

K oznámeniu č. 163/2004 Z. z.

AGREEMENT
ON ILLICIT TRAFFIC BY SEA, IMPLEMENTING ARTICLE 17 OF THE UNITED NATIONS
CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS
AND PSYCHOTROPIC SUBSTANCES

The member States of the Council of Europe, having expressed their consent to be bound by the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988, hereinafter referred to as "The Vienna Convention";

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Convinced of the need to pursue a common criminal policy aimed at the protection of society;

Considering that the fight against serious crime, which has become an increasingly international problem, calls for close co-operation on an international scale;

Desiring to increase their co-operation to the fullest possible extent in the suppression of illicit traffic in narcotic drugs and psychotropic substances by sea, in conformity with the international law of the sea and in full respect of the principle of right of freedom of navigation;

Considering, therefore, that Article 17 of the Vienna Convention should be supplemented by a regional agreement to carry out, and to enhance the effectiveness of the provisions of that article,

Have agreed as follows:

CHAPTER I
DEFINITIONS

Article 1
Definitions

For the purposes of this Agreement:

- a) "Intervening State" means a State Party which has requested or proposes to request authorisation from another Party to take action under this Agreement in relation to a vessel flying the flag or displaying the marks of registry of that other State Party;
- b) "Preferential jurisdiction" means, in relation to a flag State having concurrent jurisdiction over a relevant offence with another State, the right to exercise its jurisdiction on a priority basis, to the exclusion of the exercise of the other State's jurisdiction over the offence;
- c) "Relevant offence" means any offence of the kind described in Article 3, paragraph 1, of the Vienna Convention;

- d) "Vessel" means a ship or any other floating craft of any description, including hovercrafts and submersible crafts.

CHAPTER II
INTERNATIONAL CO-OPERATION

Section 1
General provisions

Article 2
General principles

1. The Parties shall co-operate to the fullest extent possible to suppress illicit traffic in narcotic drugs and psychotropic substances by sea, in conformity with the international law of the sea.

2. In the implementation of this Agreement the Parties shall endeavour to ensure that their actions maximise the effectiveness of law enforcement measures against illicit traffic in narcotic drugs and psychotropic substances by sea.

3. Any action taken in pursuance of this Agreement shall take due account of the need not to interfere with or affect the rights and obligations of and the exercise of jurisdiction by coastal States, in accordance with the international law of the sea.

4. Nothing in this Agreement shall be so construed as to infringe the principle of non bis in idem, as applied in national law.

5. The Parties recognise the value of gathering and exchanging information concerning vessels, cargo and facts, whenever they consider that such exchange of information could assist a Party in the suppression of illicit traffic in narcotic drugs and psychotropic substances by sea.

6. Nothing in this Agreement affects the immunities of warships and other government vessels operated for non-commercial purposes.

Article 3
Jurisdiction

1. Each Party shall take such measures as may be necessary to establish its jurisdiction over the relevant offences when the offence is committed on board a vessel flying its flag.

2. For the purposes of applying this Agreement, each Party shall take such measures as may be necessary to establish its jurisdiction over the relevant offences committed on board a vessel flying the flag or displaying the marks of registry or bearing any other indication of nationality of any other Party to this Agreement. Such jurisdiction shall be exercised only in conformity with this Agreement.

3. For the purposes of applying this Agreement, each Party shall take such measures as may be necessary to establish its jurisdiction over the relevant offences committed on board a vessel which is without nationality, or which is assimilated to a vessel without nationality under international law.

4. The flag State has preferential jurisdiction over any relevant offence committed on board its vessel.

5. Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later date, by a declaration addressed to the Secretary General of the Council of Europe, inform the other Parties to the agreement of the criteria it intends to apply in respect of the exercise of the jurisdiction established pursuant to paragraph 2 of this article.

6. Any State which does not have in service warships, military aircraft or other government ships or aircraft operated for non-commercial purposes, which would enable it to become an intervening State under this Agreement may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe declare that it will not apply paragraphs 2 and 3 of this Article. A State which has made such a declaration is under the obligation to withdraw it when the circumstances justifying the reservation no longer exist.

Article 4

Assistance to flag States

1. A Party which has reasonable grounds to suspect that a vessel flying its flag is engaged in or being used for the commission of a relevant offence, may request the assistance of other Parties in suppressing its use for that purpose. The Parties so requested shall render such assistance within the means available to them.

2. In making its request, the flag State may, *inter alia*, authorise the requested Party, subject to any conditions or limitations which may be imposed, to take some or all of the actions specified in this Agreement.

3. When the requested Party agrees to act upon the authorisation of the flag State given to it in accordance with paragraph 2, the provisions of this Agreement in respect of the rights and obligations of the intervening State and the flag State shall, where appropriate and unless otherwise specified, apply to the requested and requesting Party, respectively.

Article 5

Vessels without nationality

1. A Party which has reasonable grounds to suspect that a vessel without nationality, or assimilated to a vessel without nationality under international law, is engaged in or being used for the commission of a relevant offence, shall inform such other Parties as appear most closely affected and may request the assistance of any such Party in suppressing its use for that purpose. The Party so requested shall render such assistance within the means available to it.

2. Where a Party, having received information in accordance with paragraph 1, takes action it shall be for that Party to determine what actions are appropriate and to exercise its jurisdiction over any relevant offences which may have been committed by any persons on board the vessel.

3. Any Party which has taken action under this article shall communicate as soon as possible to the Party which has provided information, or made a request for assistance, the results of any action taken in respect of the vessel and any persons on board.

Section 2

Authorisation procedures

Article 6

Basic rules on authorisation

Where the intervening State has reasonable grounds to suspect that a vessel, which is flying the flag or displaying the marks of registry of another Party or bears any other indications of nationality of the vessel, is engaged in or being used for the commission of a relevant offence, the intervening State may request the authorisation of the flag State to stop and board the vessel in waters beyond the territorial sea of any Party, and to take some or all of the other actions specified in this Agreement. No such actions may be taken by virtue of this Agreement, without the authorisation of the flag State.

Article 7

Decision on the request for authorisation

The flag State shall immediately acknowledge receipt of a request for authorisation under Article 6 and shall communicate a decision thereon as soon as possible and, wherever practicable, within four hours of receipt of the request.

Article 8

Conditions

1. If the flag State grants the request, such authorisation may be made subject to conditions or limitations. Such conditions or limitations may, in particular, provide that the flag State's express authorisation be given before any specified steps are taken by the intervening State.

2. Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by declaration addressed to the Secretary General of the Council of Europe declare that, when acting as an intervening State, it may subject its intervention to the condition that persons having its nationality who are surrendered to the flag State under Article 15 and there convicted of a relevant offence, shall have the possibility to be transferred to the intervening State to serve the sentence imposed.

Section 3

Rules governing action

Article 9

Authorised actions

1. Having received the authorisation of the flag State, and subject to the conditions or limitations, if any, made under Article 8, paragraph 1, the intervening State may take the following actions:

- i.
 - a) stop and board the vessel;
 - b) establish effective control of the vessel and over any person thereon;
 - c) take any action provided for in sub-paragraph ii of this article which is considered necessary to establish whether a relevant offence has been committed and to secure any evidence thereof;
 - d) require the vessel and any persons thereon to be taken into the territory of the intervening State and detain the vessel there for the purpose of carrying out further investigations;
- ii. and, having established effective control of the vessel:
 - a) search the vessel, anyone on it and anything in it, including its cargo;
 - b) open or require the opening of any containers, and test or take samples of anything on the vessel;
 - c) require any person on the vessel to give information concerning himself or anything on the vessel;
 - d) require the production of documents, books or records relating to the vessel or any persons or objects on it, and make photographs or copies of anything the production of which the competent authorities have the power to require;
 - e) seize, secure and protect any evidence or material discovered on the vessel.

2. Any action taken under paragraph 1 of this article shall be without prejudice to any right existing under the law of the intervening State of suspected persons not to incriminate themselves.

Article 10

Enforcement measures

1. Where, as a result of action taken under Article 9, the intervening State has evidence that a relevant offence has been committed which would be sufficient under its laws to justify its either arresting the persons

concerned or detaining the vessel, or both, it may so proceed.

2. The intervening State shall, without delay, notify the flag State of steps taken under paragraph 1 above.

3. The vessel shall not be detained for a period longer than that which is strictly necessary to complete the investigations into relevant offences. Where there are reasonable grounds to suspect that the owners of the vessel are directly involved in a relevant offence, the vessel and its cargo may be further detained on completion of the investigation. Persons not suspected of any relevant offence and objects not required as evidence shall be released.

4. Notwithstanding the provisions of the preceding paragraph, the intervening State and the flag State may agree with a third State, Party to this Agreement, that the vessel may be taken to the territory of that third State and, once the vessel is in that territory, the third State shall be treated for the purposes of this Agreement as an intervening State.

Article 11

Execution of action

1. Actions taken under Articles 9 and 10 shall be governed by the law of the intervening State.

2. Actions under Article 9, paragraph 1 a, b and d, shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorised to that effect.

3. a) An official of the intervening State may not be prosecuted in the flag State for any act performed in the exercise of his functions. In such a case, the official shall be liable to prosecution in the intervening State as if the elements constituting the offence had been committed within the jurisdiction of that State.

b) In any proceedings instituted in the flag State, offences committed against an official of the intervening State with respect to actions carried out under Articles 9 and 10 shall be treated as if they had been committed against an official of the flag State.

4. The master of a vessel which has been boarded in accordance with this Agreement shall be entitled to communicate with the authorities of the vessel's flag State as well as with the owners or operators of the vessel for the purpose of notifying them that the vessel has been boarded. However, the authorities of the intervening State may prevent or delay any communication with the owners or operators of the vessel if they have reasonable grounds for believing that such communication would obstruct the investigations into a relevant offence.

Article 12

Operational safeguards

1. In the application of this Agreement, the Parties concerned shall take due account of the need not to

endanger the safety of life at sea, the security of the vessel and cargo and not to prejudice any commercial or legal interest. In particular, they shall take into account:

- a) the dangers involved in boarding a vessel at sea, and give consideration to whether this could be more safely done at the vessel's next port of call;
- b) the need to minimise any interference with the legitimate commercial activities of a vessel;
- c) the need to avoid unduly detaining or delaying a vessel;
- d) the need to restrict the use of force to the minimum necessary to ensure compliance with the instructions of the intervening State.

2. The use of firearms against, or on, the vessel shall be reported as soon as possible to the flag State.

3. The death, or injury, of any person aboard the vessel shall be reported as soon as possible to the flag State. The authorities of the intervening State shall fully co-operate with the authorities of the flag State in any investigation the flag State may hold into any such death or injury.

Section 4

Rules governing the exercise of jurisdiction

Article 13

Evidence of offences

1. To enable the flag State to decide whether to exercise its preferential jurisdiction in accordance with the provisions of Article 14, the intervening State shall without delay transmit to the flag State a summary of the evidence of any offences discovered as a result of action taken pursuant to Article 9. The flag State shall acknowledge receipt of the summary forthwith.

2. If the intervening State discovers evidence which leads it to believe that offences outside the scope of this Agreement may have been committed, or that suspect persons not involved in relevant offences are on board the vessel, it shall notify the flag State. Where appropriate, the Parties involved shall consult.

3. The provisions of this Agreement shall be so construed as to permit the intervening State to take measures, including the detention of persons, other than those aimed at the investigation and prosecution of relevant offences, only when:

- a) the flag State gives its express consent; or
- b) such measures are aimed at the investigation and prosecution of an offence committed after the person has been taken into the territory of the intervening State.

Article 14

Exercise of preferential jurisdiction

1. A flag State wishing to exercise its preferential jurisdiction shall do so in accordance with the provisions of this article.

2. It shall notify the intervening State to this effect as

soon as possible and at the latest within fourteen days from the receipt of the summary of evidence pursuant to Article 13. If the flag State fails to do this, it shall be deemed to have waived the exercise of its preferential jurisdiction.

3. Where the flag State has notified the intervening State that it exercises its preferential jurisdiction, the exercise of the jurisdiction of the intervening State shall be suspended, save for the purpose of surrendering persons, vessels, cargoes and evidence in accordance with this Agreement.

4. The flag State shall submit the case forthwith to its competent authorities for the purpose of prosecution.

5. Measures taken by the intervening State against the vessel and persons on board may be deemed to have been taken as part of the procedure of the flag State.

Article 15

Surrender of vessels, cargoes, persons and evidence

1. Where the flag State has notified the intervening State of its intention to exercise its preferential jurisdiction, and if the flag State so requests, the persons arrested, the vessel, the cargo and the evidence seized shall be surrendered to that State in accordance with the provisions of this Agreement.

2. The request for the surrender of arrested persons shall be supported by, in respect of each person, the original or a certified copy of the warrant of arrest or other order having the same effect, issued by a judicial authority in accordance with the procedure prescribed by the law of the flag State.

3. The Parties shall use their best endeavours to expedite the surrender of persons, vessels, cargoes and evidence.

4. Nothing in this Agreement shall be so construed as to deprive any detained person of his right under the law of the intervening State to have the lawfulness of his detention reviewed by a court of that State, in accordance with procedures established by its national law.

5. Instead of requesting the surrender of the detained persons or of the vessel, the flag State may request their immediate release. Where this request has been made, the intervening State shall release them forthwith.

Article 16

Capital punishment

If any offence for which the flag State decides to exercise its preferential jurisdiction in accordance with Article 14 is punishable by death under the law of that State, and if in respect of such an offence the death penalty is not provided by the law of the intervening State or is not normally carried out, the surrender of any person may be refused unless the flag State gives such assurances as the intervening State considers sufficient that the death penalty will not be carried out.

Section 5**Procedural and other general rules**

Article 17

Competent authorities

1. Each Party shall designate an authority, which shall be responsible for sending and answering requests under Articles 6 and 7 of this Agreement. So far as is practicable, each Party shall make arrangements so that this authority may receive and respond to the requests at any hour of any day or night.

2. The Parties shall furthermore designate a central authority which shall be responsible for the notification of the exercise of preferential jurisdiction under Article 14 and for all other communications or notifications under this Agreement.

3. Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of this article, together with any other information facilitating communication under this Agreement. Any subsequent change with respect to the name, address or other relevant information concerning such authorities shall likewise be communicated to the Secretary General.

Article 18

Communication between
designated authorities

1. The authorities designated under Article 17 shall communicate directly with one another.

2. Where, for any reason, direct communication is not practicable, Parties may agree to use the communication channels of ICPO-Interpol or of the Customs Co-operation Council.

Article 19

Form of request and languages

1. All communications under Articles 4 to 16 shall be made in writing. Modern means of telecommunications, such as telefax, may be used.

2. Subject to the provisions of paragraph 3 of this article, translations of the requests, other communications and supporting documents shall not be required.

3. At the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, any Party may communicate to the Secretary General of the Council of Europe a declaration that it reserves the right to require that requests, other communications and supporting documents sent to it, be made in or accompanied by a translation into its own language or into one of the official languages of the Council of Europe or into such one of these languages as it shall indicate. It may on

that occasion declare its readiness to accept translations in any other language as it may specify. The other Parties may apply the reciprocity rule.

Article 20

Authentication and legalisation

Documents transmitted in application of this Agreement shall be exempt from all authentication and legalisation formalities.

Article 21

Content of request

A request under Article 6 shall specify:

- a) the authority making the request and the authority carrying out the investigations or proceedings;
- b) details of the vessel concerned, including, as far as possible, its name, a description of the vessel, any marks of registry or other signs indicating nationality, as well as its location, together with a request for confirmation that the vessel has the nationality of the requested Party;
- c) details of the suspected offences, together with the grounds for suspicion;
- d) the action it is proposed to take and an assurance that such action would be taken if the vessel concerned had been flying the flag of the intervening State.

Article 22

Information for owners and masters
of vessels

Each Party shall take such measures as may be necessary to inform the owners and masters of vessels flying their flag that States Parties to this Agreement may be granted the authority to board vessels beyond the territorial sea of any Party for the purposes specified in this Agreement and to inform them in particular of the obligation to comply with instructions given by a boarding party from an intervening State exercising that authority.

Article 23

Restriction of use

The flag State may make the authorisation referred to in Article 6 subject to the condition that the information or evidence obtained will not, without its prior consent, be used or transmitted by the authorities of the intervening State in respect of investigations or proceedings other than those relating to relevant offences.

Article 24

Confidentiality

The Parties concerned shall, if this is not contrary to the basic principles of their national law, keep confidential any evidence and information provided by another Party in pursuance of this Agreement, except

to the extent that its disclosure is necessary for the application of the Agreement or for any investigations or proceedings.

Section 6
Costs and damages

Article 25

Costs

1. Unless otherwise agreed by the Parties concerned, the cost of carrying out any action under Articles 9 and 10 shall be borne by the intervening State, and the cost of carrying out action under Articles 4 and 5 shall normally be borne by the Party which renders assistance.

2. Where the flag State has exercised its preferential jurisdiction in accordance with Article 14, the cost of returning the vessel and of transporting suspected persons and evidence shall be borne by it.

Article 26

Damages

1. If, in the process of taking action pursuant to Articles 9 and 10 above, any person, whether natural or legal, suffers loss, damage or injury as a result of negligence or some other fault attributable to the intervening State, it shall be liable to pay compensation in respect thereof.

2. Where the action is taken in a manner which is not justified by the terms of this Agreement, the intervening State shall be liable to pay compensation for any resulting loss, damage or injury. The intervening State shall also be liable to pay compensation for any such loss, damage or injury, if the suspicions prove to be unfounded and provided that the vessel boarded, the operator or the crew have not committed any act justifying them.

3. Liability for any damage resulting from action under Article 4 shall rest with the requesting State, which may seek compensation from the requested State where the damage was a result of negligence or some other fault attributable to that State.

CHAPTER III
FINAL PROVISIONS

Article 27

Signature and entry into force

1. This Agreement shall be open for signature by the member States of the Council of Europe which have already expressed their consent to be bound by the Vienna Convention. They may express their consent to be bound by this Agreement by:

- a) signature without reservation as to ratification, acceptance or approval; or
- b) signature subject to ratification, acceptance or

approval, followed by ratification, acceptance or approval.

2. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3. This Agreement shall enter into force on the first day of the month following the expiry of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by the Agreement in accordance with the provisions of paragraph 1.

4. In respect of any signatory State which subsequently expresses its consent to be bound by it, the Agreement shall enter into force on the first day of the month following the expiry of a period of three months after the date of its consent to be bound by the Agreement in accordance with the provisions of paragraph 1.

Article 28

Accession

1. After the entry into force of this Agreement, the Committee of Ministers of the Council of Europe, after consulting the Contracting States to the Agreement, may invite any State which is not a member of the Council but which has expressed its consent to be bound by the Vienna Convention to accede to this Agreement, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.

2. In respect of any acceding State, the Agreement shall enter into force on the first day of the month following the expiry of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 29

Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories in respect of which its consent to be bound to this Agreement shall apply.

2. Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend its consent to be bound by the present Agreement to any other territory specified in the declaration. In respect of such territory the Agreement shall enter into force on the first day of the month following the expiry of a period of three months after the date of receipt of such declaration by the Secretary General.

3. In respect of any territory subject to a declaration under paragraphs 1 and 2 above, authorities may be designated under Article 17, paragraphs 1 and 2.

4. Any declaration made under the preceding

paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiry of a period of three months after the date of receipt of such notification by the Secretary General.

Article 30

Relationship to other conventions and agreements

1. This Agreement shall not affect rights and undertakings deriving from the Vienna Convention or from any international multilateral conventions concerning special matters.

2. The Parties to the Agreement may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Agreement, for the purpose of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it and in Article 17 of the Vienna Convention.

3. If two or more Parties have already concluded an agreement or treaty in respect of a subject dealt with in this Agreement or have otherwise established their relations in respect of that subject, they may agree to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Agreement, if it facilitates international co operation.

Article 31

Reservations

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of one or more of the reservations provided for in Article 3, paragraph 6, Article 19, paragraph 3 and Article 34, paragraph 5. No other reservation may be made.

2. Any State which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.

3. A Party which has made a reservation in respect of a provision of this Agreement may not claim the application of that provision by any other Party. It may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

Article 32

Monitoring committee

1. After the entry into force of the present Agreement, a monitoring committee of experts representing the

Parties shall be convened at the request of a Party to the Agreement by the Secretary General of the Council of Europe.

2. The monitoring committee shall review the working of the Agreement and make appropriate suggestions to secure its efficient operation.

3. The monitoring committee may decide its own procedural rules.

4. The monitoring committee may decide to invite States not Parties to the Agreement as well as international organisations or bodies, as appropriate, to its meetings.

5. Each Party shall send every second year a report on the operation of the Agreement to the Secretary General of the Council of Europe in such form and manner as may be decided by the monitoring committee or the European Committee on Crime Problems. The monitoring committee may decide to circulate the information supplied or a report thereon to the Parties and to such international organisations or bodies as it deems appropriate.

Article 33

Amendments

1. Amendments to this Agreement may be proposed by any Party, and shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe and to every non-member State which has acceded to or has been invited to accede to the Agreement in accordance with the provisions of Article 28.

2. Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems, which shall submit to the Committee of Ministers its opinion on the proposed amendment.

3. The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the European Committee on Crime Problems, and may adopt the amendment.

4. The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5. Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the thirtieth day after all the Parties have informed the Secretary General of their acceptance thereof.

Article 34

Settlement of disputes

1. The European Committee on Crime Problems of the Council of Europe shall be kept informed of the interpretation and application of this Agreement.

2. In case of a dispute between Parties as to the interpretation or application of this Agreement, the Parties shall seek a settlement of the dispute through

negotiation or any other peaceful means of their choice, including submission of the dispute to the European Committee on Crime Problems, to an arbitral tribunal whose decisions shall be binding upon the Parties, mediation, conciliation or judicial process, as agreed upon by the Parties concerned.

3. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or on any later date, by a declaration addressed to the Secretary General of the Council of Europe, declare that, in respect of any dispute concerning the interpretation or application of this Agreement, it recognises as compulsory, without prior agreement, and subject to reciprocity, the submission of the dispute to arbitration in accordance with the procedure set out in the appendix to this Agreement.

4. Any dispute which has not been settled in accordance with paragraphs 2 or 3 of this article shall be referred, at the request of any one of the parties to the dispute, to the International Court of Justice for decision.

5. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it does not consider itself bound by paragraph 4 of this article.

6. Any Party having made a declaration in accordance with paragraphs 3 or 5 of this article may at any time withdraw the declaration by notification to the Secretary General of the Council of Europe.

Article 35

Denunciation

1. Any Party may, at any time, denounce this Agreement by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiry of a period of

three months after the date of receipt of the notification by the Secretary General.

3. The present Agreement shall, however, continue to remain effective in respect of any actions or proceedings based on applications or requests made during the period of its validity in respect of the denouncing Party.

Article 36

Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council, any State which has acceded to this Agreement and the Secretary General of the United Nations of:

- a) any signature;
- b) the deposit of any instrument of ratification, acceptance, approval or accession;
- c) the name of any authority and any other information communicated pursuant to Article 17;
- d) any reservation made in accordance with Article 31, paragraph 1;
- e) the date of entry into force of this Agreement in accordance with Articles 27 and 28;
- f) any request made under Article 32, paragraph 1, and the date of any meeting convened under that paragraph;
- g) any declaration made under Article 3, paragraphs 5 and 6, Article 8, paragraph 2, Article 19, paragraph 3 and Article 34, paragraphs 3 and 5;
- h) any other act, notification or communication relating to this Agreement.

In witness whereof the undersigned, being duly authorised thereto, have signed this Agreement.

Done at Strasbourg, this 31st day of January 1995, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to this Agreement.

APPENDIX

1. The Party to the dispute requesting arbitration pursuant to Article 34, paragraph 3, shall inform the other Party in writing of the claim and of the grounds on which its claim is based.
2. The Parties concerned shall establish an arbitral tribunal.
3. The arbitral tribunal shall consist of three members. Each Party shall nominate an arbitrator. Both Parties shall, by common accord, appoint the presiding arbitrator.
4. Failing such nomination or such appointment by common accord within four months from the date on which the arbitration was requested, the necessary nomination or appointment shall be entrusted to the Secretary General of the Permanent Court of Arbitration.
5. Unless the Parties agree otherwise, the tribunal shall determine its own procedure.
6. Unless otherwise agreed between the Parties, the tribunal shall decide on the basis of the applicable rules of international law or, in the absence of such rules, *ex aequo et bono*.
7. The tribunal shall reach its decision by a majority of votes. Its decision shall be final and binding.