later date indicated in the declaration, in respect of any international registration whose date is the same as or is later than the effective date of the declaration.

(e) Upon the expiry of a period of ten years from the entry into force of this Protocol, the Assembly shall examine the operation of the system established by subparagraphs (a) to (d). Thereafter, the provisions of the said subparagraphs may be modified by a unanimous decision of the Assembly[2].

(3) The International Bureau shall, without delay, transmit one of the copies of the notification of refusal to the holder of the international registration. The said holder shall have the same remedies as if the mark had been deposited by him direct with the Office which has notified its refusal. Where the International Bureau has received information under paragraph (2)(c)(i), it shall, without delay, transmit the said information to the holder of the international registration.

(4) The grounds for refusing a mark shall be communicated by the International Bureau to any interested party who may so request.

(5) Any Office which has not notified, with respect to a given international registration, any provisional or final refusal to the International Bureau in accordance with paragraphs (1) and (2) shall, with respect to that international registration, lose the benefit of the right provided for in paragraph (1).

(6) Invalidation, by the competent authorities of a Contracting Party, of the effects, in the territory of that Contracting Party, of an international registration may not be pronounced without the holder of such international registration having, in good time, been afforded the opportunity of defending his rights. Invalidation shall be notified to the International Bureau.

Article 5*bis*
Documentary Evidence of Legitimacy of Use of Certain Elements of the Mark

Documentary evidence of the legitimacy of the use of certain elements incorporated in a mark, such as armorial bearings, escutcheons, portraits, honorary distinctions, titles, trade names, names of persons other than the name of the applicant, or other like inscriptions, which might be required by the Offices of the Contracting Parties shall be exempt from any legalization as well as from any certification other than that of the Office of origin.

Article 5*ter*
Copies of Entries in International Register; Searches for Anticipations; Extracts from International Register

(1) The International Bureau shall issue to any person applying therefor, upon the payment of a fee fixed by the Regulations, a copy of the entries in the International Register concerning a specific mark.

(2) The International Bureau may also, upon payment, undertake searches for anticipations among marks that are the subject of international registrations.

(3) Extracts from the International Register requested with a view to their production in one of the Contracting Parties shall be exempt from any legalization.

Article 6
Period of Validity of International Registration; Dependence and Independence of International Registration

(1) Registration of a mark at the International Bureau is effected for ten years, with the possibility of renewal under the conditions specified in Article 7.

(2) Upon expiry of a period of five years from the date of the international registration, such registration shall become independent of the basic application or the registration resulting therefrom, or of the basic registration, as the case may be, subject to the following provisions.

(3) The protection resulting from the international registration, whether or not it has been the subject of a transfer, may no longer be invoked if, before the expiry of five years from the date of the international registration, the basic application or the registration resulting therefrom, or the basic registration, as the case may be, has been withdrawn, has lapsed, has been renounced or has been the subject of a final decision of rejection, revocation, cancellation or invalidation, in respect of all or some of the goods and services listed in the international registration. The same applies if

(i) an appeal against a decision refusing the effects of the basic application,

(ii) an action requesting the withdrawal of the basic application or the revocation, cancellation or invalidation of the registration resulting from the basic application or of the basic registration, or

(iii) an opposition to the basic application

results, after the expiry of the five-year period, in a final decision of rejection, revocation, cancellation or invalidation, or ordering the withdrawal, of the basic application, or the registration resulting therefrom, or the basic registration, as the case may be, provided that such appeal, action or opposition had begun before the expiry of the said period. The same also applies if the basic application is withdrawn, or the registration resulting from the basic application or the basic registration is renounced, after the expiry of the five-year period, provided that, at the time of the withdrawal or renunciation, the said application or registration was the subject of a proceeding referred to in item (i), (ii) or (iii) and that such proceeding had begun before the expiry of the said period.

(4) The Office of origin shall, as prescribed in the Regulations, notify the International Bureau of the facts and decisions relevant under paragraph (3), and the International Bureau shall, as prescribed in the Regulations, notify the interested parties and effect any publication accordingly. The Office of origin shall, where applicable, request the International Bureau to cancel, to the extent applicable, the international registration, and the International Bureau shall proceed accordingly.

Article 7
Renewal of International Registration

(1) Any international registration may be renewed for a period of ten years from the expiry of the preceding period, by the mere payment of the basic fee and, subject to Article 8(7), of the supplementary and complementary fees provided for in Article 8(2).

(2) Renewal may not bring about any change in the international registration in its latest form.

(3) Six months before the expiry of the term of protection, the International Bureau shall, by sending an unofficial notice, remind the holder of the international registration and his representative, if any, of the exact date of expiry.

(4) Subject to the payment of a surcharge fixed by the Regulations, a period of grace of six months shall be allowed for renewal of the international registration.

Article 8
Fees for International Application and Registration

(1) The Office of origin may fix, at its own discretion, and collect, for its own benefit, a fee which it may require from the applicant for international registration or from the holder of the international registration in connection with the filing of the international application or the renewal of the international registration.

(2) Registration of a mark at the International Bureau shall be subject to the advance payment of an international fee which shall, subject to the provisions of paragraph (7)(a), include,

(i) a basic fee;

(ii) a supplementary fee for each class of the International Classification, beyond three, into which the goods or services to which the mark is applied will fall;

(iii) a complementary fee for any request for extension of protection under Article 3*ter*.

(3) However, the supplementary fee specified in paragraph (2)(ii) may, without prejudice to the date of the international registration, be paid within the period fixed by the Regulations if the number of classes of goods or services has been fixed or disputed by the International Bureau. If, upon expiry of the said period, the supplementary fee has not been paid or the list of goods or services has not been reduced to the required extent by the applicant, the international application shall be deemed to have been abandoned.

(4) The annual product of the various receipts from international registration, with the exception of the receipts derived from the fees mentioned in paragraph (2)(ii) and (iii), shall be divided equally among the Contracting Parties by the International Bureau, after deduction of the expenses and charges necessitated by the implementation of this Protocol.

(5) The amounts derived from the supplementary fees provided for in paragraph (2)(ii) shall be divided, at the expiry of each year, among the interested Contracting Parties in proportion to the number of marks for which protection has been applied for in each of them during that year, this number being multiplied, in the case of Contracting Parties which make an examination, by a coefficient which shall be determined by the Regulations.

(6) The amounts derived from the complementary fees provided for in paragraph (2)(iii) shall be divided according to the same rules as those provided for in paragraph (5).

(7) (a) Any Contracting Party may declare that, in connection with each international registration in which it is mentioned under Article 3*ter*, and in connection with the renewal of any such international registration, it wants to receive, instead of a share in the revenue produced by the supplementary and complementary fees, a fee (hereinafter referred to as "the individual fee") whose amount shall be indicated in the declaration, and can be changed in further declarations, but may not be higher than the equivalent of the amount which the said Contracting Party's Office would be entitled to receive from an applicant for a ten-year registration, or from the holder of a registration for a ten-year renewal of that registration, of the mark in the register of the said Office, the said amount being diminished by the savings resulting from the international procedure. Where such an individual fee is payable,

(i) no supplementary fees referred to in paragraph (2)(ii) shall be payable if only Contracting Parties which have made a declaration under this subparagraph are mentioned under Article 3*ter*, and

(ii) no complementary fee referred to in paragraph (2)(iii) shall be payable in respect of any Contracting Party which has made a declaration under this subparagraph.

(b) Any declaration under subparagraph (a) may be made in the instruments referred to in Article 14(2), and the effective date of the declaration shall be the same as the date of entry into force of this Protocol with respect to the State or intergovernmental organization having made the declaration. Any such declaration may also be made later, in which case the declaration shall have effect three months after its receipt by the Director General, or at any later date indicated in the declaration, in respect of any international registration whose date is the same as or is later than the effective date of the declaration.

Article 9
Recordal of Change in the Ownership of an International Registration

At the request of the person in whose name the international registration stands, or at the request of an interested Office made *ex officio* or at the request of an interested person, the International Bureau shall record in the International Register any change in the ownership of that registration, in respect of all or some of the Contracting Parties in whose territories the said registration has effect and in respect of all or some of the goods and services listed in the registration, provided that the new holder is a person who, under Article 2(1), is entitled to file international applications.

Article 9*bis*
Recordal of Certain Matters Concerning an International Registration

The International Bureau shall record in the International Register

(i) any change in the name or address of the holder of the international registration,

(ii) the appointment of a representative of the holder of the international registration and any other relevant fact concerning such representative,

(iii) any limitation, in respect of all or some of the Contracting Parties, of the goods and services listed in the international registration,

(iv) any renunciation, cancellation or invalidation of the international registration in respect of all or some of the Contracting Parties,

(v) any other relevant fact, identified in the Regulations, concerning the rights in a mark that is the subject of an international registration.

Article 9*ter*
Fees for Certain Recordals

Any recordal under Article 9 or under Article 9*bis* may be subject to the payment of a fee.

Article 9*quater*
Common Office of Several Contracting States

(1) If several Contracting States agree to effect the unification of their domestic legislations on marks, they may notify the Director General

(i) that a common Office shall be substituted for the national Office of each of them, and

(ii) that the whole of their respective territories shall be deemed to be a single State for the purposes of the application of all or part of the provisions preceding this Article as well as the provisions of Articles 9*quinquies* and 9*sexies*.

(2) Such notification shall not take effect until three months after the date of the communication thereof by the Director General to the other Contracting Parties.

Article 9*quinquies*
Transformation of an International Registration into National or Regional Applications

Where, in the event that the international registration is cancelled at the request of the Office of origin under Article 6(4), in respect of all or some of the goods and services listed in the said registration, the person who was the holder of the international registration files an application for the registration of the same mark with the Office of any of the Contracting Parties in the territory of which the international registration had effect, that application shall be treated as if it had been filed on the date of the international registration according to Article 3(4) or on the date of recordal of the territorial extension according to Article 3*ter*(2) and, if the international registration enjoyed priority, shall enjoy the same priority, provided that

(i) such application is filed within three months from the date on which the international registration was cancelled,

(ii) the goods and services listed in the application are in fact covered by the list of goods and services contained in the international registration in respect of the Contracting Party concerned, and

(iii) such application complies with all the requirements of the applicable law, including the requirements concerning fees.

Article 9*sexies*
Relations Between States Party to both this Protocol and the Madrid (Stockholm) Agreement

(1) (a) This Protocol alone shall be applicable as regards the mutual relations of States party to both this Protocol and the Madrid (Stockholm) Agreement.

(b) Notwithstanding subparagraph (a), a declaration made under Article 5(2)(b), Article 5(2)(c) or Article 8(7) of this Protocol, by a State party to both this Protocol and the Madrid (Stockholm) Agreement, shall have no effect in the relations with another State party to both this Protocol and the Madrid (Stockholm) Agreement.

(2) The Assembly shall, after the expiry of a period of three years from September 1, 2008, review the application of paragraph (1)(b) and may, at any time thereafter, either repeal it or restrict its scope, by a three-fourths majority. In the vote of the Assembly, only those States which are party to both the Madrid (Stockholm) Agreement and this Protocol shall have the right to participate.

Article 10
Assembly

(1) (a) The Contracting Parties shall be members of the same Assembly as the countries party to the Madrid (Stockholm) Agreement.

(b) Each Contracting Party shall be represented in that Assembly by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Contracting Party which has appointed it, except for the travel expenses and the subsistence allowance of one delegate for each Contracting Party, which shall be paid from the funds of the Union.

(2) The Assembly shall, in addition to the functions which it has under the Madrid (Stockholm) Agreement[3], also

(i) deal with all matters concerning the implementation of this Protocol;

(ii) give directions to the International Bureau concerning the preparation for conferences of revision of this Protocol, due account being taken of any comments made by those countries of the Union which are not party to this Protocol;

(iii) adopt and modify the provisions of the Regulations concerning the implementation of this Protocol;

(iv) perform such other functions as are appropriate under this Protocol.

(3) (a) Each Contracting Party shall have one vote in the Assembly. On matters concerning only countries that are party to the Madrid (Stockholm) Agreement, Contracting Parties that are not party to the said Agreement shall not have the right to vote, whereas, on matters concerning only Contracting Parties, only the latter shall have the right to vote.

(b) One-half of the members of the Assembly which have the right to vote on a given matter shall constitute the quorum for the purposes of the vote on that matter.

(c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of the members of the Assembly having the right to vote on a given matter which are represented is less than one-half but equal to or more than one-third of the members of the Assembly having the right to vote on that matter, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly having the right to vote on the said matter which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiry of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of Articles 5(2)(e), 9*sexies*(2), 12 and 13(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

(f) A delegate may represent, and vote in the name of, one member of the Assembly only.

(4) In addition to meeting in ordinary sessions and extraordinary sessions as provided for by the Madrid (Stockholm) Agreement, the Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of one-fourth of the members of the Assembly having the right to vote on the matters proposed to be included in the agenda of the session. The agenda of such an extraordinary session shall be prepared by the Director General.

Article 11
International Bureau

(1) International registration and related duties, as well as all other administrative tasks, under or concerning this Protocol, shall be performed by the International Bureau.

(2) (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for the conferences of revision of this Protocol.

(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for such conferences of revision

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at such conferences of revision.

(3) The International Bureau shall carry out any other tasks assigned to it in relation to this Protocol.

Article 12
Finances

As far as Contracting Parties are concerned, the finances of the Union shall be governed by the same provisions as those contained in Article 12 of the Madrid (Stockholm) Agreement[4], provided that any reference to Article 8 of the said Agreement shall be deemed to be a reference to Article 8 of this Protocol. Furthermore, for the purposes of Article 12(6)(b) of the said Agreement, Contracting Organizations shall, subject to a unanimous decision to the contrary by the Assembly, be considered to belong to contribution class I (one) under the Paris Convention for the Protection of Industrial Property.

Article 13
Amendment of Certain Articles of the Protocol

(1) Proposals for the amendment of Articles 10, 11, 12, and the present Article, may be initiated by any Contracting Party, or by the Director General. Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment to Article 10, and to the present paragraph, shall require four-fifths of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of those States and intergovernmental organizations which, at the time the amendment was adopted, were members of the Assembly and had the right to vote on the amendment. Any amendment to the said Articles thus accepted shall bind all the States and intergovernmental organizations which are Contracting Parties at the time the amendment enters into force, or which become Contracting Parties at a subsequent date.

Article 14
Becoming Party to the Protocol; Entry into Force

(1) (a) Any State that is a party to the Paris Convention for the Protection of Industrial Property may become party to this Protocol.

(b) Furthermore, any intergovernmental organization may also become party to this Protocol where the following conditions are fulfilled:

(i) at least one of the member States of that organization is a party to the Paris Convention for the Protection of Industrial Property;

(ii) that organization has a regional Office for the purposes of registering marks with effect in the territory of the organization, provided that such Office is not the subject of a notification under Article 9*quater*.

(2) Any State or organization referred to in paragraph (1) may sign this Protocol. Any such State or organization may, if it has signed this Protocol, deposit an instrument of ratification, acceptance or approval of this Protocol or, if it has not signed this Protocol, deposit an instrument of accession to this Protocol.

(3) The instruments referred to in paragraph (2) shall be deposited with the Director General.

(4) (a) This Protocol shall enter into force three months after four instruments of ratification, acceptance, approval or accession have been deposited, provided that at least one of those instruments has been deposited by a country party to the Madrid (Stockholm) Agreement and at least one other of those instruments has been deposited by a State not party to the Madrid (Stockholm) Agreement or by any of the organizations referred to in paragraph (1)(b).

(b) With respect to any other State or organization referred to in paragraph (1), this Protocol shall enter into force three months after the date on which its ratification, acceptance, approval or accession has been notified by the Director General.

(5) Any State or organization referred to in paragraph (1) may, when depositing its instrument of ratification, acceptance or approval of, or accession to, this Protocol, declare that the protection resulting from any international registration effected under this Protocol before the date of entry into force of this Protocol with respect to it cannot be extended to it.

Article 15
Denunciation

(1) This Protocol shall remain in force without limitation as to time.

(2) Any Contracting Party may denounce this Protocol by notification addressed to the Director General.

(3) Denunciation shall take effect one year after the day on which the Director General has received the notification.

(4) The right of denunciation provided for by this Article shall not be exercised by any Contracting Party before the expiry of five years from the date upon which this Protocol entered into force with respect to that Contracting Party.

(5) (a) Where a mark is the subject of an international registration having effect in the denouncing State or intergovernmental organization at the date on which the denunciation becomes effective, the holder of such registration may file an application for the registration of the same mark with the Office of the denouncing State or intergovernmental organization, which shall be treated as if it had been filed on the date of the international registration according to Article 3(4) or on the date of recordal of the territorial extension according to Article 3*ter*(2) and, if the international registration enjoyed priority, enjoy the same priority, provided that

(i) such application is filed within two years from the date on which the denunciation became effective,

(ii) the goods and services listed in the application are in fact covered by the list of goods and services contained in the international registration in respect of the denouncing State or intergovernmental organization, and

(iii) such application complies with all the requirements of the applicable law, including the requirements concerning fees.

(b) The provisions of subparagraph (a) shall also apply in respect of any mark that is the subject of an international registration having effect in Contracting Parties other than the denouncing State or intergovernmental organization at the date on which denunciation becomes effective and whose holder, because of the denunciation, is no longer entitled to file international applications under Article 2(1).

Article 16
Signature; Languages; Depositary Functions

(1) (a) This Protocol shall be signed in a single copy in the English, French and Spanish languages, and shall be deposited with the Director General when it ceases to be open for signature at Madrid. The texts in the three languages shall be equally authentic.

(b) Official texts of this Protocol shall be established by the Director General, after consultation with the interested governments and organizations, in the Arabic, Chinese, German, Italian, Japanese, Portuguese and Russian languages, and in such other languages as the Assembly may designate.

(2) This Protocol shall remain open for signature at Madrid until December 31, 1989.

(3) The Director General shall transmit two copies, certified by the Government of Spain, of the signed texts of this Protocol to all States and intergovernmental organizations that may become party to this Protocol.

(4) The Director General shall register this Protocol with the Secretariat of the United Nations.

(5) The Director General shall notify all States and international organizations that may become or are party to this Protocol of signatures, deposits of instruments of ratification, acceptance, approval or accession, the entry into force of this Protocol and any amendment thereto, any notification of denunciation and any declaration provided for in this Protocol.

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[1] Article 1 of the Madrid (Stockholm) Agreement reads as follows:
"Article 1
[Establishment of a Special Union. Filing of Marks at International Bureau. Definition of Country of Origin]

(1) The countries to which this Agreement applies constitute a Special Union for the International registration of marks.

(2) Nationals of any of the contracting countries may, in all the other countries party to this Agreement, secure protection for their marks applicable to goods or services, registered in the country of origin, by filing the said marks at the International Bureau of Intellectual Property (hereinafter designated as "the International Bureau") referred to in the Convention establishing the World Intellectual Property Organization (hereinafter designated as "the Organization"), through the intermediary of the Office of the said country of origin.

(3) Shall be considered the country of origin the country of the Special Union where the applicant has a real and effective industrial or commercial establishment; if he has no such establishment in a country of the Special Union, the country of the Special Union where he has his domicile; if he has no domicile within the Special Union but is a national of a country of the Special Union, the country of which he is a national."

[2] Interpretative statement adopted by the Assembly of the Madrid Union:
"Article 5(2)(e) of the Protocol is understood as allowing the Assembly to keep under review the operation of the system established by subparagraphs (a) to (d), it being also understood that any modification of those provisions shall require a unanimous decision of the Assembly."

[3] Article 10 of the Madrid (Stockholm) Agreement reads as follows:
"Article 10
[Assembly of the Special Union]

(1) (a) The Special Union shall have an Assembly consisting of those countries which have ratified or acceded to this Act.

(b) The Government of each country shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it, except for the travel expenses and the subsistence allowance of one delegate for each member country, which shall be paid from the funds of the Special Union.

(2) (a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of this Agreement;

(ii) give directions to the International Bureau concerning the preparation for conferences of revision, due account being taken of any comments made by those countries of the Special Union which have not ratified or acceded to this Act;

(iii) modify the Regulations, including the fixation of the amounts of the fees referred to in Article 8(2) and other fees relating to international registration;

(iv) review and approve the reports and activities of the Director General concerning the Special Union, and give him all necessary instructions concerning matters within the competence of the Special Union;

(v) determine the program and adopt the biennal budget of the Special Union, and approve its final accounts;

(vi) adopt the financial regulations of the Special Union;

(vii) establish such committees of experts and working groups as it may deem necessary to achieve the objectives of the Special Union;

(viii) determine which countries not members of the Special Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(ix) adopt amendments to Articles 10 to 13;

(x) take any other appropriate action designed to further the objectives of the Special Union;

(xi) perform such other functions as are appropriate under this Agreement.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) (a) Each country member of the Assembly shall have one vote.

(b) One-half of the countries members of the Assembly shall constitute a quorum.

(c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of countries represented is less than one-half but equal to or more than one-third of the countries members of the Assembly, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of Article 13(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

(f) A delegate may represent, and vote in the name of, one country only.

(g) Countries of the Special Union not members of the Assembly shall be admitted to the meetings of the latter as observers.

(4) (a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of one-fourth of the countries members of the Assembly.

(c) The agenda of each session shall be prepared by the Director General.

(5) The Assembly shall adopt its own rules of procedure."

4 Article 12 of the Madrid (Stockholm) Agreement reads as follows :
"Article 12
[Finances]

(1) (a) The Special Union shall have a budget.

(b) The budget of the Special Union shall include the income and expenses proper to the Special Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

(c) Expenses not attributable exclusively to the Special Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Special Union in such common expenses shall be in proportion to the interest the Special Union has in them.

(2) The budget of the Special Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) The budget of the Special Union shall be financed from the following sources:

(i) international registration fees and other fees and charges due for other services rendered by the International Bureau in relation to the Special Union;

(ii) sale of, or royalties on, the publications of the International Bureau concerning the Special Union;

(iii) gifts, bequests, and subventions;

(iv) rents, interests, and other miscellaneous income.

(4) (a) The amounts of the fees referred to in Article 8(2) and other fees relating to international registration shall be fixed by the Assembly on the proposal of the Director General.

(b) The amounts of such fees shall be so fixed that the revenues of the Special Union from fees, other than the supplementary and complementary fees referred to in Article 8(2)(b) and (c), and other sources shall be at least sufficient to cover the expenses of the International Bureau concerning the Special Union.

(c) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the financial regulations.

(5) Subject to the provisions of paragraph (4)(a), the amount of fees and charges due for other services rendered by the International Bureau in relation to the Special Union shall be established, and shall be reported to the Assembly, by the Director General.

(6) (a) The Special Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Special Union. If the fund becomes insufficient, the Assembly shall decide to increase it.

(b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country as a member of the Paris Union for the Protection of Industrial Property to the budget of the said Union for the year in which the fund is established or the decision to increase it is made.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has beard the advice of the Coordination Committee of the Organization.

(d) As long as the Assembly authorizes the use of the reserve fund of the Special Union as a working capital fund, the Assembly may suspend the application of the provisions of subparagraphs (a), (b), and (c).

(7) (a) In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization.

(b) The country referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(8) The auditing of the accounts shall be effected by one or more of the countries of the Special Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly."