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Original: English

**CHAIR'S SUMMARY OF THE MEETING OF THE WORKING GROUP
ON CONVENTION AMENDMENT**
(10 November 2015, Malta)

The Working Group on Convention Amendment met prior to the opening of the 24th Regular Meeting of the ICCAT Commission November 10, 2015 to review outstanding issues in relation to ICCAT Convention Amendment. The Chair introduced CONV-005, which compiles proposals for amendment discussed to-date as well as conforming changes related to the amendments developed by the Working Group.

The Working Group reviewed the four major outstanding issues: text related to ecosystem considerations and allocations in the general principles, grounds for objection, dispute resolution, and non-Party participation. The Working Group resolved text related to application of an ecosystem approach to fisheries in Article III bis (a). However, the paragraph on transparency in allocation decisions (Article III bis (e)) remains open, and in particular whether to include specific mention of allocation criteria. Issues relating to the grounds for objection in Article VIII (3)(h) remain unresolved, as does the issue of dispute resolution (Article VIII bis). While the two original proposals on dispute resolution remain on the table, delegations agreed to try to find a common approach on the basis of the Facilitator's draft prepared by Canada reflecting intersessional work (CONV-009A).

The Working Group took note of the communication from the EU offering to take on the role of the Depositary in order to facilitate a possible mechanism for enhanced fishing entity participation (CONV-008) and clarifying the practicalities of such a potential change. Delegations noted the need for additional consultation in order to identify a common approach on these issues.

The Chair was charged with finalizing the drafting of technical amendments to bring the Preamble and Article IV (2) in line with the amendments developed by the Working Group, as well as editorial clarifications in Article VIII (3)(g) and Article VIII (5). These changes are reflected in the updated consolidated text attached as **Appendix 1**. In addition, the United States presented a proposal amending the Chair's draft recommendation specifying the species that will be understood as "ICCAT Species" pursuant to the amendments (CONV-010).

The Chair concluded that a great deal of progress had been made since the Miami meeting and encouraged delegations to continue working together on the few issues which remain outstanding.

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Appendix 1

**COMPILED PROPOSALS FOR AMENDMENT OF THE INTERNATIONAL CONVENTION
FOR THE CONSERVATION OF ATLANTIC TUNAS**

Prepared by the Chair of the Working Group on Convention Amendment

Preamble

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

Article I

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

Article II

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

Article III

1. The Contracting Parties hereby agree to establish and maintain a Commission to be known as the International Commission for the Conservation of Atlantic Tunas, hereinafter referred to as “the Commission”, which shall carry out the objectives set forth in this Convention.
2. Each of the Contracting Parties shall be represented on the Commission by not more than three Delegates. Such Delegates may be assisted by experts and advisors.

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

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4. The Commission shall hold a regular meeting once every two years. A special meeting may be called at any time at the request of a majority of the Contracting Parties or by decision of the Council as constituted in Article V.
5. At its first meeting, and thereafter at each regular meeting, the Commission shall elect from among its Members a Chairman, a first Vice-Chairman and a second Vice-Chairman who shall not be re-elected for more than one term.
6. The meetings of the Commission and its subsidiary bodies shall be public unless the Commission otherwise decides.
7. The official languages of the Commission shall be English, French and Spanish.
8. The Commission shall have authority to adopt such rules of procedure and financial regulations as are necessary to carry out its functions.
9. The Commission shall submit a report to the Contracting Parties every two years on its work and findings and shall also inform any Contracting Party, whenever requested, on any matter relating to the objectives of the Convention.

Article III bis

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

- (a) apply the precautionary approach and an ecosystem approach to fisheries management in accordance with relevant internationally agreed standards and, as appropriate, recommended practices and procedures;
- (b) use the best scientific evidence available;
- (c) protect biodiversity in the marine environment;
- (d) [consider the impacts of fishing, other relevant human activities, and environmental factors on target stocks, non target species, and species belonging to the same ecosystem or dependent upon or associated with target stocks within the Convention area];
- (e) promoteensure fairness and transparency in decision making processes[, including with respect to the allocation of fishing possibilities,] and other activities[, including the application of criteria, to the extent practicable, for the allocation of fishing possibilities,]; and
- (f) give full recognition to the special requirements of developing Members of the Commission, including the need for their capacity building, in accordance with international law, to implement their obligations under this Convention and to develop their fisheries.

Article IV

1. In order to carry out the objectives of this Convention the Commission shall be responsible for the study of the populations of tuna and tuna-like fishes ~~(the Scombriformes with the exception of the families Trichiuridae and Gempylidae and the genus *Scomber*)~~ and elasmobranchs that are oceanic, pelagic and highly migratory (hereinafter “ICCAT species”), and such other species ~~of fishes exploited caught in tuna fishing for ICCAT species in the Convention area, as are not under investigation by another~~ international taking into account the work of other relevant fishery-related organizations or arrangements. Such study shall include research on ~~the abundance, biometry and ecology of the fishes these species;~~ the oceanography of their environment; and the effects of natural and human factors upon their abundance. The Commission may also study species belonging to the same ecosystem or dependent or associated with the ICCAT species. The

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Commission, in carrying out these responsibilities shall, insofar as feasible, utilise the technical and scientific services of, and information from, official agencies of the Contracting Parties and their political sub-divisions and may, when desirable, utilise the available services and information of any public or private institution, organization or individual, and may undertake within the limits of its budget with the cooperation of concerned Contracting Parties, independent research to supplement the research work being done by governments, national institutions or other international organizations. The Commission shall ensure that any information received from such institution, organization, or individual is consistent with established scientific standards regarding quality and objectivity.

2. The carrying out of the provisions in paragraph 1 of this Article shall include:
- (a) collecting and analysing statistical information relating to the current conditions and trends of ~~the tuna fishery resources of~~ ICCAT species in the Convention area;
 - (b) studying and appraising information concerning measures and methods to ensure maintenance of the populations of ICCAT species ~~tuna and tuna-like fishes~~ in the Convention area at or above levels ~~which will permit the~~ capable of producing maximum sustainable catch yield and which will ensure the effective exploitation of these ~~species~~ fishes in a manner consistent with this catch;
 - (c) recommending studies and investigations to the Contracting Parties;
 - (d) publishing and otherwise disseminating reports of its findings and statistical, biological and other scientific information relative to ~~the tuna fisheries of~~ ICCAT species in the Convention area.

Article V

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

Article VI

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

- (a) shall be responsible for keeping under review the species, group of species, or geographic area under its purview, and for collecting scientific and other information relating thereto;

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- (b) may propose to the Commission, upon the basis of scientific investigations, recommendations for joint action by the Contracting Parties;
- (c) may recommend to the Commission studies and investigations necessary for obtaining information relating to its species, group of species, or geographic area, as well as the co-ordination of programmes of investigation by the Contracting Parties.

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Article VII

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

- (a) coordinating the programmes of investigation by the Contracting Parties;
- (b) preparing budget estimates for review by the Commission;
- (c) authorising the disbursement of funds in accordance with the Commission's budget;
- (d) accounting for the funds of the Commission;
- (e) arranging for co-operation with the organizations referred to in Article XI of this Convention;
- (f) preparing the collection and analysis of data necessary to accomplish the purposes of the Convention particularly those data relating to the current and maximum sustainable catch of ~~tuna~~ stocks of ICCAT species;
- (g) preparing for approval by the Commission scientific, administrative and other reports of the Commission and its subsidiary bodies.

Article VIII

1. (a) The Commission may, on the basis of scientific evidence, make recommendations designed to ~~maintain the populations of tuna and tuna-like fishes that may be taken in the Convention area at levels which will permit the maximum sustainable catch;~~
- (i) ensure in the Convention area the long-term conservation and sustainable use of ICCAT species by maintaining or restoring the abundance of the stocks of those species at or above levels capable of producing maximum sustainable yield; and
 - (ii) promote where necessary the conservation of other species that are dependent on or associated with ICCAT Species, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened.
- These recommendations shall be applicable to the Contracting Parties under the conditions laid down in paragraphs 2 and 3 of this Article.

- (b) The recommendations referred to above shall be made:
- (i) at the initiative of the Commission if an appropriate Panel has not been established; or
 - (i bis) at the initiative of the Commission with the approval of at least two-thirds of all the Contracting Parties if an appropriate Panel has been established but a proposal has not been approved;
 - (ii) on a proposal that has been approved by an appropriate Panel if such a Panel has been established;
 - (iii) on a proposal that has been approved by the appropriate Panels if the recommendation in question relates to more than one geographic area, species or group of species.

2. Each recommendation made under paragraph 1 of this Article shall become effective for all Contracting Parties ~~six~~ four months after the date of the notification from the Commission transmitting the recommendation to the Contracting Parties, unless otherwise agreed upon by the Commission at the time a recommendation is adopted and except as provided in paragraph 3 of this Article. However, under no circumstances shall a recommendation become effective in less than three months.

3. (a) If any Contracting Party in the case of a recommendation made under paragraph 1(b)(i) or (i bis) above, or any Contracting Party member of a Panel concerned in the case of a

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recommendation made under paragraph 1(b)(ii) or (iii) above, presents to the Commission an objection to such recommendation within the ~~six months~~ period established pursuant to provided for in paragraph 2 above, the recommendation shall not become effective for ~~an additional sixty days~~ the Contracting Parties concerned.

- ~~(b) Thereupon any other Contracting Party may present an objection prior to the expiration of the additional sixty days period, or within forty five days of the date of the notification of an objection made by another Contracting Party within such additional sixty days, whichever date shall be the later.~~
- ~~(c) The recommendation shall become effective at the end of the extended period or periods for objection, except for those Contracting Parties that have presented an objection.~~
- ~~(d) However, if a recommendation has met with an objection presented by only one or less than one fourth of the Contracting Parties, in accordance with sub-paragraphs (a) and (b) above, the Commission shall immediately notify the Contracting Party or Parties having presented such objection that it is to be considered as having no effect.~~
- ~~(e) In the case referred to in sub-paragraph (d) above the Contracting Party or Parties concerned shall have an additional period of sixty days from the date of said notification in which to reaffirm their objection. On the expiry of this period the recommendation shall become effective, except with respect to any Contracting Party having presented an objection and reaffirmed it within the delay provided for.~~
- ~~(f) If a recommendation has met with objection from more than one fourth but less than the majority of the Contracting Parties, in accordance with sub-paragraphs (a) and (b) above, the recommendation shall become effective for the Contracting Parties that have not presented an objection thereto.~~
- ~~(g) If objections have been presented by a majority of the Contracting Parties within the period established pursuant to paragraph 2 above, the recommendation shall not become effective for all any Contracting Parties.~~

[(h) A Contracting Party presenting an objection in accordance with sub-paragraph (a) above shall provide to the Commission in writing, at the time of presenting its objection, an explanation of the reason for its objection, which shall be based on one or more of the following grounds:

(i) The recommendation is inconsistent with this Convention or other relevant provisions of international law; or

(ii) The recommendation unjustifiably discriminates in form or in fact against the objecting Contracting Party.

[(iii) [The objecting Contracting Party has in place a domestic measure] [The recommendation is inconsistent with a domestic measure] that pursues compatible conservation and management objectives and that is at least as effective as the recommendation.]

[(iii) The Contracting Party cannot practicably comply with the measure because it has adopted a different approach to conservation and sustainable management that is at least as effective as that contained in the Recommendation.]

[(iii) Other [constraints][special circumstances] of a legal, political, or technical nature as a result of which the objecting Contracting Party is not in a position to implement or comply with the measure.]

- (i) Each Contracting Party that presents an objection pursuant to this Article shall also provide to the Commission, to the extent practicable, a description of any alternative management and conservation measures which shall be at least equally effective as the measure to which it is objecting.
- ~~(j) The Executive Secretary shall promptly circulate to all Contracting Parties details of any objection and explanation received in accordance with this article~~

4. Any Contracting Party objecting to a recommendation may at any time withdraw that objection, and the recommendation shall become effective with respect to such Contracting Party

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immediately if the recommendation is already in effect, or at such time as it may become effective under the terms of this Article.

5. ~~The Commission~~ Executive Secretary shall promptly circulate to all Contracting Parties details of any objection and explanation received in accordance with this article ~~notify each Contracting Party immediately upon receipt of each objection~~ and of each withdrawal of such an objection, and shall notify all Contracting Parties of the entry into force of any recommendation.

Article VIII bis

1. Members of the Commission shall cooperate in order to prevent disputes and shall consult among themselves in order to settle disputes by amicable means.

2. In any case where a dispute is not resolved through the means set out in paragraph 1, the provisions relating to the settlement of disputes set out in Part VIII of the 1995 Agreement shall apply, *mutatis mutandis*, to any dispute between the members of the Commission, whether or not they are also Parties to the 1995 Agreement.

3. Paragraph 2 shall not affect the status of any member of the Commission in relation to the 1995 Agreement or the 1982 Convention.

1. The members of the Commission shall cooperate in order to prevent disputes. Any member may consult with one or more members about any dispute related to the interpretation or application of the provisions of this Convention to reach a solution satisfactory to all as quickly as possible.

2. If a dispute is not settled through such consultation within a reasonable period, the members in question shall consult among themselves as soon as possible in order to settle the dispute through any peaceful means they may agree upon, in accordance with international law.

3. In cases when two or more members of the Commission agree that they have a dispute of a technical nature, and they are unable to resolve the dispute among themselves, they may refer the dispute, by mutual consent, to a non-binding ad hoc expert panel constituted within the framework of the Commission in accordance with the procedures adopted for this purpose by the Commission. The panel shall confer with the members concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.]

Article IX

1. The Contracting Parties agree to take all action necessary to ensure the enforcement of this Convention. Each Contracting Party shall transmit to the Commission, biennially or at such other times as may be required by the Commission, a statement of the action taken by it for these purposes.
2. The Contracting Parties agree:
 - (a) to furnish, on the request of the Commission, any available statistical, biological and other scientific information the Commission may need for the purposes of this Convention;
 - (b) when their official agencies are unable to obtain and furnish the said information, to allow the Commission, through the Contracting Parties, to obtain it on a voluntary basis direct from companies and individual fishermen.

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3. The Contracting Parties undertake to collaborate with each other with a view to the adoption of suitable effective measures to ensure the application of the provisions of this Convention and in particular to set up a system of international enforcement to be applied to the Convention area except the territorial sea and other waters, if any, in which a state is entitled under international law to exercise jurisdiction over fisheries.

Article X*

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

The scheme of annual contributions in the Financial Regulations shall be established or modified only through the agreement of all the Contracting Parties present and voting. The Contracting Parties shall be informed of this ninety days in advance.

3. The Council shall review the second half of the biennial budget at its regular meeting between Commission meetings and, on the basis of current and anticipated developments, may authorise reapportionment of amounts in the Commission budget for the second year within the total budget approved by the Commission.
4. The Executive Secretary of the Commission shall notify each Contracting Party of its yearly assessment. The contributions shall be payable on January first of the year for which the assessment was levied. Contributions not received before January first of the succeeding year shall be considered as in arrears.
5. Contributions to the biennial budget shall be payable in such currencies as the Commission may decide.
6. At its first meeting the Commission shall approve a budget for the balance of the first year the Commission functions and for the following biennium. It shall immediately transmit to the Contracting Parties copies of these budgets together with notices of the respective assessments for the first annual contribution.
7. Thereafter, within a period not less than sixty days before the regular meeting of the Commission which precedes the biennium, the Executive Secretary shall submit to each Contracting Party a draft biennial budget together with a schedule of proposed assessments.
8. The Commission may suspend the voting rights of any Contracting Party when its arrears of contributions equal or exceed the amount due from it for the two preceding years.
9. The Commission shall establish a Working Capital fund to finance operations of the Commission prior to receiving annual contributions, and for such other purposes as the Commission may

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

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determine. The Commission shall determine the level of the Fund, assess advances necessary for its establishment, and adopt regulations governing the use of the Fund.

10. The Commission shall arrange an annual independent audit of the Commission's accounts. The reports of such audits shall be reviewed and approved by the Commission or by the Council in years when there is no regular Commission meeting.
11. The Commission may accept contributions, other than provided for in paragraph 2 of this Article, for the prosecution of its work.

Article XI

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

Article XII

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

^{**} See FAO Agreement.

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Article XIII

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

Article XIV^{*}**

1. This Convention shall be open for signature by the Government of any State which is a Member of the United Nations or of any Specialized Agency of the United Nations. Any such Government which does not sign this Convention may adhere to it at any time.
2. This Convention shall be subject to ratification or approval by signatory countries in accordance with their constitutions. Instruments of ratification, approval, or adherence shall be deposited with the Director-General of the Food and Agriculture Organization of the United Nations.
3. This Convention shall enter into force upon the deposit of instruments of ratification, approval, or adherence by seven Governments and shall enter into force with respect to each Government which subsequently deposits an instrument of ratification, approval, or adherence on the date of such deposit.
4. This Convention shall be open for signature or adherence by any inter-governmental economic integration organization constituted by States that have transferred to it competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters.
5. Upon the deposit of its instrument of formal confirmation or adherence, any organization referred to in paragraph 4 shall be a Contracting Party having the same rights and obligations in respect of the provisions of the Convention as the other Contracting Parties. Reference in the text of the Convention to the term “State” in Article IX, paragraph 3, and to the term “government” in the Preamble and in Article XIII, paragraph 1, shall be interpreted in this manner.
6. When an organization referred to in paragraph 4 becomes a Contracting Party to this Convention, the member states of that organization and those which adhere to it in the future shall cease to be

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

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parties to the Convention; they shall transmit a written notification to this effect to the Director-General of the Food and Agriculture Organization of the United Nations.

Article XV^{*}**

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

Article XVI^{*}**

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

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

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