

# 1986 CONVENTION FOR THE PROTECTION OF THE NATURAL RESOURCES AND ENVIRONMENT OF THE SOUTH PACIFIC REGION

*Adopted in Noumea, New Caledonia on 24 November 1986*

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## **1986 CONVENTION FOR THE PROTECTION OF THE NATURAL RESOURCES AND ENVIRONMENT OF THE SOUTH PACIFIC REGION**

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THE PARTIES,

FULLY AWARE of the economic and social value of the natural resources of the environment of the South Pacific Region;

TAKING INTO ACCOUNT the traditions and cultures of the Pacific people as expressed in accepted customs and practices;

CONSCIOUS of their responsibility to preserve their natural heritage for the benefit and enjoyment of present and future generations;

RECOGNIZING the special hydrological, geological and ecological characteristics of the region which requires special care and responsible management;

RECOGNIZING FURTHER the threat to the marine and coastal environment, its ecological equilibrium, resources and legitimate uses posed by pollution and by the insufficient integration of an environmental dimension into the development process;

SEEKING TO ENSURE that resource development shall be in harmony with the maintenance of the unique environmental quality of the region and the evolving principles of sustained resource management;

REALIZING FULLY the need for co-operation amongst themselves and with competent international, regional and sub-regional organizations in order to ensure a co-ordinated and comprehensive development of the natural resources of the region;

RECOGNIZING the desirability for the wider acceptance and national implementation of international agreements already in existence concerning the marine and coastal environment;

NOTING, however, that existing international agreements concerning the marine and coastal environment do not cover, in spite of the progress achieved, all aspects and sources of marine pollution and environmental degradation and do not entirely meet the special requirements of the South Pacific Region;

DESIROUS to adopt the regional convention to strengthen the implementation of the general objective of the Action Plan for Managing the Natural Resources and Environment of the South Pacific Region adopted at Rarotonga, Cook Islands, on 11 March 1982;

HAVE AGREED AS FOLLOWS:

## **ARTICLE 1 GEOGRAPHICAL COVERAGE**

1. This Convention shall apply to the South Pacific Region, hereinafter referred to as "the Convention Area" as defined in paragraph (a) of Article 2.
2. Except as may be otherwise provided in any Protocol to this Convention, the Convention Area shall not include internal waters or archipelagic waters of the Parties as defined in accordance with international law.

## **ARTICLE 2 DEFINITIONS**

For the purposes of this Convention and its Protocols unless otherwise defined in any such Protocol:

- (a) the "Convention Area" shall comprise:
  - (i) the 200 nautical mile zones established in accordance with international law off:
    - American Samoa
    - Australia (East coast and Islands to eastward including Macquarie Island)
    - Cook Islands
    - Federated States of Micronesia
    - French Polynesia
    - Guam
    - Kiribati
    - Marshall Islands
    - Nauru
    - New Caledonia and Dependencies
    - New Zealand
    - Niue
    - Northern Mariana Islands
    - Palau
    - Papua New Guinea
    - Pitcairn Islands
    - Solomon Islands

Tokelau

Tonga

Tuvalu

Vanuatu

Wallis and Futuna

Western Samoa

- (ii) those areas of high seas which are enclosed from all sides by the 200 nautical mile zones referred to in sub-paragraph (i);
- (iii) areas of the Pacific Ocean which have been included in the Convention Area pursuant to Article 3;

(b) "dumping" means:

- any deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures;
- any deliberate disposal at sea of vessels, aircraft, platforms or other man-made structures at sea;

"dumping" does not include:

- the disposal of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of treatment of such wastes or other matter on such vessels, aircraft, platforms or structures;
- placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention;

(c) "wastes or other matter" means material and substances of any kind, form or description;

(d) the following wastes or other matter shall be considered to be non-radioactive: sewage sludge, dredge spoil, fly ash, agricultural wastes, construction materials, vessels, artificial reef building materials and other such materials provided that they have not been contaminated with radio nuclides of anthropogenic origin (except dispersed global fallout from nuclear weapons testing), nor are potential sources of naturally occurring radio nuclides for commercial purposes, nor have been enriched in natural or artificial radio nuclides;

If there is a question as to whether the material to be dumped should be considered nonradioactive, for the purposes of this Convention, such material shall not be dumped unless the appropriate national authority of the proposed dumper confirms that such dumping would not exceed the individual and collective dose limits of the International Atomic Energy Agency general principles for the exemption of radiation sources and practices from regulatory control. The national authority shall also take into account the relevant recommendations, standards and guidelines developed by the International Atomic Energy Agency.

- (e) "vessels" and "aircraft" means waterborne or airborne craft of any type whatsoever. This expression includes air cushioned craft and floating craft, whether self-propelled or not;
  - (f) "pollution" means the introduction by man, directly or indirectly, of substances or energy into the marine environment (including estuaries) which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;
- In applying this definition to the Convention obligations, the Parties shall use their best endeavours to comply with the appropriate standards and recommendations established by competent international organizations, including the International Atomic Energy Agency;
- (g) "Organisation" means the South Pacific Commission;
  - (h) "Director" means the Director of the South Pacific Bureau for Economic Co-operation.

### **ARTICLE 3**

## **ADDITION TO THE CONVENTION AREA**

Any Party may add areas under its jurisdiction within the Pacific Ocean between the Tropic of Cancer and 60 degrees South latitude and between 130 degrees East longitude and 120 degrees West longitude to the Convention Area. Such addition shall be notified to the Depositary who shall promptly notify the other Parties and the Organisation. Such areas shall be incorporated within the Convention Area ninety days after notification to the Parties by the Depositary provided there has been no objection to the proposal to add new areas by any Party affected by that proposal. If there is any such objection the Parties concerned will consult with a view to resolving the matter.

### **ARTICLE 4**

## **GENERAL PROVISIONS**

1. The Parties shall endeavour to conclude bilateral or multilateral agreements, including regional or sub-regional agreements, for the protection, development and management of the marine and coastal environment of the Convention Area. Such agreements shall be consistent with this Convention and in accordance with international law. Copies of such agreements shall be communicated to the Organisation and through it to all Parties to this Convention.
2. Nothing in this Convention or its Protocols shall be deemed to affect obligations assumed by a Party under agreements previously concluded.
3. Nothing in this Convention and its Protocols shall be construed to prejudice or affect the interpretation and application of any provision or term in the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972.
4. This Convention and its Protocols shall be construed in accordance with international law relating to their subject matter.
5. Nothing in this Convention and its Protocols shall prejudice the present or future claims and legal views of any Party concerning the nature and extent of maritime jurisdiction.

6. Nothing in this Convention shall affect the sovereign right of States to exploit, develop and manage their own natural resources pursuant to their own policies, taking into account their duty to protect and preserve the environment. Each Party shall ensure that activities within its jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of its national jurisdiction.

## **ARTICLE 5 GENERAL OBLIGATIONS**

1. The Parties shall endeavour, either individually or jointly, to take all appropriate measures in conformity with international law and in accordance with this Convention and those Protocols in force to which they are party to prevent, reduce and control pollution of the Convention Area, from any source, and to ensure sound environmental management and development of natural resources, using for this purpose the best practicable means at their disposal, and in accordance with their capabilities. In doing so the Parties shall endeavour to harmonize their policies at the regional level.
2. The Parties shall use their best endeavours to ensure that the implementation of this Convention shall not result in an increase in pollution in the marine environment outside the Convention Area.
3. In addition to the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping and the Protocol Concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region, the Parties shall co-operate in the formulation and adoption of other Protocols prescribing agreed measures, procedures and standards to prevent, reduce and control pollution from all sources or in promoting environmental management in conformity with the objectives of this Convention.
4. The Parties shall, taking into account existing internationally recognized rules, standards, practices and procedures, co-operate with competent global regional and sub-regional organisations to establish and adopt recommended practices, procedures and measures to prevent, reduce and control pollution from all sources and to promote sustained resource management and to ensure the sound development of natural resources in conformity with the objectives of this Convention and its Protocols, and to assist each other in fulfilling their obligations under this Convention and its Protocols.
5. The Parties shall endeavour to establish laws and regulations for the effective discharge of the obligations prescribed in this Convention. Such laws and regulations shall be no less effective than international rules, standards and recommended practices and procedures.

## **ARTICLE 6 POLLUTION FROM VESSELS**

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area caused by discharges from vessels, and to ensure the effective application in the Convention Area of the generally accepted international rules and standards established through the competent international organisation or general diplomatic conference relating to the control of pollution from vessels.

## **ARTICLE 7**

### **POLLUTION FROM LAND-BASED SOURCES**

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area caused by coastal disposal or by discharges emanating from rivers, estuaries, coastal establishments, outfall structures, or any other sources in their territory.

## **ARTICLE 8**

### **POLLUTION FROM SEABED ACTIVITIES**

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area resulting directly or indirectly from exploration and exploitation of the seabed and its subsoil.

## **ARTICLE 9**

### **AIRBORNE POLLUTION**

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area resulting from discharges into the atmosphere from activities under their jurisdiction.

## **ARTICLE 10**

### **DISPOSAL OF WASTES**

1. The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area caused by dumping from vessels, aircraft, or man-made structures at sea, including the effective application of the relevant internationally recognized rules and procedures relating to the control of dumping of wastes and other matter. The Parties agree to prohibit the dumping of radioactive wastes or other radioactive matter in the Convention Area. Without prejudice to whether or not disposal into the seabed and subsoil of wastes or other matter is "dumping", the Parties agree to prohibit the disposal into the seabed and subsoil of the Convention Area of radioactive wastes or other radioactive matter.
2. This article shall also apply to the continental shelf of a Party where it extends, in accordance with international law, outward beyond the Convention Area.

## **ARTICLE 11**

### **STORAGE OF TOXIC AND HAZARDOUS WASTES**

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area resulting from the storage of toxic and hazardous wastes. In particular, the Parties shall prohibit the storage of radioactive wastes or other radioactive matter in the Convention Area.

## **ARTICLE 12**

### **TESTING OF NUCLEAR DEVICES**

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area which might result from the testing of nuclear devices.



## **ARTICLE 13 MINING AND COASTAL EROSION**

The Parties shall take all appropriate measures to prevent, reduce and control environmental damage in the Convention Area, in particular coastal erosion caused by coastal engineering, mining activities, sand removal, land reclamation and dredging.

## **ARTICLE 14 SPECIALLY PROTECTED AREAS AND PROTECTION OF WILD FLORA AND FAUNA**

The Parties shall, individually or jointly, take all appropriate measures to protect and preserve rare or fragile ecosystems and depleted, threatened or endangered flora and fauna as well as their habitat in the Convention Area. To this end, the Parties shall, as appropriate, establish protected areas, such as parks and reserves, and prohibit or regulate any activity likely to have adverse effects on the species, ecosystems or biological processes that such areas are designed to protect. The establishment of such areas shall not affect the rights of other Parties or third States under international law. In addition, the Parties shall exchange information concerning the administration and management of such areas.

## **ARTICLE 15 CO-OPERATION IN COMBATING POLLUTION IN CASES OF EMERGENCY**

1. The Parties shall co-operate in taking all necessary measures to deal with pollution emergencies in the Convention Area, whatever the cause of such emergencies, and to prevent, reduce and control pollution or the threat of pollution resulting therefrom. To this end, the Parties shall develop and promote individual contingency plans and joint contingency plans for responding to incidents involving pollution or the threat thereof in the Convention Area.
2. When a Party becomes aware of a case in which the Convention Area is in imminent danger of being polluted or has been polluted, it shall immediately notify other countries and territories it deems likely to be affected by such pollution, as well as the Organisation. Furthermore it shall inform as soon as feasible, such other countries and territories and the Organisation of any measures it has itself taken to reduce or control pollution or the threat thereof.

## **ARTICLE 16 ENVIRONMENTAL IMPACT ASSESSMENT**

1. The Parties agree to develop and maintain, with the assistance of competent global, regional and subregional organisations as requested, technical guidelines and legislation giving adequate emphasis to environmental and social factors to facilitate balanced development of their natural resources and planning of their major projects which might affect the marine environment in such a way as to prevent or minimise harmful impacts on the Convention Area.

2. Each Party shall, within its capabilities, assess the potential effects of such projects on the marine environment, so that appropriate measures can be taken to prevent any substantial pollution of, or significant and harmful changes within, the Convention Area.
3. With respect to the assessment referred to in paragraph 2, each Party shall, where appropriate, invite:
  - (a) public comment according to its national procedures;
  - (b) other Parties that may be affected to consult with it and submit comments.

The results of these assessments shall be communicated to the Organisation, which shall make them available to interested Parties.

## **ARTICLE 17**

### **SCIENTIFIC AND TECHNICAL CO-OPERATION**

1. The Parties shall co-operate, either directly or with the assistance of competent global, regional and sub-regional organisations, in scientific research, environmental monitoring, and the exchange of data and other scientific and technical information related to the purposes of the Convention.
2. In addition, the Parties shall, for the purposes of this Convention, develop and co-ordinate research and monitoring programmes relating to the Convention Area and co-operate, as far as practicable in the establishment and implementation of regional, sub-regional and international research programmes.

## **ARTICLE 18**

### **TECHNICAL AND OTHER ASSISTANCE**

The Parties undertake to co-operate, directly and when appropriate through the competent global, regional and sub-regional organisations, in the provision to other Parties of technical and other assistance in fields relating to pollution and sound environmental management of the Convention Area, taking into account the special needs of the island developing countries and territories.

## **ARTICLE 19**

### **TRANSMISSION OF INFORMATION**

The Parties shall transmit to the Organisation information on the measures adopted by them in the implementation of this Convention and of Protocols to which they are Parties, in such form and at such intervals as the Parties may determine.

## **ARTICLE 20**

### **LIABILITY AND COMPENSATION**

The Parties shall co-operate in the formulation and adoption of appropriate rules and procedures in conformity with international law in respect of liability and compensation for damage resulting from pollution of the Convention Area.

## **ARTICLE 21**

### **INSTITUTIONAL ARRANGEMENTS**

1. The Organisation shall be responsible for carrying out the following secretariat functions:
  - (a) to prepare and convene the meetings of Parties;
  - (b) to transmit to the Parties notifications, reports and other information received in accordance with this Convention and its Protocols;
  - (c) to perform the functions assigned to it by the Protocols to this Convention;
  - (d) to consider enquiries by, and information from, the Parties and to consult with them on questions relating to this Convention and the Protocols;
  - (e) to co-ordinate the implementation of cooperative activities agreed upon by the Parties;
  - (f) to ensure the necessary co-ordination with other competent global, regional and subregional bodies;
  - (g) to enter into such administrative arrangements as may be required for the effective discharge of the secretariat functions;
  - (h) to perform such other functions as may be assigned to it by the Parties; and
  - (i) to transmit to the South Pacific Conference and the South Pacific Forum the reports of ordinary and extraordinary meetings of the Parties.
2. Each Party shall designate an appropriate national authority to serve as the channel of communication with the Organisation for the purposes of this Convention.

## **ARTICLE 22**

### **MEETINGS OF THE PARTIES**

1. The Parties shall hold ordinary meetings once every two years. Ordinary meetings shall review the implementation of this Convention and its Protocols and, in particular, shall:
  - (a) assess periodically the state of the environment in the Convention Area;
  - (b) consider the information submitted by the Parties under Article 19;
  - (c) adopt, review and amend as required annexes to this Convention and to its Protocols, in accordance with the provisions of Article 25;
  - (d) make recommendations regarding the adoption of any Protocols or any amendments to this Convention or its Protocols in accordance with the provisions of Articles 23 and 24;
  - (e) establish working groups as required to consider any matters concerning this Convention and its Protocols;
  - (f) consider co-operative activities to be undertaken within the framework of this Convention and its Protocols, including their financial and institutional implications and to adopt decisions relating thereto;

- (g) consider and undertake any additional action that may be required for the achievement of the purposes of this Convention and its Protocols; and
  - (h) adopt by consensus financial rules and budget prepared in consultation with the Organisation, to determine, inter alia, the financial participation of the Parties under this Convention and those Protocols to which they are party.
2. The Organisation shall convene the first ordinary meeting of the Parties not later than one year after the date on which the Convention enters into force in accordance with Article 31.
  3. Extraordinary meetings shall be convened at the request of any Party or upon the request of the Organisation, provided that such requests are supported by at least two-thirds of the Parties. It shall be the function of an extraordinary meeting of the Parties to consider those items proposed in the request for the holding of the extraordinary meeting and any other items agreed to by all the Parties attending the meeting.
  4. The Parties shall adopt by consensus at their first ordinary meeting, rules of procedure for their meetings.

## **ARTICLE 23**

### **ADOPTION OF PROTOCOLS**

1. The Parties may, at a conference of plenipotentiaries, adopt Protocols to this Convention pursuant to paragraph 3 of Article 5.
2. If so requested by a majority of the Parties, the Organisation shall convene a conference of plenipotentiaries for the purpose of adopting Protocols to this Convention.

## **ARTICLE 24**

### **AMENDMENT OF THE CONVENTION AND ITS PROTOCOLS**

1. Any Party may propose amendments to this Convention. Amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the Organisation at the request of two-thirds of the Parties.
2. Any Party to this Convention may propose amendments to any Protocol. Such amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the Organisation at the request of two-thirds of the Parties to the Protocol concerned.
3. A proposed amendment to the Convention or any Protocol shall be communicated to the Organisation which shall promptly transmit such proposal for consideration to all the other Parties.
4. A conference of plenipotentiaries to consider a proposed amendment to the Convention or any Protocol shall be convened not less than ninety days after the requirements for the convening of the Conference have been met pursuant to paragraphs 1 or 2, as the case may be.
5. Any amendment to this Convention shall be adopted by a three-fourths majority vote of the Parties to the Convention which are represented at the conference of plenipotentiaries and shall be submitted by the Depositary for acceptance by all Parties to the Convention. Amendments to any Protocol shall be adopted by a three-fourths majority vote of the Parties

to the Protocol which are represented at the conference of plenipotentiaries and shall be submitted by the Depositary for acceptance by all Parties to the Protocol.

6. Instruments of ratification, acceptance or approval of amendments shall be deposited with the Depositary. Amendments shall enter into force between Parties having accepted such amendments of the instruments on the thirtieth day following the date of receipt by the Depositary of the instruments of at least three-fourths of the Parties to this Convention or to the Protocol concerned, as the case may be. Thereafter the amendments shall enter into force for any other Party on the thirtieth day after the date on which that Party deposits its instrument.
7. After the entry into force of an amendment to this Convention or to a Protocol, any new Party to the Convention or such Protocol shall become a Party to the Convention or Protocol as amended.

## **ARTICLE 25**

### **ANNEXES AND AMENDMENT OF ANNEXES**

1. Annexes to this Convention or to any Protocol shall form an integral part of the Convention or such Protocol respectively.
2. Except as may be otherwise provided in any Protocol with respect to its annexes, the following procedures shall apply to the adoption and entry into force of any amendments to annexes to this Convention or to annexes to any Protocol:
  - (a) any Party may propose amendments to the annexes to this Convention or annexes to any Protocol;
  - (b) any proposed amendment shall be notified by the Organisation to the Parties not less than sixty days before the convening of a meeting of the Parties unless this requirement is waived by the meeting;
  - (c) such amendments shall be adopted at a meeting of the Parties by a three-fourths majority vote of the Parties to the instrument in question;
  - (d) the Depositary shall without delay communicate the amendments so adopted to all Parties;
  - (e) any Party that is unable to approve an amendment to the annexes to this Convention or to annexes to any Protocol shall so notify in writing to the Depositary within one hundred days from the date of the communication of the amendment by the Depositary. A Party may at any time substitute an acceptance for a previous declaration of objection, and the amendment shall thereupon enter into force for that Party;
  - (f) the Depositary shall without delay notify all Parties of any notification received pursuant to the preceding sub-paragraph; and
  - (g) on expiry of the period referred to in subparagraph (e) above, the amendment to the annex shall become effective for all Parties to this Convention or to the Protocol concerned which have not submitted a notification in accordance with the provisions of that sub-paragraph.

3. The adoption and entry into force of a new annex shall be subject to the same procedure as that for the adoption and entry into force of an amendment to an annex as set out in the provisions of paragraph 2, provided that, if any amendment to the Convention or the Protocol concerned is involved, the new annex shall not enter into force until such time as that amendment enters into force.
4. Amendments to the Annex on Arbitration shall be considered to be amendments to this Convention or its Protocols and shall be proposed and adopted in accordance with the procedures set out in Article 24.

## **ARTICLE 26**

### **SETTLEMENT OF DISPUTES**

1. In case of a dispute between Parties as to the interpretation or application of this Convention or its Protocols, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice. If the Parties concerned cannot reach agreement, they should seek the good offices of, or jointly request mediation by, a third Party.
2. If the Parties concerned cannot settle their dispute through the means mentioned in paragraph 1, the dispute shall, upon common agreement except as may be otherwise provided in any Protocol to this Convention, be submitted to arbitration under conditions laid down in the Annex on Arbitration to this Convention. However, failure to reach common agreement on submission of the dispute to arbitration shall not absolve the Parties from the responsibility of continuing to seek to resolve it by means referred to in paragraph 1.
3. A Party may at any time declare that it recognizes as compulsory ipso facto and without special agreement, in relation to any other Party accepting the same obligation, the application of the arbitration procedure set out in the Annex on Arbitration. Such declaration shall be notified in writing to the Depositary who shall promptly communicate it to the other Parties.

## **ARTICLE 27**

### **RELATIONSHIP BETWEEN THIS CONVENTION AND ITS PROTOCOLS**

1. No State may become a Party to this Convention unless it becomes at the same time a Party to one or more Protocols. No State may become a Party to a Protocol unless it is, or becomes at the same time, a Party to this Convention.
2. Decisions concerning any Protocol pursuant to Articles 22, 24 and 25 of this Convention shall be taken only by the Parties to the Protocol concerned.

## **ARTICLE 28**

### **SIGNATURE**

This Convention, the Protocol Concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region, and the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping shall be open for signature at the South Pacific Commission Headquarters in Noumea, New Caledonia on 25 November 1986 and at the South Pacific Bureau for Economic Co-operation Headquarters, Suva, Fiji from 26 November 1986 to 25 November 1987 by States which were invited to participate in the Plenipotentiary Meeting of the High Level Conference on the Protection of the

Natural Resources and Environment of the South Pacific Region held at Noumea, New Caledonia from 24 November 1986 to 25 November 1986.

## **ARTICLE 29 RATIFICATION, ACCEPTANCE OR APPROVAL**

This Convention and any Protocol thereto shall be subject to ratification, acceptance or approval by States referred to in Article 28. Instruments of ratification, acceptance or approval shall be deposited with the Director who shall be the Depositary.

## **ARTICLE 30 ACCESSION**

1. This Convention and any Protocol hereto shall be open to accession by the States referred to in Article 28 as from the day following the date on which the Convention or Protocol concerned was closed for signature.
2. Any State not referred to in paragraph 1 may accede to the Convention and to any Protocol subject to prior approval by three-fourths of the Parties to the Convention or the Protocol concerned.
3. Instruments of accession shall be deposited with the Depositary.

## **ARTICLE 31 ENTRY INTO FORCE**

1. This Convention shall enter into force on the thirtieth day following the date of deposit of at least ten instruments of ratification, acceptance, approval or accession.
2. Any Protocol to this Convention, except as otherwise provided in such Protocol, shall enter into force on the thirtieth day following the date of deposit of at least five instruments of ratification, acceptance or approval of such Protocol, or of accession thereto, provided that no Protocol shall enter into force before the Convention. Should the requirements for entry into force of a Protocol be met prior to those for entry into force of the Convention pursuant to paragraph 1, such Protocol shall enter into force on the same date as the Convention.
3. Thereafter, this Convention and any Protocol shall enter into force with respect to any State referred to in Articles 28 or 30 on the thirtieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

## **ARTICLE 32 DENUNCIATION**

1. At any time after two years from the date of entry into force of this Convention with respect to a Party, that Party may denounce the Convention by giving written notification to the Depositary.
2. Except as may be otherwise provided in any Protocol to this Convention, any Party may, at any time after two years from the date of entry into force of such Protocol with respect to that Party, denounce the Protocol by giving written notification to the Depositary.

3. Denunciation shall take effect ninety days after the date on which notification of denunciation is received by the Depositary.
4. Any Party which denounces this Convention shall be considered as also having denounced any Protocol to which it was a Party.
5. Any Party which, upon its denunciation of a Protocol is no longer a Party to any Protocol to this Convention, shall be considered as also having denounced this Convention.

### **ARTICLE 33**

#### **RESPONSIBILITIES OF THE DEPOSITARY**

1. The Depositary shall inform the Parties, as well as the Organisation
  - (a) of the signature of this Convention and of any Protocol thereto and of the deposit of instruments of ratification, acceptance, approval, or accession in accordance with Articles 29 and 30;
  - (b) of the date on which the Convention and any Protocol will come into force in accordance with the provisions of Article 31;
  - (c) of notification of denunciation made in accordance with Article 32;
  - (d) of notification of any addition to the Convention Area in accordance with Article 3;
  - (e) of the amendments adopted with respect to the Convention and to any Protocol, their acceptance by the Parties and the date of their entry into force in accordance with the Provisions of Article 24; and
  - (f) of the adoption of new annexes and of the amendments of any annex in accordance with Article 25.
2. The original of this Convention and of any Protocol thereto shall be deposited with the Depositary who shall send certified copies thereof to the Signatories, the Parties, to the Organisation and to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the United Nations Charter.

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

DONE at Noumea, New Caledonia on the twenty-fourth day of November in the year one thousand nine hundred and eighty-six in a single copy in the English and French languages, the two texts being equally authentic.



## **ANNEX ON ARBITRATION**

### **ARTICLE 1**

Unless the agreement referred to in Article 26 of the Convention provides otherwise, the arbitration procedure shall be in accordance with the rules set out in this Annex.

### **ARTICLE 2**

The claimant Party shall notify the Organisation that the Parties have agreed to submit the dispute to arbitration pursuant to paragraph 2, or that paragraph 3 of Article 26 of the Convention is applicable. The notification shall state the subject matter of the arbitration and include the provisions of the Convention or any Protocol thereto, the interpretation or application of which is the subject of disagreement. The Organisation shall transmit this information to all Parties to the Convention or Protocol concerned.

### **ARTICLE 3**

1. The Tribunal shall consist of a single arbitrator if so agreed between the Parties to the dispute within thirty days from the date of receipt of the notification for arbitration.
2. In the case of the death, disability or default of the arbitrator, the Parties to a dispute may agree upon a replacement within thirty days of such death, disability or default.

### **ARTICLE 4**

1. Where the Parties to a dispute do not agree upon a Tribunal in accordance with Article 3 of this Annex, the Tribunal shall consist of three members:
  - (i) one arbitrator nominated by each Party to the dispute,
  - (ii) a third arbitrator who shall be nominated by agreement between the two first named and who shall act as its Chairman.
2. If the Chairman of a Tribunal is not nominated within thirty days of nomination of the second arbitrator, the Parties to a dispute shall, upon the request of one Party, submit to the Secretary-General of the Organisation within a further period of thirty days, an agreed list of qualified persons. The Secretary-General shall select the Chairman from such list as soon as possible. He shall not select a Chairman who is, or has been, a national of one Party to the dispute except with the consent of the other Party to the dispute.
3. If one Party to a dispute fails to nominate an arbitrator as provided in subparagraph 1(i) within sixty days from the date of receipt of the notification for arbitration, the other Party may request the submission to the Secretary-General of the Organisation within a period of thirty days of an agreed list of qualified persons. The Secretary-General shall select the Chairman of the Tribunal from such list as soon as possible. The Chairman shall then request the Party which has not nominated an arbitrator to do so. If this Party does not nominate an arbitrator within fifteen days of such request, the Secretary-General shall, upon request of the Chairman, nominate the arbitrator from the agreed list of qualified persons.

4. In the case of the death, disability or default of an arbitrator, the Party to the dispute who nominated him shall nominate a replacement within thirty days of such death, disability or default. If the Party does not nominate a replacement, the arbitration shall proceed with the remaining arbitrators. In the case of the death, disability or default of the Chairman, a replacement shall be nominated in accordance with paragraphs 1(ii) and 2 within ninety days of such death, disability or default.
5. A list of arbitrators shall be maintained by the Secretary-General of the Organisation and composed of qualified persons nominated by the Parties. Each Party may designate for inclusion in the list four persons who shall not necessarily be its nationals. If the Parties to the dispute have failed within the specified time limits to submit to the Secretary-General an agreed list of qualified persons as provided for in paragraphs 2, 3 and 4, the Secretary-General shall select from the list maintained by him the arbitrator or arbitrators not yet nominated.

#### **ARTICLE 5**

The Tribunal may hear and determine counter-claims arising directly out of the subject matter of the dispute.

#### **ARTICLE 6**

The Tribunal may, at the request of one of the Parties to the dispute, recommend interim measures of protection.

#### **ARTICLE 7**

Each Party to the dispute shall be responsible for the costs entailed by the preparation of its own case. The remuneration of the members of the Tribunal and of all general expenses incurred by the arbitration shall be borne equally by the Parties to the dispute. The Tribunal shall keep a record of all its expenses and shall furnish a final statement thereof to the Parties.

#### **ARTICLE 8**

Any Party which has an interest of a legal nature which may be affected by the decision in the case may, after giving written notice to the Parties to the dispute which have originally initiated the procedure, intervene in the arbitration procedure with the consent of the Tribunal which should be freely given. Any intervenor shall participate at its own expense. Any such intervenor shall have the right to present evidence, briefs and oral arguments on the matter giving rise to its intervention, in accordance with procedures established pursuant to Article 9 of this Annex but shall have no rights with respect to the composition of the Tribunal.

#### **ARTICLE 9**

A Tribunal established under the provisions of this Annex shall decide its own rules of procedure.

#### **ARTICLE 10**

1. Unless a Tribunal consists of a single arbitrator, decisions of the Tribunal as to its procedure, its place of meeting, and any question related to the dispute laid before it, shall be taken by majority vote of its members. However, the absence or abstention of any member of the Tribunal who was nominated by a Party to the dispute shall not constitute an impediment to

the Tribunal reaching a decision. In case of equal voting, the vote of the Chairman shall be decisive.

2. The Parties to the dispute shall facilitate the work of the Tribunal and in particular shall, in accordance with their legislation and using all means at their disposal:
  - (i) provide the Tribunal with all necessary documents and information; and
  - (ii) enable the Tribunal to enter their territory to hear witnesses or experts, and to visit the scene of the subject matter of the arbitration.
3. The failure of a Party to the dispute to comply with the provisions of paragraph 2 or to defend its case shall not preclude the Tribunal from reaching a decision and rendering an award.

#### **ARTICLE 11**

The Tribunal shall render its award within five months from the time it is established unless it finds it necessary to extend that time limit for a period not to exceed five months. The award of the Tribunal shall be accompanied by a statement of reasons for the decision. It shall be final and without appeal and shall be communicated to the Secretary-General of the Organisation who shall inform the Parties. The Parties to the dispute shall immediately comply with the award.