

# TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

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**JAARGANG 2004 Nr. 145**

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A. TITEL

*Overeenkomst over de toepassing van de bepalingen van het Verdrag van de Verenigde Naties inzake het recht van de zee van 10 december 1982 die betrekking hebben op de instandhouding en het beheer van de grensoverschrijdende en de over grote afstanden trekkende visbestanden, met Bijlagen;  
New York, 4 augustus 1995*

B. TEKST

De Engelse en de Franse tekst van de Overeenkomst zijn geplaatst in *Trb.* 1996, 277.

Voor ondertekeningen van de Overeenkomst zie *Trb.* 1996, 277 en *Trb.* 2000, 40<sup>1)</sup>.

<sup>1)</sup> In dit Tractatenblad is een verkeerde datum van ondertekening voor Japan vermeld; de correcte datum moet zijn 19 november 1996.

C. VERTALING

Zie *Trb.* 2000, 40.

D. PARLEMENT

Artikel 1 van de Rijkswet van 18 oktober 2001 (*Stb.* 2001, 535) luidt als volgt:

„Artikel 1

De op 4 augustus 1995 te New York tot stand gekomen Overeenkomst over de toepassing van de bepalingen van het Verdrag van de Verenigde Naties inzake het recht van de zee van 10 december 1982 die betrekking hebben op de instandhouding en het beheer van de grensoverschrijdende en de over grote afstanden trekkende visbestanden, waarvan de Engelse

en de Franse tekst zijn geplaatst in Tractatenblad 1996, 277, en de vertaling in het Nederlands in Tractatenblad 2000, 40, wordt goedgekeurd voor het gehele Koninkrijk.”

Deze Rijkswet is gecontrasigneerd door de Staatssecretaris van Landbouw, Natuurbeheer en Visserij G. H. FABER en de Minister van Buitenlandse Zaken J. J. VAN AARTSEN.

Voor de behandeling in de Staten-Generaal zie Kamerstukken II 2000/2001, 27 892 (R 1693); Hand. II 2000/2001, blz. 6293; Kamerstukken I 2000/2001, 27 892 (R 1693) (403); 2001/2002 27 892 (R1693) (23); Hand. I 2001/2002, blz. 62.

#### E. BEKRACHTIGING

Zie *Trb.* 2000, 40.

Behalve de aldaar genoemde hebben nog de volgende staten in overeenstemming met artikel 38 van de Overeenkomst een akte van bekrachtiging bij de Secretaris-Generaal van de Verenigde Naties nedergelegd:

België <sup>1)</sup> . . . . .	19 december 2003
Brazilië . . . . .	8 maart 2000
Denemarken <sup>2)</sup> . . . . .	19 december 2003
Duitsland <sup>3)</sup> . . . . .	19 december 2003
de Europese Gemeenschap <sup>4)</sup> . . . . .	19 december 2003
Finland <sup>5)</sup> . . . . .	19 december 2003
Frankrijk <sup>6)</sup> . . . . .	19 december 2003
Griekenland <sup>7)</sup> . . . . .	19 december 2003
Ierland <sup>8)</sup> . . . . .	19 december 2003
Italië <sup>9)</sup> . . . . .	19 december 2003
Luxemburg <sup>10)</sup> . . . . .	19 december 2003
de Marshall-eilanden . . . . .	19 maart 2003
het Koninkrijk der Nederlanden <sup>11)</sup> . . . . .	19 december 2003
(voor Nederland)	
Nieuw-Zeeland . . . . .	18 april 2001
Oekraïne . . . . .	27 februari 2003
Oostenrijk <sup>12)</sup> . . . . .	19 december 2003
Portugal <sup>13)</sup> . . . . .	19 december 2003
Spanje <sup>14)</sup> . . . . .	19 december 2003
het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland <sup>15)</sup> . . . . .	19 december 2003
Zweden <sup>16)</sup> . . . . .	19 december 2003

<sup>1)</sup> Onder de volgende verklaringen:

“The Government of the Kingdom of Belgium recalls that as a Member of the European Community, it has transferred competence to the Community in respect of certain matters governed by the Agreement.

The Kingdom of Belgium hereby confirms the declarations made by the European Community upon ratification of 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.”.

2) Onder de volgende verklaringen:

“In this respect, the Government of the Kingdom of Denmark recalls that as a Member of the European Community, Denmark has transferred competence to the European Community in respect of certain matters governed by the Agreement, which are specified in the Annex to this letter. This Annex also contains interpretative declarations by the European Community and its Member States to the Agreement.

At the same time, Denmark hereby confirms the declarations made by the European Community upon ratification of the Agreement.”.

3) Onder de volgende verklaringen:

“The Federal Republic of Germany recalls that as a Member of the European Community, the Federal Republic of Germany has transferred competence to the European Community in respect of certain matters governed by the Agreement, which are specified in Annex I to this declaration.

The Federal Republic of Germany hereby confirms the declarations made by the European Community upon ratification of the Agreement (...).”.

4) Onder de volgende verklaring:

“Pursuant to article 4 of Annex IX of the Convention, rendered applicable mutatis mutandis in the context of the Agreement by virtue of its article 47 (1), the European Community accepts the rights and obligations of States under the Agreement in respect of matters relating to which competence has been transferred to it by Member States which are parties to the Agreement.”

Declaration made pursuant to article 47 of the Agreement

“1. Article 47 (1) of the Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea relating to the conservation and management of straddling fish stocks and highly migratory fish stocks provides that in cases where an international organization referred to in Annex IX, article 1, of the Convention does not have competence over all the matters governed by the Agreement, Annex IX of the Convention (with the exception of article 2, first sentence, and article 3 (1)) shall apply mutatis mutandis to participation by such international organization in the Agreement.

2. The current members of the Community are the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

3. The Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea relating to the conservation and management of straddling fish stocks and highly migratory fish stocks shall apply, with regard to the competences transferred to the European Community, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty, in particular article 227 thereof.

4. This declaration is not applicable in the case of the territories of the Member States in which the said Treaty does not apply and is without prejudice to such acts or positions as may be adopted under the Agreement by the Member States concerned on behalf of and in the interests of those territories.

#### I. MATTERS FOR WHICH THE COMMUNITY HAS EXCLUSIVE COMPETENCE

5. The Community points out that its Member States have transferred competence to it with regard to the conservation and management of living marine resources. Hence, in this field, it is for the Community to adopt the relevant rules and regulations (which the Member States enforce) and within its competence to enter into external undertakings with third States or competent organizations. This competence applies in regard of waters under national fisheries jurisdiction and to the high seas.

6. The Community enjoys the regulatory competence granted under international law to the flag State of a vessel to determine the conservation and management measures for marine fisheries resources applicable to vessels flying the flag of Member States and to ensure that Member States adopt provisions allowing for the implementation of the said measures.

7. Nevertheless, measures applicable in respect of masters and other officers of fishing vessels, e.g., refusal, withdrawal or suspension of authorizations to serve as such, are within the competence of the Member States in accordance with their national legislation.

Measures relating to the exercise of jurisdiction by the flag State over its vessels on the high seas, in particular provisions such as those related to the taking and relinquishing of control of fishing vessels by States other than the flag State, international cooperation in respect of enforcement and the recovery of the control of their vessels, are within the competence of the Member States in compliance with Community law.

#### II. MATTERS FOR WHICH BOTH THE COMMUNITY AND ITS MEMBER STATES HAVE COMPETENCE

8. The Community shares competence with its Member States on the following matters governed by this Agreement: requirements of developing States, scientific research, port-State measures and measures adopted in respect of non-members of regional fisheries organizations and non-Parties to the Agreement.

The following provisions of the Agreement apply both to the Community and to its Member States:

- general provisions: (Articles 1, 4 and 34 to 50)
- dispute settlement: (Part VIII)."

Interpretative declarations deposited by the Community and its Member States upon ratification of the Agreement

"1. The European Community and its Member States understand that the terms 'geographical particularities', 'specific characteristics of the sub-region or region', 'socio-economic geographical and environmental factors', 'natural characteristics of that sea' or any other similar terms employed in reference to a geographical region do not prejudice the rights and duties of States under international law.

2. The European Community and its Member States understand that no provision of this Agreement may be interpreted in such a way as to conflict with the principle of freedom of the high seas, recognized by international law.

3. The European Community and its Member States understand that the term 'States whose nationals fish on the high seas' shall not provide any new grounds for jurisdiction based on the nationality of persons involved in fishing on the high seas rather than on the principle of flag State jurisdiction.

4. The Agreement does not grant any State the right to maintain or apply unilateral measures during the transitional period as referred to in article 21 (3). Thereafter, if no agreement has been reached, States shall act only in accordance

with the provisions provided for in articles 21 and 22 of the Agreement.

5. Regarding the application of article 21, the European Community and its Member States understand that, when a flag State declares that it intends to exercise its authority, in accordance with the provisions in article 19, over a fishing vessel flying its flag, the authorities of the inspecting State shall not purport to exercise any further authority under the provisions of article 21 over such a vessel.

Any dispute related to this issue shall be settled in accordance with the procedures provided for in Part VIII of the Agreement. No State may invoke this type of dispute to remain in control of a vessel which does not fly its flag.

In addition, the European Community and its Member States consider that the word 'unlawful' in article 21, para 18 of the Agreement should be interpreted in the light of the whole Agreement, and in particular, articles 4 and 35 thereof.

6. The European Community and its Member States reiterate that all States shall refrain in their relations from the threat or use of force in accordance with general principles of international law, the United Nations Charter and the United Nations Convention on the Law of the Sea.

In addition, the European Community and its Member States underline that the use of force as referred to in article 22 constitutes an exceptional measure which must be based upon the strictest compliance with the principle of proportionality and that any abuse thereof shall imply the international liability of the inspecting State. Any case of non-compliance shall be resolved by peaceful means and in accordance with the applicable dispute-settlement procedures.

Furthermore, the European Community and its Member States consider that the relevant terms and conditions for boarding and inspection should be further elaborated in accordance with the relevant principles of international law in the framework of the appropriate regional and subregional fisheries management organizations and arrangements.

7. The European Community and its Member States understand that in the application of the provisions of article 21, paragraphs 6, 7 and 8, the flag State may rely on the requirements of its legal system under which the prosecuting authorities enjoy a discretion to decide whether or not to prosecute in the light of all the facts of a case. Decisions of the flag State based on such requirements shall not be interpreted as failure to respond or to take action.”.

5) Onder de volgende verklaringen:

“Finland recalls that, as a Member State of the European Community, it has transferred competence to the European Community in respect of certain matters governed by the Agreement, which are specified in the Annex to the instrument of ratification.

Finland hereby confirms the declarations made by the European Community upon ratification of the Agreement.”.

6) Onder de volgende verklaringen:

“In accordance with article 47.1 of 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 (with two annexes), done at New York on 4 December 1995, of which the United Nations is the depository, and in accordance with article 5.2 of annex IX to the United Nations Convention on the Law of the Sea, the Government of the French Republic hereby declares that, as a member of the European Community, France has transferred competences dealt with in the Agreement to the European Community. ...

The Government of the French Republic also confirms the content of the dec-

larations made by the European Community upon ratification of the Agreement.

Interpretative declarations:

1. In ratifying 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, the Government of the French Republic declares that it considers that the Agreement constitutes an important effort to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks and to promote international cooperation to that end.

2. The Government of the French Republic understands that the terms 'geographical particularities', 'specific characteristics of the subregion or region', 'socio-economic, geographical and environmental factors', 'natural characteristics of that sea' or any other similar terms employed in reference to a geographical region do not prejudice the rights and duties of States under international law.

3. The Government of the French Republic understands that no provision of this Agreement may be interpreted in such a way as to conflict with the principle of freedom of the high seas recognized by international law.

4. The Government of the French Republic understands that the term 'States whose nationals fish on the high seas' shall not provide any new grounds for jurisdiction based on the nationality of persons involved in fishing on the high seas rather than on the principle of flag State jurisdiction.

5. The Agreement does not grant any State the right to maintain or apply unilateral measures during the transition period as referred to in article 21, paragraph 3. Thereafter, if no agreement has been reached, the States shall act only in accordance with the provisions provided for in articles 21 and 22 of the Agreement.

6. Regarding the application of article 21 of the Agreement, the Government of the French Republic understands that, when the flag State declares that it intends to exercise its authority, in accordance with article 19, over a fishing vessel flying its flag within the framework of an alleged violation committed on the high seas, the authorities of the inspecting State shall not purport to exercise any further authority under the provisions of article 21 over such a vessel. Any dispute related to this issue shall be settled in accordance with the procedures set forth in Part VIII of the Agreement (Peaceful settlement of disputes). No State may invoke this type of dispute to remain in control of a vessel which does not fly its flag for an alleged violation committed on the high seas. In addition, the Government of the French Republic considers that the word 'unlawful' in article 21, paragraph 18, of the Agreement should be interpreted in the light of the whole Agreement, and, in particular, articles 4 and 35 thereof.

7. The Government of the French Republic reiterates that all States shall refrain in their relations from the threat or use of force in accordance with general principles of international law, the Charter of the United Nations and the United Nations Convention on the Law of the Sea.

8. In addition, the Government of the French Republic stresses that the use of force as referred to in article 22 constitutes an exceptional measure which must be based on the strictest compliance with the principle of proportionality and that any abuse thereof shall entail the international liability of the inspecting State. Any case of non-compliance must be resolved by peaceful means, in accordance with the applicable dispute-settlement procedures. It considers, moreover, that the relevant conditions for boarding and inspection should be further elaborated in accordance with the applicable principles of international law, within the frame-

work of the appropriate subregional and regional fisheries management organizations and arrangements.

9. The Government of the French Republic understands that, in the application of the provisions of article 21, paragraphs 6, 7 and 8, the flag State may avail itself of its legal provisions under which the prosecuting authorities have the power to decide whether or not there are grounds for prosecution in the light of all the facts of the case. Decisions by the flag State based on such provisions must not be interpreted as failure to respond or to take action.

10. The Government of the French Republic declares that the provisions of articles 21 and 22 apply only to the sole sector of sea fishing.

11. The Government of the French Republic is of the view that the provisions of articles 21 and 22 could not be considered as liable to be extended to vessels engaged in maritime transport within the framework of another international instrument or to be transposed to any instrument that does not deal directly with the conservation and management of the fish resources dealt with in the Agreement.”.

7) Onder de volgende verklaringen:

“In this respect, the Government of the Hellenic Republic recalls that as a Member of the European Community, it has transferred competence to the European Community in respect of certain matters governed by the Agreement, which are specified in the Annex to this letter. The Hellenic Republic confirms the declarations made by the European Community upon ratification of 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.”.

8) Onder de volgende verklaringen:

“Pursuant to article 47 (1) of the Agreement (applying *mutatis mutandis* article 5 (2) and 5 (6) of Annex IX of the United Nations Convention on the Law of the Sea 1982), the Government of Ireland hereby declares that as a Member State of the European Community, Ireland has transferred competence to the European Community in respect of certain matters governed by the Agreement, which are specified in the Annex to this Declaration.

The Government of Ireland hereby confirms the Declarations made by the European Community upon ratification of the Agreement.

Annex

I. Matters for which the Community has exclusive competence

1. As a Member State of the European Community, Ireland recalls that it has transferred competence to the Community with regard to the conservation and management of living marine resources. Hence, in this field, it is for the Community to adopt the relevant rules and regulations (which the Member States enforce) and within its competence to enter into external undertakings with third States or competent organisations. This competence applies in regard of waters under national fisheries jurisdiction and to the high seas.

2. The Community enjoys the regulatory competence granted under international law to the flag State of a vessel to determine the conservation and management measures for marine fisheries resources applicable to vessels flying the flag of Member States and to ensure that Member States adopt provisions allowing for the implementation of the said measures.

3. Nevertheless, measures applicable in respect of masters and other officers of fishing vessels, for example refusal, withdrawal or suspension of authorisations to serve as such, are within the competence of the Member States in accordance with their national legislation. Measures relating to the exercise of jurisdiction by

the flag State over its vessels on the high seas, in particular provisions such as those related to the taking and relinquishing of control of fishing vessels by States other than the flag State, international cooperation in respect of enforcement and the recovery of the control of their vessels, are within the competence of the Member States in compliance with Community law.

II. Matters for which both the Community and its Member States have competence

4. The Community shares competence with its Member States on the following matters governed by this Agreement: requirements of developing States, scientific research, port-State measures and measures adopted in respect of non-members of regional fisheries organisations and non-Parties to the Agreement. The following provisions of the Agreement apply both to the Community and to its Member States:

- general provisions: (articles 1, 4, and 34 to 50)
- dispute settlement: (Part VIII)."

9) Onder de volgende verklaring:

"... the Government of Italy recalls that as a Member of the European Community, it has transferred competence to the Community in respect of certain matters governed by the Agreement, which are specified in the Annex to this letter. Italy confirms the declarations made by the European Community upon ratification of 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."

10) Onder de volgende verklaringen:

"As a member of the European Community, Luxembourg has transferred competence with regard to the matters governed by this Agreement to the European Community.

Luxembourg has the honour to confirm the declaration concerning the competence of the European Community with regard to all the matters governed by 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, included in annex B, as well as the declarations made by the European Community regarding the ratification of the aforementioned Agreement, included in annex C."

11) Onder de volgende verklaringen:

"The Government of the Kingdom of the Netherlands recalls that as a member of the European Community it has transferred competence to the Community in respect of certain matters governed by the Agreement.

...the Government of the Kingdom of the Netherlands confirms the declarations made by the European Community upon ratification of the Agreement for the Implementing of the Provisions of the United Nations Convention on the Law of Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. In this respect, ... [the Government of the Kingdom of the Netherlands confirms] the declarations made by the European Community upon ratification of the Agreement for the Implementing of the Provisions of the United Nations Convention on the Law of Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks."



<sup>12)</sup> Onder de volgende verklaring:

“The Republic of Austria declares upon ratification of the Agreement on 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 that she has, as a Member State of the European Community, transferred competence to the Community in respect of the following matters governed by the Agreement:

I. Matters for which the Community has exclusive competence

1. Member States have transferred competence to the Community with regard to the conservation and management of living marine resources. Hence, in this field, it is for the Community to adopt the relevant rules and regulations (which the Member States enforce) and within its competence to enter into external undertakings with third States or competent organisations. This competence applies in regard of waters under national fisheries jurisdiction and to the high seas.

2. The Community enjoys the regulatory competence granted under international law to the flag State of a vessel to determine the conservation and management measures for marine fisheries resources applicable to vessels flying the flag of Member States and to ensure that Member States adopt provisions allowing for the implementation of the said measures.

3. Nevertheless, measures applicable in respect of masters and other officers of fishing vessels, for example refusal, withdrawal or suspension of authorisations to serve as such, are within the competence of the Member States in accordance with their national legislation. Measures relating to the exercise of jurisdiction by the flag State over its vessels on the high seas, in particular provisions such as those related to the taking and relinquishing of control of fishing vessels by States other than the flag State, international cooperation in respect of enforcement and the recovery of the control of their vessels, are within the competence of the Member States in compliance with Community law.

II. Matters for which both the Community and its Member States have competence

4. The Community shares competence with its Member States on the following matters governed by this Agreement: requirements of developing States, scientific research, port-State measures and measures adopted in respect of non-members of regional fisheries organisations and non-Parties to the Agreement. The following provisions of the Agreement apply both to the Community and to its Member States:

- general provisions: (articles 1, 4, and 34 to 50)
- dispute settlement: (Part VIII)”.

Interpretative Declarations by the Republic of Austria with regard to the Agreement on 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

1. The Republic of Austria understands that the terms ‘geographical particularities’, ‘specific characteristics of the sub-region or region’, ‘socioeconomic geographical and environment factors’, ‘natural characteristics of that sea’ or any other similar terms employed in reference to a geographical region do not prejudice the rights and duties of States under international law.

2. The Republic of Austria understands that no provision of this Agreement may be interpreted in such a way as to conflict with the principle of freedom of the high seas, recognised by international law.

3. The Republic of Austria understands that the term ‘States whose nationals

fish on the high seas' shall not provide any new grounds for jurisdiction based on the nationality of persons involved in fishing on the high seas rather than on the principle of flag State jurisdiction.

4. The Agreement does not grant any State the right to maintain or apply unilateral measures during the transitional period as referred to in article 21 (3). Thereafter, if no agreement has been reached, States shall act only in accordance with the provisions provided for in articles 21 and 22 of the Agreement.

5. Regarding the application of article 21, the Republic of Austria understands that, when a flag State declares that it intends to exercise its authority, in accordance with the provisions in article 19, over a fishing vessel flying its flag, the authorities of the inspecting State shall not purport to exercise any further authority under the provisions of article 21 over such a vessel. Any dispute related to this issue shall be settled in accordance with the procedures provided for in Part VIII of the Agreement. No State may invoke this type of dispute to remain in control of a vessel which does not fly its flag. In addition, the Republic of Austria considers that the word 'unlawful' in article 21 (18) of the Agreement should be interpreted in the light of the whole Agreement, and in particular, articles 4 and 35 thereof.

6. The Republic of Austria reiterates that all States shall refrain in their relations from the threat or use of force in accordance with general principles of international law, the United Nations Charter and the United Nations Convention on the Law of the Sea. In addition, the Republic of Austria underlines that the use of force as referred to in article 22 constitutes an exceptional measure which must be based on the strictest compliance with the principle of proportionality and that any abuse thereof shall imply the international liability of the inspecting State. Any case of non-compliance shall be resolved by peaceful means and in accordance with the applicable dispute-settlement procedures. Furthermore, the Republic of Austria considers that the relevant terms and conditions for boarding and inspection should be further elaborated in accordance with the relevant principles of international law in the framework of the appropriate regional and subregional fisheries management organisations and arrangements.

7. The Republic of Austria understands that in the application of the provisions of article 21 (6), (7) and (8), the flag State may rely on the requirements of its legal system under which the prosecuting authorities enjoy a discretion to decide whether or not to prosecute in the light of all the facts of a case. Decisions of the flag State based on such requirements shall not be interpreted as failure to respond or to take action."

Confirmation by the Republic of Austria of the declarations made by the European Community upon ratification of the Agreement for the implementing 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.

"The Republic of Austria hereby confirms the declarations made by the European Community upon ratification of the Agreement for the implementing 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, ...".

<sup>13)</sup> Onder de volgende verklaring:

"The Government of Portugal recalls that as a Member of the European Community it has transferred competence to the Community in respect of certain matters governed by the Agreement. Portugal hereby confirms the declarations made by the European Community upon ratification of the Agreement for the Implementing 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.”.

<sup>14)</sup> Onder de volgende verklaringen:

“Spain, as a member of the European Community, points out that it has transferred competence to the Community with regard to a number of matters regulated by the Fish Stocks Convention. Spain hereby reaffirms the declarations made by the European Community upon ratifying 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.

Interpretative declarations:

1. Spain understands that the terms ‘geographical particularities’, ‘specific characteristics of the subregion or region’, ‘socio-economic, geographical and environmental factors’, ‘natural characteristics of that sea’ or any other similar terms employed in reference to a geographical region do not prejudice the rights and duties of States under international law.

2. Spain understands that no provision of this Agreement may be interpreted in such a way as to conflict with the principle of freedom of the high seas, recognized by international law.

3. Spain understands that the term ‘States whose nationals fish on the high seas’ shall not provide any new grounds for jurisdiction based on the nationality of persons involved in fishing on the high seas rather than on the principle of flag State jurisdiction.

4. The Agreement does not grant any State the right to maintain or apply unilateral measures during the transitional period as referred to in article 21, paragraph 3. Thereafter, if no agreement has been reached, States shall act only in accordance with the provisions provided for in articles 21 and 22 of the Agreement.

5. Regarding the application of article 21, Spain understands that, when a flag State declares that it intends to exercise its authority, in accordance with the provisions of article 19, over a fishing vessel flying its flag, the authorities of the inspecting State shall not purport to exercise any further authority under the provisions of article 21 over such a vessel. Any dispute related to this issue shall be settled in accordance with the procedures provided for in part VIII of the Agreement. No State may invoke this type of dispute to remain in control of a vessel which does not fly its flag. In addition, Spain considers that the word ‘unlawful’ in article 21, paragraph 18 of the Agreement should be interpreted in the light of the whole Agreement, particularly, articles 4 and 35 thereof.

6. Spain reiterates that all States shall refrain in their relations from the threat or use of force in accordance with general principles of international law, the United Nations Charter and the United Nations Convention on the Law of the Sea.

In addition, Spain underlines that the use of force as referred to in article 22 constitutes an exceptional measure which must be based upon the strictest compliance with the principle of proportionality and that any abuse thereof shall imply the international liability of the inspecting State. Any case of non-compliance shall be resolved by peaceful means and in accordance with the applicable dispute-settlement procedures. Furthermore, Spain considers that the relevant terms and conditions for boarding and inspection should be further elaborated in accordance with the relevant principles of international law in the framework of the appropriate regional and subregional fisheries management organizations and arrangements.

7. Spain understands that in the application of the provisions of article 21, paragraphs 6, 7 and 8, the flag State may rely on the requirements of its legal system under which the prosecuting authorities enjoy a discretion to decide whether or not to prosecute in the light of all the facts of a case. Decisions of the flag State based on such requirements shall not be interpreted as failure to respond or to take action.

8. Spain is of the view that the constituent conventions of regional fisheries management organizations such as the Northwest Atlantic Fisheries Organization, the North-East Atlantic Fisheries Commission and the International Commission for the Conservation of Atlantic Tunas, given their status as special international agreements, have legal precedence over the New York Agreement, which sets forth general rules on the conservation and management of straddling fish stocks and highly migratory fish stocks. Part VI of the Agreement, 'Compliance and enforcement', laying down boarding and inspection procedures, is therefore to be regarded as a regulation subordinate to alternative mechanisms established by subregional or regional fisheries management organizations which effectively discharge the obligations under the New York Agreement of their members or participants to ensure compliance with the conservation and management measures established by such organizations or arrangements.

9. Spain understands that in article 8, paragraph 3, of the Agreement the term 'a real interest' used with reference to States which may be members of a regional fisheries management organization shall be regarded as meaning that a regional fisheries management organization must in all circumstances be open to any State whose fleet fishes or has fished in the area covered by the constituent convention of such organization, in respect of which fleet the flag State has the authority to ensure compliance and enforcement. Participation in such organizations by the States in question shall indicate their real interest in the fisheries.

10. Spain, as a member of the European Community, points out that it has transferred competence to the Community with regard to a number of matters regulated by the Fish Stocks Convention. Spain hereby reaffirms the declarations made by the European Community upon ratifying 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."

<sup>15)</sup> Voor de "Metropolitan Territory" onder de volgende verklaring:

"[The Government of the United Kingdom] have the honour to declare, in accordance with article 47 (1) of the Agreement (applying mutatis mutandis article 5 (2) and (6) of Annex IX of the United Nations Convention on the Law of the Sea 1982), that as a Member of the European Community, the United Kingdom has transferred competence to the European Community in respect of certain matters governed by the Agreement, which are specified in the Annex to this declaration."

<sup>16)</sup> Onder de volgende verklaring:

"The Kingdom of Sweden recalls that, as a Member of the European Community, it has transferred competence to the Community in respect of certain matters governed by the Agreement. The Kingdom of Sweden hereby confirms the declarations made by the European Community upon ratification of 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."

## F. TOETREDING

Zie *Trb.* 2000, 40.

Behalve de aldaar genoemde hebben nog de volgende staten in overeenstemming met artikel 39 van de Overeenkomst een akte van toetreding bij de Secretaris-Generaal van de Verenigde Naties nedergelegd:

Barbados . . . . .	22 september 2000
Costa Rica . . . . .	18 juni 2001
Cyprus . . . . .	25 september 2002
India <sup>1)</sup> . . . . .	19 augustus 2003
Malta <sup>2)</sup> . . . . .	11 november 2001
Zuid-Afrika . . . . .	14 augustus 2003

1) Onder de volgende verklaring:

“The Government of the Republic of India reserves the right to make at the appropriate time the declarations provided for in articles 287 and 298 concerning the settlement of disputes.”

2) Onder de volgende verklaring:

“... in terms of article 43 of the Agreement, the Government of Malta, enters the following declaration:

1. In the view of the Malta Government, the requirements of implementing the 1995 Agreement must be in conformity with the 1982 Convention on the Law of the Sea.

2. Malta understands that the terms ‘geographical particularities’, ‘specific characteristics of the sub-region’, ‘socio-economic geographical and environmental factors’, ‘natural characteristics of that sea’ or any other similar terms employed in reference to a geographical region do not prejudice the rights and duties of States under international law.

3. Malta understands that no Provision of this Agreement may be interpreted in such a way as to conflict with the principle of freedom of the high seas, and of flag state exclusive jurisdiction over its vessels on the high seas as recognised by international law.

4. Malta understands that the term ‘States whose nationals fish on the high seas’ shall not provide any new grounds for jurisdiction based on the nationality of persons involved in fishing on the high seas rather than on the principle of flag State jurisdiction.

5. The Agreement does not grant any State the right to maintain or apply unilateral measures during the transitional period as referred to in article 21 (3). Thereafter, if no agreement has been reached, States shall act only in accordance with the provisions provided for in articles 21 and 22 of the Agreement.

6. Regarding the application of article 21, Malta understands that, when a flag State declares that it intends to exercise its authority, in accordance with the provisions in article 19, over a fishing vessel flying its flag, the authorities of the inspecting State shall not purport to exercise any other authority under the provisions of article 21 over such vessel.

Any dispute related to this issue shall be settled in accordance with the procedures provided for in Part VIII of the Agreement. No State may invoke this type of dispute to remain in control of a vessel, which does not fly its flag.

In addition, Malta considers that the word ‘unlawful’ in article 21, para. 18 of

the Agreement should be interpreted in the light of the whole Agreement, and in particular, articles 4 and 35 thereof.

7. Malta reiterates that all States shall refrain in their relations from the threat or use of force in accordance with general principles of international law, the United Nations Convention on the Law of the Sea.

Furthermore, Malta considers that the relevant terms and conditions for boarding and inspection should be further elaborated in accordance with the relevant principles of international law in the framework of the appropriate regional and sub-regional fisheries management organisations and arrangements.

8. Malta understands that in the application of the provisions of article 21, paragraphs 6, 7 and 8, the flag State may rely on the requirements of its legal system under which the prosecuting authorities enjoy a discretion to decide whether or not to prosecute in the light of all the facts of a case. Decisions of the flag State based on such requirements shall not be interpreted as failure to respond or to take action.

9. Malta hereby declares that the provisions of article 21 and 22 apply only to maritime fishing.

10. These provisions cannot be regarded as capable of being extended to cover vessels engaged in maritime transport under another international instrument, or of being transferred to any instrument not dealing directly with the conservation and management of fisheries resources covered by the Agreement.

11. The Agreement does not grant any State the right to maintain or apply unilateral measures during the transitional period as referred to in article 21 (3). Thereafter, if no agreement has been reached, States shall act only in accordance with the provisions provided for in article 21 and 22 of the Agreement.

12. Malta does not consider itself bound by any of the declarations which other States may have made, or will make, upon signing or ratifying the Agreement, reserving the right, as necessary, to determine its position with regard to each of them at the appropriate time, in particular, ratification of the Agreement does not imply automatic recognition of maritime or territorial claims by any signatory or ratifying State.

13. Note is taken of the statement by the European Community made at the time of signature of the Agreement regarding the fact that its Member States have transferred competence to it with regard to certain aspects of the Agreement. In view of Malta's application to join the European Community, it is understood that this will also become applicable to Malta on membership.

Furthermore, the Government of Malta would like to state that should Malta accede to the European Union, it reserves the right to submit a further Declaration in line with future declarations by the European Union."

#### G. INWERKINGTREDING

De bepalingen van de Overeenkomst zijn ingevolge artikel 40, eerste lid, op 11 december 2001 in werking getreden voor de staten die de Overeenkomst voor of op 11 november 2001 hebben bekrachtigd of zijn toetgetreden.

Voor de staten die na 11 november 2001 een akte van bekrachtiging of toetreding nederleggen, treedt de Overeenkomst ingevolge artikel 40, tweede lid, in werking 30 dagen na de datum van nederlegging van die akte.

Voor het Koninkrijk der Nederlanden zijn de bepalingen van de Overeenkomst ingevolge artikel 40, tweede lid, op 18 januari 2004 in werking getreden.

Wat het Koninkrijk der Nederlanden betreft, geldt de Overeenkomst alleen voor Nederland.

#### H. TOEPASSELIJKVERKLARING

Zie *Trb.* 2000, 40<sup>1</sup>. <sup>2</sup>).

In overeenstemming met artikel 43 heeft Nieuw-Zeeland de Overeenkomst op 18 april 2001 van toepassing verklaard op Tokelau.

<sup>1</sup>) In dit Tractatenblad is ten onrechte niet gemeld dat het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland op 3 december 1999 de Overeenkomst ook toepasselijk heeft verklaard op de Britse Maagdeneilanden.

<sup>2</sup>) Op 10 december 2001 heeft het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland op verzoek de volgende verklaringen afgelegd, ter aanvulling van de op 3 december 1999 afgelegde verklaringen:

“1. The United Kingdom is a keen supporter of the Straddling Fish Stocks Agreement. Legislation of the European Communities (Council decision 10176/97 of 8 June 1998) binds the United Kingdom as a matter of EC law to deposit its instrument of ratification in relation to the metropolitan territory simultaneously with the European Community and the other Member States.

It is hoped that this event will take place later this year. The constraints imposed by that Council decision only apply in respect of the United Kingdom metropolitan territory and those overseas territories to which the EC treaties apply.

2. In the light of its temporary inability to ratify the Agreement in relation to the metropolitan territory, and the strong desire of the United Kingdom to implement the Agreement in respect of those overseas territories to which the EC treaty does not apply, because of the advantages it will bring to them, the United Kingdom lodged its instrument of ratification to the Agreement, with declarations, in respect of those overseas territories on 3 December 1999.

3. The United Kingdom is concerned that upon entry into force of the Agreement, the overseas territories covered by this ratification should enjoy the rights and obligations accruing under the Agreement. I would therefore be grateful if you would arrange for the above formal declaration to be circulated in order to make it clear to all concerned the nature of the United Kingdom's approach to ratification of this convention.”

Op 8 februari 2000 heeft Mauritius de volgende verklaring afgelegd:

“The Republic of Mauritius rejects as unfounded the claim by the United Kingdom of Great Britain and Northern Ireland of its sovereignty over the so-called British Indian Ocean Territory (Chagos Archipelago) and reaffirms its sovereignty and sovereign rights over the Chagos Archipelago which forms an integral part of the national territory of the Republic of Mauritius and over their surrounding maritime zones.”

Op 8 februari 2002 heeft Argentinië het volgende medegedeeld:

“In that regard, the Argentine Republic rejects the claim of extension of the application of the Agreement to the Malvinas, South Georgia and South Sandwich Islands communicated by the United Kingdom of Great Britain and Northern Ire-

land and lodged on 10 December 2001. With regard to the question of the Malvinas, United Nations General Assembly resolutions 2065 (XX), 3160 (XXVIII), 31/49, 37/9, 38/12, 39/6, 40/21, 41/40, 42/19 and 43/25 recognize the existence of a dispute over sovereignty and request the Argentine Republic and the United Kingdom to resume negotiations in order to find a peaceful and lasting solution to the dispute, with assistance from the good offices of the Secretary-General of the United Nations, who is required to inform the General Assembly of the progress made.

The Argentine Republic reaffirms its rights of sovereignty over the Malvinas, South Georgia and South Sandwich Islands and the surrounding maritime areas, which are an integral part of its national territory.

The Argentine Republic reserves the right to express, at the appropriate time, its opinion concerning other aspects of the communication by the United Kingdom.”.

Bij nota van 17 juni 2002 heeft het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland de volgende mededeling gedaan:

“The United Kingdom rejects the Argentine objection to the ratification of the Agreement by the United Kingdom on behalf of the Falkland Islands, South Georgia and the South Sandwich Islands and the assertion by Argentina of rights of sovereignty over those territories and their surrounding maritime areas.

The United Kingdom has no doubt about its sovereignty over the Falkland Islands, South Georgia and the South Sandwich Islands and the surrounding maritime areas.”.

Bij het nederleggen van de akte van bekrachtiging op 19 december 2003 heeft het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland de volgende verklaring afgelegd:

“[The Government of the United Kingdom hereby confirm] the declarations made by the European Community upon ratification of the Agreement, and confirm that the interpretative declarations made by the European Community shall apply also to the United Kingdom’s ratification of the said Agreement in respect of certain Overseas Territories, namely Pitcairn, Henderson, Ducie and Oeno Islands, Falkland Islands, South Georgia and South Sandwich Islands, Bermuda, Turks and Caicos Islands, British Indian Ocean Territory, British Virgin Islands and Anguilla.”.

#### J. GEGEVENS

Zie *Trb.* 1996, 277 en *Trb.* 2000, 40.

Zie *Stb.* 536, blz. 1 voor het Besluit van 12 december 2001, houdende de inwerkingtreding van de Wet van 18 oktober 2001 tot wijziging van de Visserijwet 1963 ter uitvoering van onderhavige Overeenkomst.



**Verwijzingen**

- Titel : Handvest van de Verenigde Naties;  
San Francisco, 26 juni 1945  
Laatste *Trb.* : *Trb.* 2001, 179

Uitgegeven de *negentiende* mei 2004.

*De Minister van Buitenlandse Zaken,*

B. R. BOT