



HRVATSKI SABOR

KLASA: 022-03/21-01/38

URBROJ: 65-21-02

Zagreb, 20. svibnja 2021.

**P.Z. br. 141**

**ZASTUPNICAMA I ZASTUPNICIMA  
HRVATSKOGA SABORA**

**PREDSJEDNICAMA I PREDSJEDNICIMA  
RADNIH TIJELA**

Na temelju članaka 178. i 192., a u svezi članka 207.a Poslovnika Hrvatskoga sabora u prilogu upućujem *Konačni prijedlog zakona o potvrđivanju Sporazuma o nezakonitoj trgovini morskim putem, kojim se primjenjuje članak 17. Konvencije Ujedinjenih naroda protiv nezakonite trgovine opojnim drogama i psihotropnim tvarima*, koji je predsjedniku Hrvatskoga sabora podnijela Vlada Republike Hrvatske, aktom od 20. svibnja 2021. godine.

Za svoje predstavnike, koji će u njezino ime sudjelovati u radu Hrvatskoga sabora i njegovih radnih tijela, Vlada je odredila potpredsjednika Vlade Republike Hrvatske i ministra unutarnjih poslova dr. sc. Davora Božinovića i državne tajnike Tereziju Gras, dr. sc. Irenu Petrijević i Vuksanović i Žarka Katića.

**PREDSJEDNIK**

**Gordan Jandroković**



**VLADA REPUBLIKE HRVATSKE**

KLASA: 022-03/21-11/25  
URBROJ: 50301-21/22-21-2

Zagreb, 20. svibnja 2021.

**PREDSJEDNIKU HRVATSKOGA SABORA**

**PREDMET:** Konačni prijedlog zakona o potvrđivanju Sporazuma o nezakonitoj trgovini morskim putem, kojim se primjenjuje članak 17. Konvencije Ujedinjenih naroda protiv nezakonite trgovine opojnim drogama i psihotropnim tvarima

Na temelju članka 85. Ustava Republike Hrvatske („Narodne novine“, br. 85/10. – pročišćeni tekst i 5/14. – Odluka Ustavnog suda Republike Hrvatske) i članka 207.a Poslovnika Hrvatskoga sabora („Narodne novine“, br. 81/13., 113/16., 69/17., 29/18., 53/20., 119/20. – Odluka Ustavnog suda Republike Hrvatske i 123/20.), Vlada Republike Hrvatske podnosi Konačni prijedlog zakona o potvrđivanju Sporazuma o nezakonitoj trgovini morskim putem, kojim se primjenjuje članak 17. Konvencije Ujedinjenih naroda protiv nezakonite trgovine opojnim drogama i psihotropnim tvarima.

Za svoje predstavnike, koji će u njezino ime sudjelovati u radu Hrvatskoga sabora i njegovih radnih tijela, Vlada je odredila potpredsjednika Vlade Republike Hrvatske i ministra unutarnjih poslova dr. sc. Davora Božinovića i državne tajnike Tereziju Gras, dr. sc. Irenu Petrijević i Vuksanović i Žarka Katića.



PREDSJEDNIK

mr. sc. Andrej Plenković

**KONAČNI PRIJEDLOG ZAKONA O POTVRĐIVANJU SPORAZUMA O  
NEZAKONITOJ TRGOVINI MORSKIM PUTEM, KOJIM SE PRIMJENJUJE  
ČLANAK 17. KONVENCIJE UJEDINJENIH NARODA PROTIV NEZAKONITE  
TRGOVINE OPOJNIM DROGAMA I PSIHOTROPNIM TVARIMA**

**KONAČNI PRIJEDLOG ZAKONA O POTVRĐIVANJU SPORAZUMA O  
NEZAKONITOJ TRGOVINI MORSKIM PUTEM, KOJIM SE PRIMJENJUJE  
ČLANAK 17. KONVENCIJE UJEDINJENIH NARODA PROTIV NEZAKONITE  
TRGOVINE OPOJNIM DROGAMA I PSIHOTROPNIM TVARIMA**

**I. USTAVNA OSNOVA**

Ustavna osnova za donošenje Zakona o potvrđivanju Sporazuma o nezakonitoj trgovini morskim putem, kojim se primjenjuje članak 17. Konvencije Ujedinjenih naroda protiv nezakonite trgovine opojnim drogama i psihotropnim tvarima sadržana je u odredbi članka 140. stavka 1. Ustava Republike Hrvatske („Narodne novine“, br. 85/10. – pročišćeni tekst i 5/14. – Odluka Ustavnog suda Republike Hrvatske).

**II. OCJENA STANJA I CILJ KOJI SE DONOŠENJEM ZAKONA ŽELI POSTIĆI**

Konvencija Ujedinjenih naroda protiv nezakonite trgovine opojnim drogama i psihotropnim tvarima (u daljnjem tekstu: Bečka konvencija) sastavljena je u Beču 20. prosinca 1988. sa svrhom unaprjeđivanja suradnje između država stranaka u međunarodnoj borbi protiv raznih aspekata nezakonite trgovine opojnim drogama i psihotropnim tvarima. Republika Hrvatska je 8. listopada 1991. temeljem notifikacije o sukcesiji postala strankom Bečke konvencije („Narodne novine – Međunarodni ugovori“, broj 4/94.).

Države članice Vijeća Europe koje su stranke Bečke konvencije, želeći u najvećoj mogućoj mjeri povećati napore i suradnju u suzbijanju nezakonite trgovine opojnim drogama i psihotropnim tvarima morskim putem, sporazumjele su se kako je članak 17. Bečke konvencije potrebno dopuniti sporazumom kojim bi se provela i povećala učinkovitost odredaba članka 17. Bečke konvencije. Nastavno na navedeno, Sporazum o nezakonitoj trgovini morskim putem, kojim se primjenjuje članak 17. Konvencije Ujedinjenih naroda protiv nezakonite trgovine opojnim drogama i psihotropnim tvarima (u daljnjem tekstu: Sporazum) sastavljen je u Strasbourgu 31. siječnja 1995. te je otvoren za potpisivanje državama članicama Vijeća Europe koje su stranke Bečke konvencije. S tim u vezi, Odbor ministara Vijeća Europe može, u skladu s člankom 28. Sporazuma i nakon savjetovanja s državama strankama Sporazuma, pozvati i bilo koju državu stranku Bečke konvencije koja nije članica Vijeća Europe da pristupi Sporazumu.

Cilj Sporazuma je nužno poboljšanje i konkretiziranje načina suradnje država stranaka Bečke konvencije. Sukladno tome, Sporazum sadrži odredbe koje predstavljaju temelj i važan međunarodni okvir za suradnju država članica Vijeća Europe u borbi protiv trgovine drogama morskim putem.

U skladu s člankom 27. stavkom 3. Sporazuma, isti je stupio na snagu 1. svibnja 2000., odnosno prvoga dana mjeseca koji je uslijedio nakon isteka razdoblja od tri mjeseca od datuma na koji su tri države članice Vijeća Europe izrazile svoj pristanak biti njime vezane. U ovom trenutku Sporazum broji petnaest država stranaka.

Sporazum je, uz uvjet ratifikacije, u ime Vlade Republike Hrvatske, 7. studenoga 2007., potpisao Daniel Bučan, tadašnji veleposlanik – stalni predstavnik Republike Hrvatske pri Vijeću Europe.



### **III. OSNOVNA PITANJA KOJA SE PREDLAŽU UREDITI ZAKONOM**

Ovim se Zakonom potvrđuje Sporazum kako bi njegove odredbe, u smislu članka 141. Ustava Republike Hrvatske, postale dio unutarnjeg pravnog poretka Republike Hrvatske.

Sporazumom se utvrđuje pravni okvir institucionalne suradnje između država stranaka u svrhu poboljšanja suradnje u području suzbijanja nezakonite trgovine opojnim drogama i psihotropnim tvarima morskim putem, u skladu s međunarodnim pravom mora i uz puno poštovanje načela prava na slobodu plovidbe. Sukladno tome, odredbama Sporazuma propisuju se definicije, opća načela suradnje i nadležnosti, operativne zaštitne mjere, pitanje troškova i naknade štete, uspostava Odbora za praćenje, te konkretne mjere koje svaka od država stranaka može poduzeti u slučaju osnovane sumnje da je na plovilu počinjeno relevantno kazneno djelo ili da je isto korišteno u te svrhe. Bilo koja radnja poduzeta temeljem Sporazuma vodi računa o potrebi da se ne miješa ili ne utječe na prava, obveze i provođenje nadležnosti obalnih država, u skladu s međunarodnim pravom mora.

Prilikom polaganja isprave o ratifikaciji, Republika Hrvatska će na Sporazum priopćiti izjave u skladu s člancima 6., 8., 17., 23. i 24. Sporazuma te rezervu u skladu s člankom 19. Sporazuma. Naime, Republika Hrvatska shvaća odredbu članka 6. Sporazuma na način da će država zastave ocjenjivati i odobravati pojedinačno svaku radnju iz zaprimljenog zahtjeva kojim država koja poduzima mjere traži odobrenje da zaustavi i ukrca se na plovilo u vodama izvan teritorijalnog mora bilo koje stranke te da poduzme neke ili sve druge radnje određene Sporazumom. Nadalje, u skladu s člankom 8. stavkom 2. Sporazuma, Republika Hrvatska izjavljuje da, kad djeluje kao država koja poduzima mjere, svoje poduzimanje mjera čini podložnim uvjetu da osobe koje su njezini državljani, a koje su predane državi zastave na temelju članka 15. i tamo osuđene za relevantno kazneno djelo, imaju mogućnost transfera u državu koja poduzima mjere radi izdržavanja izrečene kazne. Osim toga, Republika Hrvatska će, u skladu s člankom 17. stavkom 1. i 2. Sporazuma, odrediti tijelo odgovorno za slanje i odgovaranje na zahtjeve koji se zaprimaju temeljem Sporazuma, kao i središnje tijelo odgovorno za obavijesti o provođenju preferencijalne nadležnosti i za sva ostala priopćenja ili obavijesti koja se zaprimaju temeljem Sporazuma. Nadalje, Republika Hrvatska shvaća odredbe članaka 23. i 24. Sporazuma na način da se podaci razmijenjeni između država stranaka temeljem Sporazuma mogu koristiti isključivo u svrhu zbog koje su dostavljeni.

Osim toga, u skladu s člankom 19. stavkom 3. Sporazuma, Republika Hrvatska pridržava pravo da zahtjevi, ostala priopćenja i popratni dokumenti koji joj se šalju temeljem Sporazuma budu prevedeni ili popraćeni prijevodom na hrvatski ili engleski jezik.

### **IV. OCJENA SREDSTAVA POTREBNIH ZA PROVEDBU ZAKONA**

Za provedbu ovoga Zakona nije potrebno osigurati dodatna financijska sredstva u državnom proračunu Republike Hrvatske.

### **V. ZAKONI KOJIMA SE POTVRĐUJU MEĐUNARODNI UGOVORI**

Temelj za donošenje ovoga Zakona nalazi se u članku 207.a Poslovnika Hrvatskoga sabora („Narodne novine“, br. 81/13., 113/16., 69/17., 29/18., 53/20., 119/20. – Odluka Ustavnog suda Republike Hrvatske i 123/20.), prema kojemu se zakoni kojima se, u skladu s Ustavom Republike Hrvatske, potvrđuju međunarodni ugovori donose u pravilu u jednom čitanju, a postupak donošenja pokreće se podnošenjem konačnog prijedloga zakona o potvrđivanju međunarodnog ugovora.

Donošenje ovoga Zakona pretpostavka je za ispunjenje formalno-pravnih pretpostavki kako bi Sporazum stupio na snagu u Republici Hrvatskoj čime će se stvoriti uvjeti za primjenu mehanizama i oblika suradnje koji su njime predviđeni.

S obzirom na prirodu postupka potvrđivanja međunarodnih ugovora kojim država i formalno izražava spremnost da bude vezana već sklopljenim međunarodnim ugovorom, kao i na činjenicu da u ovoj fazi postupka nisu moguće izmjene ili dopune teksta međunarodnog ugovora, predlaže se ovaj Konačni prijedlog zakona raspraviti i prihvatiti u jednom čitanju.

**KONAČNI PRIJEDLOG ZAKONA O POTVRĐIVANJU SPORAZUMA O  
NEZAKONITOJ TRGOVINI MORSKIM PUTEM, KOJIM SE PRIMJENJUJE  
ČLANAK 17. KONVENCIJE UJEDINJENIH NARODA PROTIV NEZAKONITE  
TRGOVINE OPOJNIM DROGAMA I PSIHOTROPNIM TVARIMA**

**Članak 1.**

Potvrđuje se Sporazum o nezakonitoj trgovini morskim putem, kojim se primjenjuje članak 17. Konvencije Ujedinjenih naroda protiv nezakonite trgovine opojnim drogama i psihotropnim tvarima, sastavljen u Strasbourgu 31. siječnja 1995. u izvorniku na engleskom i francuskom jeziku, a koji je Republika Hrvatska potpisala 7. studenoga 2007.

**Članak 2.**

Tekst Sporazuma iz članka 1. ovoga Zakona, u izvorniku na engleskom jeziku i u prijevodu na hrvatski jezik, glasi:

**SPORAZUM O NEZAKONITOJ TRGOVINI MORSKIM PUTEM, KOJIM SE  
PRIMJENJUJE ČLANAK 17. KONVENCIJE UJEDINJENIH NARODA PROTIV  
NEZAKONITE TRGOVINE OPOJNIM DROGAMA I PSIHOTROPNIM TVARIMA**

**Strasbourg, 31. I. 1995.**

Države članice Vijeća Europe koje su izrazile svoj pristanak biti vezane Konvencijom Ujedinjenih naroda protiv nezakonite trgovine opojnim drogama i psihotropnim tvarima, sastavljenom u Beču, 20. prosinca 1988., u daljnjem tekstu „Bečka konvencija“,

smatrajući da je cilj Vijeća Europe postići veće jedinstvo između svojih članica;

uvjerene u potrebu da se nastavi sa zajedničkom kaznenom politikom s ciljem zaštite društva;

smatrajući da borba protiv teških kaznenih djela, koja postaju sve veći međunarodni problem, zahtijeva blisku suradnju u međunarodnim razmjerima;

želeći u najvećoj mogućoj mjeri povećati svoju suradnju u suzbijanju nezakonite trgovine opojnim drogama i psihotropnim tvarima morskim putem, u skladu s međunarodnim pravom mora i uz puno poštovanje načela prava na slobodu plovidbe;

smatrajući, stoga, da bi članak 17. Bečke konvencije trebalo dopuniti regionalnim sporazumom kojim bi se provela i povećala učinkovitost odredaba tog članka,

sporazumjele su se kako slijedi:

## **Poglavlje I. – Definicije**

### **Članak 1. – Definicije**

U svrhe ovog Sporazuma:

- a „Država koja poduzima mjere“ je država stranka koja je od druge stranke zatražila ili predlaže zatražiti odobrenje da na temelju ovog Sporazuma poduzme radnje u odnosu na plovilo koje vije zastavu ili ima registarske oznake te druge države stranke;
- b „Preferencijalna nadležnost“ je, u odnosu na državu zastave koja ima istodobnu nadležnost nad relevantnim kaznenim djelom s drugom državom, pravo izvršavanja njezine nadležnosti na prioritetnoj osnovi, isključujući izvršavanje nadležnosti te druge države nad kaznenim djelom;
- c „Relevantno kazneno djelo“ je bilo koje kazneno djelo koje je opisano u članku 3. stavku 1. Bečke konvencije;
- d „Plovilo“ je brod ili bilo koji drugi plovni objekt bilo kakvog opisa, uključujući i lebdjelice i uronjive objekte.

## **Poglavlje II. – Međunarodna suradnja**

### **Odjeljak 1. – Opće odredbe**

#### **Članak 2. Opća načela**

1. Stranke u najvećoj mogućoj mjeri surađuju u suzbijanju nezakonite trgovine opojnim drogama i psihotropnim tvarima morskim putem, u skladu s međunarodnim pravom mora.
2. U provedbi ovog Sporazuma stranke nastoje osigurati da njihove radnje maksimalno povećaju učinkovitost provedbe zakonodavnih mjera protiv nezakonite trgovine opojnim drogama i psihotropnim tvarima morskim putem.
3. Svaka radnja poduzeta na temelju ovog Sporazuma vodi računa o potrebi da se ne miješa u ili ne utječe na prava i obveze te izvršavanje nadležnosti obalnih država, u skladu s međunarodnim pravom mora.
4. Ništa se u ovom Sporazumu ne će tumačiti na način da se krši načelo *non bis in idem*, kako se primjenjuje u nacionalnom pravu.
5. Stranke uzimaju u obzir vrijednost prikupljanja i razmjene informacija o plovilima, teretu i činjenicama, kad god smatraju da bi takva razmjena informacija mogla pomoći stranci u suzbijanju nezakonite trgovine opojnim drogama i psihotropnim tvarima morskim putem.

6. Ništa u ovom Sporazumu ne utječe na imunitete ratnih brodova i drugih državnih plovila koja plove u nekomercijalne svrhe.

### **Članak 3. – Nadležnost**

1. Svaka stranka poduzima takve mjere koje mogu biti potrebne za uspostavu njezine nadležnosti nad relevantnim kaznenim djelima kad je kazneno djelo počinjeno na plovilu koje vije njezinu zastavu.
2. U svrhe primjene ovog Sporazuma, svaka stranka poduzima takve mjere potrebne za uspostavu svoje nadležnosti nad relevantnim kaznenim djelima počinjenim na plovilu koje vije zastavu ili ima registarske oznake ili nosi bilo kakvu drugu oznaku državne pripadnosti bilo koje druge stranke ovog Sporazuma. Takva se nadležnost izvršava samo u skladu s ovim Sporazumom.
3. U svrhe primjene ovog Sporazuma, svaka stranka poduzima takve mjere koje mogu biti potrebne za uspostavu svoje nadležnosti nad relevantnim kaznenim djelima počinjenim na plovilu koje je bez državne pripadnosti, ili koje je izjednačeno s plovilom bez državne pripadnosti na temelju međunarodnog prava.
4. Država zastave ima preferencijalnu nadležnost nad bilo kojim relevantnim kaznenim djelom počinjenim na njezinom plovilu.
5. Svaka država može, prilikom potpisivanja ili polaganja svoje isprave o ratifikaciji, prihvatu, odobrenju ili pristupu, ili u nekom kasnijem trenutku, izjavom upućenom glavnom tajniku Vijeća Europe, obavijestiti druge stranke sporazuma o kriterijima koje namjerava primijeniti u odnosu na izvršavanje nadležnosti uspostavljene temeljem stavka 2. ovog članka.
6. Bilo koja država koja nema u službi ratne brodove, vojne zrakoplove ili druge državne brodove ili zrakoplove koji prometuju u nekomercijalne svrhe, što bi joj na temelju ovog Sporazuma omogućilo da postane država koja poduzima mjere, može, prilikom potpisivanja ili polaganja svoje isprave o ratifikaciji, prihvatu, odobrenju ili pristupu, izjavom upućenom glavnom tajniku Vijeća Europe izjaviti da ne će primjenjivati stavke 2. i 3. ovog članka. Država koja je dala takvu izjavu dužna ju je povući kad više ne postoje okolnosti koje opravdavaju rezervu.

### **Članak 4. – Pomoć državama zastave**

1. Stranka koja ima opravdane razloge sumnjati da je plovilo koje vije njezinu zastavu uključeno ili se koristi za počinjenje relevantnog kaznenog djela, može tražiti pomoć drugih stranaka u onemogućavanju njegovog korištenja

u tu svrhu. Stranke od kojih se to traži pružaju takvu pomoć u okviru sredstava koja su im dostupna.

2. U podnošenju zahtjeva, država zastave može, *inter alia*, ovlastiti stranku kojoj se zahtjev podnosi, podložno bilo kojim uvjetima ili ograničenjima koja se mogu nametnuti, da poduzme neke ili sve radnje određene u ovom Sporazumu.
3. Kad stranka kojoj se zahtjev podnosi pristane djelovati po ovlaštenju države zastave koje joj je dano u skladu sa stavkom 2., odredbe ovog Sporazuma u odnosu na prava i obveze države koja poduzima mjere i države zastave se, po potrebi i ako nije drukčije određeno, primjenjuju na stranku kojoj se zahtjev podnosi odnosno na stranku koja podnosi zahtjev.

### **Članak 5. – Plovila bez državne pripadnosti**

1. Stranka koja ima opravdane razloge sumnjati da je plovilo bez državne pripadnosti, ili koje je izjednačeno s plovilom bez državne pripadnosti na temelju međunarodnog prava, uključeno ili se koristi za počinjenje relevantnog kaznenog djela, obavještava one druge stranke za koje se čini da na njih to najviše utječe te od bilo koje takve stranke može zatražiti pomoć u onemogućavanju njegovog korištenja u tu svrhu. Stranka od koje se to traži pruža takvu pomoć u okviru sredstava koja su joj dostupna.
2. Kad stranka, nakon što primi informacije u skladu sa stavkom 1., poduzme radnje, na toj je stranci da odredi koje su radnje primjerene i da izvršava svoju nadležnost nad bilo kojim relevantnim kaznenim djelom koje je mogla počinuti bilo koja osoba na plovilu.
3. Bilo koja stranka koja je poduzela radnje na temelju ovog članka što prije dostavlja stranci koja je pružila informacije, ili zatražila pomoć, rezultate bilo koje poduzete radnje u odnosu na plovilo ili bilo koju osobu na plovilu.

### **Odjeljak 2. – Postupci odobrenja**

#### **Članak 6. – Osnovna pravila o odobrenju**

Kad država koja poduzima mjere ima opravdane razloge sumnjati da je plovilo koje vije zastavu ili ima registarske oznake druge stranke ili nosi bilo koje druge oznake državne pripadnosti plovila uključeno ili se koristi za počinjenje relevantnog kaznenog djela, država koja poduzima mjere može od države zastave zatražiti odobrenje da zaustavi i ukrca se na plovilo u vodama izvan teritorijalnog mora bilo koje stranke, te da poduzme neke ili sve druge radnje određene u ovom Sporazumu. Niti jedna takva radnja ne može se poduzeti temeljem ovog Sporazuma bez odobrenja države zastave.

### **Članak 7. – Odluka o zahtjevu za odobrenjem**

Država zastave odmah potvrđuje primitak zahtjeva za odobrenje na temelju članka 6. te odluku o tome dostavlja što je prije moguće a, kad god je to ostvarivo, u roku od četiri sata od primitka zahtjeva.

### **Članak 8. - Uvjeti**

1. Ako država zastave odobri zahtjev, takvo odobrenje može biti podložno uvjetima ili ograničenjima. Takvi uvjeti ili ograničenja mogu, posebice, omogućiti da se izričito odobrenje države zastave daje prije nego što država koja poduzima mjere poduzme bilo kakve određene korake.
2. Svaka država može, prilikom potpisivanja ili polaganja svoje isprave o ratifikaciji, prihvatu, odobrenju ili pristupu, izjavom upućenom glavnom tajniku Vijeća Europe, izjaviti da, kad djeluje kao država koja poduzima mjere, može svoje poduzimanje mjera učiniti podložnim uvjetu da osobe koje su njezini državljani, a koje su predane državi zastave na temelju članka 15. i tamo osuđene za relevantno kazneno djelo, imaju mogućnost transfera u državu koja poduzima mjere radi izdržavanja izrečene kazne.

### **Odjeljak 3. – Pravila koja uređuju poduzimanje radnji**

#### **Članak 9. – Odobrene radnje**

1. Po primitku odobrenja države zastave, i podložno uvjetima ili ograničenjima, ako ih ima, na temelju članka 8. stavka 1., država koja poduzima mjere može poduzeti sljedeće radnje:
  - i.
    - a zaustaviti i ukrcati se na plovilo;
    - b uspostaviti učinkovitu kontrolu nad plovilom i bilo kojom osobom na njemu;
    - c poduzeti bilo koju radnju predviđenu u podstavku ii. ovog članka koja se smatra potrebnom kako bi se utvrdilo je li relevantno kazneno djelo počinjeno i kako bi se osigurali bilo kakvi dokazi o tome;
    - d zatražiti da se plovilo i bilo koja osoba na njemu odvede na državno područje države koja poduzima mjere i tamo zadržati plovilo u svrhu provođenja daljnje istrage;
  - ii.
    - i, nakon uspostavljanja učinkovite kontrole nad plovilom:
      - a pretražiti plovilo, bilo koga ili bilo što na njemu, uključujući i njegov teret;

- b otvoriti ili zatražiti otvaranje bilo kojeg spremnika, te testirati ili uzeti uzorke bilo čega na plovilu;
  - c zatražiti od bilo koje osobe na plovilu da pruži informacije o sebi ili bilo čemu na plovilu;
  - d zatražiti davanje na uvid dokumenata, knjiga ili evidencija koje se odnose na plovilo ili bilo koju osobu ili predmet na njemu, te fotografirati ili načiniti preslike bilo čega čije davanje na uvid nadležna tijela imaju pravo zahtijevati.
  - e oduzeti, osigurati i zaštititi bilo kakve dokaze ili materijal otkriven na plovilu.
2. Niti jedna radnja poduzeta na temelju stavka 1. ovog članka ne dovodi u pitanje bilo koje pravo osumnjičenih osoba da se ne inkriminiraju, na temelju prava države koja poduzima mjere.

#### **Članak 10. – Mjere provedbe**

1. Kada, kao rezultat radnji poduzetih na temelju članka 9., država koja poduzima mjere ima dokaz da je počinjeno relevantno kazneno djelo što bi na temelju njezinih zakona bilo dovoljno da se opravda bilo uhićenje tih osoba ili zadržavanje plovila, ili oboje, ona može tako postupiti.
2. Država koja poduzima mjere bez odgode obavještava državu zastave o koracima koje je poduzela na temelju stavka 1. ovog članka.
3. Plovilo se ne zadržava dulje nego što je prijeko potrebno da se završe istrage relevantnih kaznenih djela. Kad postoje opravdani razlozi za sumnju da su vlasnici plovila izravno umiješani u relevantno kazneno djelo, plovilo i njegov teret mogu se zadržati i nakon završetka istrage. Osobe koje se ne sumnjiči za relevantno kazneno djelo se puštaju, a predmeti koji nisu potrebni kao dokaz se vraćaju.
4. Neovisno o odredbama prethodnog stavka, država koja poduzima mjere i država zastave mogu se dogovoriti s trećom državom, strankom ovog Sporazuma, da se plovilo može odvesti na državno područje te treće države i, kad je plovilo na tom državnom području, da se u svrhe ovog Sporazuma treća država smatra državom koja poduzima mjere.

#### **Članak 11. Izvršenje radnje**

1. Radnje poduzete na temelju članaka 9. i 10. uređuju se pravom države koja poduzima mjere.



2. Radnje na temelju članka 9. stavka 1 a, b i d, provode samo ratni brodovi ili vojni zrakoplovi, ili drugi brodovi ili zrakoplovi koji su jasno označeni i za koje se može utvrditi da su u državnoj službi i ovlaštenu u tu svrhu.
3.
  - a Službenik države koja poduzima mjere ne podliježe kaznenom progonu u državi zastave ni zbog kojeg djela izvršenog u vršenju svojih dužnosti. U tom slučaju, službenik podliježe kaznenom progonu u državi koja poduzima mjere kao da su elementi koji čine kazneno djelo počinjeni u nadležnosti te države.
  - b U svim postupcima pokrenutim u državi zastave, kaznena djela počinjena protiv službenika države koja poduzima mjere u odnosu na radnje poduzete na temelju članaka 9. i 10. smatraju se da su počinjena protiv službenika države zastave.
4. Zapovjednik plovila na koje je izvršen ukrcaj u skladu s ovim Sporazumom ima pravo komunicirati s vlastima države zastave plovila kao i s vlasnicima ili operatorima plovila kako bi ih obavijestio da je na plovilo izvršen ukrcaj. Ipak, vlasti države koja poduzima mjere mogu spriječiti ili odgoditi bilo kakvu komunikaciju s vlasnicima ili operatorima plovila ako imaju opravdane razloge vjerovati da bi takva komunikacija omela istragu relevantnog kaznenog djela.

#### **Članak 12. – Operativne zaštitne mjere**

1. U primjeni ovog Sporazuma, predmetne stranke vode računa o potrebi da se ne dovede u opasnost sigurnost života na moru, sigurnost plovila i tereta i da se ne dovede u pitanje nikakav trgovački ili pravni interes. Posebice, one uzimaju u obzir:
  - a opasnosti pri ukrcavanju na plovilo na moru, te razmatraju može li se to sigurnije obaviti u sljedećoj luci pristajanja plovila;
  - b potrebu da se bilo kakvo upletanje u zakonite trgovačke aktivnosti plovila svede na najmanju moguću mjeru;
  - c potrebu da se izbjegne neopravdano zadržavanje ili uzrokovanje kašnjenja plovila;
  - d potrebu da se upotreba sile ograniči na najmanju moguću mjeru kako bi se osiguralo postupanje u skladu s uputama države koja poduzima mjere.
2. Korištenje vatrenog oružja prema, ili na plovilu se što je prije moguće prijavljuje državi zastave.

3. Smrt ili ozljeđivanje bilo koje osobe na plovilu se što je prije moguće prijavljuje državi zastave. Vlasti države koja poduzima mjere u potpunosti surađuju s vlastima države zastave u svakoj istrazi takve smrti ili ozljeđivanja koju država zastave može voditi.

#### **Odjeljak 4. – Pravila koja uređuju izvršavanje nadležnosti**

##### **Članak 13. – Dokaz o kaznenim djelima**

1. Kako bi državi zastave omogućila da odluči da li izvršiti svoju preferencijalnu nadležnost u skladu s odredbama članka 14., država koja poduzima mjere bez odgađanja dostavlja državi zastave sažetak dokaza bilo kakvih kaznenih djela otkrivenih kao rezultat radnji poduzetih na temelju članka 9. Država zastave odmah potvrđuje primitak tog sažetka.
2. Ako država koja poduzima mjere otkrije dokaz koji je navodi na vjerovanje da su možda počinjena kaznena djela van okvira ovog Sporazuma, ili da su na plovilu sumnjive osobe koje nisu uključene u relevantna kaznena djela, obavještava državu zastave. Ako je potrebno, uključene stranke se savjetuju.
3. Odredbe ovog Sporazuma se tumače tako da državi koja poduzima mjere dopuštaju poduzimanje mjera, uključujući zadržavanje osoba, koje nisu cilj istrage i kaznenog progona relevantnih kaznenih djela, samo kad:
  - a država zastave daje svoj izričiti pristanak; ili
  - b su te mjere usmjerene na istragu i kazneni progon kaznenog djela počinjenog nakon što je osoba odvedena na državno područje države koja poduzima mjere.

##### **Članak 14. - Izvršavanje preferencijalne nadležnosti**

1. Država zastave koja želi izvršiti svoju preferencijalnu nadležnost to i čini u skladu s odredbama ovog članka.
2. Ona u tom smislu obavještava državu koja poduzima mjere što je prije moguće, a najkasnije četrnaest dana od primitka sažetka dokaza u skladu s člankom 13. Ako država zastave to ne učini, smatra se da se odrekla izvršavanja svoje preferencijalne nadležnosti.
3. Kad država zastave obavijesti državu koja poduzima mjere da izvršava svoju preferencijalnu nadležnost, izvršavanje nadležnosti države koja poduzima mjere se prekida, osim u svrhu predaje osoba, plovila, tereta i dokaza u skladu s ovim Sporazumom.
4. Država zastave odmah slučaj predaje svojim nadležnim tijelima u svrhu kaznenog progona.

5. Mjere koje država koja poduzima mjere poduzima prema plovilu i osobama na njemu mogu se smatrati kao dio postupka države zastave.

#### **Članak 15. – Predaja plovila, tereta, osoba i dokaza**

1. Kad država zastave obavijesti državu koja poduzima mjere o svojoj namjeri da izvrši svoju preferencijalnu nadležnost, te ako država zastave tako zahtijeva, uhićene osobe, oduzeto plovilo, teret i dokazi predaju se toj državi u skladu s odredbama ovog Sporazuma.
2. Zahtjev za predaju uhićenih osoba treba biti popraćen, za svaku osobu ponaosob, izvornikom ili ovjerenom preslikom naloga za uhićenje ili drugog naloga koji ima isti učinak, a koji je izdalo pravosudno tijelo u skladu s postupkom propisanim pravom države zastave.
3. Stranke čine sve što je u njihovoj moći da ubrzaju predaju osoba, plovila, tereta i dokaza.
4. Ništa se u ovom Sporazumu ne će tumačiti na način da bilo koja zadržana osoba bude lišena svog prava, na temelju prava države koja poduzima mjere, da zakonitost njezina zadržavanja preispita sud te države, u skladu s postupcima utvrđenim njezinim nacionalnim pravom.
5. Umjesto da zahtijeva predaju zadržanih osoba ili plovila, država zastave može zahtijevati njihovo trenutno puštanje. Kad se postavi takav zahtjev, država koja poduzima mjere ih odmah pušta.

#### **Članak 16. – Smrtna kazna**

Ako je bilo koje kazneno djelo za koje država zastave odluči izvršavati svoju preferencijalnu nadležnost u skladu s člankom 14. kažnjivo smrću na temelju prava te države, i ako u pogledu takvog kaznenog djela smrtna kazna nije predviđena prema pravu države koja poduzima mjere ili ju se u normalnim prilikama ne izvršava, predaja bilo koje osobe se može odbiti ako država zastave ne pruži takva jamstva koje država koja poduzima mjere smatra dovoljnima da se smrtna kazna ne će izvršiti.

### **Odjeljak 5. – Postupovna i ostala opća pravila**

#### **Članak 17. – Nadležna tijela**

1. Svaka stranka određuje tijelo koje je odgovorno za slanje i odgovaranje na zahtjeve na temelju članaka 6. i 7. ovog Sporazuma. U mjeri u kojoj je to moguće, svaka stranka ovome tijelu omogućuje primanje i odgovaranje na zahtjeve u bilo koje doba dana ili noći.

2. Nadalje, stranke određuju središnje tijelo koje je odgovorno za obavijesti o izvršavanju preferencijalne nadležnosti na temelju članka 14. i za sva ostala priopćenja ili obavijesti na temelju ovog Sporazuma.
3. Svaka stranka, prilikom potpisivanja ili polaganja svoje isprave o ratifikaciji, prihvatu, odobrenju ili pristupu, priopćuje glavnom tajniku Vijeća Europe nazive i adrese tijela određenih prema ovome članku, kao i bilo koje druge informacije koje olakšavaju komunikaciju na temelju ovog Sporazuma. Bilo kakva naknadna promjena u pogledu naziva, adrese ili drugih relevantnih informacija vezano za takva tijela, također se priopćuje glavnom tajniku.

#### **Članak 18. – Komunikacija između određenih tijela**

1. Tijela određena na temelju članka 17. međusobno neposredno komuniciraju.
2. Kada, iz bilo kojeg razloga, neposredna komunikacija nije ostvariva, stranke se mogu dogovoriti da koriste komunikacijske kanale Interpola ICPO ili Vijeća za carinsku suradnju.

#### **Članak 19. – Oblik zahtjeva i jezici**

1. Sva priopćenja na temelju članaka 4. do 16. su u pisanom obliku. Mogu se koristiti moderna sredstva telekomunikacija, kao što je telefaks.
2. Podložno odredbama stavka 3. ovog članka, prijevodi zahtjeva, ostalih priopćenja i popratnih dokumenata nisu potrebni.
3. Prilikom potpisivanja ili polaganja svoje isprave o ratifikaciji, prihvatu, odobrenju ili pristupu, svaka stranka može glavnom tajniku Vijeća Europe priopćiti izjavu kojom pridržava pravo zatražiti da zahtjevi, ostala priopćenja i popratni dokumenti koji joj se šalju budu prevedeni ili popraćeni prijevodom na njezinom jeziku, ili na jednom od službenih jezika Vijeća Europe, ili na nekom od tih jezika koji ona odredi. Tom prilikom može izraziti spremnost prihvatiti prijevode na bilo kojem drugom jeziku koji odredi. Druge stranke mogu primijeniti pravilo uzajamnosti.

#### **Članak 20. – Utvrđivanje vjerodostojnosti i ovjeravanje**

Dokumenti koji se dostavljaju u primjeni ovog Sporazuma izuzeti su od svih formalnosti utvrđivanja vjerodostojnosti i ovjeravanja.

#### **Članak 21. – Sadržaj zahtjeva**

U zahtjevu na temelju članka 6. posebno se navodi sljedeće:

- a tijelo koje podnosi zahtjev i tijelo koje provodi istrage ili postupke;

- b pojedivosti o dotičnom plovilu, uključujući, ako je moguće, njegov naziv, opis plovila, bilo koje registarske oznake ili druge znakove koji ukazuju na državnu pripadnost, kao i njegovu lokaciju, zajedno sa zahtjevom da se potvrdi da je plovilo državne pripadnosti one stranke kojoj se zahtjev podnosi;
- c pojedivosti o sumnji o počinjenju kaznenih djela, zajedno s razlozima za sumnju;
- d radnju koja se predlaže i jamstvo da bi se takva radnja poduzela da dotično plovilo vije zastavu države koja poduzima mjere.

### **Članak 22. – Informacije za vlasnike i zapovjednike plovila**

Svaka stranka poduzima takve mjere koje su potrebne da se obavijesti vlasnike i zapovjednike plovila koja viju njihovu zastavu, da države stranke ovog Sporazuma mogu dobiti odobrenje za ukrcaj na plovila izvan teritorijalnog mora bilo koje stranke za svrhe predviđene ovim Sporazumom, te da ih se istodobno obavijesti o obvezi poštivanja uputa koje im daje stranka države koja poduzima mjere, a koja se ukrcava na plovilo koristeći to odobrenje.

### **Članak 23. – Ograničenje uporabe**

Država zastave može odobrenje iz članka 6. uvjetovati time da tijela države koja poduzima mjere ne će koristiti ili prenositi dobivenu informaciju ili dokaz u pogledu istraga ili postupaka bez njenog prethodnog pristanka, osim onih informacija ili dokaza koji se odnose na relevantna kaznena djela.

### **Članak 24. – Tajnost**

Dotične stranke, ako se to ne protivi osnovnim načelima njihovog nacionalnog prava, štite tajnost bilo kojeg dokaza ili informacije koju dobiju od druge stranke prema ovome Sporazumu, osim u onoj mjeri u kojoj je njihovo otkrivanje nužno za primjenu Sporazuma ili bilo kojih istraga ili postupaka.

## **Odjeljak 6. – Troškovi i naknada štete**

### **Članak 25. – Troškovi**

1. Ako se dotične stranke drukčije ne dogovore, trošak poduzimanja bilo kakve radnje na temelju članka 9. i 10. snosi država koja poduzima mjere, a trošak poduzimanja bilo kakve radnje na temelju članka 4. i 5., u normalnim okolnostima, snosi stranka koja pruža pomoć.

2. Kada država zastave izvršava svoju preferencijalnu nadležnost u skladu s člankom 14., ona snosi trošak vraćanja plovila i prijevoza osumnjičenih osoba i dokaza.

#### **Članak 26. – Naknada štete**

1. Ako tijekom poduzimanja radnji iz članka 9. i 10., bilo koja osoba, fizička ili pravna, pretrpi gubitak, štetu ili povredu nastalu zbog nemara ili neke druge pogreške koja se može pripisati državi koja poduzima mjere, ta država snosi odgovornost za naknadu takve štete.
2. Kada se radnja poduzima na način koji nije opravdan prema uvjetima ovog Sporazuma, država koja poduzima mjere snosi odgovornost za naknadu štete za bilo kakav gubitak, štetu ili povredu koja iz toga proizlazi. Država koja poduzima mjere također snosi odgovornost za naknadu štete za svaki takav gubitak, štetu ili povredu, ako se sumnje pokažu neutemeljenima i ako plovilo na koje se izvršilo ukrcavanje, operator ili posada nisu učinili nikakvo djelo koje ih opravdava.
3. Odgovornost za bilo kakvu štetu nastalu radnjom na temelju članka 4. snosi država koja podnosi zahtjev, koja može tražiti naknadu od države kojoj se zahtjev podnosi u slučajevima kada je šteta nastala nemarom ili nekom drugom pogreškom koja se može pripisati toj državi.

### **Poglavlje III. – Završne odredbe**

#### **Članak 27. – Potpisivanje i stupanje na snagu**

1. Ovaj Sporazum otvoren je za potpisivanje državama članicama Vijeća Europe koje su već izrazile pristanak biti vezane Bečkom konvencijom. One mogu izraziti svoj pristanak biti vezane ovim Sporazumom:
  - a potpisivanjem bez rezerve ratifikacije, prihvata ili odobrenja; ili
  - b potpisivanjem koje podliježe ratifikaciji, prihvatu ili odobrenju, nakon čega slijedi ratifikacija, prihvata ili odobrenje.
2. Isprave o ratifikaciji, prihvatu ili odobrenju polažu se kod glavnog tajnika Vijeća Europe.
3. Ovaj Sporazum stupa na snagu prvoga dana mjeseca koji slijedi nakon isteka razdoblja od tri mjeseca od datuma na koji su tri države članice Vijeća Europe izrazile svoj pristanak biti vezane ovim Sporazumom, u skladu s odredbama stavka 1.

4. U odnosu na svaku državu potpisnicu koja naknadno izrazi svoj pristanak biti vezana Sporazumom, isti stupa na snagu prvoga dana mjeseca koji slijedi nakon isteka razdoblja od tri mjeseca od datuma njezina pristanka da bude vezana ovim Sporazumom u skladu s odredbama stavka 1.

#### **Članak 28. – Pristup**

1. Nakon stupanja na snagu ovog Sporazuma, Odbor ministara Vijeća Europe, nakon savjetovanja s državama strankama ovog Sporazuma, može pozvati bilo koju državu koja nije članica Vijeća, a koja je izrazila svoj pristanak biti vezana Bečkom konvencijom, da pristupi ovome Sporazumu, odlukom donesenom većinom predviđenom člankom 20. d Statuta Vijeća Europe i jednoglasnom odlukom predstavnika država stranaka koje imaju pravo na mjesto u Odboru.
2. U odnosu na bilo koju državu koja pristupa, Sporazum stupa na snagu prvoga dana mjeseca koji slijedi nakon isteka razdoblja od tri mjeseca od datuma polaganja isprave o pristupu kod glavnog tajnika Vijeća Europe.

#### **Članak 29. – Teritorijalna primjena**

1. Svaka država može, prilikom potpisivanja ili polaganja svoje isprave o ratifikaciji, prihvatu, odobrenju ili pristupu, odrediti područje ili područja u odnosu na koja se primjenjuje njezin pristanak da bude vezana ovim Sporazumom.
2. Svaka država može, u bilo kojem kasnijem trenutku, izjavom upućenom glavnom tajniku Vijeća Europe, proširiti svoj pristanak biti vezana ovim Sporazumom na bilo koje drugo područje određeno u toj izjavi. U odnosu na to područje Sporazum stupa na snagu prvoga dana mjeseca koji slijedi nakon isteka razdoblja od tri mjeseca od datuma kada je glavni tajnik primio takvu izjavu.
3. U odnosu na bilo koje područje na koje se odnosi izjava na temelju stavaka 1. i 2. ovog članka, mogu se odrediti tijela na temelju članka 17. stavaka 1. i 2.
4. Svaka izjava dana na temelju prethodnih stavaka može se, u odnosu na bilo koje područje navedeno u toj izjavi, povući obaviješću upućenom glavnom tajniku. Povlačenje stupa na snagu prvoga dana mjeseca koji slijedi nakon isteka razdoblja od tri mjeseca od datuma kada je glavni tajnik primio takvu obavijest.

**Članak 30. – Odnos s drugim konvencijama i sporazumima**

1. Ovaj Sporazum ne utječe na prava i obveze koje proistječu iz Bečke konvencije ili bilo kojih međunarodnih mnogostranih konvencija koje se odnose na posebna pitanja.
2. Stranke Sporazuma mogu međusobno sklopiti dvostrane ili mnogostrane sporazume o pitanjima koja se odnose na ovaj Sporazum, za potrebe dopune ili jačanja njegovih odredaba ili olakšavanja primjene načela sadržanih u njemu i u članku 17. Bečke konvencije.
3. Ako su dvije ili više stranaka već sklopile neki sporazum ili međunarodni ugovor vezano za predmet koji se odnosi na ovaj Sporazum ili su na neki drugi način uspostavile odnose vezano za taj predmet, one se mogu usuglasiti da primijene taj sporazum ili međunarodni ugovor ili da prema njemu uredite te odnose na odgovarajući način, umjesto prema ovome Sporazumu, ako to olakšava međunarodnu suradnju.

**Članak 31. – Rezerve**

1. Svaka država može, prilikom potpisivanja ili polaganja svoje isprave o ratifikaciji, prihvatu, odobrenju ili pristupu, izjaviti da zadržava pravo na jednu ili više rezervi predviđenih člankom 3. stavkom 6., člankom 19. stavkom 3. i člankom 34. stavkom 5. Nikakva druga rezerva ne može se staviti.
2. Svaka država koja je stavila rezervu na temelju prethodnog stavka može je u potpunosti ili djelomično povući obaviješću upućenom glavnom tajniku Vijeća Europe. Povlačenje proizvodi učinke od datuma primitka takve obavijesti od strane glavnog tajnika.
3. Stranka koja je stavila rezervu u odnosu na odredbe ovog Sporazuma ne može zahtijevati da bilo koja druga stranka primijeni tu odredbu. Međutim, može, u slučaju da je njezina rezerva djelomična ili uvjetna, zahtijevati primjenu te odredbe u onoj mjeri u kojoj ju je sama prihvatila.

**Članak 32. – Odbor za praćenje**

1. Nakon stupanja na snagu ovog Sporazuma, odbor za praćenje sastavljen od stručnjaka koji predstavljaju stranke, saziva glavni tajnik Vijeća Europe na zahtjev stranke Sporazuma.
2. Odbor za praćenje ispituje djelovanje Sporazuma i daje odgovarajuće prijedloge za osiguranje njegovog učinkovitog izvršavanja.
3. Odbor za praćenje može odlučiti o svojim vlastitim postupovnim pravilima.



4. Odbor za praćenje može odlučiti pozvati države koje nisu stranke ovog Sporazuma, kao i međunarodne organizacije ili tijela, ako je potrebno, na svoje sastanke.
5. Svaka stranka šalje jednom u dvije godine izvješće o primjeni Sporazuma glavnom tajniku Vijeća Europe u obliku i na način o kojem može odlučiti Odbor za praćenje ili Europski odbor za probleme kriminala. Odbor za praćenje može odlučiti proslijediti dobivenu informaciju ili izvješće o tome strankama i onim međunarodnim organizacijama ili tijelima za koje smatra da je to potrebno.

### **Članak 33. – Izmjene i dopune**

1. Izmjene i dopune ovog Sporazuma može predložiti svaka stranka, a glavni tajnik Vijeća Europe ih dostavlja državama članicama Vijeća Europe i svim državama koje nisu članice, a koje su pristupile ili su pozvane pristupiti Sporazumu u skladu s odredbom članka 28.
2. O svim izmjenama i dopunama koje neka stranka predloži, obavještava se Europski odbor za probleme kriminala, koji Odboru ministara podnosi svoje mišljenje o predloženoj izmjeni i dopuni.
3. Odbor ministara razmatra predloženu izmjenju i dopunu i mišljenje koje je podnio Europski odbor za probleme kriminala, te može usvojiti tu izmjenju i dopunu.
4. Tekst bilo koje izmjene i dopune koju Odbor ministara usvoji u skladu sa stavkom 3. ovog članka prosljeđuje se strankama radi prihvaćanja.
5. Bilo koja izmjena i dopuna usvojena u skladu sa stavkom 3. ovog članka stupa na snagu tridesetoga dana nakon što su sve stranke obavijestile glavnog tajnika o njihovom prihvatu izmjene i dopune.

### **Članak 34. – Rješavanje sporova**

1. Europski odbor za probleme kriminala Vijeća Europe obavještava se o tumačenju i primjeni ovog Sporazuma.
2. U slučaju spora između stranaka vezano za tumačenje ili primjenu ovog Sporazuma, stranke pokušavaju riješiti spor pregovorima ili bilo kojim drugim mirnim sredstvima koja izaberu, uključujući podnošenje spora Europskom odboru za probleme kriminala, arbitražnom sudu čije su odluke obvezujuće za stranke te posredovanjem, mirenjem ili sudskim postupkom kako dogovore odnosne stranke.
3. Svaka država može, prilikom potpisivanja ili polaganja svoje isprave o ratifikaciji, prihvatu, odobrenju ili pristupu, ili u bilo kojem kasnijem

trenutku, izjavom upućenom glavnom tajniku Vijeća Europe, izjaviti da, u pogledu bilo kakvog spora vezano za tumačenje ili primjenu ovog Sporazuma, prihvaća kao obvezno, bez prethodne suglasnosti i podložno uzajamnosti, podnošenje spora na arbitražu u skladu s postupkom utvrđenim u dodatku ovom Sporazumu.

4. Svaki spor koji nije riješen u skladu sa stavcima 2. i 3. ovog članka, na zahtjev bilo koje od stranaka u sporu, podnosi se Međunarodnom sudu radi odluke.
5. Svaka država može, prilikom potpisivanja ili polaganja svoje isprave o ratifikaciji, prihvatu, odobrenju ili pristupu, izjavom upućenom glavnom tajniku Vijeća Europe, izjaviti da se ne smatra vezanom stavkom 4. ovog članka.
6. Svaka stranka koja da izjavu u skladu sa stavcima 3. ili 5. ovog članka, može u svako doba tu izjavu povući obaviješću upućenom glavnom tajniku Vijeća Europe.

#### **Članak 35. – Otkaz**

1. Svaka stranka može u svako doba, otkazati ovaj Sporazum putem obavijesti upućene glavnom tajniku Vijeća Europe.
2. Takav otkaz proizvodi učinke od prvoga dana mjeseca koji slijedi nakon isteka razdoblja od tri mjeseca od datuma kada je glavni tajnik zaprimio tu obavijest.
3. Međutim, ovaj Sporazum nastavlja proizvoditi učinke u odnosu na bilo kakve radnje ili postupke temeljene na molbama ili zahtjevima podnesenima za vrijeme njegove valjanosti u odnosu na stranku koja Sporazum otkazuje.

#### **Članak 36. – Obavijesti**

Glavni tajnik Vijeća Europe obavještava države članice Vijeća Europe i svaku državu koja je stranka ovog Sporazuma te glavnog tajnika Ujedinjenih naroda o:

- a svakom potpisivanju;
- b polaganju svake isprave o ratifikaciji, prihvatu, odobrenju ili pristupu;
- c nazivu svakog tijela i svim drugim informacijama priopćenim u skladu s člankom 17.;
- d svakoj rezervi u skladu s člankom 31. stavkom 1.;

- e datumu stupanja na snagu ovog Sporazuma u skladu s člancima 27. i 28.;
- f svakom zahtjevu podnesenom na temelju članka 32. stavka 1. i datumu svakog sastanka sazvanog na temelju tog stavka;
- g svakoj izjavi danoj na temelju članka 3. stavaka 5. i 6., članka 8. stavka 2., članka 19. stavka 3. i članka 34. stavaka 3. i 5.;
- h svakom drugom činu, obavijesti ili priopćenju u svezi s ovim Sporazumom.

U potvrdu toga su potpisani, za to propisno ovlašteni, potpisali ovaj Sporazum.

Sastavljeno u Strasbourgu, 31. siječnja 1995. na engleskom i francuskom jeziku, pri čemu su oba teksta jednako vjerodostojna, u jednom primjerku koji se pohranjuje u arhivu Vijeća Europe. Glavni tajnik Vijeća Europe dostavlja ovjerene preslike svakoj državi članici Vijeća Europe i svakoj državi koja je pozvana da pristupi ovome Sporazumu.

#### **Dodatak**

1. Stranka u sporu koja traži arbitražu prema članku 34. stavku 3., pisanim putem obavještava drugu stranku o potraživanju i razlozima na kojima se potraživanje temelji.
2. Dotične stranke uspostavljaju arbitražni sud.
3. Arbitražni sud sastoji se od tri člana. Svaka stranka imenuje jednog arbitra. Obje stranke suglasno postavljaju predsjedavajućeg arbitra.
4. Ako se stranke ne suglase o takvom imenovanju ili postavljanju, u roku od četiri mjeseca od datuma kada je arbitraža zatražena, potrebno imenovanje ili postavljanje, povjerava se glavnom tajniku Stalnog arbitražnog suda.
5. Ako se stranke drukčije ne dogovore, sud utvrđuje vlastiti postupak.
6. Ako se stranke drukčije ne dogovore, sud odlučuje na temelju primjenjivih pravila međunarodnog prava, ili, kada takva pravila ne postoje, *ex aequo et bono*.
7. Sud donosi svoju odluku većinom glasova. Njegova odluka je konačna i obvezujuća.

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

**Strasbourg, 31.I.1995**

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 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.

### **Članak 3.**

Prilikom polaganja svoje isprave o ratifikaciji, Republika Hrvatska će na Sporazum iz članka 1. ovoga Zakona priopćiti sljedeće izjave:

#### **IZJAVA**

u skladu s člankom 6. Sporazuma

Republika Hrvatska shvaća odredbu članka 6. Sporazuma na način da će država zastave ocjenjivati i odobravati pojedinačno svaku radnju iz zaprimljenog zahtjeva kojim država koja poduzima mjere traži odobrenje da zaustavi i ukrci se na plovilo u vodama izvan teritorijalnog mora bilo koje stranke, te da poduzme neke ili sve druge radnje određene u Sporazumu.

#### **IZJAVA**

u skladu s člankom 8. stavkom 2. Sporazuma

U skladu s člankom 8. stavkom 2. Sporazuma, Republika Hrvatska izjavljuje da kad djeluje kao država koja poduzima mjere, svoje poduzimanje mjera čini podložnim uvjetu da osobe koje su njezini državljani, a koje su predane državi zastave na temelju članka 15. i tamo osuđene za relevantno kazneno djelo, imaju mogućnost transfera u državu koja poduzima mjere radi izdržavanja izrečene kazne.

#### **IZJAVA**

u skladu s člankom 17. Sporazuma

U skladu s člankom 17. stavkom 1. Sporazuma, Republika Hrvatska određuje Ministarstvo unutarnjih poslova Republike Hrvatske, Ravnateljstvo policije kao tijelo odgovorno za slanje i odgovaranje na zahtjeve iz članaka 6. i 7. Sporazuma.

U skladu s člankom 17. stavkom 2. Sporazuma, Republika Hrvatska određuje Ministarstvo pravosuđa i uprave Republike Hrvatske kao središnje tijelo odgovorno za obavijesti o izvršavanju preferencijalne nadležnosti iz članka 14. Sporazuma i za sva ostala priopćenja ili obavijesti prema Sporazumu.

#### **IZJAVA**

u skladu s člancima 23. i 24. Sporazuma

Republika Hrvatska shvaća odredbe članaka 23. i 24. na način da se podaci razmijenjeni između država stranaka temeljem Sporazuma mogu koristiti isključivo u svrhu zbog koje su dostavljeni.

#### **Članak 4.**

Prilikom polaganja svoje isprave o ratifikaciji, Republika Hrvatska će na Sporazum iz članka 1. ovoga Zakona priopćiti sljedeću rezervu:

#### **REZERVA**

u skladu s člankom 19. stavkom 3.

U skladu s člankom 19. stavkom 3. Sporazuma, Republika Hrvatska pridržava pravo da zahtjevi, ostala priopćenja i popratni dokumenti koji joj se šalju temeljem Sporazuma budu prevedeni ili popraćeni prijevodom na hrvatski ili engleski jezik.

#### **Članak 5.**

Provedba ovoga Zakona u djelokrugu je tijela državne uprave nadležnih za unutarnje poslove te poslove obrane i pravosuđa.

#### **Članak 6.**

Na dan stupanja na snagu ovoga Zakona, Sporazum iz članka 1. ovoga Zakona nije na snazi u odnosu na Republiku Hrvatsku te će se podaci o njegovom stupanju na snagu objaviti sukladno odredbi članka 30. stavka 3. Zakona o sklapanju i izvršavanju međunarodnih ugovora („Narodne novine“, broj 28/96.).

#### **Članak 7.**

Ovaj Zakon stupa na snagu osmoga dana od dana objave u „Narodnim novinama“.

## OBRAZLOŽENJE

**Člankom 1.** utvrđuje se da Hrvatski sabor potvrđuje Sporazum o nezakonitoj trgovini morskim putem, kojim se primjenjuje članak 17. Konvencije Ujedinjenih naroda protiv nezakonite trgovine opojnim drogama i psihotropnim tvarima, sukladno odredbi članka 140. stavka 1. Ustava Republike Hrvatske („Narodne novine“, br. 85/10 – pročišćeni tekst i 5/14 – Odluka Ustavnog suda Republike Hrvatske) i članka 18. Zakona o sklapanju i izvršavanju međunarodnih ugovora, čime se iskazuje formalni pristanak Republike Hrvatske da bude vezana njegovim odredbama, a na temelju čega će taj pristanak biti izražen i na međunarodnoj razini polaganjem isprave o ratifikaciji kod glavnog tajnika Vijeća Europe kao depozitara.

**Članak 2.** sadrži tekst Sporazuma u izvorniku na engleskom jeziku i u prijevodu na hrvatski jezik.

**U članku 3.** su navedene izjave koje priopćava Republika Hrvatska, prilikom polaganja svoje isprave o ratifikaciji, u skladu s člancima 6., 8., 17., 23. i 24. Sporazuma.

**U članku 4.** je navedena rezerva koju priopćava Republika Hrvatska, prilikom polaganja svoje isprave o ratifikaciji u skladu s člankom 19. Sporazuma.

**Člankom 5.** utvrđuje se da je provedba ovoga Zakona u djelokrugu tijela državne uprave nadležnih za unutarnje poslove te poslove obrane i pravosuđa.

**Člankom 6.** utvrđuje se da na dan stupanja Zakona na snagu, Sporazum nije na snazi u odnosu na Republiku Hrvatsku te da će se podaci o njegovom stupanju na snagu objaviti naknadno sukladno odredbi članka 30. stavka 3. Zakona o sklapanju i izvršavanju međunarodnih ugovora.

**Člankom 7.** uređuje se stupanje Zakona na snagu.

**Prilog** – Preslika teksta Sporazuma u izvorniku na engleskom jeziku



**Council of Europe**  
**Conseil de l'Europe**



**Agreement on Illicit Traffic by Sea,  
implementing Article 17  
of the United Nations Convention  
against Illicit Traffic in Narcotic Drugs  
and Psychotropic Substances**

**Accord relatif au trafic illicite  
par mer, mettant en œuvre l'article 17  
de la Convention des Nations Unies  
contre le trafic illicite de stupéfiants  
et de substances psychotropes**

**Strasbourg, 31.I.1995**

*European Treaty Series* / 156  
*Série des traités européens*



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.





- 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.