

**THE ANTIGUA CONVENTION**

This document describes the content of the Antigua Convention, and also relates the main changes that will occur when the Antigua Convention is implemented, highlighting its advances and advantages, as well as the reasons that led the Inter-American Tropical Tuna Commission (IATTC) to amend the text of its Convention.

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## Introduction

As is widely known, the Government of Japan, with technical assistance provided by the United Nations Food and Agriculture Organization (FAO), organized and hosted the first joint meeting of the regional fisheries management organizations (RFMOs) for tunas, held on 22-26 January 2007 in Kobe (Japan).

Noteworthy among the matters discussed during the meeting were the commitment to carry out a review of the current situation of the tuna RFMOs and the consideration of actions to improve performance, mainly in the management of the populations of tunas and the organizations' control capability, as well as the coordination of the measures adopted among the RFMOs.

In response to the concern expressed during the Kobe meeting, the various organizations have carried out activities to respond to the consensuses of Kobe; among other actions, performance reviews by autonomous committees have been carried out, and recommendations have been generated to reinforce the mandate of the organizations and, consequently, improve their performance.

In the case of the IATTC, there has not yet been any agreement on the question of a performance review, although draft resolutions have been proposed and discussions held among members. However, any performance review agreed or conducted would need to take into account the fact that the IATTC has a new Convention (Antigua Convention) intended to address certain matters that would be likely to arise during a review of the performance of the IATTC pursuant to the 1949 Convention.

Presented in the following is a summary of the most important changes that will take place in the organization as a result of the adoption of the new Antigua Convention, since the 15-month transition process started on 27 May 2009 and will conclude on 27 August 2010. Therefore, the Commission's performance review, as well as the recommendations that may arise from that exercise, should take into account the consequences of the adoption of the Antigua Convention.

## 1. Background

The IATTC operates under the authority and guidance of a Convention signed originally by the governments of Costa Rica and the United States of America in 1949. The Convention, which entered into force in 1950, currently governs the operation of the Commission, and the originally bilateral agreement is now a multilateral agreement in which 16 countries participate, working cooperatively to reach the goal of the conservation and sustainable use of the tuna resources in the eastern Pacific Ocean (EPO).

Currently, the member States of the IATTC are the following:

Colombia	Spain	Japan	Peru
Costa Rica	United States	Mexico	Republic of Korea
Ecuador	France	Nicaragua	Vanuatu
El Salvador	Guatemala	Panama	Venezuela

Belize, Canada, China, Cook Islands, the European Union and Chinese Taipei are Cooperating non-Parties or Cooperating Fishing Entities.

The Convention establishes that the main obligations of the IATTC are (1) to study the biology of the tunas, baitfishes, and other types of fish caught by tuna vessels in the EPO and the effects that fishing and natural factors have on them and (2) to recommend appropriate conservation measures so that the stocks of fish could be maintained at levels that would afford maximum sustainable catches.

In 1976, the IATTC's responsibilities were broadened to address the problems arising from the tuna-dolphin relationship in the EPO. It was agreed that the objectives would be to maintain a high level of tuna production and maintain the dolphin stocks at or above levels that ensure their survival, working to avoid as far as possible the incidental catching of this marine mammal.

In 1998 the Agreement on the International Dolphin Conservation Program (AIDCP) was signed, with which the objectives of the dolphin program were widened. The IATTC provides the Secretariat for the Agreement, in which 13 countries participate, and which has, among other functions, that of managing the international scientific observer program aboard the fleet of purse-seine vessels that operates and fishes in the EPO.

Also in 1998, the Commission decided to revise its Convention, in order to update it, taking into account the need to incorporate the relevant principles of international law related to the conservation and management of living marine resources reflected in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), as well as the provisions of, *inter alia*, Agenda 21 and the Rio Declaration of 1992, the 1993 FAO Agreement to promote compliance with international conservation and management measures by fishing vessels that fish on the high seas, the 1995 FAO Code of Conduct for Responsible Fishing, and the 1995 Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of December 10, 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks.

To that end, in order to enhance cooperative conservation and management efforts, and to promote the sustainable development of the tuna fishery, it was necessary to strengthen the IATTC, as the competent RFMO for the management of these highly migratory species; therefore, the Commission decided to revise its functions and its Convention, and amend the Convention to bring it in line with the above-mentioned international instruments. It therefore established a Working Group, made up of the member governments and open to other governments of coastal States and of other States and regional economic integration organizations whose vessels fished for tuna in the EPO.

In June 1998, during the 61<sup>st</sup> Meeting of the Commission, a resolution on the establishment of a Working Group to revise the IATTC Convention was adopted. The group met on 10 occasions between 1998 and 2003.

In addition, the Working Group held a special meeting of legal and technical experts in Antigua (Guatemala) on October 22-26, 2003, to harmonize the texts that resulted from the negotiations of the Working Group in the various languages, English, Spanish, and French.

Meeting	Venue	Date
1	La Jolla, California	October 19, 1998
2	Ensenada, Mexico	January 28, 1999
3	La Jolla, California	October 6-7, 1999
4	La Jolla, California	May 22-25, 2000
5	La Jolla, California	September 11-16, 2000
6	San José, Costa Rica	March 12-17, 2001
7	La Jolla, California	September 3-8, 2001
8	La Jolla, California	February 4-9, 2002
9	Managua, Nicaragua	September 30 - October 5, 2002
10	La Jolla, California	March 18-22, 2003

The then 13 countries Parties to the 1949 Convention – Costa Rica, Ecuador, El Salvador, United States, France, Guatemala, Japan, Mexico, Nicaragua, Panama, Peru, Vanuatu and Venezuela – took part in the negotiations. Representatives of other States, a regional economic integration organization (the European Union, or EU), and a fishing entity (Chinese Taipei) that were not Parties to the 1949 Convention and whose vessels fished for the stocks of fishes covered by the Convention during the four years prior to its adoption, also participated in the meetings of the Working Group. Observers from various non-governmental organizations also attended these meetings.

As a result of these deliberations, on June 27, 2003, the Commission approved a resolution adopting the Antigua Convention (C-03-02), and a resolution on the participation of a fishing entity in the Antigua Convention (C-03-09).

The Commission decided that the Convention would be open to signature in Washington (United States) for one year from October 1, 2003.

## 2. Current situation

The Convention will enter into force 15 months after the date of deposit of the seventh instrument of ratification or accession by governments which were Parties to the 1949 Convention at the time the Antigua Convention was opened for signature.

Thus, to date seven ratifications by such Parties have been deposited, the most recent being that of Costa Rica, which deposited its instrument of ratification last May 27. Therefore, the 15-month period has begun, and will conclude on August 27, 2010.

To date there have been ratifications by eleven governments, for a total of eleven countries, four of which were either not members of the 1949 Convention (Belize, Canada, and the EU), or joined that Convention after the opening to signature of the Antigua Convention (Korea).

The countries that have signed and/or ratified to date are as follows:

	<b>Date of signature</b>	<b>Date of ratification/accession</b>
Belize		June 12, 2007
Canada	December 22, 2004	June 3, 2009
China	March 3, 2004	
Korea		December 13, 2005
Costa Rica	November 14, 2003	May 27, 2009
Ecuador	April 14, 2004	
El Salvador	May 13, 2004	March 10, 2005
United States	November 14, 2003	
France	November 14, 2003	July 20, 2007
Guatemala	January 6, 2004	
Japan		July 11, 2008
Mexico	November 14, 2003	January 14, 2005
Nicaragua	November 21, 2003	December 13, 2006
Panama		July 10, 2007
Peru	November 14, 2003	
European Union	December 13, 2004	June 7, 2006
Venezuela	May 12, 2004	

Resolution C-03-09 calls on a fishing entity to sign the instrument and/or provide a written communication of commitment under the name of Chinese Taipei. This fishing entity signed the instrument on November 14, 2003.

The Convention is open to:

- a. The Parties to the 1949 Convention;
- b. States not Parties to the 1949 Convention with coasts adjoining the Convention Area;
- c. States and regional economic integration organizations that are not Parties to the 1949 Convention but whose vessels fished for fish stocks covered by the Convention at any time during the four years prior to the adoption of the Antigua Convention, and that participated in its negotiation;
- d. Other States that are not Parties to the 1949 Convention and whose vessels fished for fish stocks covered by the Convention at any time during the four years prior to the adoption of the Antigua Convention, following consultations with the Parties to the 1949 Convention.
- e. States whose vessels fish for fish stocks covered by the Convention, following consultations with the Parties; or
- f. States that are otherwise invited to accede on the basis of a decision by the Parties.

### **3. Principal differences between the 1949 Convention and the Antigua Convention**

#### ***3.1 Definitions (Article I)***

Several new definitions are included in the Antigua Convention, related to the concepts of fishing, of members and Parties, and of consensus, as well as to the AIDCP.

The definition of fishing in the Antigua Convention includes the idea not only of catching, but also of activities to prepare for it. Thus, the concept of fishing includes, *inter alia*, the following:

- a. The actual or attempted catching or harvesting of the fish stocks covered by the Convention;
- b. Engaging in any activity which can reasonably be expected to result in the locating, catching, harvesting of these stocks;
- c. Placing, searching for or recovering any fish-aggregating device or associated equipment, including radio beacons;

Another aspect of the Antigua Convention is that it defines two types of actors:

- **Parties**: the States and regional economic integration organizations willing to abide by the Convention.
- **Members of the Commission**: the Parties and any fishing entity which has consented to be bound by the terms of the Convention and by management measures.

The non-Party Members have almost the same rights and obligations as the Parties, and are considered in reaching consensus, except in the case of approval of amendments to the Convention and its annexes, and invitations to accede to the Convention.

Since the Antigua Convention modifies decision-taking from the unanimity required by the 1949 Convention to consensus, it establishes a definition which reads:

““Consensus” means the adoption of a decision without voting and without the expression of any stated objection.”

As regards the AIDCP, because the IATTC Secretariat was constituted as the technical Secretariat of that agreement, its definition is included, which obviously was not present in the 1949 Convention.

### ***3.2 Objective, and species under the auspices of the Convention (Article II)***

The objectives described in the 1949 Convention and the Antigua Convention are very similar, and both seek the conservation and use of tunas, maintaining the populations at levels that will produce a maximum sustainable yield. The objective in the Antigua Convention includes the novel element that measures be adopted in accordance with the rules of international law.

#### *3.2.1 1949 Convention*

Objective (Article II):

Maintain the population of yellowfin and skipjack tuna and other species of fishes that are fished by tuna vessels in the Eastern Pacific at a level that will permit maximum sustained catches year after year.

#### *3.2.2 Antigua Convention*

Definitions (Article I)

““Fish stocks covered by this Convention” means stocks of tunas and tuna-like species and other species of fish taken by vessels fishing for tunas and tuna-like species in the Convention Area.”

Objective (Article II):

“... ensure the long-term conservation and sustainable use of the fish stocks covered by this Convention, in accordance with the relevant rules of international law.”

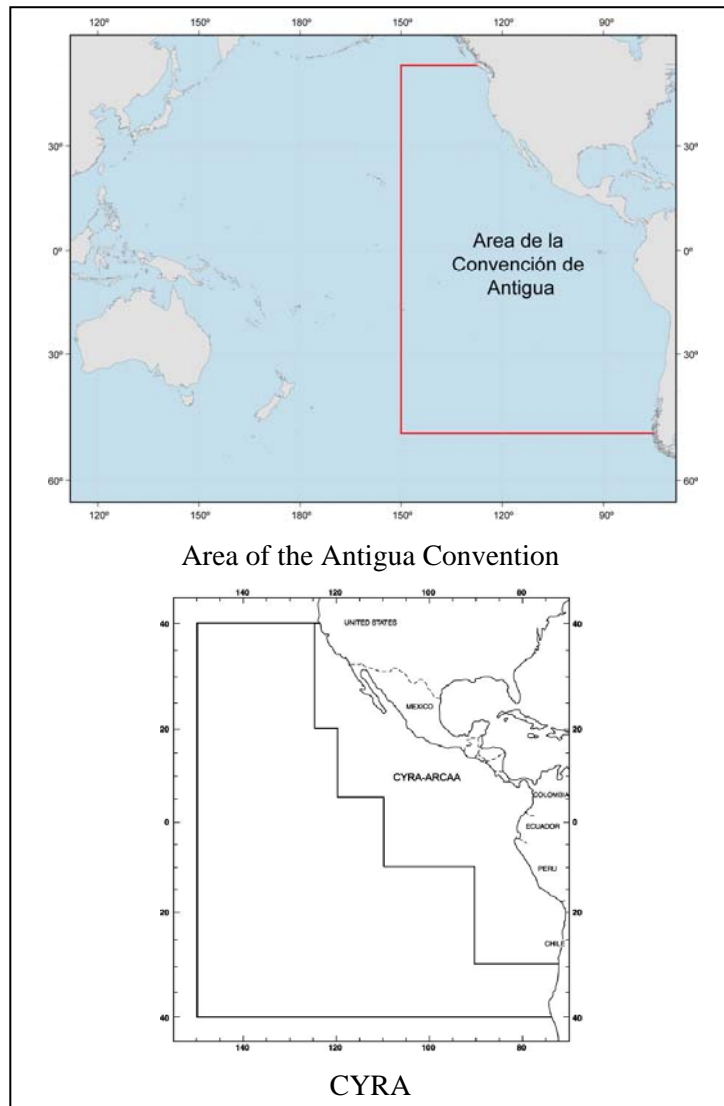
Although the definition of “stocks of tunas and tuna-like species” may seem vague, there are precedents that can help to determine which species the Convention refers to. In fact, in the AIDCP (Article I, paragraph 1) they are defined as follows: ““Tuna” means the species of the suborder Scombroidei (Klawe, 1980), with the exception of the genus *Scomber*”. Similarly, in the basic texts of the International Commission for the Conservation of Atlantic Tuna (ICCAT), they are defined as the “populations of tuna and tuna-like fishes (the Scombriformes with the exception of the families Trichiuridae and Gempylidae and the genus *Scomber*)”.

### 3.3 Convention Area (Article III)

The 1949 Convention, without establishing a specific area, mentions only the “eastern Pacific Ocean”. In 1962 an area was established for the conservation of yellowfin tuna, called the Commission’s Yellowfin Regulatory Area (CYRA), but since 1998 the Convention area has been established in some IATTC resolutions as the area between the coast of the Americas and the 150°W meridian, from the 40°N parallel to the 40°S parallel, which is the same as the AIDCP area and, more recently, the area covered by the Antigua Convention, which is larger than that defined in the AIDCP.

The AIDCP Area comprises the area of the Pacific Ocean bounded by the coastline of North, Central, and South America and by the following lines:

- a. The 40°N parallel from the coast of North America to its intersection with the 150°W meridian;
- b. The 150°W meridian to its intersection with the 40°S parallel;
- c. And the 40°S parallel to its intersection with the coast of South America.



Whereas the Antigua Convention Area comprises the area of the Pacific Ocean bounded by the coastline of North, Central, and South America and by the following lines:

- a. the 50°N parallel from the coast of North America to its intersection with the 150°W meridian;
- b. the 150°W meridian to its intersection with the 50°S parallel; and
- c. the 50°S parallel to its intersection with the coast of South America.

### 3.4 Compatibility of management and administration measures (Article V)

This article, which includes concepts not present in the 1949 Convention and which derive from UNCLOS, the United Nations Agreement on Fishing on the High Seas, and the FAO Code of Conduct for Responsible Fishing, promote respect for the sovereignty of coastal States in the exploration and exploitation, conservation, and administration of the living marine resources in their respective exclusive economic zones (EEZ) and in undertaking fishing on the high seas.

The principle established is that the conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible.

This is a rather elegantly drafted article, which, as stated, may help avoid bringing into the Commission jurisdictional disputes and piecemeal management approaches for highly migratory species.

### ***3.5 Application of the precautionary approach (Article IV)***

This is another article which includes concepts that do not exist in the 1949 Convention and which derive from UNCLOS, the FAO Code of Conduct for Responsible Fishing, and the High Seas Agreement.

Basically, it includes the following principles:

- a. Being cautious when information is uncertain, unreliable or inadequate.
- b. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.
- c. Where the status of target stocks or non-target or associated or dependent species is of concern, monitoring shall be enhanced in order to review their status and the efficacy of conservation and management measures.

This principle, without a doubt, strengthens actions for the pursuit of the IATTC's objective, which is the long-term conservation and sustainable use of the fish stocks covered by the Convention.

### ***3.6 Functions of the Commission (Article VII)***

There are multiple functions attributed to the Commission that are defined in the 1949 Convention and in the Antigua Convention, but the latter also assigns new functions to the Commission, or makes some more specific:

#### ***3.6.1 Functions of the Commission in the 1949 Convention considered in the Antigua Convention***

- a. Research on the abundance, biology, biometry and ecology of the tunas and bonitos of the EPO, and of other types of fishes fished by tuna vessels, and the effects of natural factors and human activities on the abundance of the populations.
- b. Collect and analyze reports on the condition and tendencies of the fish stocks.
- c. Study and analyze ways of maintaining and increasing the fish stocks.
- d. Recommend, on the basis of scientific research, joint actions for maintaining the fish stocks at the maximum sustainable level.
- e. Compile statistics and reports relating to the fisheries.
- f. Disseminate research, scientific and statistical data on the fisheries.
- g. Appoint the Director of the Commission and approve the program of work.

#### ***3.6.2 New functions of the Commission incorporated in the Antigua Convention***

- a. Collection, verification, and timely exchange and reporting of data concerning the fisheries for fish stocks.



- b. Restore the stocks of the species to levels of maximum sustainable yield, through the establishment of maximum allowable catches and/or total fishing capacity and/or allowable fishing effort for the el EPO.
- c. Assess whether a fish stock is fully fished or overfished and whether an increase in fishing capacity or fishing effort would put it at risk.
- d. Determine the extent to which the fishing interests of new members might be accommodated, taking into account international norms;
- e. Avoid, reduce and minimize waste, discards, catch by lost or discarded gear, catch of non-target species and impacts on associated or dependent species.
- f. Prevent or eliminate excessive fishing and fishing capacity.
- g. Establish a comprehensive program for data collection and monitoring.
- h. Coordination and compatibility with measures adopted in the AIDCP;
- i. Promote the development and use of selective, environmentally safe and cost-effective fishing gear and techniques.
- j. Apply the precautionary approach.
- k. Promote the application of the Code of Conduct and other international instruments including the FAO Plans of Action.
- l. Provide the Secretariat for the AIDCP.
- m. Establish such subsidiary bodies as it considers necessary.
- n. Approve its budget, the financial state of the budget exercise, adopt or amend its own rules and financial regulations.
- o. Adopt non-discriminatory and transparent measures consistent with international law, to prevent, deter and eliminate activities that undermine the effectiveness of conservation and management measures.

### ***3.7 Decision making (Article IX)***

This was one of the most debated articles in the negotiations for the Antigua Convention.

The 1949 Convention establishes that the Commission's agreements, resolutions, and recommendations must be approved by unanimous vote. However, the practice has been consensus.

In the Antigua Convention, it was agreed that decision-taking would be by consensus of the members present at the meeting. However, it was decided that consensus of all the members would be required for the following matters:

- a. Adoption and amendment of the budget, the form and proportion of the contributions.
- b. Allocation of allowable catches, fishing effort, or fishing capacity.

There is a special process for seeking the consensus of the members not present at a meeting, and resolutions become binding 45 days after their notification, unless provision to the contrary is made during their adoption.

However, amendments of the Convention and its annexes, and invitations to accession by other countries or fishing entities, must be by consensus of the Parties.

There are thus small but important differences in the taking of decisions by the Commission, but for more crucial matters there is still the need for consensus of all members, even if they are not present at a meeting where such decisions are taken.

### ***3.8 Committee for the review of implementation of measures adopted by the Commission (Article X)***

The functions of this Committee are similar to those of the current working group on compliance. Its objective is to monitor compliance with management measures, as well as to share information on the actions taken by the Members to ensure compliance by their vessels with measures agreed pursuant to the Convention.

As with the current working group, the Committee established under the Antigua Convention will consist of representatives designated by each member, and will hold at least one annual meeting, if possible on the occasion of the annual meeting of the Commission. Its functions will be to:

- a. Review and monitor compliance with management measures.
- b. Analyze information by flag and other necessary information.
- c. Provide information, technical advice and recommendations relating to the implementation of, and compliance with, conservation and management measures;
- d. Recommend means of promoting compatibility of the fisheries management measures of the members of the Commission;
- e. Recommend means of eliminating fishing that undermines management measures;
- f. Recommend the priorities and objectives of the program for data collection and monitoring.

### ***3.9 Scientific Advisory Committee (Article XI)***

Currently, the IATTC does not have a formal scientific committee. At the invitation of the Director, scientific meetings are held, whose objective is to help the Director to prepare his recommendations to the Commission regarding scientific matters and in population assessments.

The Scientific Advisory Committee under the Antigua Convention shall consist of representatives designated by each member, with qualifications suitable for the nature of the Committee, and will hold at least one annual meeting. Its main functions will be to:

- a. Review plans, proposals and research programs, and provide advice.
- b. Review assessments, analyses, research or other work and recommendations prepared by the scientific staff prior to their consideration by the IATTC.
- c. Recommend specific issues and items to be addressed by the scientific staff.
- d. Recommend the priorities and objectives of the program for data collection and monitoring.

- e. Assist the Commission and the Director in locating sources of funding to conduct research.
- f. Develop and promote cooperation between and among the members of the Commission through their research institutions.
- g. Promote and facilitate cooperation by the Commission with other national and international public or private organizations with similar objectives.

It is important to note that, while the Scientific Advisory Committee will provide technical advice and recommendations regarding conservation and management measures, the Director will continue to provide recommendations to the IATTC Commissioners on conservation and management measures.

### **3.10 Functions of the Director (Article XII)**

The various functions assigned to the Director of the Commission in the Antigua Convention are, *inter alia*, the following:

- a. Appointing, removing and directing the administrative, scientific, and technical staff.
- b. Where appropriate, appointing a Coordinator of Scientific Research.
- c. Ensuring the publication and dissemination of conservation and management measures.
- d. Maintaining a record of vessels fishing in the Convention Area.
- e. Acting as the legal representative of the Commission.

### **3.11 Scientific staff (Article XIII)**

This article, also not present in the 1949 Convention, describes the functions that are essentially already performed by the scientific staff of the Commission. In this respect, the functions described are the following:

- a. Conduct scientific research projects and other research activities.
- b. Provide the Commission with scientific advice and recommendations for conservation and management measures, following consultations with the Scientific Advisory Committee.
- c. Provide the Scientific Advisory Committee with the information necessary to carry out its functions.
- d. Provide the Commission with recommendations for scientific research.
- e. Collect and analyze information relating to conditions and trends of the fish stocks.
- f. Propose standards for collection, verification, and exchange of data concerning the fisheries.
- g. Collect data and all kinds of reports concerning catches and the operations of vessels.
- h. Study and appraise information concerning methods for maintaining and increasing the fish stocks.
- i. Publish or disseminate the results of its research, subject to rules of confidentiality.

### **3.12 Financial contributions (Article XV)**

While the 1949 Convention does provide some guidance on how member country contributions are to be decided, the Antigua Convention does not define a system for calculating the contributions of the members to the Commission's budget. Unlike the 1949 Convention, however, the Antigua Convention does address the matter of a suspension of the vote in cases of arrears in payment.

Thus, on the first point, the 1949 Convention states that "the proportion of joint expenses to be paid by each Party shall be related to the proportion of the total catch from the fisheries utilized by that Party", while the Antigua Convention states that "The amount of the contribution of each member to the budget shall be determined in accordance with the scheme which the Commission shall adopt, and amend, as required."

Regarding the second issue, the Antigua Convention states that, if a member goes into arrears in its contributions by an amount equivalent to or greater than 24 months of its allocation, it will not have the right to participate in the taking of decisions until it has fulfilled its obligations.

### **3.13 Rights of States (Article XVII)**

The Antigua Convention does not prejudice the legal position of any Party on matters related to the Convention. In this regard, this article defines this proviso, noting that "no provision of this Convention may be interpreted in such a way as to prejudice or undermine the sovereignty, sovereign rights, or jurisdiction exercised by any State in accordance with international law, as well as its position or views with regard to matters relating to the law of the sea."

### **3.14 Implementation, compliance and enforcement by Parties (Article XVIII)**

This article, not considered in the 1949 Convention, includes the provisions of the High Seas Agreement (Articles 19 and 20) on the obligations of the States to duly comply with management measures.

To this end, it includes actions such as:

- a. Taking measures to ensure the implementation of and compliance with the Convention and any conservation and management measures.
- b. Providing to the Commission statistical and biological information and information concerning its fishing activities in the Convention Area, and regarding actions taken to implement the agreed measures.
- c. Informing the Committee for the review of implementation of measures adopted by the Commission of:
  - a. Legal and administrative provisions, including those regarding infractions and sanctions, applicable to compliance with conservation and management measures adopted by the Commission;
  - b. Actions taken to ensure compliance with conservation and management measures adopted by the Commission, including, if appropriate, an analysis of individual cases and the final decision taken.
- d. Informing another State and the Commission if it observes that a vessel flying the flag of such other State has been involved in any activity that undermines the effectiveness of conservation measures and that State must investigate and report the results.

- e. Applying sanctions of sufficient severity to ensure compliance with the Convention and with the measures adopted.
- f. Taking actions, either jointly or individually, to deter vessels that fish in contravention of management measures.

An important difference in this article from those of the High Seas Agreement is that it does not recognize nor accept the concept of inspections and boardings, as a result of the majority of the member countries of the Commission not sharing this initiative.

### **3.15 *Duties of Flag States (Article XX)***

This article, not considered in the 1949 Convention, reflects the provisions of the High Seas Agreement (Article 18), the Compliance Agreement (Article III), and the FAO Code of Conduct for Responsible Fishing (Articles 8 and 7.6.2) regarding the responsibility of States that its vessels comply with management measures.

To this end, it includes the following obligations for Parties:

- a. Take measures to ensure that vessels flying its flag comply with the provisions of this Convention and conservation measures.
- b. Not grant the right to fly its flag to a vessel fishing in the Convention Area, unless the vessel is authorized to do so, and only when it can exercise effective control over the activities of such vessel.
- c. Ensure that vessels flying its flag do not fish in areas under the sovereignty or national jurisdiction of any other State in the Convention Area without the corresponding license, permit or authorization from the State with jurisdiction.

### **3.16 *Cooperation and assistance (Article XXIII)***

This article, not considered in the 1949 Convention, reflects the provisions of the High Seas Agreement (Article 24) and the FAO Compliance Agreement (Article VII) on the special needs of developing States.

It establishes mainly the need for “technical assistance, technology transfer, training and other forms of cooperation, to assist developing countries that are members of the Commission to fulfill their obligations under the Convention, as well as to enhance their ability to develop fisheries under their respective national jurisdictions and to participate in high seas fisheries.”

### **3.17 *Cooperation with other organizations or arrangements (Article XXIV)***

This article, not considered in the 1949 Convention, promotes cooperation with other international bodies, and indicates the need for applying cooperative conservation and management measures with other conventions in overlap areas. It is an important article, because it establishes the framework for working with the Western and Central Pacific Fisheries Commission (WCPFC), with which it shares an overlap area.

Specifically, it states that “where the Convention Area overlaps with an area under regulation by another fisheries management organization, the Commission shall cooperate with such other organization in order to ensure that the objective of this Convention is reached. To this end, through consultations or other arrangements, the Commission shall strive to agree with the other organization on the relevant measures to be taken, such as ensuring the harmonization and compatibility of the

conservation and management measures adopted by the Commission and the other organization, or deciding that the Commission or the other organization, as appropriate, avoid taking measures in respect of species in that area which are regulated by the other.”

### **3.18 Settlement of disputes (Article XXV)**

This article, not considered in the 1949 Convention, establishes a framework for resolving disputes and, although it does not specify a concrete mechanism, it does define an avenue for arriving at a solution in the case of a difference between two or more members of the Commission.

It states that if a dispute is not settled through consultation within a reasonable period, “the members in question shall consult among themselves as soon as possible in order to settle the dispute through any peaceful means they may agree upon, in accordance with international law.

In cases when two or more members of the Commission agree that they have a dispute of a technical nature, and they are unable to resolve the dispute among themselves, they may refer the dispute, by mutual consent, to a non-binding *ad hoc* expert panel constituted within the framework of the Commission in accordance with the procedures adopted for this purpose by the Commission. The panel shall confer with the members concerned and shall endeavor to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.”

### **3.19 Non-Members (Article XXVI)**

This article, not considered in the 1949 Convention, establishes a framework for encouraging non-members to join the Commission or to adopt laws and regulations compatible with the Convention, as well as to cooperate to deter vessels of non-member countries from carrying out activities that undermine the effectiveness of the Convention.

To this end, it states that the members of the Commission shall exchange information with respect to activities of vessels of non-members that undermine the effectiveness of the Convention, as well as cooperate, in a manner consistent with the Convention and international law, to jointly deter vessels of non-members from carrying out such activities.

### **3.20 Accession (Article XXX)**

As alluded to earlier, this article establishes the possibility of accession to the Convention by any State or regional economic integration organization:

- a. That meets the requirements of Article XXVII (signature) of the Convention;
- b. Whose vessels fish for fish stocks covered by the Convention, following consultations with the Parties; or
- c. That is invited to accede on the basis of a decision by the Parties.

The accession article, together with the signature article, are important because they establish a basis for becoming a Party to the Convention which is different to that provided for by the 1949 Convention, which requires the specific, formal approval by all Parties in order for a new Party to join.

The Antigua Convention makes it easier for a State or regional economic integration organization to become a Party by establishing that a coastal State or State with vessels fishing in the region may join.

### **3.21 Withdrawal (Article XXXVI)**

This article describes the procedure for withdrawing from the Convention, stating that “any Party may

withdraw at any time after twelve (12) months from the date on which this Convention entered into force with respect to that Party by giving written notice of withdrawal to the Depositary. The Depositary shall inform the other Parties of the withdrawal within thirty (30) days of receipt of such notice. The withdrawal shall become effective six (6) months after receipt of such notice by the Depositary.”

#### **4. Final considerations**

It is important to stress that the Antigua Convention, and its imminent entry into force, represent a substantial advance in the regulatory framework that governs the functioning of the IATTC.

Among its main virtues, the following can be highlighted:

- a. It updates the legal framework in accordance with UNCLOS and related international agreements in force.
- b. It establishes statutes for a clearly multilateral body.
- c. It clarifies with greater legality the Commission’s area of competence.
- d. It strengthens the promotion of sustainable fisheries by introducing concepts such as the precautionary approach, the ecosystem approach, the compatibility of management measures between EEZs and the high seas, and establishing a framework of action for the scientific committee, in order to review and evaluate the recommendations of the scientific staff and its program of work.
- e. It encourages compliance with management measures, as well as with the provisions of the Convention, by formalizing the creation of a compliance committee and incorporating provisions such as the responsibility of flag States and compliance and enforcement.
- f. It establishes a framework of greater transparency for its activity by facilitating the participation of non-members and non-governmental organizations and by including a specific article on transparency. Also, it allows for a framework for the provisional application of the instrument and for accession.
- g. It makes possible an open framework for participation, by offering the possibility of the incorporation of fishing entities with nearly all the rights and attributes of the countries Party to the Convention, as well as allowing for the participation of regional economic integration organizations.
- h. It strengthens the Commission by clarifying and increasing its responsibilities and functions.
- i. It facilitates a framework for cooperation with other regional fisheries management organizations, which is of the greatest importance because of the existence of another fisheries Commission for the western and central Pacific Ocean, with which it shares an overlap area.
- j. It allows some flexibility in the taking of decisions in comparison with the total consensus or unanimity established in the 1949 Convention for all the decisions and matters of la Commission.
- k. It establishes a framework appropriate for encouraging cooperation with developing countries, through the training of human resources and technology transfer and cooperation.