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Alimentación y la Agricultura

منظمة  
الغذية والزراعة  
للأمم المتحدة

# COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

## Ninety-ninth Session

Rome, 20- 23 October 2014

### General Fisheries Commission for the Mediterranean (GFCM) - Proposal to amend the Agreement

## I. Background

1. This item has been placed in the Provisional Agenda of the Committee on Constitutional and Legal Matters (hereinafter "CCLM or the Committee") under Rule XXXIV, paragraph 7 (b) of the General Rules of the Organization (GRO), whereby the Committee shall consider specific items referred to it which may arise out of: *the formulation, adoption, entry into force and interpretation of multilateral conventions and agreements concluded under Article XIV of the Constitution.*

2. Under Article XII of the Agreement for the Establishment of a General Fisheries Commission for the Mediterranean (hereinafter "*the GFCM Agreement*")<sup>1</sup>, the General Fisheries Commission for the Mediterranean (hereinafter "GFCM"; or "the Commission") may amend the agreement by a two-thirds majority of all the Members of the Commission and the amendments come into force once approved by the FAO Council.<sup>2</sup> The GFCM Agreement has been amended in the past on three occasions in 1963, in 1976, and in 1997, respectively. The latest amendments to the GFCM Agreement were approved by the Council at its 113<sup>th</sup> Session (Rome, 4-6 November 1997).<sup>3</sup>

3. At the 38<sup>th</sup> Session of the Commission (19-24 May 2014), the GFCM Contracting Parties endorsed by consensus proposed amendments to the GFCM Agreement, as reproduced in Appendix 2 to this document. Furthermore, they requested the Secretariat to submit, in close collaboration with the FAO Legal Office, the amendments to the CCLM for consideration and to the FAO Council for final approval.<sup>4</sup> The present document explains the rationale behind the proposed amendments to the GFCM Agreement. It also clarifies the scope and impact of the amendments on the work of the Commission within the framework of FAO.

<sup>1</sup> A copy of the GFCM Agreement can be found in Appendix 1 to the present document.

<sup>2</sup> Article XII.3 of the GFCM Agreement.

<sup>3</sup> CL 113/REP paragraphs 63-67 and Council Resolution 3/113 – *Amendments to GFCM Agreement: Entry into Force.*

<sup>4</sup> GFCM 38th session report, paragraph 68.

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4. The proposed amendments are in line with the recommendations for further strengthening of the GFCM issued in 2011 on the basis of the GFCM performance review,<sup>5</sup> which was carried out during the 2009-2011 biennium following the call to all regional fisheries bodies (RFBs), and specifically regional fisheries management organizations (RFMOs), to conduct performance reviews made, respectively, by the UN General Assembly<sup>6</sup> and the Committee on Fisheries (COFI) at its 27<sup>th</sup> Session (2007).<sup>7</sup>

## II. The nature of the proposed amendments and entry into force

5. The proposed amendments seek to incorporate existing operational and functional practices of the Commission into the formal legal framework of the GFCM Agreement. These practices, which originate from binding recommendations and various decisions of the Commission, have developed since the last amendments to the GFCM Agreement in 1997, and have been introduced to enhance the efficiency of the Commission and strengthen its institutional and financial operational autonomy. In some instances, the amendments appear to extend the existing obligations of the GFCM Contracting Parties. Under Article XII of the GFCM Agreement amendments not involving new obligations for Contracting Parties shall come into force as from the date of their adoption by the Commission. Amendments involving new obligations shall come into force in respect of each Contracting Party only upon acceptance of such amendments by it. The advice of the CCLM is specifically requested on whether the proposed amendments, as negotiated and endorsed by the Commission, involve new obligations for Contracting Parties.

6. At its Thirty-fifth Session in October 1977, the CCLM set down the following criteria for determining whether amendments to agreements establishing statutory bodies under Article XIV of the FAO Constitution involve new obligations:

*“if, as a result of the amendments, the overall burden to be borne by contracting parties in the implementation of their existing obligations, would remain substantially the same, the amendments would not involve new obligations. If that burden would be transformed in such a way that the tasks to be performed were different in character from those entailed under existing obligations, the amendments causing such a transformation could be said to involve new obligations. Any extension of an existing obligation could not be considered per se as a new obligation; there might however be cases where such an extension could be considered as tantamount to a new obligation – where, for example, it was bound to have substantial financial implications for the contracting parties or the burden entailed was disproportionate to the existing burden on contracting parties.”<sup>8</sup>*

7. During the “Third GFCM Extraordinary Session” (7-9 April 2014) and the “Resumed Third GFCM Extraordinary Session” (17 May 2014), the Contracting Parties examined the amendments proposed to the GFCM Agreement against the above criteria, which the CCLM has consistently applied since 1977. They concluded that no new obligations were involved because, in general, the proposed amendments did not impose a different burden on the Contracting Parties, in particular, a financial, legislative or administrative burden, different from that involved in the implementation of the existing obligations.

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<sup>5</sup> See the report of the Performance Review, document GFCM XXXV/2011/Inf.8.

<sup>6</sup> See the report of the “Sixth round of Informal Consultations of States Parties to the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (New York, 23-24 April 2007)”, available online at the following link: <http://www.un.org/Depts/los/>.

<sup>7</sup> Report of the twenty-seventh session of the Committee on Fisheries (Rome, 5–9 March 2007), paragraph 86. FAO Fisheries Report. No. 830. Rome, FAO. 2007.

<sup>8</sup> Report of the Thirty-fifth Session of the CCLM, 10-14 October 1977, paragraph 46.

8. Should the CCLM confirm this view, the amendments adopted by consensus by the Contracting Parties at the 38<sup>th</sup> Session of the Commission would come into force immediately upon approval by the FAO Council at its 150<sup>th</sup> Session.

### III. Purpose and scope of the proposed amendments

9. The proposed amendments submitted for review by the CCLM have been grouped under the following categories:

- preliminary matters;
- objective, general principles and functions of the Commission;
- organization and structure of the Commission;
- role of Contracting Parties, non-Contracting Parties, observers and organizations;
- dispute settlement; and
- final provisions.

10. The proposed amendments result in the introduction of new provisions, and the renumbering and reorganization of certain existing provisions. Accordingly, in order to facilitate the review of the proposed new text of the agreement, the text of the GFCM Agreement as at present in force is reproduced in Appendix 1 to this document, and the text of the amendments proposed and endorsed by the GFCM at its 38<sup>th</sup> Session in Rome in Appendix 2.

#### A. Preliminary matters

11. Amendments introduced in *the Preamble* of the GFCM Agreement mainly aim at updating the references to international legal instruments in the area of fisheries management and conservation relevant to the GFCM mandate which were either not in force or in place when the last amendments were adopted in 1997. Amendments in *the Preamble* also incorporate considerations which strengthen the justification for the existence of the Commission. In this respect, concerns which are nowadays addressed in many RFMOs related constituent instruments, such as IUU fishing<sup>9</sup> or the preservation of small-scale fisheries, have been spelled out in *the Preamble*. While a preamble cannot stipulate specific obligations, the new text seems to correspond to existing obligations and activities of Contracting Parties.

12. Article 1<sup>10</sup> (*Use of terms*) is a new article containing definitions for terms that are used throughout the agreement. There is no analogous article in the current GFCM Agreement. The proposed definitions are intended to ensure consistency in the use of terms throughout the agreement and avoid ambiguity. The proposed definitions are not intended to affect existing obligations of Contracting Parties. They are not considered to extend the generally accepted meaning or scope of the defined terms. The majority of the definitions contained in Article 1 are based on instruments adopted under the aegis of FAO in the context of the Code of Conduct on Responsible Fisheries (e.g. International Plans of Action, Guidelines or Strategies).

13. Article 3 (*Area of Application*) specifies the geographical application of the agreement and reflects the contents of Article IV (*Region*) of the GFCM Agreement and the current Preamble. The only change relates to the deletion of the words “*connecting waters*”. These words are also deleted in the amended Preamble. The Contracting Parties considered that such deletion was justified as the term “*connecting waters*” is neither defined nor recognized internationally and could, consequently, lead to

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<sup>9</sup> Illegal, Unregulated and Unreported Fishing.

<sup>10</sup> The articles refer to proposed new text of the Agreement as set forth in Appendix 2 to this document. The term GFCM Agreement refers to the agreement as currently in force and the articles therein are numbered with roman letters (e.g. I, II, IV, IX, etc). The Roman numerals have been changed into Arabic numerals for ease of reference for all contracting parties.

different interpretations. Furthermore, Contracting Parties concurred that the deletion did not affect the geographical competence of the GFCM which, in any event, currently encompasses all waters in the Mediterranean and the Black Sea.

14. Article 4 (Membership) reproduces Article I(2) of the existing GFCM Agreement on membership and introduces a new paragraph 2. The new paragraph is added to clarify that, throughout the text of the agreement, references to “*whose vessels*” in relation to a Member Organization means vessels flying the flag of Member States of such an organization. Similar wording can be found in the Agreement establishing the Indian Ocean Tuna Commission.<sup>11</sup> It is considered that these proposed amendments simply clarify existing provisions and do not amount to new obligations.

## **B. Objective, general principles and functions of the Commission**

15. Article 2 (Objective) stipulates that the GFCM objective is to ensure the conservation and sustainability of fisheries and aquaculture. In so doing it merely reiterates *the Preamble* and Article III (*Functions*) of the current GFCM Agreement. The other two paragraphs of the proposed Article 2, on the establishment of the Commission and its headquarters, are taken from Article I(1) and Article 2(11) of the current GFCM Agreement, respectively.

16. The general principles of the GFCM are listed in Article 5 (General Principles) whereas Article 8 (Functions of the Commission) enumerates the functions of the Commission. The Contracting Parties considered the current wording of Article III of GFCM Agreement, which intermingles the objective, the principles and the functions of the Commission, to be convoluted and, accordingly, opted to have separate provisions that clearly address each of these three elements. The objective of the Commission is now stipulated under Article 2 (*Objective*) (see preceding paragraph 15). As regards the general principles and the functions, the various additions under the sub-paragraphs in Articles 5 and 8 reflect the evolving practice of the GFCM whose activities have significantly increased over the years. This is the case, for example, of the adoption of multiannual management plans, the resolution of situations of non-compliance, the collection of data, the fight against IUU fishing, and the development of education and training activities. All these activities are being consistently undertaken by the GFCM, as demonstrated by the numerous binding recommendations adopted by the Commission under Article V of the GFCM Agreement over the years. It is considered that the proposed amendments do not affect existing obligations which *de facto* and in practice have been expanded. As a result, the amendments formalize the recent practice of the Commission and spell out activities which are already foreseen in connection with the implementation of the relevant binding recommendations adopted.

## **C. Organization and structure of the Commission**

17. Article 6 (The Commission) reproduces almost *verbatim* Article II of the current GFCM Agreement. One formal difference is represented by the choice of the Contracting Parties to place the provision on the establishment of the Bureau of the Commission, previously in Article II (9) of the GFCM Agreement in a standalone provision (Article 7 (The Bureau)).

18. The Secretariat on the other hand is addressed under Article 10 (The Secretariat), which mirrors the wording in the GFCM Agreement (see Article XI).

19. Article 9 (Subsidiary bodies of the Commission) endows the Commission with the power to create subsidiary bodies in line with the current GFCM Agreement (see Article VII of the GFCM Agreement). In addition, it specifically provides that the Commission may establish particular arrangements for the Black Sea. This is consistent with the practice of the GFCM which, in 2011, established an *ad hoc* Working Group for the Black Sea. Article 9 thus aligns the text of the agreement with the practice of the Commission and does not create new obligations on the Contracting Parties.

20. Articles 11 (Financial Arrangements) and 12 (Expenses) deal with financial matters and correspond to Article IX (*Finances*) and X (*Expenses*) of the GFCM Agreement. One difference, as

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<sup>11</sup> Agreement for the establishment of the Indian Ocean Tuna Commission, Article IV, paragraph 5.

opposed to the text in force, relates to the adoption of a triennial budget foreseen under Article 11(1). The proposed amendment would not seem to affect the obligations of GFCM Contracting Parties. The GFCM Agreement does not specify the budget cycle but simply refers to a budget being adopted at each regular session. The financial obligations are not changed, rather their cycle is changed from an annual cycle (linked to the annual session) to a triennial cycle. The triennial budget approach is to be conceived in terms of a multiannual planning exercise. Furthermore, given the need to plan financial matters on a multiannual basis so as to give the Commission more stability in its operation, the Contracting Parties decided not only to include Article 11.1, but also to implement a triennial budget with immediate effect.<sup>12</sup>

21. Article 13 (*Decision-making*) details the procedure for recommendations adopted by the Commission under Article 8(b) to become binding on Contracting Parties. There are no marked differences with Article V (*Recommendations on Management Measures*) of the GFCM Agreement. The only element of novelty is represented by the final paragraph of Article 13 which envisages the possibility for the Commission to adopt decisions under urgent circumstances. Since these decisions will solely concern procedural and administrative matters of the Commission, their scope is limited and does not alter the decision-making prerogatives of the Commission. The amendments proposed with regard to Article 13 are thus intended to introduce some flexibility in respect of the decision-making process in case of emergency situations.

22. Under the proposed amendments, the reporting provisions as provided for in Article II, 13 and Article VI – *Reports* – have been deleted in the course of the negotiations of the amendments to the GFCM Agreement. As a natural consequence from the fact that such bodies are placed and operate within the framework of FAO, it is, however, incumbent on the Organization and the Commission to examine any legal, administrative institutional and financial matter, even in absence of a formal reporting line between the Commission and FAO. Even if the reporting at regular interval is no more foreseen in the revised text of the agreement, matters of legal, administrative, institutional and financial nature of interest to the Organization must be reported as maybe appropriate for action to the Council or Conference of FAO. With regard to the accountability of statutory bodies established under Article XIV with an autonomous budget, it should also be noted that some flexibility has been already introduced regarding the reporting obligations. These have decreased over the past years to serve the overall purpose of greater administrative and financial responsibility and for greater operational autonomy of such statutory bodies.

#### **D. Role of Contracting Parties, non-Contracting Parties, Observers and Organizations**

23. The GFCM Agreement does not go into detail when it comes to the actors that are affected by the work of the Commission or participate in its initiatives. The only exception is that of international organizations having a mandate similar to the GFCM which are addressed by Article VIII (*Cooperation with International Organizations*) of the GFCM Agreement. This article is retained and further elaborated under Article 16 (*Cooperation with International Organizations*). Articles 14 (*Obligations relating to the implementation of decisions by contracting parties*), 15 (*Observers*), 17 (*Recognition of special requirements of developing states contracting parties*) and 18 (*Non-Contracting Parties*) are partly or entirely new.

24. Article 14 (*Obligations relating to the implementation of decisions by Contracting Parties*) sets out in precise terms the actions which are already to be taken by Contracting Parties to ensure compliance with recommendations adopted by the Commission under Article V of the GFCM Agreement. The duty to cooperate in good faith is well established under public international law and is implied in the GFCM Agreement. The proposed amendment seeks to more clearly define how Contracting Parties may give effect to their duty of to comply, and the actions to be taken in case of non-compliance. Article 17 recognizes the special requirements of developing States and this

<sup>12</sup> See paragraphs 13-16 of the report of the "Third GFCM Extraordinary Session", available at this link: <https://gfcmsitestorage.blob.core.windows.net/documents/Reports/GFCM-2014-ExSession-Report.pdf>

provision is based on the 1995 UN Fish Stocks Agreement and is commonly found in the constituent instruments of RFMOs.

25. The GFCM Contracting Parties did not consider that the proposed amendments in Article 14 and 17 respectively affected their obligations. Recommendations adopted by the Commission are only binding and applicable to GFCM Members, subject to objections made in accordance with Article 13 (*Decision-making*). No changes have been introduced in this respect compared to Article V (*Recommendation on Management Measures*) – of the GFCM Agreement. The objection procedure thus provides a mechanism for the Contracting Parties to allow for a limited application of the binding recommendations adopted by the Commission, in as far as the objection made limits the application of the recommendation. It does not establish new obligations, nor modify the scope but, rather, sets out the methods by which obligations set forth in recommendations adopted by the Commission can be met. Accordingly, the obligation for Contracting Parties to “transpose” into national legislation binding recommendations adopted by the Commission, and subject to the objection procedure, cannot be construed as creating new obligations. Nor can the recognition of special requirements for developing states lead to a different conclusion.

26. Article 18 (*Non-Contracting Parties*) addresses non-Contracting Parties, in particular those which are known to fish in the Mediterranean and the Black Sea. Consistent with its own current practice, as well as that of the majority of RFMOs, the Commission presently grants cooperating non-Contracting Party status upon request.<sup>13</sup> Similarly, the GFCM has currently in place a process of identification of cases of non-compliance that can ultimately lead to the imposition of non-discriminatory market-related measures, including in respect of non-Contracting Parties.<sup>14</sup> These measures are tantamount to those included in the FAO International Plan of Action against IUU fishing. They would not seem to bring about new obligations for the Contracting Parties as the article primarily concerns the non-Contracting Parties.

27. Article 15 (*Observers*) allows for the participation of observers in meetings held under the aegis of the Commission. Such participation, that underpins transparency and representation, has been already occurring due to the interest of many different actors (non-state and others) in the work of the GFCM. The provisions in the article are consistent with relevant Rules of the Organization on observers and do not affect the existing obligations of the Contracting Parties nor creates new obligations.

## **E. Dispute settlement**

28. Article 19 (*Settlement of disputes on the interpretation and application of the Agreement*) does not depart considerably from the text of Article XVII (*Interpretation and Settlement of disputes*) of the GFCM Agreement. The proposed amendments seek to clarify the procedure to be followed by parties in a dispute, including consultations to reach an amicable settlement and arbitration. The amended article introduces arbitration for all cases, and removes reference to International Court of Justice. It also introduces the element of the binding nature of the arbitration finding. The Contracting Parties in the course of the negotiation of this article requested an Annex relating to the arbitration procedure which would be an integral part to the agreement. The revised dispute settlement procedure does not in itself generate new obligations for the Contracting Parties nor affect existing obligations.

## **F. Final provisions**

29. Few amendments were made in the final provisions of the GFCM Agreement, as set forth below.

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<sup>13</sup> See recommendation GFCM/2006/5 “On the criteria for obtaining the status of Cooperating non-contracting party in the GFCM area”.

<sup>14</sup> See Recommendation GFCM/38/2014/2 “Amending and repealing Recommendation GFCM/34/2010/3 concerning the identification of the non-compliance”, Annex H of the report of the 38th session of the Commission.

30. Article 21 (*Official Languages of the Commission*). This new article was considered essential by the Contracting Parties to ensure flexibility when organizing meetings of the Commission and its subsidiary bodies, as well as with respect to publication of meeting documents.

31. Article 23 (*Acceptance*) and Article 25 (*Reservations*) address the Contracting Parties determination that it would be appropriate to distinguish between reservations lodged by a Contracting Party to amendments to the agreement and those by a non-Contracting Party upon acceptance of the agreement. As a result, Article 23(7) refers to reservations by non-Contracting Parties accepting the Agreement subject to the approval of a two-thirds majority of the Contracting Parties. Under the GFCM Agreement there is a requirement of unanimity. This has been changed following the desire of contracting parties to alleviate the approval process. On the other hand, Article 25 (*Reservations*), which has been added to the agreement, refers to the case of Contracting Parties and stipulates that relevant rules of the 1969 Vienna Convention on the Law of Treaties only apply in cases of amendments involving new obligations (see Article 22(2)). In order to avoid the risk that a reservation is made to avoid obligations to comply with GFCM binding recommendations, the Commission would undertake a preliminary assessment of its scope (see Article 25(2)). The articles do not seem to affect existing obligations of the Contracting Parties nor to create new obligations.

32. Article XV of the GFCM Agreement on territorial application was deleted.

#### **IV. Conclusions**

33. The review above would seem to show that none of the proposed amendments creates obligations for the GFCM Contracting Parties that are new in the sense that they involve tasks that are different in character from those that already have to be performed or are being performed in practice ever since 1997. None of the proposed amendments would therefore fall within the concept of “new obligations” as contemplated in Article XII of the GFCM Agreement.

#### **V. Suggested Action by the Committee**

The CCLM is invited:

- i) to consider and review the proposed amendments as endorsed by the Commission at its 38<sup>th</sup> Session in light of the Basic Texts of the Organization;
- ii) to provide its views on whether any of the proposed amendments involve new obligations for the Contracting Parties;
- iii) to provide any other comment of legal nature that it considers to be relevant to the proposed amendments;
- iv) to endorse the proposed amendments for on-forwarding to the FAO Council at its 150<sup>th</sup> Session for approval.

## **Appendix 1**

### **Agreement for the establishment of the General Fisheries Commission for the Mediterranean**

**As amended by the General Fisheries Council for the Mediterranean at its First Special Session (May 1963), at its Thirteenth Session (July 1976) and at its Twenty-second Session (October 1997) and approved by the FAO Conference at its Twelfth Session (December 1963) and by the FAO Council at its Seventieth Session (December 1976) and at its Hundred and Thirteenth Session (November 1997)**

**ENTERED INTO FORCE ON 29 APRIL 2004  
(only for those countries that have accepted it)**

#### **PREAMBLE**

The Contracting Parties

Taking account of the relevant provisions of the United Nations Convention on the Law of the Sea which entered into force on 16 November, 1994 (hereafter referred to as the United Nations Convention) and which requires all members of the international community to cooperate in the conservation and management of the living marine resources,

Noting also the objectives and purposes stated in Chapter 17 of Agenda 21 adopted by the United Nations Conference on Environment and Development, 1992 and the Code of Conduct for Responsible Fisheries adopted by the FAO Conference in 1995,

Noting also that other international instruments have been negotiated concerning the conservation and management of certain fish stocks,

Having a mutual interest in the development and proper utilization of the living marine resources in the Mediterranean and the Black Sea and connecting waters (hereafter referred to as the Region) and desiring to further the attainment of their objectives through international cooperation which would be furthered by the establishment of a General Fisheries Commission for the Mediterranean,

Recognizing the importance of fisheries conservation and management in the Region and of promoting cooperation to that effect,

Agree as follows:

#### **ARTICLE I**

##### **The Commission**

1. The Contracting Parties hereby establish within the framework of the Food and Agriculture Organization of the United Nations (hereinafter referred to as "the Organization") a Commission to be known as the General Fisheries Commission for the Mediterranean (hereinafter referred to as "the Commission"), for the purpose of exercising the functions and discharging the responsibilities set forth in Article III below.

2. The Members of the Commission shall be such Members and Associate Members of the Organization and such non-member States as are members of the United Nations, any of its Specialized Agencies or the International Atomic Energy Agency, that are:



- i) coastal States or Associate Members situated wholly or partly within the Region;
- ii) States or Associate Members whose vessels engage in fishing in the Region for stocks covered by this Agreement; or
- iii) regional economic integration organizations of which any State referred to in subparagraphs (i), or (ii) above is a member and to which that State has transferred competence over matters within the purview of this Agreement;

and which accept this Agreement in accordance with the provisions of Article XIII below, it being understood that these provisions shall not affect the membership status in the Commission of such States that are not members of the United Nations, any of its Specialized Agencies or the International Atomic Energy Agency as may have become parties to this Agreement prior to 22 May 1963. As regards Associate Members, this Agreement shall, in accordance with the provisions of Article XIV.5 of the Constitution and Rule XXI.3 of the General Rules of the Organization, be submitted by the Organization to the authority having responsibility for the international relations of such Associate Members.

## **ARTICLE II**

### **Organization**

1. Each Member shall be represented at sessions of the Commission by one delegate, who may be accompanied by an alternate and by experts and advisers. Participation in meetings of the Commission by alternates, experts, and advisers shall not entail the right to vote, except in the case of an alternate who is acting in the place of a delegate during his absence.
2. Subject to paragraph 3, each Member shall have one vote. Decisions of the Commission shall be taken by a majority of the votes cast, except as otherwise provided by this Agreement. A majority of the total membership of the Commission shall constitute a quorum.
3. A Regional Economic Integration Organization that is a Member of the Commission shall be entitled to exercise in any meeting of the Commission or of any subsidiary body of the Commission a number of votes equal to the number of its Member States that are entitled to vote in such meeting.
4. A Regional Economic Integration Organization that is a Member of the Commission shall exercise its membership rights on an alternative basis with its member States that are Members of the Commission in the areas of their respective competence. Whenever a Regional Economic Integration Organization that is a Member of the Commission exercises its right to vote, its member States shall not exercise theirs, and conversely.
5. Any Member of the Commission may request a Regional Economic Integration Organization that is a Member of the Commission or its member States that are Members of the Commission to provide information as to which, as between the Member Organization and its member States, has competence in respect of any specific question. The Regional Economic Integration Organization or the member States concerned shall provide this information on such request.
6. Before any meeting of the Commission or a subsidiary body of the Commission, a Regional Economic Integration Organization that is a Member of the Commission, or its member States that are Members of the Commission shall indicate which, as between the Regional Economic Integration Organization and its Member States, has competence in respect to any specific question to be considered in the meeting and which, as between the Regional Economic Integration Organization and its member States, shall exercise the right to vote in respect of each particular agenda item. Nothing in this paragraph shall prevent a Regional Economic Integration Organization that is a Member of the Commission or its member States that are Members of the Commission from making a single

declaration for the purposes of this paragraph, which declaration shall remain in force for questions and agenda items to be considered at all subsequent meetings subject to such exceptions or modifications as may be indicated before any individual meeting.

7. In cases where an agenda item covers both matters in respect of which competence has been transferred to the Regional Economic Integration Organization and matters which lie within the competence of its member States, both the Regional Economic Integration Organization and its member States may participate in the discussions. In such cases the meeting, in arriving at its decisions, shall take into account only the intervention of the Member which has the right to vote.

8. For the purpose of determining a quorum of any meeting of the Commission, the delegation of a Regional Economic Integration Organization that is a Member of the Commission shall be counted to the extent that it is entitled to vote in the meeting in respect of which the quorum is sought.

9. The Commission shall elect a Chairman and two Vice-Chairmen.

10. The Chairman of the Commission shall normally convene a regular session of the Commission every year unless otherwise directed by a majority of the Members. The site and date of all sessions shall be determined by the Commission in consultation with the Director-General of the Organization.

11. The seat of the Commission shall be at the headquarters of the Organization in Rome, or such other location as may be determined by the Commission.

12. The Commission may, by a two-thirds majority of its membership, adopt and amend its own Rules of Procedure provided that such Rules of Procedure or the amendments thereto are not inconsistent with this Agreement or with the Constitution of the Organization.

13. The Commission may, by a two-thirds majority of its membership, adopt and amend its own Financial Regulations, provided that such Regulations shall be consistent with the principles embodied in the Financial Regulations of the Organization. Such Regulations shall be reported to the Finance Committee of the Organization which shall have the power to disallow such Financial Regulations or amendment if it finds that they are inconsistent with the principles embodied in the Financial Regulations of the Organization.

### **ARTICLE III**

#### **Functions**

1. The purpose of the Commission shall be to promote the development, conservation, rational management and best utilization of living marine resources, as well as the sustainable development of aquaculture in the Region, and to these ends it shall have the following functions and responsibilities:

- a) to keep under review the state of these resources, including their abundance and the level of their exploitation, as well as the state of the fisheries based thereon;
- b) to formulate and recommend, in accordance with the provisions of Article V, appropriate measures:
  - i) for the conservation and rational management of living marine resources, including measures:
    - regulating fishing methods and fishing gear,
    - prescribing the minimum size for individuals of specified species,
    - establishing open and closed fishing seasons and areas,
    - regulating the amount of total catch and fishing effort and their allocation among Members,

- ii) for the implementation of these recommendations;
- c) to keep under review the economic and social aspects of the fishing industry and recommend any measures aimed at its development;
- d) to encourage, recommend, coordinate and, as appropriate, undertake training and extension activities in all aspects of fisheries;
- e) to encourage, recommend, coordinate and, as appropriate, undertake research and development activities, including cooperative projects in the areas of fisheries and to the protection of living marine resources;
- f) to assemble, publish or disseminate information regarding exploitable living marine resources and fisheries based on these resources;
- g) to promote programmes for marine and brackish water aquaculture and coastal fisheries enhancement;
- h) to carry out such other activities as may be necessary for the Commission to achieve its purpose as defined above.

2. In formulating and recommending measures under paragraph 1(b) above, the Commission shall apply the precautionary approach to conservation and management decisions, and take into account also the best scientific evidence available and the need to promote the development and proper utilization of the marine living resources.

#### **ARTICLE IV**

##### **Region**

The Commission shall carry out the functions and responsibilities set forth in Article III in the Region as referred to in the Preamble.

#### **ARTICLE V**

##### **Recommendations on Management Measures**

1. The recommendations referred to in Article III, paragraph 1(b), shall be adopted by a two-thirds majority of Members of the Commission present and voting. The text of such recommendations shall be communicated by the Chairman of the Commission to each Member
2. Subject to the provisions of this Article, the Members of the Commission undertake to give effect to any recommendations made by the Commission under Article III, paragraph 1(b), from the date determined by the Commission, which shall not be before the period for objection provided for in this Article has elapsed.
3. Any Member of the Commission may within one hundred and twenty days from the date of notification of a recommendation object to it and in that event shall not be under obligation to give effect to that recommendation. In the event of an objection being made within the one hundred and twenty days period any other Member may similarly object at any time within a further period of sixty days. A Member may also at any time withdraw its objection and give effect to a recommendation.

4. If objections to a recommendation are made by more than one-third of the Members of the Commission, the other Members shall be relieved forthwith of any obligation to give effect to that recommendation; nevertheless any or all of them may agree among themselves to give effect to it.
5. The Chairman of the Commission shall notify each Member immediately upon receipt of each objection or withdrawal of objection.

## **ARTICLE VI**

### **Reports**

The Commission shall transmit, after each session, to the Director-General of the Organization, a report embodying its views, recommendations and decisions, and make such other reports to the Director-General of the Organization as may seem to it necessary or desirable. Reports of the committees and working parties of the Commission provided for in Article VII of the Agreement shall be transmitted to the Director-General of the Organization through the Commission.

## **ARTICLE VII**

### **Committees, Working Parties and Specialists**

1. The Commission may establish temporary, special or standing committees to study and report on matters pertaining to the purposes of the Commission and working parties to study and recommend on specific technical problems.
2. The committees and working parties referred to in paragraph 1 above shall be convened by the Chairman of the Commission at such times and places as are determined by the Chairman in consultation with the Director-General of the Organization, as appropriate.
3. The establishment of committees and working parties referred to in paragraph 1 above and the recruitment or appointment of specialists shall be subject to the availability of the necessary funds in the relevant chapter of the approved budget of the Commission. Before taking any decision involving expenditures in connection with the establishment of committees and working parties and the recruitment or appointment of specialists, the Commission shall have before it a report from the Secretary of the Commission on the administrative and financial implications thereof.

## **ARTICLE VIII**

### **Cooperation with International Organizations**

The Commission shall cooperate closely with other international organizations in matters of mutual interest.

## **ARTICLE IX**

### **Finances**

1. Each Member of the Commission undertakes to contribute annually its share of the autonomous budget in accordance with a scale of contributions to be adopted by the Commission.

2. At each regular session, the Commission shall adopt its autonomous budget by consensus of its Members, provided however that if, after every effort has been made, a consensus cannot be reached in the course of that session, the matter will be put to a vote and the budget shall be adopted by a two-thirds majority of its Members.
3.
  - a) The amount of the contribution of each Member of the Commission shall be determined in accordance with a scheme which the Commission shall adopt and amend by consensus.
  - b) The scheme adopted or amended by the Commission shall be set out in the Financial Regulations of the Commission.
4. Any non-Member of the Organization that becomes a Member of the Commission shall be required to make such contribution towards the expenses incurred by the Organization with respect to the activities of the Commission as the Commission may determine.
5. Contributions shall be payable in freely convertible currencies unless otherwise determined by the Commission with the concurrence of the Director-General.
6. The Commission may also accept donations and other forms of assistance from organizations, individuals and other sources for purposes connected with the fulfilment of any of its functions.
7. Contributions and donations and other forms of assistance received shall be placed in a Trust Fund administered by the Director-General in conformity with the Financial Regulations of the Organization.
8. A Member of the Commission which is in arrears in the payment of its financial contributions to the Commission shall have no vote in the Commission if the amount of its arrears equals or exceeds the amount of the contributions due from it for the two preceding calendar years. The Commission may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay was due to conditions beyond the control of the Member but in no case shall it extend the right to vote beyond a further two calendar years.

## **ARTICLE X**

### **Expenses**

1. The expenses of delegates and their alternates, experts and advisers occasioned by attendance at sessions of the Commission and the expenses of representatives sent to committees or working parties established in accordance with Article VII of this Agreement shall be determined and paid by the respective Members.
2. The expenses of the Secretariat, including publications and communications and the expenses incurred by the Chairman and Vice-Chairmen of the Commission, when performing duties on behalf of the Commission between Commission sessions, shall be determined and paid from the budget of the Commission.
3. The expenses of research and development projects undertaken by individual Members of the Commission, whether independently or upon recommendation of the Commission, shall be determined and paid by the Members concerned.
4. The expenses incurred in connection with cooperative research or development projects undertaken in accordance with the provisions of Article III, paragraph 1(e), unless otherwise available shall be determined and paid by the Members in the form and proportion to which they shall mutually agree. Contributions for cooperative projects shall be paid into a trust fund to be established by the

Organization and shall be administered by the Organization in accordance with the Financial Regulations and Rules of the Organization.

5. The expenses of experts invited to attend meetings of the Commission, committees or working parties in their individual capacity shall be borne by the budget of the Commission.

6. The Commission may accept voluntary contributions generally or in connection with specific projects or activities of the Commission. Such contributions shall be paid into a trust fund to be established by the Organization. The acceptance of such voluntary contributions and the administration of the trust fund shall be in accordance with the Financial Regulations and Rules of the Organization.

## **ARTICLE XI**

### **Administration**

1. The Secretary of the Commission (hereinafter referred to as the "Secretary") shall be appointed by the Director-General with the approval of the Commission, or in the event of appointment between regular sessions of the Commission, with the approval of the Members of the Commission.

2. The Secretary shall be responsible for implementing the policies and activities of the Commission and shall report thereon to the Commission. The Secretary shall also act as Secretary to other subsidiary bodies established by the Commission, as required.

3. The expenses of the Commission shall be paid out of its autonomous budget except those relating to such staff and facilities as can be made available by the Organization. The expenses to be borne by the Organization shall be determined and paid within the limits of the biennial budget prepared by the Director-General and approved by the Conference of the Organization in accordance with the General Rules and the Financial Regulations of the Organization.

4. Expenses incurred by delegates, their alternates, experts and advisers when attending, as government representatives, sessions of the Commission, its sub-commissions and its committees, as well as the expenses incurred by observers at sessions, shall be borne by the respective governments or organizations. The expenses of experts invited by the Commission to attend, in their individual capacity, meetings of the Commission or its sub-commissions or committees shall be borne by the budget of the Commission.

## **ARTICLE XII**

### **Amendments**

1. The General Fisheries Commission for the Mediterranean may amend this Agreement by a two-thirds majority of all the Members of the Commission. Subject to paragraph 2 below, amendments shall come into force as from the date of their adoption by the Commission.

2. Amendments involving new obligations for Members shall come into force after acceptance by two-thirds of the Members of the Commission and with respect to each Member only on acceptance of it by that Member. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director-General of the Organization who shall inform all the Members of the General Fisheries Commission for the Mediterranean, as well as the Secretary-General of the United Nations, of the receipt of acceptance and the entry into force of such amendments. The rights and obligations of any Member of the General Fisheries Commission for the Mediterranean that has not accepted an amendment involving additional obligations shall continue to be governed by the provisions of this Agreement as they stood prior to the amendment.

3. Amendments to this Agreement shall be reported to the Council of the Organization which shall have the power to disallow any amendment which it finds to be inconsistent with the objectives

and purposes of the Organization or the provisions of the Constitution of the Organization. If the Council of the Organization considers it desirable, it may refer the amendment to the Conference of the Organization which shall have the same power.

### **ARTICLE XIII**

#### **Acceptance**

1. This Agreement shall be open to acceptance by Members or Associate Members of the Organization.
2. The Commission may, by a two-thirds majority of its membership, admit to membership such other States that are Members of the United Nations, any of its Specialized Agencies or the International Atomic Energy Agency as have submitted an application for membership and a declaration made in a formal instrument that they accept this Agreement as in force at the time of admission.
3. Participation in the activities of the Commission by Members of the Commission which are not Members or Associate Members of the Organization shall be contingent upon the assumption of such proportionate share in the expenses of the Secretariat as may be determined in the light of the relevant provisions of the Financial Regulations of the Organization.
4. Acceptance of this Agreement by any Member or Associate Member of the Organization shall be effected by the deposit of an instrument of acceptance with the Director-General of the Organization and shall take effect on receipt of such instrument by the Director-General.
5. Acceptance of this Agreement by non-members of the Organization shall be effected by the deposit of an instrument of acceptance with the Director-General of the Organization. Membership shall become effective on the date on which the Commission approves the application for membership, in conformity with the provisions of paragraph 2 of this Article.
6. The Director-General of the Organization shall inform all Members of the Commission, all Members of the Organization and the Secretary-General of the United Nations of all acceptances that have become effective.
7. Acceptance of this Agreement may be made subject to reservations which shall become effective only upon unanimous approval by the Members of the Commission. Members of the Commission not having replied within three months from the date of the notification shall be deemed to have accepted the reservation. Failing such approval, the nation or regional economic integration organization making the reservation shall not become a party to this Agreement. The Director-General of the Organization shall notify forthwith all Members of the Commission of any reservations.
8. References in this Agreement to the United Nations Convention on the Law of the Sea, 1982, or to other international agreements, do not prejudice the position of any State with respect to signature, ratification, or accession to the 1982 United Nations Convention or with respect to other agreements.

### **ARTICLE XIV**

#### **Entry into force**

This Agreement shall enter into force as from the date of receipt of the fifth instrument of acceptance.

## **ARTICLE XV**

### **Territorial Application**

The Members of the Commission shall, when accepting this Agreement, state explicitly to which territories their participation shall extend. In the absence of such a declaration, participation shall be deemed to apply to all the territories for the international relations of which the Member is responsible. Subject to the provisions of Article XVI below, the scope of the territorial application may be modified by a subsequent declaration.

## **ARTICLE XVI**

### **Withdrawal**

1. Any Member may withdraw from this Agreement at any time after the expiration of two years from the date upon which the Agreement entered into force with respect to that Member, by giving written notice of such withdrawal to the Director-General of the Organization who shall immediately inform all the Members of the Commission and the Members of the Organization of such withdrawal. Notice of withdrawal shall become effective three months from the date of its receipt by the Director-General.

2. A Member of the Commission may give notice of withdrawal with respect to one or more of the territories for the international relations of which it is responsible. When a Member gives notice of its own withdrawal from the Commission it shall state to which territory or territories the withdrawal is to apply. In the absence of such a declaration, the withdrawal shall be deemed to apply to all the territories for the international relations of which the Member of the Commission is responsible, with the exception of Associate Members.

3. Any Member of the Commission that gives notice of withdrawal from the Organization shall be deemed to have simultaneously withdrawn from the Commission, and this withdrawal shall be deemed to apply to all the territories for the international relations of which the Member concerned is responsible, except that such withdrawal shall not be deemed to apply to an Associate Member.

## **ARTICLE XVII**

### **Interpretation and Settlement of Disputes**

Any dispute regarding the interpretation or application of this Agreement, if not settled by the Commission, shall be referred to a committee composed of one member appointed by each of the parties to the dispute, and in addition an independent chairman chosen by the members of the committee. The recommendations of such a committee, while not binding in character, shall become the basis for renewed consideration by the parties concerned of the matter out of which the disagreement arose. If as the result of this procedure the dispute is not settled, it shall be referred to the International Court of Justice in accordance with the Statute of the Court, or, in the case of a Regional Economic Integration Organization that is a Member of the Commission, it shall be submitted to arbitration unless the parties to the dispute agree to another method of settlement.



## **ARTICLE XVIII**

### **Termination**

This Agreement shall be automatically terminated if and when, as the result of withdrawals, the number of Members of the Commission drops below five, unless the remaining Members unanimously decide otherwise.

## **ARTICLE XIX**

### **Certification and Registration**

The text of this Agreement was originally formulated at Rome on the 24th day of September one thousand nine hundred and forty-nine in the French language. Two copies in the English, French and Spanish languages of this Agreement and of any amendments to this Agreement shall be certified by the Chairman of the Commission and by the Director-General of the Organization. One of these copies shall be deposited in the archives of the Organization. The other copy shall be transmitted to the Secretary-General of the United Nations for registration. In addition, the Director-General shall certify copies of this Agreement and transmit one copy to each Member of the Organization and to such non-member nations of the Organization that are or may become parties to this Agreement.

## Appendix 2

### Endorsed amended Agreement for the establishment of the General Fisheries Commission for the Mediterranean<sup>15</sup>

#### PREAMBLE:

The Contracting Parties,

~~Taking account of the **Recalling** international law as reflected in relevant provisions of the United Nations Convention on the Law of the Sea which entered into force on 16 November, 1994 (hereafter referred to as the United Nations Convention) and which requires all members of the international community to cooperate in the conservation and management of the living marine resources of 10 December 1982,~~

**Further recalling the Agreement for the Implementation of the Provisions of the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995, the Agreement to promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 24 November 1993, as well as other relevant international instruments concerning the conservation and management of living marine resources,**

~~Noting also the objectives and purposes stated in Chapter 17 of Agenda 21 adopted by the United Nations Conference on Environment and Development, 1992 and **Taking into account** the Code of Conduct for Responsible Fisheries adopted by the Food and Agriculture Organization Conference **at its twenty-eighth session on 31 October 1995, and related instruments adopted by the Food and Agriculture Organization Conference,** Noting also that other international instruments have been negotiated concerning the conservation and management of certain fish stocks,~~

~~Having a mutual interest in the development and the proper utilization of the living marine resources in the Mediterranean and the Black Sea and connecting waters (hereafter referred to as the **“area of application”** “the Region”),~~

**Acknowledging the specificities of the different subregions in the area of application,**

**Determined to ensure the long-term conservation and sustainable use of living marine resources and marine ecosystems in the area of application,**

**Recognizing the economic, social and nutritional benefits deriving from the sustainable use of living marine resources in the area of application,**

**Further recognizing that, under international law, States re required to cooperate in the conservation and management of living marine resources and the protection of their ecosystems,**

<sup>15</sup> Note to the reader. In this document:

- (i) text in normal font comes from the GFCM Agreement currently in force. It is proposed to retain it;
- (ii) text which appears in ~~strike through~~ is found in the GFCM Agreement currently in force. It is proposed to delete it;
- (iii) text which appears in **bold and underlined** is new as opposed to the GFCM Agreement currently in force. It is proposed to include it.

**Affirming that responsible aquaculture reduces stress on living marine resources and plays an important role in the promotion and better use of aquatic living resources, including food security,**

**Conscious of the need to avoid adverse impacts on the marine environment, preserve biodiversity and minimize the risk of long-term or irreversible effects of the use and exploitation of living marine resources,**

Recognizing the importance of fisheries conservation and management in the Region and of promoting cooperation to that effect,

**Mindful that effective conservation and management must be based on the best scientific information available and on the application of the precautionary approach,**

**Aware of the importance of coastal fishing communities and of the need to involve fishers, relevant professional organizations and civil society organizations in decision-making processes,**

**Determined to cooperate effectively and take action to prevent, deter and eliminate illegal, unreported and unregulated fishing,**

**Recognizing the special requirements of developing States to assist them to participate effectively in the conservation, management and farming of living marine resources,**

**Convinced that the conservation and sustainable use of the living marine resources in the area of application and the protection of the marine ecosystems in which those resources occur plays a major role in the context of blue growth and sustainable development,**

desiring to further the attainment of their objectives through international cooperation which would be furthered by the establishment of a **Recognizing** the need to establish for these purposes the General Fisheries Commission for the Mediterranean (**whose acronym shall be “GFCM”**) within the framework of the Food and Agriculture Organization, under Article XIV of its Constitution,

Have agreed as follows:

**Article 1: Use of Terms (new)**

**1. For the purposes of this Agreement:**

- a) **“1982 Convention” means the United Nations Convention on the Law of the Sea of 10 December 1982;**
- b) **“1995 Agreement” means the Agreement for the Implementation of the Provisions of the United Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995;**
- c) **“aquaculture” means the farming of aquatic living resources;**
- d) **“Contracting Party” means any State and regional economic integration organization comprising the Commission pursuant to Article 4;**
- e) **“Cooperating non-Contracting Party” means a Member or Associate Member of the Organization and such non-member States as are members of the United Nations or any of its specialized agencies not formally associated as a Contracting Party with the Commission which abides by measures referred to in Article 8(b);**

- f) “fishing” means searching for, attracting, locating, catching, taking or harvesting of living marine resources or any activity which can reasonably be expected to result in attracting, locating, catching, taking or harvesting of living marine resources;
- g) “fishing capacity” means the maximum amount of fish that could be taken in a fishery or by a single fishing unit (e.g. a fisher, community, vessel or fleet) over a period of time (e.g. season, year), given the biomass and age structure of the fish stock and the present state of the technology, in the absence of any regulated catch limitations and if the means available are fully used;
- h) “fishing effort” means the amount of fishing gear of a specific type used on the fishing grounds over a given unit of time (e.g. hours trawled per day, number of hooks set per day or number of hauls of a beach seine per day); when two or more kinds of gear are used, the respective efforts must be adjusted to some standard type before being added;
- i) “fishing related activities” means any operation in support of, or in preparation for fishing activities, including landing, packaging, processing, transshipping or transporting of fish, as well as provisioning of personnel, fuel, gear and other supplies;
- j) “illegal, unreported and unregulated fishing” refers to the activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing;
- k) “maximum sustainable yield” means the highest theoretical equilibrium yield that can be continuously taken (on average) from a stock under existing (average) environmental conditions without affecting the reproduction process;
- l) “straddling stocks” means stocks which occur both within the exclusive economic zones and in an areas beyond and adjacent to the exclusive economic zones;
- m) “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.

## Article 2: Objective

1. *(old Article I, 1)* The Contracting Parties hereby establish within the framework of the Constitution of the Food and Agriculture Organization (hereinafter referred to as “the Organization”) a Commission to be known as the General Fisheries Commission for the Mediterranean (hereinafter referred to as "the Commission"), for the purpose of exercising the functions and discharging the responsibilities set out in this Agreement ~~forth in Article III below.~~

2. *(old Article III, 1)* ~~The purpose of the Commission shall be to promote the development,~~ The objective of the Agreement is to ensure the conservation rational management and best utilization and sustainable use, at the biological, social, economic and environmental level, of living marine resources, as well as the sustainable development of aquaculture in the ~~Region~~ area of application.

3. *(old Article II, 11)* ~~The seat~~ The headquarters of the Commission shall be in Rome, Italy. ~~at the headquarters of the Organization in Rome, or such other location as may be determined by the Commission.~~

**Article: 3**      **Area of Application** (*new*)

1. **The geographical area of application of this Agreement comprises all marine waters of the Mediterranean Sea and the Black Sea.**

2. **Nothing in this Agreement, nor any act or activity carried out in pursuance of this Agreement, shall constitute recognition of claims or positions of any Contracting Party concerning legal status and extent of waters and zones by any such Contracting Party.**

**Article 4:**      **Membership**

1. (*old Article I, 2*) ~~The Members of~~ **Membership in** the Commission shall be open to ~~such~~ Members and Associate Members of the Organization and such non-member States as are members of the United Nations, any of its specialized agencies [~~or the International Atomic Energy Agency~~],

a) that are:

- i) coastal States or Associate Members situated wholly or partly within the ~~Region~~ **area of application**;
- ii) States or Associate Members whose vessels engage in fishing, **or intend to conduct fishing**, in the ~~Region~~ **area of application** for stocks covered by this Agreement; or
- iii) regional economic integration organizations of which any State referred to in subparagraphs (i), or (ii) above is a member and to which that State has transferred competence over matters within the purview of this Agreement;

b) and that accept this Agreement in accordance with the provisions **of Article 23 below**.

~~Article XIII below, it being understood that these provisions shall not affect the membership status in the Commission of such States that are not members of the United Nations, any of its Specialized Agencies or the International Atomic Energy Agency as may have become parties to this Agreement prior to 22 May 1963. As regards Associate Members, this Agreement shall, in accordance with the provisions of Article XIV.5 of the Constitution and Rule XXI.3 of the General Rules of the Organization, be submitted by the Organization to the authority having responsibility for the international relations of such Associate Members.~~

2. (new) **For the purposes of this Agreement, the term “whose vessels” in relation to a Contracting Party regional economic integration organization means the vessels of a Member State of such Contracting Party regional economic integration organization.**

**Article 5:**      **General Principles** (*partly old Article III*)

~~The purpose of the Commission shall be to promote the development, conservation, rational management and best utilization of living marine resources, as well as the sustainable development of~~

aquaculture in the Region **In giving effect to the objective of this Agreement, the Commission shall:**

- a) **adopt recommendations on conservation and management measures aimed at ensuring the long-term sustainability of fishing activities, in order to preserve the marine living resources, the economic and social viability of fisheries, and aquaculture; in adopting such recommendations, the Commission shall give particular attention to measures to prevent overfishing and minimize discards. The Commission shall also pay particular attention to the potential impacts on small-scale fisheries and local communities;**
- b) **formulate, in accordance with Article 8(b), appropriate measures based on the best scientific advice available, taking into account relevant environmental, economic and social factors;**
- c) **apply the precautionary approach in accordance with the 1995 Agreement and the Code of Conduct for Responsible Fisheries;**
- d) **consider aquaculture, including culture-based fisheries, as a means to promote the diversification of income and diet and, in so doing, ensure that living marine resources are used responsibly, that genetic diversity is conserved and adverse impacts on the environment and local communities are minimized;**
- e) **foster, as appropriate, a subregional approach to fisheries management and aquaculture development in order to better address the specificities of the Mediterranean and the Black Sea;**
- f) **take the appropriate measures to ensure compliance with its recommendations to deter and eradicate illegal, unreported and unregulated fishing activities;**
- g) **promote transparency in its decision-making processes and other activities; and**
- h) **carry out such other relevant activities as may be necessary for the Commission to achieve its principles as defined above.**

**Article 6 :** **The Commission** (*old Article II*)

1. Each Contracting Party shall be represented at sessions of the Commission by one delegate, who may be accompanied by an alternate and by experts and advisers. Participation in meetings of the Commission by alternates, experts, and advisers shall not entail the right to vote, except in the case of an alternate who is acting in the place of a delegate during his absence.

2. Subject to paragraph 3, each Contracting Party shall have one vote. Decisions of the Commission shall be taken by a majority of the votes cast, except as otherwise provided by this Agreement. A majority of the total membership of the Commission shall constitute a quorum.

3. A regional economic integration organization that is a Contracting Party to the Commission shall be entitled to exercise, in any meeting of the Commission or of any subsidiary body of the Commission, a number of votes equal to the number of its Member States that are entitled to vote in such meeting.

4. A regional economic integration organization that is a Contracting Party to the Commission shall exercise its membership rights on an alternative basis with its member States that are Contracting Parties to the Commission in the areas of their respective competence. Whenever a regional economic

integration organization that is a Contracting Party to the Commission exercises its right to vote, its Member States shall not exercise theirs, and conversely.

5. Any Contracting Party to the Commission may request a regional economic integration organization that is a Contracting Party to the Commission or its Member States that are Contracting Parties to the Commission to provide information as to which, as between the Contracting Party regional economic integration organization and its Member States, has competence in respect of any specific question. The regional economic integration organization or the Member States concerned shall provide this information on such request.

6. Before any meeting of the Commission or a subsidiary body of the Commission, a regional economic integration organization that is a Contracting Party to the Commission, or its Member States that are Contracting Parties to the Commission shall indicate which, as between the regional economic integration organization and its Member States, has competence in respect to any specific question to be considered in the meeting and which, as between the regional economic integration organization and its Member States, shall exercise the right to vote in respect of each particular agenda item. Nothing in this paragraph shall prevent a regional economic integration organization that is a Contracting Party to the Commission or its Member States that are Contracting Parties to the Commission from making a single declaration for the purposes of this paragraph, which declaration shall remain in force for questions and agenda items to be considered at all subsequent meetings subject to such exceptions or modifications as may be indicated before any individual meeting.

7. In cases where an agenda item covers both matters in respect of which competence has been transferred to the regional economic integration organization and matters which lie within the competence of its Member States, both the regional economic integration organization and its Member States may participate in the discussions. In such cases the meeting, in arriving at its decisions, shall take into account only the intervention of the Contracting Party which has the right to vote.

8. For the purpose of determining a quorum of any meeting of the Commission, the delegation of a regional economic integration organization that is a Contracting Party to the Commission shall be counted to the extent that it is entitled to vote in the meeting in respect of which the quorum is sought.

**9. The principle of cost-effectiveness shall apply to the frequency, duration and scheduling of sessions and other meetings and activities held under the auspices of the Commission.**

#### **Article 7: The Bureau**

*(old Article II, 9)* The Commission shall elect a ~~Chairman and two Vice Chairmen~~ **Chairperson and two Vice-Chairpersons** by a two-third majority. **The three shall constitute the Bureau of the Commission which will operate in accordance with the terms of reference set out in the Rules of Procedure.**

~~The Chairman of the Commission shall normally convene a regular session of the Commission every year unless otherwise directed by a majority of the Members. The site and date of all sessions shall be determined by the Commission in consultation with the Director General of the Organization.~~

#### **Article 8: Functions of the Commission (partly old Article III)**

**In accordance with its objectives and general principles, the Commission shall exercise the following functions and responsibilities:**

- a) regularly review **and assess** the state of living marine resources; ~~to keep under review the state of these resources, including their abundance and the level of their exploitation, as well as the state of the fisheries based thereon;~~
- b) **formulate and recommend, in accordance with the provisions of Article V Article 13,** appropriate measures, including:
- i) for the conservation and ~~rational~~ management of living marine resources **found in the area of application;**
- ii) **to minimize impacts for fishing activities on living marine resources and their ecosystems;** ~~regulating fishing methods and fishing gear; prescribing the minimum size for individuals of specified species;~~
- iii) **to adopt multiannual management plans applied in the totality of the relevant subregions based on an ecosystem approach to fisheries to guarantee the maintenance of stocks above levels which can produce maximum sustainable yield, and consistent with actions already taken at the national level;**
- iv) **to establish** ~~open and closed fishing seasons and~~ **fisheries restricted areas for the protection of vulnerable marine ecosystems, including but not limited to nursery and spawning areas, in addition to or to complement similar measures that may already be included in management plans;**
- v) **to ensure, if possible through electronic means, the collection, submission, verification, storing and dissemination of data and information, consistent with relevant data confidentiality policies and requirements;**
- vi) **to take action to prevent, deter and eliminate illegal, unreported and unregulated fishing, including mechanisms for effective monitoring, control and surveillance;**
- vii) **to resolve situations of non-compliance, including through an appropriate system of measures. The Commission shall define this system of measures and the way to implement them in its Rules of Procedure;**

For the implementation of these recommendations

- c) ~~promote programmes for marine and brackish water~~ **the sustainable development of aquaculture and coastal fisheries development and enhancement;**
- d) ~~to keep under~~ **regularly review** the socioeconomic aspects of the fishing industry ~~and recommend any measures aimed at its development,~~ **including by obtaining and evaluating economic and other data and information relevant to the work of the Commission;**
- e) ~~to encourage, recommend, coordinate and, as appropriate, undertake training~~ **promote the development of institutional capacity and human resources, particularly through education, training and vocational extension activities in areas of competence of the Commission** ~~in all aspects of fisheries;~~
- f) **enhance communication and consultation with civil society concerned with aquaculture and fishing;**



g) encourage, recommend, coordinate and, undertake research and development activities, including cooperative projects in the areas of fisheries and the protection of living marine resources;

~~to assemble, publish or disseminate information regarding exploitable living marine resources and fisheries based on these resources;~~

h) adopt and amend, by a two-thirds majority of its membership, its Rules of Procedure and Financial Regulations and **such other internal administrative regulations as may be necessary to carry out its functions;**

i) **approve its budget and programme of work and** exercise any other function as may be necessary for achieving the objective of this Agreement.

#### **Article 9 : Subsidiary bodies of the Commission (old Article VII)**

1. The Commission may establish, **as necessary,** temporary, special or standing ~~committees~~ **subsidiary bodies** to study and report on matters pertaining to the purposes of the Commission and working parties to study and recommend on specific technical problems. **The mandate of established subsidiary bodies shall be set out in the Rules of Procedure taking in consideration the need for a subregional approach. The Commission may also establish specific mechanisms for the Black Sea region which will endeavour to ensure a full participation of all riparian States, in accordance with their status within the Commission, to fisheries management related decisions.**

2. ~~The committees~~ **subsidiary bodies** and working parties referred to in paragraph 1 above shall be convened by the ~~Chairman~~ **Chairperson** of the Commission at such times and places as are determined by the ~~Chairman~~ **Chairperson** in consultation with the Director-General of the Organization, as appropriate.

3. The establishment by the Commission of **subsidiary bodies** ~~committees~~ and working parties referred to in paragraph 1 above shall be subject to the availability of necessary funds ~~in the relevant chapter of the approved budget of the Commission and,~~ before taking any decision involving expenditure ~~and the recruitment or appointment of specialists,~~ the Commission shall have before it a report from the Executive Secretary on administrative and financial implications.

4. **Each Contracting Party shall be entitled to appoint one representative to any subsidiary body and working party, who at sessions may be accompanied by alternates, experts and advisers.**

5. **Contracting Parties shall provide available information relevant to the functioning of each subsidiary body and working party in such a way as to enable them to fulfil their responsibilities.**

#### **Article 10: The Secretariat (old Article XI)**

1. **The Secretariat shall be composed of the Executive Secretary and such staff serving the Commission. The Executive Secretary and the staff of the Secretariat shall be appointed and governed in accordance with the terms, conditions and procedures laid down in the**

**Administrative Manual, Staff Regulations and Staff Rules of the Organization, as generally applicable to other staff members of the Organization.**

2. The Executive Secretary of the Commission shall be appointed by the Director-General with the approval of the Commission, or in the event of appointment between regular sessions of the Commission, with the approval of the Contracting Parties.

3. The Executive Secretary shall be responsible for ~~implementing~~ **monitoring the implementation of** the policies and activities of the Commission and shall report thereon to the Commission, **according to the terms of reference set out in the Rules of Procedure.** The Executive Secretary shall also act as Executive Secretary to other subsidiary bodies established by the Commission, as required.

~~The Commission shall transmit, after each session, to the Director-General of the Organization, a report embodying its views, recommendations and decisions, and make such other reports to the Director-General of the Organization as may seem to it necessary or desirable. Reports of the committees and working parties of the Commission provided for in Article VII of the Agreement shall be transmitted to the Director-General of the Organization through the Commission.~~

**Article 11: Financial Arrangements (old Article IX)**

~~The Commission may adopt and amend, as required, its own Financial Regulations by a two-thirds majority of the Contracting Parties, which shall be consistent with the principles embodied in the Financial Regulations of FAO. The Financial Regulations and amendments thereto shall be reported to the Finance Committee of FAO which shall have the power to disallow them if it finds that they are inconsistent with the principles embodied in the Financial Regulations of FAO.~~

1. At each regular session, the Commission shall adopt its autonomous budget **for three years, which may be reviewed on a yearly basis at the regular session. The budget will be adopted** by consensus of its Contracting Parties, provided however that if, after every effort has been made, a consensus cannot be reached in the course of that session, the matter will be put to a vote and the budget shall be adopted by a two-thirds majority of its Contracting Parties.

2. Each Contracting Party shall undertake to contribute annually its share of the autonomous budget based on the scale of contributions determined in accordance with a scheme which the Commission shall adopt or amend by consensus. The scheme shall be set out in the Financial Regulations.

3. Any non-member of the Organization that becomes a Contracting Party shall be required to make such contribution towards the expenses incurred by the Organization with respect to the activities of the Commission as the Commission may determine.

4. Contributions shall be payable in freely convertible currencies unless otherwise determined by the Commission with the concurrence of the Director-General of the Organization.

5. The Commission may ~~also~~ accept donations and other forms of assistance from organizations, individuals and other sources for purposes connected with the fulfilment of any of its functions. **The Commission may also accept voluntary contributions generally or in connection with specific projects or activities of the Commission which shall be executed by the Secretariat. Voluntary contributions, donations and other forms of assistance received shall be paid into a trust fund to be established and administrated by the Organization in conformity with the Financial Regulations and Rules of the Organization.** ~~Contributions and donations and other forms of assistance received shall be placed in a trust fund administered by the Director-General of the Organization in conformity with the Financial Regulations of the Organization.~~

6. A Contracting Party which is in arrears in the payment of its financial contributions to the Commission shall have no vote in the Commission if the amount of its arrears equals or exceeds the amount of the contributions due from it for the two preceding calendar years. The Commission may, nevertheless, permit such a Contracting Party to vote if it is satisfied that the failure to pay was due to conditions beyond the control of the Contracting Party but in no case shall it extend the right to vote beyond a further two calendar years.

**Article 12: Expenses (old Article X)**

~~The expenses of delegates and their alternates, experts and advisers occasioned by attendance at sessions of the Commission and the expenses of representatives sent to subsidiary bodies of the Commission shall be determined and paid by the respective Contracting Parties.~~

1. The expenses of the Secretariat, including publications and communications and the expenses incurred by the Chairperson and Vice-Chairpersons of the Commission, when performing duties on behalf of the Commission between sessions of the Commission, shall be determined and paid from the budget of the Commission.

2. The expenses of research and development projects undertaken by individual Contracting Parties, whether independently or upon recommendation of the Commission, shall be determined and paid by the Contracting Parties concerned.

3. The expenses incurred in connection with cooperative research or development projects undertaken, unless otherwise available, shall be determined and paid by the Contracting Parties in the form and proportion to which they shall mutually agree. ~~Contributions for cooperative projects shall be paid into a trust fund to be established by the FAO and shall be administered by the FAO in accordance with the Financial Regulations and Rules of the FAO.~~

4. The expenses of experts invited to attend meetings of the Commission and its subsidiary bodies in their individual capacity shall be borne by the budget of the Commission.

~~The Commission may accept voluntary contributions generally or in connection with specific projects or activities of the Commission. Such contributions shall be paid into a trust fund to be established by the FAO. The acceptance of such voluntary contributions and the administration of the trust fund shall be in accordance with the Financial Regulations and Rules of the FAO.~~

5. The expenses of the Commission shall be paid out of its autonomous budget except those relating to such staff and facilities as can be made available by the Organization. The expenses to be borne by the Organization shall be determined and paid within the limits of the biennial budget prepared by the Director-General and approved by the Conference of the Organization in accordance with the Financial Regulations and Rules of the Organization.

6. Expenses incurred by delegates, their alternates, experts and advisers when attending, as government representatives, sessions of the Commission and its subsidiary bodies, as well as the expenses incurred by observers at sessions, shall be borne by the respective governments or organizations. **In recognition of the special requirements of developing States Contracting**

**Parties, according to Article 17 and subject to the availability of funds, the expenses could be borne by the budget of the Commission.**

**Article 13: Decision Making (old Article V)**

1. The recommendations referred to in ~~Article III, paragraph 1(b)~~ **Article 8(b)**, shall be adopted by a two-thirds majority of the Contracting Parties of the Commission present and voting. The text of such recommendations shall be communicated by ~~the Chairman of the Commission~~ **the Executive Secretary** to each Contracting Party, **cooperating non-Contracting Party and relevant non-Contracting Party.**

2. Subject to the provisions of this Article, the Contracting Parties of the Commission undertake to give effect to any recommendations adopted under ~~Article III, paragraph 1(b)~~ **Article 8(b)**, from the date determined by the Commission, which shall not be before the period for objection provided for in this Article has elapsed.

3. Any Contracting Party of the Commission may, within one hundred and twenty days from the date of notification of a recommendation, object to it and, in that event, shall not be under obligation to give effect to that recommendation. **The objection should include a written explanation of reasons for objecting, and where appropriate, proposals for alternative measures.** In the event of an objection being made within the one hundred and twenty days period, any other Contracting Party may similarly object at any time within a further period of sixty days. A Contracting Party may also, at any time, withdraw its objection and give effect to a recommendation.

4. If objections to a recommendation are made by more than one-third of the Contracting Parties of the Commission, the other Contracting Parties shall be relieved forthwith of any obligation to give effect to that recommendation; nevertheless any or all of them may agree among themselves to give effect to it.

5. ~~The Chairman of the Commission~~ **The Executive Secretary** shall promptly notify each Contracting Party immediately upon receipt of each objection or withdrawal of objection.

**6. In exceptional circumstances, when required by a Contracting Party as determined by the Executive Secretary in consultation with the Chairperson, if urgent matters require Contracting Parties to take decisions between sessions of the Commission any rapid means of communication, including electronic means of communication, may be used for decision-making with respect to procedural and administrative matters of the Commission only, including any of its subsidiary bodies, other than matters relating to the interpretation of and the adoption of amendments to the Agreement or its Rules of Procedure.**

**Article 14: Obligations relating to the implementation of decisions by the contracting parties. (new)**

1. Subject to the provisions of this Article, the Contracting Parties of the Commission undertake to give effect to any recommendations made by the Commission **under Article 8(b)**, ~~Article III, paragraph 1(b), Article 7(b)~~, from the date determined by the Commission, which shall not be before the period for objection provided for in **Article 13** has elapsed.

2. Each Contracting Party shall transpose, as appropriate, adopted recommendations into national laws, regulations or appropriate legal instruments of the regional economic integration organization. They shall report annually to the Commission indicating how they have implemented and/or transposed the recommendations, including providing such relevant legislative documents in connection with these recommendations as may be required by the Commission and information on the monitoring and control of their fisheries. The Commission shall use this information to assess whether the recommendations are uniformly implemented.
3. Each Contracting Party shall take measures and cooperate to ensure that their duties as flag States and port States are fulfilled in accordance with relevant international instruments to which it is a party and with recommendations adopted by the Commission.
4. The Commission, through a process leading to the identification of cases of non-compliance, will address Contracting Parties which fail to comply with recommendations adopted by the Commission with a view to resolving situations of non-compliance.
5. The Commission shall define through its Rules of Procedure appropriate measures which may be taken by the Commission when Contracting Parties are identified as being in prolonged and unjustified non-compliance with its recommendations.

Article 15: Observers *(new)*

1. In accordance with the Rules of the Organization, the Commission may invite or, upon their request, allow in observer capacity regional or international governmental organizations and regional or international or other non-governmental organizations, including from the private sector, which have interests and objectives common with those of the Commission or whose activities are pertinent to the work of the Commission or its subsidiary bodies.
2. Any Member or Associate Member of the Organization that is not a Contracting Party may, upon its request, be invited as an observer at sessions of the Commission and its subsidiary bodies. It may submit memoranda and participate without vote in discussions.

Article 16: Cooperation with other organizations and institutions *(partly old Article VIII)*

1. The Commission shall cooperate ~~elose~~ly with other international organizations and institutions in matters of mutual interest.
2. The Commission shall seek to make suitable arrangements for consultation, cooperation and collaboration with other relevant organizations and institutions, including entering into memoranda of understanding and partnership agreements.

Article 17: Recognition of the special requirements of developing states contracting parties *(new)*

1. The Commission shall give full recognition to the special requirements of developing States Contracting Parties to this Agreement, in accordance with relevant provisions in the 1995 Agreement.

**2. The Contracting Parties may cooperate, either directly or through the Commission, for the purposes set out in this Agreement and provide assistance for identified needs.**

**Article 18: Non-Contracting Parties (new)**

**1. The Commission, through the Secretariat, may invite non-contracting Parties whose vessels engage in fishing in the area of application, with particular reference to coastal States, to cooperate fully in the implementation of its recommendations, including by becoming cooperating non-Contracting Parties. The Commission may accept by consensus of its Contracting Parties any application for granting cooperating non-contracting Party status provided however that if, after every effort has been made, a consensus cannot be reached, the matter will be put to a vote and the cooperating non-Contracting Party status will be granted by a two-thirds majority of its Contracting Parties.**

**2. The Commission, through the Secretariat, shall exchange information with respect to vessels engaged in fishing or fishing related activities in the Agreement area that are flying the flags of non-contracting Parties to this Agreement and identify and address, as appropriate, including through the application of sanctions, consistent with international law, which shall be defined in the Rules of Procedure, cases of activities by non-contracting Parties adversely affecting the objective of the Agreement. Sanctions may include non-discriminatory market-related measures.**

**3. The Commission shall take measures, consistent with international law and with this Agreement, to deter the activities of such vessels which undermine the effectiveness of applicable recommendations, and shall regularly report on any action taken in response to fishing or fishing related activities in the Agreement area by non-contracting Parties.**

**4. The Commission shall draw the attention of any non-contracting Parties to any activity which, in the opinion of any Contracting Party, negatively affects the implementation of the objective of the Agreement.**

**Article 19: Settlement of disputes on the interpretation and application of the agreement  
(partly old Article XVI)**

**1. In the event of a dispute between two or more of Contracting Parties concerning the interpretation or application of this Agreement, the Parties concerned shall consult among each other with a view to seeking solutions by negotiation, mediation, inquiry or any other peaceful means of their own choice.**

**2. If the parties concerned cannot reach agreement in accordance with paragraph 19.1, they may jointly refer the matter to a committee composed of one representative appointed by each of the party of the dispute, and in addition the Chairperson of the Commission. The findings by such committee, while not binding in character, shall constitute the basis for renewed consideration by the Contracting Parties concerned of the matter out of which disagreement arose.**

**3. Any dispute concerning the interpretation or application of this Agreement not resolved under paragraphs 19.1 and 19.2 may, with the consent in each case of all parties to the dispute, be referred for settlement to arbitration. The results of the arbitration procedure shall be binding upon the parties.**

**4. In cases where the dispute is referred to arbitration, the arbitral tribunal shall be constituted as provided in the Annex to this Agreement. The Annex forms an integral part of this Agreement.**

**Article 20: Relationship with other agreements (old Article XIII, 8)**

References in this Agreement to the 1982 Convention or to other international agreements do not prejudice the position of any State with respect to signature, ratification, or accession to the 1982 Convention or with respect to other agreements, **nor the rights, jurisdiction and duties of Contracting Parties under the 1982 Convention or the 1995 Agreement.**

**Article 21: Official languages of the Commission (new)**

**The official languages of the Commission shall be such official languages of the Organization as the Commission itself may decide. The delegations may use any one of these languages at sessions and for their reports and communications. The use of official languages for simultaneous interpretation and translation of documents in the statutory sessions of the Commission shall be specified in the Rules of Procedure.**

**Article 22: Amendments (old Article XII)**

1. The Commission may amend this Agreement by a two-thirds majority of all the Contracting Parties. Subject to paragraph 2 below, amendments shall come into force as from the date of their adoption by the Commission.

2. Amendments involving new obligations for Contracting Parties shall come into force after acceptance by two-thirds of the Contracting Parties and with respect to each Contracting Party only on acceptance of it by that Contracting Party. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director-General of the Organization, who shall inform all the Members of the Organization, as well as the Secretary-General of the United Nations, of the receipt of acceptance and the entry into force of such amendments. The rights and obligations of any Contracting Party that has not accepted an amendment involving additional obligations shall continue to be governed by the provisions of this Agreement as they stood prior to the amendment.

3. Amendments to this Agreement shall be reported to the Council of the Organization which shall have the power to disallow any amendment which it finds to be inconsistent with the objectives and purposes of the Organization or the provisions of the Constitution of the Organization. If the Council of the Organization considers it desirable, it may refer the amendment to the Conference of the Organization which shall have the same power.

**Article 23: Acceptance (old Article XIII)**

1. This Agreement shall be open to acceptance by Members or associate Members of the Organization.

2. The Commission may, by a two-thirds majority of its membership, admit to membership such other States that are members of the United Nations, any of its specialized agencies or the International Atomic Energy Agency as have submitted an application for membership and a declaration made in a formal instrument that they accept this Agreement as in force at the time of admission.

3. Participation in the activities of the Commission by Contracting Parties which are not Members or associate Members of the Organization shall be contingent upon the assumption of such proportionate

share in the expenses of the Secretariat as may be determined in the light of the relevant provisions of the Financial Regulations and Rules of the Organization.

4. Acceptance of this Agreement by any Member or associate Member of the Organization shall be effected by the deposit of an instrument of acceptance with the Director-General of the Organization and shall take effect on receipt of such instrument by the Director-General.

5. Acceptance of this Agreement by non-members of the Organization shall be effected by the deposit of an instrument of acceptance with the Director-General of the Organization. Membership shall become effective on the date on which the Commission approves the application for membership, in conformity with the provisions of paragraph 2 of this Article.

6. The Director-General of the Organization shall inform all Contracting Parties of the Commission, all Members of the Organization and the Secretary-General of the United Nations of all acceptances that have become effective.

7. Acceptance of this Agreement **by non-Contracting Parties** may be made subject to reservations which shall become effective only upon **approval by two thirds of** the Contracting Parties. Contracting Parties **whose relevant competent authorities** have not replied within three months from the date of the notification shall be deemed to have accepted the reservation. Failing such approval, the nation or regional economic integration organization making the reservation shall not become a party to this Agreement. The Director-General of the Organization shall notify forthwith all Contracting Parties of any reservations.

**Article 24: Entry into Force (old Article XIV)**

This Agreement shall enter into force as from the date of receipt of the fifth instrument of acceptance.

**Article 25: Reservations (new)**

**1. Acceptance of this Agreement may be made subject to reservations, which shall not be incompatible with the objectives of the Agreement and shall be made in accordance with the general rules of public international law as reflected in the provisions of Part II, Section 2 of the Vienna Convention on the Law of Treaties of 1969.**

**2. The Commission shall regularly assess if a reservation may create issues of non-compliance with the recommendations adopted under Article 8(b) and may consider appropriate measures, as foreseen in its Rules of Procedures.**

~~The Members of the Commission shall, when accepting this Agreement, state explicitly to which territories their participation shall extend. In the absence of such a declaration, participation shall be deemed to apply to all the territories for the international relations of which the Member is responsible. Subject to the provisions of Article XVI below, the scope of the territorial application may be modified by a subsequent declaration.~~

**Article 26: Withdrawal (old Article XVI)**

1. Any Contracting Party may withdraw from this Agreement at any time after the expiration of two years from the date upon which the Agreement entered into force with respect to that Contracting Party, by giving written notice of such withdrawal to the Director-General of the Organization, who shall immediately inform all the Contracting Parties and the Members of the Organization of such



withdrawal. Notice of withdrawal shall become effective three months from the date of its receipt by the Director-General of the Organization.

2. A Contracting Party may give notice of withdrawal with respect to one or more of the territories for the international relations of which it is responsible. When a Contracting Party gives notice of its own withdrawal from the Commission it shall state to which territory or territories the withdrawal is to apply. In the absence of such a declaration, the withdrawal shall be deemed to apply to all the territories for the international relations of which the Contracting Party is responsible, with the exception of associate members.

3. Any Contracting Party that gives notice of withdrawal from the Organization shall be deemed to have simultaneously withdrawn from the Commission, and this withdrawal shall be deemed to apply to all the territories for the international relations of which the Contracting Party concerned is responsible, except that such withdrawal shall not be deemed to apply to an associate member.

**Article 27: Termination (old Article XVIII)**

This Agreement shall be automatically terminated if and when, as the result of withdrawals, the number of Contracting Parties drops below five, unless the remaining Contracting Parties unanimously decide otherwise.

**Article 28: Certification and Registration (old Article XIX)**

The text of this Agreement was originally formulated at Rome on the 24th day of September one thousand nine hundred and forty-nine in the French language and [*was amended on (xx)...*] Two copies in the Arabic, English, French and Spanish languages of this Agreement and of any amendments to this Agreement shall be certified by the Chairperson of the Commission and by the Director-General of the Organization. One of these copies shall be deposited in the archives of the Organization. The other copy shall be transmitted to the Secretary-General of the United Nations for registration. In addition, the Director-General shall certify copies of this Agreement and transmit one copy to each member of the Organization and to such non-member of the Organization that are or may become Contracting Parties to this Agreement.

## Annex Relation to Arbitration

**1. The arbitral tribunal referred to in paragraph 4 of Article 19 shall be composed of three arbitrators who shall be appointed as follows:**

a) **The Contracting Party commencing proceedings shall communicate the name of an arbitrator to the other Contracting Party which, in turn, within a period of forty days following such notification, shall communicate the name of the second arbitrator. In disputes between more than two Contracting Parties, parties to the dispute with the same interest shall appoint one arbitrator jointly by agreement. The Contracting Parties shall, within a period of sixty days following the appointment of the second arbitrator, appoint the third arbitrator, who shall not be a national of either Contracting Party and shall not be of the same nationality as either of the first two arbitrators. The third arbitrator shall preside over the tribunal;**

b) **If the second arbitrator has not been appointed within the prescribed period, or if the Contracting Parties have not reached agreement within the prescribed period on the appointment of the third arbitrator, that arbitrator shall be appointed, at the request of either Contracting Party, by the Director-General of the Organization within two months from the date of receipt of the request.**

**2. The arbitral tribunal shall decide where its headquarters will be located and shall adopt its own rules of procedure.**

**3. The arbitral tribunal shall render its decisions in accordance with the provisions of this Agreement and international law.**

**4. The award of the arbitral tribunal shall be made by a majority of its members, who may not abstain from voting.**

**5. Any Contracting Party which is not a Party to the dispute may intervene in the proceedings with the consent of the arbitral tribunal.**

**6. The award of the arbitral tribunal shall be final and binding on Contracting Parties to the dispute and on any Contracting Party which intervenes in the proceedings and shall be complied with without delay. The arbitral tribunal shall interpret the award at the request of one of the Contracting Parties to the dispute or of any intervening Contracting Party.**

**7. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the Contracting Parties to the dispute in equal shares.**