

Interpretative Declarations by the Republic of Austria with regard to the Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks

1. The Republic of Austria understands that the terms 'geographical particularities', 'specific characteristics of the sub-region or region', 'socioeconomic geographical and environmental factors', 'natural characteristics of that sea' or any other similar terms employed in reference to a geographical region do not prejudice the rights and duties of States under international law.
2. The Republic of Austria understands that no provision of this Agreement may be interpreted in such a way as to conflict with the principle of freedom of the high seas, recognised by international law.
3. The Republic of Austria understands that the term 'States whose nationals fish on the high seas' shall not provide any new grounds for jurisdiction based on the nationality of persons involved in fishing on the high seas rather than on the principle of flag State jurisdiction.
4. The Agreement does not grant any State the right to maintain or apply unilateral measures during the transitional period as referred to in Article 21(3). Thereafter, if no agreement has been reached, States shall act only in accordance with the provisions provided for in Articles 21 and 22 of the Agreement.
5. Regarding the application of Article 21, the Republic of Austria understands that, when a flag State declares that it intends to exercise its authority, in accordance with the provisions in Article 19, over a fishing vessel flying its flag, the authorities of the inspecting State shall not purport to exercise any further authority under the provisions of Article 21 over such a vessel. Any dispute related to this issue shall be settled in accordance with the procedures provided for in Part VIII of the Agreement. No State may invoke this type of dispute to remain in control of a vessel which does not fly its flag.
In addition, the Republic of Austria considers that the word 'unlawful' in Article 21(18) of the Agreement should be interpreted in the light of the whole Agreement, and in particular, Articles 4 and 35 thereof.
6. The Republic of Austria reiterates that all States shall refrain in their relations from the threat or use of force in accordance with general principles of international law, the United Nations Charter and the United Nations Convention on the Law of the Sea.
In addition, the Republic of Austria underlines that the use of force as referred to in Article 22 constitutes an exceptional measure which must be based on the strictest compliance with the principle of proportionality and that any abuse thereof shall imply the international liability of the inspecting State. Any case of non-compliance shall be resolved by peaceful means and in accordance with the applicable dispute-settlement procedures.
Furthermore, the Republic of Austria considers that the relevant terms and conditions for boarding and inspection should be further elaborated in accordance with the relevant principles of international law in the framework of the appropriate regional and subregional fisheries management organisations and arrangements.

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