

[DRAFT]

International Waters: Review of Legal and Institutional Frameworks

UNDP-GEF International Waters Good Practices Project

DRAFT – 25 February 2010

TABLE OF CONTENTS

I. Introduction	4
II. Evaluation Criteria Overview	5
III. Selected Frameworks	6
A. Americas	6
Amazon Basin	6
Cartagena Convention	15
Columbia River Basin	22
Guarani Aquifer System	35
International Commission for the Conservation of Atlantic Tunas (ICCAT)	44
Joint (Fisheries) Development Zone between Jamaica and Colombia	59
Rio Grande/Rio Bravo	63
B. Europe	70
Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution	70
Black Sea	97
Caspian Sea	107
Danube River Basin	115
Franco-Swiss Genevese Aquifer	129
The Rhine	135
C. Africa	147
Abidjan Convention	147
Lake Tanganyika	157
Lake Victoria Basin Commission	168
Niger Basin	178

Nile River Basin Initiative	187
Nubian Sandstone Aquifer System (NSAS)	197
North-Western Sahara Aquifer System (NWSAS)	201
Okavango River Basin.....	206
Senegal River Basin	211
Southern African Development Community (SADC)	218
D. Asia.....	239
Bay of Bengal	239
Mekong.....	244
Partnerships in Environmental Management for the Seas of East Asia (PEMSEA).....	257
South China Sea.....	264
Western and Central Pacific Fisheries Commission (WCPFC).....	274

I. Introduction

This report discusses the legal and institutional frameworks that apply to twenty-seven international water bodies that were identified as part of the UNDP-GEF *Good Practices and Portfolio Learning in GEF Transboundary Freshwater and Marine Legal and Institutional Frameworks* project (“IW Project”). The analysis in the report is organized by a common set of eighteen criteria and is intended to provide information that can be used to support further research and analysis, with the ultimate goal of identifying a set of common elements of good governance for transboundary freshwater and marine water bodies.

The report is based on primary materials that establish legal and institutional frameworks, such as international agreements (including treaties and conventions where applicable), protocols or action plans. Where relevant secondary materials were available (primarily for water bodies with more extensive legal frameworks), those secondary materials are identified and referenced as appropriate.

Part II of this report identifies and explains the eighteen (18) criteria that are used to describe the legal and institutional frameworks of each of the water bodies discussed in this report. Part III provides a detailed discussion of the legal and institutional frameworks for each water body identified, organized by global region.

While we have endeavored to provide comprehensive information regarding legal and institutional frameworks, this report is not an exhaustive presentation of all of the available information for each of the water bodies addressed. As the described frameworks continue to evolve, there may be future revisions of this report, for which supplemental information would be welcome.

II. Evaluation Criteria Overview

The following eighteen (18) criteria, identified in coordination with the Board of Advisors and Steering Committee of the IW Project, were used to standardize the review and reporting on the legal and institutional frameworks of the water bodies studied:

1. **Legal Basis** (i.e. is it based on a Treaty, Memorandum of Understanding etc.);
2. **Member States** (what states are parties to the agreement, are there observer states or groups);
3. **Geographical Scope** (what is covered within the framework);
4. **Legal Personality** (what is the body that implements the framework);
5. **Functions** (what does the framework seek to do);
6. **Organizational Structure** (what are the institutional designs and how do they interact);
7. **Relationships** (i.e. with multilateral, domestic and non-water sectors);
8. **Decision Making** (how are decisions within the institution made);
9. **Dispute Resolution** (is there a specified method for preventing and dealing with disputes among members);
10. **Data Information Sharing, Exchange, and Harmonization** (how do the countries share and exchange data with respect to the shared waters);
11. **Notifications** (how are members notified of changes to the framework);
12. **Funding and Financing** (how are operational costs paid for in both the long and short term);
13. **Benefit Sharing** (how are the benefits of the framework distributed among members);
14. **Compliance and Monitoring** (how do members ensure they are applying the agreement properly, and are there any reporting or evaluation mechanisms);
15. **Participation and the Role of Multiple Stakeholders** (how are civil society, youth and private sector groups engaged);
16. **Dissolution and Termination** (how is the agreement terminated);
17. **Additional Remarks** (any pertinent information that falls outside any of the identified criteria); and
18. **Websites and References** (helpful websites and citations to supporting information).

III. Selected Frameworks

A. Americas

Amazon Basin

1. Legal Basis

The Amazon Basin is governed by two multilateral conventions:

- The Amazon Cooperation Treaty was adopted in Brasilia, Brazil on 3 July 1978 and entered into force on 2 August 1980.¹
- The parties to the Amazon Cooperation Treaty also entered into the Amendment Protocol to the Amazon Cooperation Treaty on 14 December 1998. This amendment created the Amazon Cooperation Treaty Organization (“ACTO”).²

ACTO has also entered into the following bilateral agreements that form the legal basis governing the Amazon Basin:

- Memorandum of Understanding between ACTO and the Coordinating Body for the Indigenous Organizations of the Amazon Basin, 25 Oct. 2004, *available at* <http://www.otca.org.br/en/programs-projects/index.php?id=1076>.
- Memorandum of Understanding between ACTO and the Andean Community, 29 Sep. 2004, *available at* <http://www.otca.org.br/en/programs-projects/index.php?id=1057>.
- Letter of Understanding Between the Coordinator Intergovernmental Committee of the Countries of the Basin of the Plata and the Amazonian Cooperation Treaty Organization, 30 Aug. 2004, *available at* <http://www.otca.org.br/en/programs-projects/index.php?id=1076>.
- Standard Agreement between the ACTO and the Pan American Health Organization/World Health Organization, *available at* <http://www.otca.org.br/en/programs-projects/index.php?id=1154>.
- Agreement between ACTO and the Inter-American Development Bank (“IADB”)—Strengthening the Joint Regional Capacity for the Sustainable Use of Amazonian Biodiversity, *available at* <http://www.otca.org.br/en/programs-projects/index.php>. [Spanish only]

Certain Member States of ACTO have entered into bilateral agreements, both formal and informal, that govern relations between them in relation to the Amazon Basin:

¹ Treaty for Amazonian co-operation (“Amazon Cooperation Treaty”), 3 July 1978, 1202 U.N.T.S. 71.

² Protocol of Amendment of the Amazon Cooperation Treaty (“Protocol”), 14 Dec. 1998, 2199 U.N.T.S. 167.

- Brazil and Bolivia: Exchange of Notes Constituting an Agreement for the Construction of a Hydroelectric Plant in Cachuela Esperanza, supplementary to the Agreement on Economic and Technical Cooperation, 2 Aug. 1988, 1513 U.N.T.S. 4.
- Brazil and Bolivia: Agreement Concerning the Cachuela Esperanza Hydroelectric Plant, Supplementary to the Agreement on Economic and Technical Cooperation between the Government of the Federative Republic of Brazil and the Government of the Republic of Bolivia, 8 Feb. 1984, 1353 U.N.T.S. 376.
- Ecuador and Peru: Declaration and Exchange of Notes Concerning the Termination of the Process of Demarcation of the Peruvian-Ecuadorean Frontier, 22-24 May 1944, *available at* <http://mgd.nacse.org/qml/watertreaty/textdocs/international/92.html>.

2. Member States

The Member States of the Amazon Cooperation Treaty and the ACTO are Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname, and Venezuela.

3. Geographical Scope

The Amazon River Basin spans an area of 5,870,000 square kilometers, contains nearly one-fifth of the fresh water on the surface of the Earth, and discharges 4.2 million cubic feet of water per second.³ The Amazon River Basin covers area in the territories of the eight Member States.⁴

4. Legal Personality

The ACTO and a Permanent Secretariat were established in Brasilia, Brazil in March 2003.⁵ The Protocol granted ACTO corporate body status and authorized it to enter into agreements with the Member States, non-member states, and other international organizations. The Permanent Secretariat, which is headed by the Secretary General, is empowered to enter into agreements on behalf of the ACTO whenever the Member States unanimously authorize it to do so.⁶

5. Functions

The Amazon Cooperation Treaty is primarily designed to foster the sustainable development of, among other things, the Amazon River. The Member States “agree[d] to undertake joint actions and efforts to

³ Georges D. Landau, *The Treaty For Amazonian Cooperation: A Bold New Instrument For Development*, 10 GA. J. INT’L. & COMP. L. 463 (1980).

⁴ See Amazon Cooperation Treaty, art. II; CIA World Factbook, *available at* <https://www.cia.gov/library/publications/the-world-factbook/>.

⁵ Amazon Cooperation Treaty Organization Strategic Plan 2004-2012 (“ACTO Strategic Plan”), Oct. 2004, at 15, *available at* http://www.otca.org.br/PDF/Strategic_Plan.pdf.

⁶ Protocol, art. I, II (3).

promote the harmonious development of their respective Amazonian territories in such a way that these actions produce equitable and mutually beneficial results and achieve also the preservation of the environment, and the conservation and rational utilization of the natural resources of those territories.”⁷ The Treaty also guarantees “complete freedom of commercial navigation,”⁸ promotes coordination of health services,⁹ as well as coordination in research¹⁰, infrastructure¹¹, and tourism.¹² Under Article V, the Member States commit to make efforts towards the rational use of water resources. These efforts have included the establishment of a hydrometeorological database of the Amazon region, strengthening technical cooperation between countries in hydrology and climatology, and encouraging the use of remote sensing.¹³

As detailed in the ACTO Strategic Action Plan, the Permanent National Commissions have developed goals for each of the following sectors: water, forests/soils and protected natural areas, biological diversity, bio-technology and biotrade, territory ordering, human settlements and indigenous affairs, social infrastructure, health and education; and transportation, electric power and communication infrastructure. The Water aims are the Integrated Management of Hydro-biological Resources and a standard agreement on measures towards preventing contamination.¹⁴

In 2005, ACTO launched the “Integrated and Sustainable Management of Cross-Border Water Resources in the Amazon River Basin” project. With technical and financial support from the Global Environmental Facility, the Organization of American States, the United Nations Environment Program, and national institutions in the region, the project will work to establish guidelines for water resource management of the Amazon Basin, taking into account the challenges associated with climate change. In addition, the project is intended to strengthen the institutional framework for planning and executing projects promoting the protection and sustainable management of water resources in the Amazon Basin. This project marks the first time that the eight countries in the Amazon Basin worked together on the management of water resources.¹⁵

⁷ Amazon Cooperation Treaty, art. I.

⁸ Amazon Cooperation Treaty, art. III.

⁹ Amazon Cooperation Treaty, art. VIII.

¹⁰ Amazon Cooperation Treaty, art. IX.

¹¹ Amazon Cooperation Treaty, art. X.

¹² Amazon Cooperation Treaty, art. XIII.

¹³ B. Braga, E. Salati, and H. Mattos de Lemos, *Sustainable water-resources development of the Amazon Basin*, in *MANAGEMENT OF LATIN AMERICAN RIVER BASINS*, 43 (Asit K. Biswas, Newton V. Cordeiro, Benedito P F Braga, Cecilia Tortajada eds.) (United Nations University Press 1999).

¹⁴ ACTO Strategic Plan, at 24.

¹⁵ Amazon Basin countries seek to integrate water resource management, 27 June 2005, *available at* <http://www.otca.org.br/en/noticia/noticia.php?idNoticia=325&tipoN=8>; GEF Amazonas Project ACTO/UNEP/OAS, *available at* http://www.otca.org.br/en/get_amazonas.php.

According to the ACTO Strategic Plan, the project is to be developed and implemented in three stages. The first stage involves institutional strengthening and pilot projects, such as the development of a framework program of strategic responses for major water resources-related environmental problems that affect the region. The second stage will build upon the work completed in the first stage and seek to implement the strategic actions that were identified. The final stage will work towards strengthening the sustainability of the actions taken and consolidating the integration and joint management by the Amazon countries. In developing the management structure, the Strategic Plan encourages the incorporation of the knowledge and practices on water use developed by the regional indigenous population and recognition of the demand for potable water and basic sanitation needs. The Strategic Plan also encourages the integration of the Amazon biome and human activity in the lower sections of the basin and the upper Andean region into a sustainable system of water resources management.¹⁶

6. Organizational Structure

The organizational structure of the Amazon Cooperation Treaty is placed under the auspices of the Ministers of Foreign Affairs of the Member States. The Ministers of Foreign Affairs will hold a meeting at the initiative of any of the Parties, if the meeting is supported by four Member States. At the meeting, the Ministers will establish common policy guidelines, evaluate the progress of the Amazon cooperation process, and make relevant decisions that guide the implementation of the Treaty.¹⁷ In addition to the Meetings of the Ministers of Foreign Affairs, the Amazon Cooperation Treaty and the Protocol provide for the establishment of the Amazon Cooperation Council (“CCA”), the CCA Coordination Commission, and the Permanent Secretariat/Secretary-General.¹⁸ The CCA is comprised of high-level diplomatic representatives of the Contracting Parties. The duties of the CCA include: ensuring compliance with the Treaty objectives; carrying out the decisions made at the meetings of the Ministers of Foreign Affairs; recommending convening meetings of the Ministers of Foreign Affairs; and analyzing projects submitted by Member States and assessing their progress.¹⁹

There are also five coordinators that oversee the different aspects of the Amazon Cooperation Treaty: environment; health; science, technology, and education; infrastructure, tourism, transport, and communication; and indigenous affairs. These coordinators report to the Permanent Secretariat, as well as to an Executive Director and Administrative Director.²⁰ In addition, the Amazon Cooperation Treaty authorizes the creation of Special Commissions to study specific matters related to the Treaty. These Special Amazon Commissions work with the CAA, the Permanent Secretariat, and relevant national institutions in their sectors of interest. Currently, there are seven Special Amazon Commissions: Health

¹⁶ ACTO Strategic Plan, at 38-41.

¹⁷ Amazon Cooperation Treaty, art. XX; Manuel Picasso Botto, *The Amazon Cooperation Treaty: A mechanism for cooperation and sustainable development*, in MANAGEMENT OF LATIN AMERICAN RIVER BASINS 71-72 (Asit K. Biswas, Newton V. Cordeiro, Benedito P F Braga, Cecilia Tortajada eds.) (United Nations University Press 1999).

¹⁸ Amazon Cooperation Treaty Organization Chart (“Organization Chart”), available at <http://www.otca.org.br/en/organization/index.php?id=102>.

¹⁹ Amazon Cooperation Treaty, art. XXI.

²⁰ Organization Chart.

(CESAM); Indigenous Affairs (CEIA); Environment (CEMAA); Transport, Infrastructure and Communications (CETICAM); Tourism (CETURA); Education (CEEDA); and Science and Technology (CECTA).²¹

In March 2003, the Pro-Tempore Secretariats that had been in place since the Amazon Cooperation Treaty was concluded were replaced by the Permanent Secretariat of the ACTO and its Secretary-General.²² The Member States must elect the Secretary-General by unanimous vote. The establishment of the Permanent Secretariat consolidated the institutional structure of the Amazon Cooperation Treaty. The Permanent Secretariat is responsible for preparing, in consultation with the Member States, the work plan, program of activities, and the budget. These items must be approved unanimously by the CCA before they become effective. One of the major goals of the Permanent Secretariat is to increase the use of the Amazon Cooperation Treaty through various projects and decisions made at the Meeting of the Ministers and the CCA.²³

To implement the projects, the Permanent Secretariat works through technical units on the regional and national level to avoid creating any additional permanent bureaucracies. Each country has a Permanent National Commission (“PNC”) that is responsible for: applying the provisions of the Amazon Cooperation Treaty in its territory; carrying out the decisions and agreements adopted by the Meetings of Ministers and the CCA; coordinating policies involving sustainable development in the Amazon region; and suggesting relevant policy measures. The PNCs are composed of representatives from relevant governmental agencies in each country—such as the Ministry of Foreign Affairs, the Ministry of Environment, the Ministry of Health, the Ministry of Transportation, the Ministry of Defense, the Ministry of Education, and the Ministry of Planning. The Permanent National Commissions held their first international meeting in 2004. The Permanent National Commissions are also being encouraged by the ACTO to take a more proactive role in formulating policies and strategies.²⁴

7. Relationships

According to Article XVI, the Amazon Cooperation Treaty shall not “be to the detriment of projects and undertakings executed within their respective territories, according to International Law and fair practice between neighboring and friendly countries.” The Amazon Cooperation Treaty does not limit the Member States’ abilities to conclude bilateral or multilateral agreements as long as they are not contrary

²¹ Organization Chart; Amazon Cooperation Treaty, art. XXIV; Special Amazon Commissions, *available at* <http://www.otca.org.br/en/institucional/index.php?id=34>.

²² Protocol, art. II.

²³ ACTO Strategic Plan, at 65.

²⁴ Amazon Cooperation Treaty, art. XXIII; ACTO Strategic Plan, at 14, 23, 35; Permanent National Commissions, *available at* <http://www.otca.org.br/en/institucional/index.php?id=35>.

to the aims stated in the Treaty²⁵ and do not affect any prior treaties that were in place between the Member States.²⁶

The ACTO actively seeks lasting ties with multinational organizations, such as the World Health Organization, United Nations Educational, Scientific and Cultural Organization, the World Bank, the Inter-American Development Bank, the European Union, and the national cooperation agencies of many countries. ACTO has also worked with international non-governmental organizations such as the International Union Conservation of Nature and the WWF. Since the establishment of the Permanent Secretariat, the ACTO has work to reinvigorate the treaty structure and strengthen its relationships with United Nations organizations and other specialized agencies. As the ACTO has limited funds, it seeks international partnerships and sponsorships for its projects. And since the Member States each have their own national policies on international cooperation in the Amazon region, the Permanent Secretariat has made a push for increased coordination with national governments on this front in order to avoid conflicts and duplication of effort.²⁷

8. Decision Making

All decisions made by the ACTO and CCA must be by the unanimous decision of the Member States. Decisions of the Special Amazon Commissions must be made by the unanimous vote of the participating Member States.²⁸ While the Permanent Secretariat is empowered to enter into agreements on behalf of ACTO, it can only do so with the unanimous approval from the Member States.²⁹

9. Dispute Resolution

The Amazon Cooperation Treaty does not contain any specific provisions on dispute resolution. Instead, the Amazon Cooperation Treaty operates only by consensus for all significant decisions. The Treaty emphasizes the sovereignty of each country, noting that “the exclusive use and utilization of natural resources within their respective territories is a right inherent in the sovereignty of each state and that the exercise of this right shall not be subject to any restrictions other than those arising from International Law.”³⁰ Therefore, a Member State cannot be obligated to undertake any action that it did not approve. This can lead to periods of inactivity if all of the Member States cannot agree on what actions are necessary to protect the Amazon Basin.

²⁵ Amazon Cooperation Treaty, art. XVIII.

²⁶ Amazon Cooperation Treaty, art. XIX.

²⁷ ACTO Strategic Plan, at 10, 76.

²⁸ Amazon Cooperation Treaty, art. XXV.

²⁹ Protocol, art. II(3).

³⁰ Amazon Cooperation Treaty, art. IV.

10. Data Information Sharing, Exchange, and Harmonization

The Member States have a duty to “maintain a permanent exchange of information and cooperation among themselves,” as well as with other agencies operating in the Amazon River Basin.³¹ This sharing of information is reflected by the multiple memoranda of understanding ACTO has entered into with other regional or worldwide bodies (such as the Andean Community and the Inter-American Development Bank). The Member States also agreed to exchange information on flora, fauna, and diseases in the Amazonian territory and to make an annual report on the conservation measures adopted.³²

In addition, the ACTO Bi-Annual Action Plan describes the programs and projects that are underway and is distributed to the Member States to keep them informed of the activities of the Permanent Secretariat. The Action Plan describes the duration of the program or project, estimated costs, and projected sources of funding. The coordinators of active projects must report back to the Permanent Secretariat on established indicators designed to assess the progress towards the achievement of project goals. The Permanent Secretariat will also publish an Annual Report on the progress of the Bi-Annual Action Plan. To succeed, many of the Amazon Basin projects will require the creation of databases accessible to specialists, experts, and institutions working towards sustainable development in the Amazon.³³

The ACTO Strategic Action Plan, released in October 2004, describes the plans of the Permanent Secretariat from 2004 to 2012 for various projects designed to promote sustainable development and to protect the Amazon Basin. The report describes the strategic axes that will be used to guide the ACTO, the programmatic structure of the plan, and operational tools. The Strategic Action Plan is meant to be used as a planning document that can be modified based on suggestions from the various stakeholders.³⁴

11. Notifications

Project coordinators need to notify the Permanent Secretariat on their success in meeting progress indicators. *See Data Information Sharing, Exchange, and Harmonization.*

12. Funding and Financing

The Treaty has no explicit provision addressing funding and financing. The funding mechanism is unclear, although the Member States are required to contribute funds to the ACTO. According to the Strategic Plan, ACTO is studying alternative mechanisms for funding.³⁵ Many of the project activities are

³¹ Amazon Cooperation Treaty, art. XV.

³² Amazon Cooperation Treaty, art. VII.

³³ ACTO Strategic Action Plan, at 67-68.

³⁴ ACTO Strategic Action Plan, at 9-11.

³⁵ ACTO Strategic Plan, at 71.

financed with money from international organizations (such as the European Union, various arms of the United Nations, the Inter-American Development Bank, and the Organization of American States).³⁶

13. Benefit Sharing

No specific provision.

14. Compliance and Monitoring

Each Member State has a Permanent National Commission that is responsible for ensuring that Treaty provisions are carried out. *See* **Organizational Structure**. Additionally, coordinators of active projects are required to report to the Permanent Secretariat on indicators designed to monitor the achievement of the goals of the project. *See* **Data Information Sharing, Exchange, and Harmonization**.

15. Participation and the Role of Multiple Stakeholders

There is no standing meeting for the Ministers of Foreign Affairs (the highest body in the institutional structure). Meetings of the Ministers of Foreign Affairs are only convened at the request of a Member State, with the support of four other Member States.³⁷ Since the Amazon Cooperation Treaty came into force in 1980, there have been nine meetings of the Ministers of Foreign Affairs, the most recent in November 2005.³⁸ The CCA holds annual meetings and special meetings upon the request of a majority of the Member States.³⁹ Since the Permanent Secretariat was established in 2003, the Amazon Coordination Treaty gained a more formal institutional structure that encourages more regular participation.

When implementing projects, the ACTO welcomes the participation of multiple stakeholders from both international institutions and local civil society, especially as project partners and sponsors. In the Strategic Plan, the Permanent Secretariat encouraged the active participation of regional and local players—especially indigenous people—in developing Amazon cooperation initiatives. The Permanent Secretariat recognizes the value of knowledge and practices that the indigenous people of the Amazon Basin have been developing for hundreds of years.⁴⁰

16. Dissolution and Termination

The decision to renounce the Amazon Cooperation Treaty must be announced by the departing Member State to the other Member States “at least ninety days prior to formal delivery of the instrument of

³⁶ Botto, *The Amazon Cooperation Treaty: A mechanism for cooperation and sustainable development*, at 82-87.

³⁷ Amazon Cooperation Treaty, art. XX.

³⁸ IX Meeting of Ministers of Foreign Affairs of Member Countries of the Amazon Cooperation Treaty Organization, 25 Nov. 2005, *available at* <http://www.otca.org.br/en/institucional/index.php?id=1322>.

³⁹ Amazon Cooperation Treaty, art. XXI.

⁴⁰ ACTO Strategic Plan, at 18, 30.

denunciation” to Brazil. The Treaty will cease to be binding on the Member State denouncing it one year after the delivery of the denunciation instrument to Brazil.⁴¹

17. Additional Remarks

The Amazon River is the longest, widest, and deepest freshwater river in the world and accounts for 20% of the total global freshwater available. The Amazon faces several environmental problems, including pressure from uncontrolled agricultural and cattle raising, deforestation and the corresponding soil erosion and loss of biodiversity, contamination of water bodies from biocides in agriculture and other chemical discharges, and stress from use as fishing grounds and a critical navigation artery. The Amazon Cooperation Treaty was enacted to protect the Amazon Basin from threats such as these.

Historians have divided the history of the Amazon Cooperation Treaty into three phases. In the first era (1978-1989), the eight Member States focused only on expressing their sovereignty and promoting the idea of shared responsibility over the Amazon between developed and developing countries. There was initially little activity as the Amazon Basin was not recognized as a regional priority. In the second phase (1989-1994), each Member State made a renewed commitment of political will in the Declaration of the Presidents. This led to the third phase, which brought about the creation of the Permanent Secretariat and the transition to the ACTO.⁴²

18. Websites and References

- Amazon Cooperation Treaty Organization, *available at* www.otca.info (www.otca.org.br)
- Amazon Cooperation Treaty Organization Strategic Plan 2004-2012, Oct. 2004, *available at* http://www.otca.org.br/PDF/Strategic_Plan.pdf.
- Georges D. Landau, *The Treaty For Amazonian Cooperation: A Bold New Instrument For Development*, 10 GA. J. INT’L. & COMP. L. 463 (1980).
- Integrated and Sustainable Management of Transboundary Water Resources in the Amazon River Basin Considering Climate Variability and Climate Change – GEF Full Size Project Document, 26 June 2008, *available at* <http://www.oas.org/dsd/gefdocuments/06.fsp.rev.final.doc>.
- Manuel Picasso Botto, *The Amazon Cooperation Treaty: A mechanism for cooperation and sustainable development*, in *MANAGEMENT OF LATIN AMERICAN RIVER BASINS* 68-100 (Asit K. Biswas, Newton V. Cordeiro, Benedito P F Braga, Cecilia Tortajada eds.) (United Nations University Press 1999).

⁴¹ Amazon Cooperation Treaty, art. XXVIII (2).

⁴² ACTO Strategic Plan, at 16-18.

Cartagena Convention

1. Legal Basis:

The Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region was adopted in Cartagena, Colombia on 24 March 1983 and entered into force on 11 October 1986.⁴³

The Convention is supplemented by three Protocols:

- Protocol Concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region (“Oil Spills Protocol”) which was also adopted on 24 March 1983 and entered into force on 11 October 1986.⁴⁴
- Protocol Concerning Specially Protected Areas and Wildlife (“SPAW Protocol”) of the Wider Caribbean Region Committee which was adopted on 18 January 1990 and entered into force on 18 June 2000.⁴⁵
- Protocol Concerning Pollution from Land-Based Sources and Activities which was adopted on 6 October 1999 but is not yet in force.⁴⁶

The Cartagena Convention is not the only Multilateral Environmental Agreement applicable in the region. Other applicable agreements include the Convention on Biological Diversity, MARPOL 73/78, the Basel Convention, and others. However, the Cartagena Convention’s regional area of application makes it an important complement to these other agreements.

With the exception of the European Economic Commission (“EEC”), all Member States simultaneously signed both the Oil Spills Protocol and the Cartagena Convention. In almost all cases, the Oil Spills Protocol was ratified or acceded to by a Member State at the same time as that Member State ratified or acceded to the Cartagena Convention. The Oil Spills Protocol entered into force simultaneously with the Cartagena Convention.

⁴³ Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region—The Final Act of the Conference of the Plenipotentiaries on the Protection and Development of the Marine Environment of the Wide Caribbean Region (“Cartagena Convention”), 24 Mar. 1983, 1506 U.N.T.S. 157.

⁴⁴ Protocol Concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region (“Oil Spills Protocol”), 24 Mar. 1983, 22 I.L.M. 240.

⁴⁵ Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (“SPAW Protocol”), 18 Jan. 1990, 2180 U.N.T.S. 103.

⁴⁶ Protocol Concerning Pollution from Land-Based Sources and Activities to Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (“LBS Protocol”), *available at* <http://cep.unep.org/repcar/lbs-protocol-en.pdf>. (viewed and current on 28 April 2009)

The Government of St. Lucia deposited the ninth instrument of ratification to the SPAW Protocol on 25 April 2000. The Government of Colombia, as Depositary, evaluated the instrument and officially informed the UNEP, as the Secretariat, that the SPAW Protocol entered into force on 18 June 2000. The LBS Protocol was opened for signature on 6 October 1999 and remained open for signature until 5 October 2000. Currently, parties to the Cartagena Convention that have not yet signed the LBS Protocol are now invited to accede to the Protocol by depositing its instrument of accession with the Government of Colombia (the Depositary).⁴⁷

2. Member States

The Member States of the Cartagena Convention are Antigua and Barbuda, Barbados, Belize, Colombia, Costa Rica, Cuba, Dominica, the Dominican Republic, France, Grenada, Guatemala, Honduras, Jamaica, Mexico, the Netherlands, Nicaragua, Panama, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, United Kingdom, the United States, Venezuela, and the EEC.

The Member States of the Oil Spills Protocol are Antigua and Barbuda, Barbados, Belize, Colombia, Costa Rica, Cuba, Dominica, the Dominican Republic, France, Grenada, Guatemala, Honduras, Jamaica, Mexico, the Netherlands, Nicaragua, Panama, Saint Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, United Kingdom, the United States, and Venezuela.

The SPAW Protocol Member States are Antigua and Barbuda, Barbados, Belize, Colombia, Costa Rica, Cuba, the Dominican Republic, France, Guatemala, Honduras, Jamaica, Mexico, the Netherlands, Panama, Saint Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, United Kingdom, the United States, and Venezuela.

The LBS Protocol Member States are Colombia, Costa Rica, the Dominican Republic, France, the Netherlands, and the United States.

3. Geographical Scope

The Cartagena Convention's area of application comprises the marine environment of the Gulf of Mexico, the Caribbean Sea and the areas of the Atlantic Ocean adjacent thereto, south of 30 north latitude and within 200 nautical miles of the Atlantic Coasts of the Member States.⁴⁸

4. Legal Personality

The Member States assigned secretariat functions to the United Nations Environment Programme ("UNEP"). The Caribbean Environment Programme ("CEP") is the UNEP division in the region. Since 1986, CEP's Regional Coordinating Unit ("CAR/RCU") has been stationed in Kingston, Jamaica.

⁴⁷ Caribbean Environment Programme LBS Brochure ("CEP LBS Brochure"), *available at* www.cep.unep.org/publications-and-resources/promotional-material/publications/amep/lbs-brochure. (viewed and current on 1 February 2009).

⁴⁸ Cartagena Convention, art. 2(1).

CEP has also established a Regional Activity Centre in Guadeloupe to support the implementation of the SPAW Protocol and another in Curaçao for the Oil Spill Protocol.⁴⁹

5. Functions

The Convention imposes general obligations on Member States relating to the environmental upkeep of the Caribbean Sea, and endeavors to set up mechanisms for further cooperation. The main vehicle is the UNEP which has coordinating powers.⁵⁰

The legal structure of the Convention is such that it covers the various aspects of marine pollution for which the Member States must adopt measures. Thus, the Convention requires the adoption of measures aimed at preventing, reducing and controlling pollution of the following areas:⁵¹

- pollution from ships;
- pollution caused by dumping;
- pollution from sea-bed activities;
- airborne pollution; and
- pollution from land-based sources and activities.

In addition, the Member States are required to take appropriate measures to protect and preserve rare or fragile ecosystems, as well as the habitat of depleted, threatened, or endangered species and to develop technical and other guidelines for the planning and environmental impact assessments of important development projects to prevent or reduce harmful impacts on the area of application.

The Caribbean Environment Programme has four main sub-programs:

- Assessment and Management of Environmental Pollution (“AMEP”): which facilitates implementation of the protocols on land-based sources and oil spills, as well as such global agreements as the Basel Convention and the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities.
- Specially Protected Areas and Wildlife (“SPAW”): which facilitates implementation of the SPAW Protocol and coordinates with numerous related global initiatives, such as the Convention on Biological Diversity, the Ramsar Convention on wetlands protection, the Convention on International

⁴⁹ Caribbean Environment Programme SPAW Brochures (“CEP SPAW Brochure”), *available at* <http://www.cep.unep.org/publications-and-resources/promotional-material/publications/spaw/spaw-brochure-en.pdf/view?searchterm=pdf>. (viewed and current on 1 February 2009).

⁵⁰ Cartagena Convention, art. 4.

⁵¹ Cartagena Convention, arts. 5-9.

Trade in Endangered Species (“CITES”), the International Coral Reef Initiative, and the Global Coral Reef Monitoring Network.

- Information Systems for the Management of Marine and Coastal Resources (“CEPNET”): which supports all CEP activities by promoting information and data exchange, through both electronic information systems and networks of experts and agencies.
- Education, Training and Awareness (“ETA”): which develops the research, technical, and managerial capability of Caribbean states and territories to address environmental issues. Through Intergovernmental Meetings held every two years, participating governments and Member States review CEP’s progress in implementing the Cartagena Convention, chart future activities, and oversee financial and institutional arrangements. Between Intergovernmental Meetings, a 13-nation Monitoring Committee and Bureau of Contracting Parties supervises the program’s development and provides policy direction.

Additionally, through Intergovernmental Meetings held every two years, participating governments and Contracting Parties review CEP’s progress, chart future activities, and oversee financial and institutional arrangements.⁵²

6. Organizational Structure

The UNEP Secretariat serves as the hub of the Convention for many different parties.⁵³ The Secretariat is administered by CAR/RCU. CAR/RCU staff help coordinate numerous scientific and technical projects conducted by national and technical agencies, bodies of experts, scientific and academic institutions, and non-governmental organizations. CAR/RCU does not conduct research and implement projects itself, but coordinates projects and helps to collect, review, and disseminate studies, publications, and the results of work performed under the aegis of CEP.

7. Relationships

The Cartagena Convention mandates a close relationship with UNEP, which controls the Secretariat.⁵⁴ In addition, the CEP functions as the programmatic framework for the Convention—bringing together Member States, donor agencies, and other international organizations on projects to protect the marine and coastal environment in the Wider Caribbean Region.⁵⁵

⁵² Caribbean Environment Programme Brochure (“CEP Brochure”), at 5, *available at* www.cep.unep.org/cepold/publications/cep-brochure/cep-brochure-en.pdf.

⁵³ Cartagena Convention, arts. 14-15.

⁵⁴ Cartagena Convention, arts. 14-15.

⁵⁵ *See* Caribbean Environment Programme, *available at* <http://www.cep.unep.org/>. (viewed and current on 28 April 2009).

8. Decision Making

The Member States will adopt by unanimous vote the rules on financial contributions for activities under the Cartagena Convention and its Protocols. Amendments to the Cartagena Convention and its Protocols require a three-fourths majority vote of the Member States present at the conference of plenipotentiaries. The conference of plenipotentiaries will be convened to consider amendments at the request of a majority of the Member States.⁵⁶

9. Dispute Resolution

The Convention requires that disputes be settled through negotiation.⁵⁷ If negotiations are not successful, disputes are settled through arbitration as set forth in the Annex to the Cartagena Convention.⁵⁸

According to the Annex to the Cartagena Convention, arbitral tribunals shall consist of three members: each party to the dispute appoints an arbitrator, and both arbitrators elect a third arbitrator, who serves as the president of the tribunal.⁵⁹ If a party refuses to appoint an arbitrator, or if a president cannot be elected, the Secretary General of the United Nations can appoint the arbitrators.⁶⁰

The procedure for arbitration is established by the tribunal itself.⁶¹ The tribunal shall give an award within five months of being established, but may extend its term for up to five additional months.⁶² All disputes arising from the interpretation or execution of the tribunal's award must be decided by the tribunal or a tribunal established by these procedures.⁶³

10. Data Information Sharing, Exchange, and Harmonization

The Cartagena Convention requires Member States to cooperate in scientific research, monitoring, and the exchange of data and other scientific information. Therefore, one of CEP's central roles has been to assist and promote greater coordination of environmental activities and to disseminate information throughout the Caribbean Region.⁶⁴

⁵⁶ Cartagena Convention, art. 18 and 20.

⁵⁷ Cartagena Convention, art. 23.

⁵⁸ Cartagena Convention, art. 23; *see also* Cartagena Convention, Annex.

⁵⁹ Cartagena Convention, Annex art. 3.

⁶⁰ Cartagena Convention, Annex art. 4.

⁶¹ Cartagena Convention, Annex art. 5.

⁶² Cartagena Convention, Annex art. 10.

⁶³ Cartagena Convention, Annex art. 10.

⁶⁴ Cartagena Convention, arts. 10-13; CEP Brochure, at 5.

11. Notifications

The Member States shall transmit to the UNEP, as Secretariat, information on the measures they adopted in implementing the Cartagena Convention and the Protocols to which they are parties, in such form and at such intervals as the meetings of the Member States may determine.⁶⁵

12. Funding and Financing

According to the Cartagena Convention, the Member States shall unanimously adopt financial rules, prepared in consultation with the UNEP, to determine their financial participation.⁶⁶ The LBS and SPAW Protocols provide that the UNEP may seek additional funds or other forms of assistance, including voluntary contributions from the Member States, other governments and governmental agencies, international organizations, non-governmental organizations, the private sector, and individuals.⁶⁷

13. Benefit Sharing

No specific provision.

14. Compliance and Monitoring

The UNEP is tasked with monitoring compliance with the Cartagena Convention and its associated protocols.

15. Participation and the Role of Multiple Stakeholders

No specific provision.

16. Dissolution and Termination

Member States may denounce the Convention or a protocol anytime after two years from the date of entry into force.⁶⁸

17. Additional Remarks

N/A

18. Websites and References

- Caribbean Environment Programme, *available at* <http://www.cep.unep.org/>.

⁶⁵ Cartagena Convention, art. 22.

⁶⁶ Cartagena Convention, art. 20.

⁶⁷ LBS Protocol, art. XVI; SPAW Protocol, art. 24.

⁶⁸ Cartagena Convention, art. 29.

[DRAFT]

- CEP Brochure, *available at* www.cep.unep.org/cepold/publications/cep-brochure/cep-brochure-en.pdf.
- CEP SPAW Brochure *available at* <http://www.cep.unep.org/publications-and-resources/promotional-material/publications/spaw/spaw-brochure-en.pdf/view?searchterm=pdf>.
- CEP LBS Brochure, *available at* www.cep.unep.org/publications-and-resources/promotional-material/publications/amep/lbs-brochure.

Columbia River Basin

1. Legal Basis

The Columbia River Treaty was signed by the United States and Canada on 17 January 1961.⁶⁹ The purpose of this bilateral Treaty was to develop the Columbia River Basin in a manner that benefited the economies and people of both countries. The Treaty was not implemented until three years later, in 1964, when the province of British Columbia finally agreed to the Treaty. The final negotiations resulted in: (1) a Protocol to ratify the Treaty that allowed for the sale of the Canadian Entitlement (*see Functions*), (2) an agreement between the Canadian federal government and the province of British Columbia that established and clarified certain rights and obligations, and (3) the Canadian right to downstream U.S. power electric utilities for a period of 30 years. When these additional agreements were added, the Treaty was ratified and implemented on 16 September 1964.

The Treaty Relating to Boundary Waters between the United States and Canada is also relevant to the Columbia River boundary waters.⁷⁰ It was signed by the United Kingdom and the United States in 1909 and it set out rules for dispute resolution for issues arising from the use, obstruction or diversion of the boundary waters of Canada and the United States.⁷¹ One of the most significant results of this Treaty was its establishment of the International Joint Commission (“IJC”). The IJC is composed of six commissioners, with the United States and Canada each appointing three commissioners.⁷²

2. Member States

The Columbia River Treaty was signed by the United States and Canada, the only two countries that border the Columbia River Basin.

⁶⁹ Treaty between the United States of America and Canada relating to cooperative development of the water resources of the Columbia River Basin (“Columbia River Treaty”), 17 Jan. 1961, and exchanges of notes at Washington, 22 Jan. 1964 and at Ottawa, 16 Sep. 1964, 542 U.N.T.S. 244.

⁷⁰ Treaty between the United States and Great Britain relating to boundary waters between the United States and Canada (“Boundary Waters Treaty”), 11 Jan. 1909, 36 Stat. 2448.

⁷¹ The Preliminary Article instructs that boundary waters are defined as “the waters from main shore to main shore of the lakes and rivers connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary.” Boundary Waters Treaty, Preliminary Article.

⁷² Boundary Waters Treaty, art. VII.

3. Geographical Scope

The total area of the Columbia River Basin is 668,400 square kilometers. Approximately 101,900 square kilometers of the Basin (or 15.25%) is in Canada, while 566,500 square kilometers of the Basin (or 84.75%) is in the United States.⁷³

4. Legal Personality

Article XIV of the Columbia River Treaty directs the United States and Canada to each designate an Entity or Entities which are empowered and charged with the duty to formulate and carry out the operating arrangements necessary to implement the Treaty. The countries may designate more than one Entity if desired. The Canadian Entity is British Columbia Hydro and Power Authority and the U.S. Entities are the Administrator of the Bonneville Power Administration (Department of the Interior) and the Division Engineer, North Pacific Division of the United States Army Corps of Engineers. The Bonneville Power Administration markets power from federal projects in the Columbia Basin in the United States while the United States Army Corps of Engineers oversees flood control matters and other major civil engineering projects on the Columbia River. The British Columbia Hydro and Power Authority is responsible for the operation of the three Canadian dams required under the Treaty.⁷⁴

The duties of the Entities, pursuant to Article XIV of the Columbia River Treaty, include:

- Coordination of plans and exchange of information relating to facilities to be used in producing and obtaining the benefits contemplated by the Treaty;
- Calculation of and arrangements for delivery of hydroelectric power to which Canada is entitled for providing flood control;
- Calculation of the amounts payable to the United States for standby transmission services;
- Consultation on requests for variations in operation or use of water;
- The establishment and operation of a hydrometeorological system;
- Assisting and cooperating with the Permanent Engineering Board (*see Data Information Sharing, Exchange, and Harmonization*) in the discharge of its functions;
- Periodic calculation of accounts;

⁷³ International River Basin Register, Oregon State University Program in Water Conflict Management and Transformation, *available at* http://www.transboundarywaters.orst.edu/publications/register/tables/IRB_northamerica.html.

⁷⁴ Columbia River Treaty: History and 2014/2024 Review—Bonneville Power Administration (“2014/2024 Review”), April 2008, *available at* http://www.bpa.gov/Corporate/pubs/Columbia_River_Treaty_Review_-_April_2008.pdf.

- Preparation of the hydroelectric operating plans and the flood control operating plans for the Canadian storage together with determination of the downstream power benefits to which Canada is entitled;
- Preparation of proposals for Canada to dispose of its downstream power benefits in the United States pursuant to Article VIII;
- Making appropriate arrangements for delivery to Canada of the downstream power benefits to which Canada is entitled including such matters as load factors for delivery, times and points of delivery, and calculation of transmission loss; and
- Preparation and implementation of detailed operating plans that may produce results more advantageous to both countries than those that would arise from operation under the Assured Operating Plans.

Lastly, each Entity is authorized to make maintenance curtailments and must give notice to the other Entity of the reason for the maintenance and the probable duration (except in the case of emergency maintenance).⁷⁵

5. Functions

The focus of the Columbia River Treaty is hydroelectricity and flood control. There is no direct treatment of other interests such as fish protection, irrigation, and other environmental concerns, but the Treaty allows the Entities to incorporate a broad range of interests into the Detailed Operating Plans that are agreed to prior to each operating year.

i) Requirements of Canada

Under the Columbia River Treaty, Canada was required to construct and operate 15.5 million acre-feet of reservoir storage in the upper Columbia River Basin for optimum power generation and flood control downstream in Canada and the U.S.⁷⁶ To achieve this storage, Canada was required to construct the following dams, all located within the province of British Columbia:

- On the Columbia River near Mica Creek, a dam with approx. 7 million acre feet of storage;
- On the outlet of Arrow Lakes, a dam with approx. 7,100,000 acre-feet of storage; and
- Near Duncan Lake, a dam with approx. 1,400,000 acre-feet.⁷⁷

⁷⁵ Columbia River Treaty, art. XIV.

⁷⁶ Columbia River Treaty, art. II.

⁷⁷ Columbia River Treaty, art. II.

The Treaty allows Canada substantial flexibility to operate its individual projects as long as the net flow at the U.S. border is met.

ii) Requirements of the United States

The Columbia River Treaty requires the U.S. to (1) give Canada one-half of the estimated increase in U.S. downstream power benefits as determined five years in advance (the “Canadian Entitlement”) and (2) make a monetary payment for 50% of the value of the estimated future flood damages prevented in the U.S. during the first 60 years of the Treaty. Instead of receiving an annual payment for the flood control benefits, Canada chose to receive lump sum payments totaling \$64.4 million for half of the estimated flood damage prevented in the U.S. through the year 2024.⁷⁸

Additionally, the U.S. must maintain and operate the hydroelectric facilities constructed on the main arm of the Columbia River in the U.S. in a manner that “makes the most effective use of the improvement in stream flow resulting from operation of the Canadian storage for hydroelectric power generation in the United States of America power system.”⁷⁹

The Treaty also permitted the U.S. to construct the Libby project dam with 5 million acre-feet of storage on the Kootenai River⁸⁰ in Montana for flood control purposes.

iii) Planning Mechanisms under the Columbia River Treaty

The Columbia River Treaty required the United States and Canada to prepare annually an Assured Operating Plan (“AOP”) for the operation of storage under the Treaty six years in advance of each operating year. The AOP is developed to achieve optimum power and flood control benefits for the U.S. and Canada and to define the amount of the Canadian Entitlement to downstream power benefits to be delivered for that year.⁸¹

The Columbia River Treaty also allows the Entities to develop Detailed Operating Plans (“DOP”) for each upcoming year. The goal of the DOP is to determine annually whether there is a plan for operation that may achieve results more advantageous to the U.S. or Canada than the previously planned Assured Operating Plan. In formulating the DOP, the Entities may take into consideration factors besides hydroelectric power and flood control, such as fish protection, recreation, and the environment.⁸²

⁷⁸ Columbia River Treaty, art. VI.

⁷⁹ Columbia River Treaty, art. III.

⁸⁰ When referring to its American portions, the river is spelled “Kootenai”, while the spelling “Kootenay” is used when referring to the Canadian portions.

⁸¹ Columbia River Treaty, Annex A.

⁸² Columbia River Treaty, art. XIV.

iv) “Called Upon” Provision for Flood Control Takes Effect in 2024

Absent a new agreement, the Columbia River Treaty provides that Canada’s duty to provide storage for flood control for the U.S. will expire in 2024 and will be replaced with “Called Upon” storage by Canada.⁸³ Under “Called Upon” storage, the U.S. must pay for the operating costs and any losses incurred by Canada when it requests Canada’s flood control operations. The United States paid Canada \$64.4 million as half of the estimated future U.S. flood damages prevented through the year 2024 (60 years from the ratification date of the Treaty). Thus, beginning in 2024, the U.S. must again begin paying for Canada’s flood control storage on an as-needed basis.

6. Organizational Structure

The United States and Canada each designated Entities that are responsible for carrying out the operating arrangements under the Columbia River Treaty. *See Legal Personality. See also Data Information Sharing, Exchange, and Harmonization* discussing the Permanent Engineering Board’s role in monitoring and reporting under the Treaty.

7. Relationships

i) The International Joint Commission (“IJC”)

The IJC’s dispute resolution duties are much broader than just governing disputes along the Columbia River Basin. The IJC assists the governments of Canada and the United States in finding solutions to problems that relate to the many rivers that lie along or flow across the border between the United States and Canada. The IJC was established by the 1909 Boundary Waters Treaty. It is composed of six members—with three appointed by the President of the United States (with the advice and approval of the Senate) and three appointed by Governor in Council of Canada (on the advice of the Prime Minister). The IJC is bound by the Boundary Waters Treaty in its efforts to resolve disputes, and IJC members must act impartially, rather than representing the views of their respective governments. The IJC has the duty to issue authorizations for certain uses of water, while protecting competing interests in accordance with the Boundary Waters Treaty. For example, the IJC might approve applications for dams or canals and can set conditions limiting water levels and flows. Additionally, the IJC investigates water pollution in lakes and rivers along the Canada-United States border when asked to do so by either government.⁸⁴

In addition to its primary role regarding the boundary waters of Canada and the United States, the two governments have also asked the IJC to investigate air pollution problems in the boundary regions. In 1991, the two governments signed the Canada-United States Air Quality Agreement and set up an Air Quality Committee to make reports every two years. The governments also asked the IJC to invite comments on the Committee’s reports from individuals and groups and to prepare summaries of those views.⁸⁵

⁸³ Columbia River Treaty, art. IV (3).

⁸⁴ International Joint Commission - Who We Are (“IJC Who We Are”), *available at* http://www.ijc.org/en/backgr und/ijc_cmi_nature.htm.

⁸⁵ IJC Who We Are

The IJC provides guidance or arbitration to many other rivers or basins in addition to the Columbia River Basin. The Great Lakes-St. Lawrence River system is also a significant focus for the IJC. Under the Great Lakes Water Quality Agreement, the IJC is tasked with reviewing Remedial Action Plans, which are strategies prepared by Canada and the United States to clean up problem areas and promote sustainable development in the Great Lakes region. In the West, the IJC has established operating conditions for dams on the Kootenai and Osoyoos Rivers (which, like the Columbia River, also cross through the states of Washington, Idaho, and Montana and the province of British Columbia). The IJC has helped establish rules for sharing the benefits of the St. Mary and Milk Rivers in Alberta, Saskatchewan, and Montana. In the East, the IJC regulates dams on the St. Croix River, which flows through New Brunswick and Maine. In the Midwest, the IJC helps regulate the sharing of benefits from the Souris River among Saskatchewan, Manitoba, and North Dakota. Lastly, the IJC sets emergency water levels for the Rainy Lake system, which crosses through Minnesota, Manitoba, and Ontario.⁸⁶

ii) Pacific Northwest-Southwest Intertie

The operation of the new Canadian dams pursuant to the Columbia River Treaty created additional power in the United States, with a sizeable portion of the Canadian Entitlement being sold to California. Thus, the Pacific Northwest-Southwest Intertie, a system of high-voltage transmission lines that carry large amounts of electricity, was built. The Intertie ensured that the Canadian Entitlement could be exported or resold in the California market during the early years of the Treaty implementation of the Treaty, when British Columbia and the Northwestern United States had no need for the additional power. The Intertie remains a vital component of the western-connected grid, providing enhanced reliability and power trading benefits to western Canada and the western United States.⁸⁷

iii) PNCA Agreement

The Columbia River Treaty also triggered the creation of the U.S. Pacific Northwest Coordination Agreement (“PNCA”), which helps optimize the operation of Pacific Northwest projects to take advantage of improved water flows from Canada. Under the PNCA, most Pacific Northwest hydropower projects operate as though they were owned by one utility—taking advantage of the regional diversity in stream flows and power loads, as well as the ability to optimize all reservoir storage operations to one power load. Sixteen parties, including the U.S. Army Corps of Engineers, the Bonneville Power Administration, and the Bureau of Reclamation, are members of the PNCA. The PNCA was initially signed in 1964 and has been renewed once; it is now referred to as the 1997 Pacific Northwest Coordination Agreement.⁸⁸

8. Decision Making

Decisions are made primarily by the Entities of each country. *See Legal Personality.*

⁸⁶ IJC Who We Are

⁸⁷ 2014/2024 Review.

⁸⁸ 2014/2024 Review.

9. Dispute Resolution

The Columbia River Treaty provides that a dispute or difference that arises under the Treaty may be referred by either the United States or Canada to the IJC for a decision. If the IJC does not render a decision within three months of the referral or within such other period as may be agreed upon by the United States and Canada, either may submit the dispute to arbitration by providing written notice to the other.⁸⁹

The Treaty mandates that arbitration must be by a tribunal composed of a member appointed by Canada, a member appointed by the United States and a member appointed jointly by the United States and Canada who shall be Chairman. If within six weeks of the delivery of a notice of arbitration, either the United States or Canada has failed to appoint its member, or they are unable to agree upon the member who is to be Chairman, either the United States or Canada may request that the President of the International Court of Justice appoint the member or members. The decision of a majority of the members of an arbitration tribunal shall be the decision of the tribunal, which shall be binding and definitive on the parties. The United States and Canada may agree by an exchange of notes to use alternative procedures for settling differences arising under the Treaty, including reference of any difference to the International Court of Justice for a decision.⁹⁰

i) Trail Smelter Case

The historical Trail Smelter case, though it predated ratification of the Columbia River Treaty, illustrates the IJC's ability to resolve disputes under the Boundary Waters Treaty.⁹¹

During the 1920s, Canadian company Consolidated Mining and Smelting Company of Canada operated a zinc and lead smelter in Trail, British Columbia near the Columbia River, approximately seven miles north of the United States border. The company built 400-foot-high stacks on the smelter, which emitted sulphur dioxide. Sulphur dioxide fumes were occasionally carried south to the town of Northport in Washington State, where they caused damage to private farms, orchards, and timberlands. Responding to pressure from Northport residents, the governments of Canada and the United States agreed in 1928 to submit the dispute to the IJC, despite the private nature of the dispute (where both the party causing the harm and the parties being harmed were private citizens.) Article 9 of the Boundary Waters Treaty allows Canada or the United States to submit a dispute to the IJC so that the IJC may investigate the dispute. However, the IJC's conclusions in a case submitted under Article 9 are not binding decisions and have no authority over the two governments. The IJC issued a report in 1931 recommending that the smelter pay \$350,000 for damages caused up to 1 January 1932 to the Northport citizens. The Northport residents were not satisfied and sought arbitration.

The United States and Canada subsequently agreed to submit the dispute to binding arbitration. While the parties could have submitted the dispute to the IJC for binding arbitration under Article 10 of the

⁸⁹ Columbia River Treaty, art. XVI.

⁹⁰ Columbia River Treaty, art. XVI.

⁹¹ *Trail Smelter Arbitration* (United States v. Canada) (1938 and 1941) 3. R.I.A.A. 1905, 1982.

Boundary Waters Treaty,⁹² they opted instead for an *ad hoc* three-member arbitration panel. The tribunal was to “apply the law and practice followed in dealing with [similar] questions in the United States of America as well as international law and practice, and [it] shall give consideration to the desire of the high contracting parties to reach a solution just to all parties concerned.” The tribunal sat for seven years and issued its final decision in 1941. It confirmed the IJC’s recommendation that the smelter pay the United States US \$350,000 for damages, and it also assessed additional damages in the amount of US \$78,000 for the damages caused from 1932 until 1937. Lastly, the tribunal ruled that the smelter must control its downdrafts and monitor sulfur dioxide so that concentrations in Washington State did not become excessive. Canada accepted this decision and paid the damages. The United States used the money to satisfy the claims of individual property owners in Washington State against Trail Smelter.

10. Data Information Sharing, Exchange, and Harmonization

Much of the data sharing under the Columbia River Treaty is performed by the Permanent Engineering Board.⁹³ The Columbia River Treaty established the Permanent Engineering Board, consisting of four members—two appointed by the United States and two appointed by Canada. The Permanent Engineering Board is tasked with the following duties:

- Assemble records of the flows of the Columbia River and the Kootenay River at the Canada-United States boundary;
- Report to the United States and Canada whenever there is substantial deviation from the hydroelectric and flood control operating plans and if appropriate include in the report recommendations for remedial action and compensatory adjustments;
- Assist in reconciling differences concerning technical or operational matters that may arise between the Entities;
- Make periodic inspections and require reports from the Entities with a view to ensuring that the objectives of the Treaty are being met;
- Make reports to the United States and Canada at least once a year of the results being achieved under the Treaty and make special reports concerning any matter which it considers should be brought to their attention; and
- Investigate and report with respect to any other matter coming within the scope of the Treaty at the request of either the United States or Canada.

The Permanent Engineering Board must comply with directions relating to its administration and procedures that are agreed upon by the United States and Canada as evidenced by an exchange of notes.

⁹² Article 10 of the Boundary Waters Treaty provides that the IJC may issue binding decisions if both the United States and Canada consent, it being understood that on the part of the United States any such action will be by and with the advice and consent of the Senate, and on the part of Canada with the consent of the Governor General in Council. Boundary Waters Treaty, art. 10.

⁹³ Columbia River Treaty, art. XV.

11. Notifications

The Permanent Engineering Board is responsible for providing certain notifications to the United States and Canada. *See Data Information Sharing, Exchange, and Harmonization.*

12. Funding and Financing

With regard to arbitration, the Columbia River Treaty notes that the funding of administrative support for a tribunal and the remuneration and expenses of its members shall be agreed upon by the United States and Canada in an exchange of notes.⁹⁴ The Columbia River Treaty contains no further explanation as to cost sharing for operational costs.

With regards to the IJC, the Boundary Waters Treaty provides that “[t]he salaries and personal expenses of the Commission and of the secretaries shall be paid by their respective Governments, and all reasonable and necessary joint expenses of the Commission, incurred by it, shall be paid in equal moieties by [the United States and Canada]”.⁹⁵

13. Benefit Sharing

i) 50/50 Share of Downstream Power Benefits

Article V of the Columbia River Treaty instructs that Canada is entitled to one-half of downstream power benefits (the “Canadian Entitlement”). The United States must deliver to Canada at a point on the Canada-United States boundary near Oliver, British Columbia (or another agreed upon place) the downstream power benefits to which Canada is entitled less transmission loss. If Canada opts to sell its entitlement to downstream power to United States purchasers in accordance with Article VIII, the United States will not deliver this power to Canada.

ii) Payment for Flood Control

For the flood control that Canada provides to the United States, the United States was required to pay Canada US \$64.4 million—consisting of US \$1,200,000 for the dam at Mica, US \$52,100,000 for the dam at Arrow Lakes and US \$11,100,000 for the dam at Kootenay. This money became due when Canada commenced the operation of storage after the completion of the three dams. If full operation of the dams was not commenced within the time specified by the Treaty, the payment was to be reduced according to a discount formula set out in the Columbia River Treaty.⁹⁶

In addition to the flood control discussed above which has already been paid for by the United States, the United States Entity may call upon Canada to operate additional storage in the Columbia River Basin in Canada within the limits of existing facilities to meet flood control needs for the duration of the flood period (referred to as “Called Upon” flood control.) For this “Called Upon” flood control, the United

⁹⁴ Columbia River Treaty, art. XVI (5).

⁹⁵ Boundary Waters Treaty, art. XII.

⁹⁶ Columbia River Treaty, art. VI.

States must pay Canada, in respect only of each of the first four flood periods for which a call is made, US \$1,875,000 and shall deliver to Canada in respect of each and every call made, electric power equal to the hydroelectric power lost by Canada as a result of operating the storage to meet the flood control need for which the call was made, delivery to be made when the loss of hydroelectric power occurs.⁹⁷

The Columbia River Treaty contains a “Called Upon” flood control provision which will automatically be triggered 60 years after the Treaty’s ratification date. For each flood period where flood control is provided by Canada to the United States, the United States must pay Canada the operating cost incurred by Canada in providing the flood control and must compensate Canada for the economic loss to Canada arising directly from Canada foregoing alternative uses of the storage used to provide the flood control.⁹⁸

14. Compliance and Monitoring

The Columbia River Treaty provides that the Permanent Engineering Board shall “make periodic inspections and require reports ... from the entities with a view to ensuring that the objectives of the Treaty are being met.”⁹⁹ See **Data Information Sharing, Exchange, and Harmonization**.

15. Participation and the Role of Multiple Stakeholders

i) Public Participation with the IJC

The Boundary Waters Treaty requires that the IJC give all interested parties a “convenient opportunity to be heard” on matters under consideration. The IJC invites public participation and advice when it undertakes studies, deals with Orders of Approval, and prepares reports to Governments. Citizens, both specialists and non-specialists, serve on IJC boards and task forces.¹⁰⁰

The IJC holds public meetings every two years to discuss progress in keeping water clean, and it also hosts conferences where members of the public and community groups can participate. Whenever the IJC is asked to approve a plan for a dam or other structure along the boundary waters, it asks for public comment. The IJC boards that monitor these structures, once built, also hold regular public meetings.¹⁰¹

ii) Columbia Basin Trust (“CBT”):

The CBT is a corporation that was created in 1985 to promote social, economic, and environmental well-being in the Canadian portion of the Columbia River Basin. The CBT’s website notes, “Despite the significant changes that occurred across the Columbia Basin as a result of the [Columbia River] Treaty,

⁹⁷ Columbia River Treaty, art. IV (2)(b).

⁹⁸ Columbia River Treaty, art. IV(3).

⁹⁹ Columbia River Treaty, art. XV.

¹⁰⁰ International Joint Commission—How is the Public Involved with International Joint Commission Activities?, available at <http://www.ijc.org/rel/agree/water.html#what>.

¹⁰¹ IJC Who We Are.

there was a lack of consultation with residents. The people of the Basin came together in the early 1990s to press the Province of [British Columbia] for recognition of the injustice of the situation.” Along with its local governments, the people living around the Basin formed the CBT and reached a binding agreement with the Province of British Columbia which resulted in \$276 million to finance the construction of the dams, \$45 million which CBT used as an endowment, and \$2 million per year from 1996 to 2010 for operations. The CBT was formed pursuant to the Columbia Basin Trust Act, the Preamble of which noted that the Canadian government sought to “work with the people of the Columbia Basin to ensure that benefits derived from the Columbia River Treaty help to create a prosperous economy with a healthy, renewed natural environment.”¹⁰²

16. Dissolution and Termination

The Columbia River Treaty has no specified end date.¹⁰³ Either country may cancel the Treaty after 60 years (2024) provided that notice is provided ten years in advance. Certain terms of the Treaty will continue on during the useful life of the dams even if the Treaty is terminated. This includes the Called Upon flood control provisions, Libby coordination obligations, and Kootenay River diversion rights. If terminated, the Mica, Duncan, Arrow, and Libby dams may continue to operate and will be subject to the 1909 Boundary Waters Treaty. Canada must provide flood control operation for the United States as long as the need exists and the dam exists, but the United States must pay Canada’s operating costs and power losses (this is known as “Called Upon” flood storage.)

As discussed above, Called Upon flood control storage means that the United States must first operate all of its storage for flood control purposes, and only then can request Canadian flood control storage, but the United States must compensate Canada for any operating costs and economic losses due to the requested flood control operations. Called Upon flood control will be implemented in 2024, regardless of whether the Treaty is terminated or not.¹⁰⁴

Upon termination of the Columbia River Treaty, the Canadian Entitlement will cease to exist, and the United States will retain all incremental power at downstream projects from operation of Canadian storage, while Canada will continue to retain all incremental power downstream due to the operation of Libby—this will end the 50/50 sharing of downstream power benefits between the two countries. If the Treaty is not terminated in 2024, Canada will continue to operate storage for downstream power and flood control benefits unless otherwise agreed, and the United States will continue to provide the Canadian Entitlement of half of all downstream power benefits. Again, flood control will be changed to Called Upon storage in 2024 regardless of whether the Columbia River Treaty is cancelled or not.¹⁰⁵

¹⁰² Columbia Basin Trust—About Us, *available at* http://www.cbt.org/About_Us/.

¹⁰³ Columbia River Treaty, art. XIX.

¹⁰⁴ Columbia River Treaty, art. VI.

¹⁰⁵ Columbia River Treaty, art. VI.

17. Additional Remarks

i) Initial Controversy Over the Columbia River Treaty

The province of British Columbia initially resisted the Columbia River Treaty on the grounds that, while the province would be committed to building the three major dams within its borders, it would not have any assurance that there would be a purchaser for the Canadian Entitlement to downstream power that was surplus to the province's needs. The Treaty was ratified in 1964, after a consortium of 37 public and four private utilities in the United States contracted to purchase this surplus, agreeing to pay Canada a lump sum of U.S. \$274.8 million upfront to purchase the Canadian Entitlement for the 30 years following the scheduled completion date of the Canadian dams. Canada was able to use this money it received upfront to build the three dams it was required to build under the Columbia River Treaty.

ii) Future of the Columbia River Treaty

The United States and Canadian Entities are reviewing future scenarios regarding the Columbia River Treaty. This joint effort has been named the 2014/2024 Columbia River Treaty Review. The Entities launched the first phase of the review with technical studies designed to establish baseline information of what power and flood control operations might look like after 2024 with and without the Treaty. The first phase of their studies is expected to be completed in the spring of 2009. The Bonneville Power Administration and the U.S. Army Corps of Engineers will then host public workshops to discuss the initial findings and seek input on the direction for the second phase of studies.¹⁰⁶

18. Websites and References

- Columbia Basin Trust: About Us, *available at* http://www.cbt.org/About_Us/.
- Columbia Basin Water Management Division—U.S. Army Corps of Engineers, *available at* <http://www.nwd-wc.usace.army.mil/>.
- Columbia River Treaty, *available at* <http://www.ccrh.org/comm/river/docs/cotreaty.htm>.
- Columbia River Treaty: History and 2014/2024 Review—Bonneville Power Administration, *available at* http://www.bpa.gov/Corporate/pubs/Columbia_River_Treaty_Review_-_April_2008.pdf.
- International Joint Commission - Who We Are, *available at* http://www.ijc.org/en/background/ijc_cmi_nature.htm.
- International River Basin Registry, Oregon State University Program in Water Conflict Management and Transformation, *available at* <http://www.transboundarywaters.orst.edu/database/interriverbasinreg.html>.
- The Boundary Waters Treaty of 1909, *available at* <http://www.ijc.org/rel/agree/water.html#text>.

¹⁰⁶ 2014/2024 Review.

[DRAFT]

- The Columbia River Treaty—Northwest Power and Conservation Council, *available at* <http://www.nwcouncil.org/history/ColumbiaRiverTreaty.asp>.
- The Trail Smelter Case (United States, Canada), *available at* http://untreaty.un.org/cod/riaa/cases/vol_III/1905-1982.pdf.

Guarani Aquifer System

1. Legal Basis

There is to date no binding legal agreement specifically governing the use of the Guaraní Aquifer System (“GAS”), a transboundary aquifer shared by Argentina, Brazil, Paraguay and Uruguay.¹⁰⁷ Of the four countries, only Paraguay has signed the 1997 UN Convention on the Non-Navigable Uses of International Watercourses (which is not in force), and there are currently no international conventions specifically addressing transboundary aquifers, although the UN International Law Commission has recently completed Draft Articles on the Law of Transboundary Aquifers.¹⁰⁸

However, there are several non-binding arrangements relevant to the GAS. First, the GAS Project (otherwise known as the Environmental Protection and Sustainable Development of the Guaraní Aquifer System Project), which is an undertaking by the four countries sharing the resource, the Global Environment Facility (“GEF”), the World Bank, and the Organization of American States (“OAS”), developed a Declaration of Basic Principles and Action Guidelines.¹⁰⁹ These Principles, approved by the GAS Project Steering Committee in June 2004,¹¹⁰ declared that the Guaraní Aquifer, as a transboundary

¹⁰⁷ According to the World Bank:

The beneficiary countries have long-standing experience in collaborating on transboundary water issues, most notably with regard to the Plata River basin which has had a general treaty and an Intergovernmental Committee since the 1960s. In addition, bilateral projects and specific treaties exist with respect to other water systems, such as the Uruguay River (Uruguay and Argentina), and the Paraná River (Brazil and Paraguay). To date, the success of these agreements has been mixed, especially with respect to hydrological allocation and pollution control issues. The countries do recognize, however, the importance of cooperation in transboundary waters issues. The attempt to reach an agreement on groundwater is a historical first and will certainly enhance the dialogue on other waterbodies within the region and may contribute to improved water management at a transboundary level.

World Bank Project Appraisal Document on a Proposed Global Environment Facility Trust Fund Grant in the Amount of SDR 10.8 million (US\$13.40 million equivalent) to Argentina, Brazil, Paraguay, and Uruguay for the Environmental Protection and Sustainable Development of the Guaraní Aquifer System Project—Report No: 23490-LAC (“WB Project Appraisal”), 17 May 2002, at 9, *available at* <http://www.ana.gov.br/guarani/docsbasicos/pad.pdf>. (viewed and current on 28 April 2009)

¹⁰⁸ On 11 Dec. 2008, the UN General Assembly adopted by consensus Resolution A/RES/63/124 on the Law of Transboundary Aquifers. *See* UN General Assembly adopts resolution on the Law of Transboundary Aquifers, *available at* http://www.unesco.org/water/news/transboundary_aquifers.shtml. (viewed and current on 28 April 2009).

¹⁰⁹ Proyecto de Declaración de Principios Básicos y Líneas de Acción para el Sistema Acuífero Guaraní, July 2004, *available at* http://www.adesaregional.org.uy/documentos/declaracion_principios_basicos.pdf. [Spanish only] (viewed and current on 28 April 2009).

¹¹⁰ *See* Lilian del Castillo-Laborde, Emerging Legal Principles for Transboundary Aquifers and the South American Guaraní Aquifer (“Castillo-Laborde Article”), *available at* <http://www.inweb.gr/twm4/abs/DEL%20CASTILLO%20LABORDE%20Lilian2.pdf>. (viewed and current on 28 April 2009).

shared water resource, should be protected from contamination and sustainably managed. At the same time, the Member States are called upon to use the aquifer in a manner that does not prejudice the environment or areas outside their territories, maintain and share technical information, and generally act in accordance with applicable principles of international law and the relevant international agreements to which they are a party to.¹¹¹

In the wake of the winding down of the GAS Project (*see Functions*), the four Member States agreed in 2008 on basic principles for the management of the GAS under the auspices of the recently approved Strategic Action Program (“SAP”).¹¹² Generally speaking, these principles recognize the need to build on and to continue the work achieved by the GAS Project. Moreover, the countries concerned agree to continue cooperation and support, including: (a) the creation and maintenance of databases as well as the GAS information system (SISAG); (b) the operation, maintenance and development of the GAS monitoring system; (c) the implementation of local management structures in key areas; (d) dissemination of technical materials and information produced by the GAS Project; and (e) continued implementation of strategic action coordinated at the regional level and incorporation of management tools developed by the GAS Project.¹¹³ Additionally, Annex 11 of the SAP lists international water agreements (both binding and non-binding) that relate to the four GAS Member States.¹¹⁴

2. Member States

The Member States that share the aquifer are Argentina, Brazil, Paraguay, and Uruguay.

3. Geographical Scope

The Guaraní Aquifer System, named after the Guaraní Indigenous Nation, is one of the largest groundwater reservoirs in the world, located under the four MERCOSUR countries: Argentina, Brazil, Paraguay and Uruguay. The GAS was previously known as the Botucatu Aquifer in Brazil, the Tacuarembó Aquifer in Uruguay and Argentina, and the Misiones Aquifer in Paraguay. According to the World Bank:

The Guaraní Aquifer System extends from the central-west region of Brazil into Paraguay and the southeastern and southern regions of Brazil, and into northeastern Argentina and central and western Uruguay ... It has an estimated total surface area of approximately 1.2 million square kilometers (839,800 km² in Brazil, 225,500 km² in Argentina, 71,700 km² in Paraguay, and 45,000 km² in Uruguay). The portion within

¹¹¹ It has been reported that a specific “agreement is under way which envisages the protection of the resource.” *See* Castillo-Laborde Article.

¹¹² Project Summary, *available at* <http://www.sg-guarani.org/about-the-project/project-summary/?searchterm=strategic%20action%20program>. [Containing documents detailing the Strategic Action Program] (viewed and current on 1 February 2009).

¹¹³ *See* SAP Annex 17 [Agreed principles for the management of the GAS].

¹¹⁴ *See* SAP Annex 11.

Brazil encompasses about two-thirds of the total areal extent of the System, and includes parts of eight Brazilian states—an area equal to that of England, France and Spain combined. An estimated fifteen million people live within the aquifer’s area of surface influence.¹¹⁵

4. Legal Personality

An office of the Secretary-General was established during the GAS Project through a 2002 OAS-Republic of Uruguay Memorandum of Understanding, detailing the obligation of the Republic to establish the headquarters of the General Secretariat in Montevideo.¹¹⁶ *See Funding and Financing.* This Memorandum also recognized the privileges and immunities extended to the OAS, as Executing Agency of the Project.

Following the Project’s anticipated termination in 2009, the Member States expect to continue the work of the GAS Project through a Coordination Office under the auspices of the 1969 Plata River Basin Treaty.¹¹⁷ No firm details have emerged at the time of writing.

5. Functions

The GAS Project was undertaken by the Member States, the Global Environment Facility (“GEF”), the World Bank, and the OAS through the Unit for Sustainable Development and Environment (“USDE”). The International Atomic Energy Agency (“IAEA”) is also a cooperating and funding partner. Project preparations began in 2000, and the project’s execution phase was designed to run from March 2003 through February 2009. According to the project’s website (www.sg-guarani.org):

The long-term objective of the process that started with the Project is to achieve the management and sustainable use of the Guaraní Aquifer System (GAS). The GAS is located in the eastern and south-central portions of South America, and underlies parts of Argentina, Brazil, Paraguay and Uruguay. This project is a first step towards achieving the long term objective. Its purpose is to support the four countries in the joint elaboration and implementation of a common institutional, legal and technical framework for the management and preservation of the GAS for current and future generations.¹¹⁸

¹¹⁵ WB Project Appraisal, at 6.

¹¹⁶ *See* Memorandum de Entendimiento entre el Gobierno de la Republica Oriental de Uruguay y la Secretaría General de la Organización de los Estados Americanos para la Ejecución del Proyecto “Protección Ambiental y Desarrollo Sostenible del Sistema Acuífero Guaraní,” art. 4 (1)(a) and Annex III.

¹¹⁷ Information provided by Dr. Luis Amore, GAS Project Secretary-General. The intergovernmental Plata River Basin Committee (“CIC”) currently describes and links to the GAS Project. *See* CIC Programas en la Cuenca, *available at* <http://www.cicplata.org/?id=progrsc>. [Spanish only] (viewed and current on 28 April 2009).

¹¹⁸ <http://www.sg-guarani.org/index/site/proyecto/pto001.php>. (viewed and current on 1 February 2009).

The Project's seven components include:¹¹⁹

- Expansion and consolidation of the current scientific and technical knowledge base regarding the Guaraní Aquifer System;
 - According to the World Bank, the purpose is to develop a “sound scientific and technical basis for the determination of the priority transboundary issues and associated strategic remedial actions for the protection of the [GAS].”¹²⁰
- Joint development and implementation of a Guaraní Aquifer System Management Framework, based upon an agreed Strategic Program of Action;
 - The “core” of the project, providing for an “agreed technical, institutional, financial, and legal framework for the management” of the GAS, including harmonization and enhancement of data gathering networks; creation of a data management system; development of joint institutional arrangements for the management of the GAS; and formulation of strategic actions “leading to the integration and optimization of development initiatives and proposals” within the GAS.¹²¹
- Enhancement of public and stakeholder participation, social communication and environmental education;
 - This component provides for the practical involvement of stakeholders in decision-making through both “formal and informal educational and informational programming.” The project envisions a Guaraní Aquifer System Citizens’ Fund to provide cost-sharing funding to NGOs and academic institutions.¹²²
- Evaluation and monitoring of the project and dissemination of project results;
 - This component involves tracking of agreed indicators, including GEF-IW process, stress reduction, and environmental status indicators, and the implementation of a monitoring and evaluation system to oversee and evaluate Project progress and disseminate project results.

¹¹⁹ See <http://www.sg-guarani.org/index/site/proyecto/pto001.php>. (viewed and current on 1 February 2009).

¹²⁰ See WB Project Appraisal, at 12.

¹²¹ See WB Project Appraisal, at 12.

¹²² See WB Project Appraisal, at 12.

- Development of regionally-appropriate groundwater management and mitigation measures in identified critical areas (“hot spots”);
 - The objective is to develop practical mechanisms and measures to mitigate priority problems in hot spots and to develop and test effective means and costs of quantifying, analyzing, managing, and remediating the impacts of known threats affecting specific areas in the GAS.
- Consideration of the potential to use the Guaraní Aquifer System's “clean” geothermal energy; and
 - The objective is to quantify and determine the “potential value” of the GAS as a source of “clean” geothermal energy and to communicate this assessment and appropriate guidelines to stakeholders, including GAS participating countries’ energy ministries.
- Project coordination and management.
 - This component includes activities to be carried out by the GAS General Secretariat and the operational activities of the coordinating and executing unit. *See **Organizational Structure**.*

The GAS Project posts semi-annual reports on the implementation of the project, the latest being from April 2007.¹²³

In anticipation of the expected termination of the GAS Project on 30 January 2009, the Member States developed the SAP to continue the work of the project. Specifically, under the SAP the Member States plan to implement the following regional actions:

- Realization and maintenance of databases and the GAS Information System (SISAG), as well as a GAS monitoring system;
- Dissemination of knowledge developed during the GAS Project, building of institutional and technical capacities in the GAS countries, and continued support for sustained cooperation;
- Continued public participation, public awareness, as well as continued implementation of common principles;
- Implementation of scientific programs in strategic areas; and
- Economic and environmental evaluation of current and future uses of the GAS.¹²⁴

¹²³ See <http://www.sg-guarani.org/index/site/proyecto/pto005e.php>. (viewed and current on 1 February 2009).

¹²⁴ See SAP Executive Summary, available at <http://www.sg-guarani.org/pea/resumo.pdf>. [summary of Strategic Regional Actions]. (viewed and current on 1 February 2009).

6. Organizational Structure

i) GAS Project

The Project Steering Committee (“PSC”) is the highest-level decision-making body for the project’s execution phase. Members of the PSC are representatives from the four Member States with responsibility for foreign affairs, water resources, and the environment.

As initially laid out in the Global Environment Facility Trust Fund Grant Agreement (*see Funding and Financing*), the OAS as recipient of the World Bank/GEF funding is required to carry out the project through a General Secretariat with technical staff to handle the daily management of the Project. According to the website, the General Secretariat:

is in charge of service consultancy contracts and of the elaboration of management proposals for the Guaraní Aquifer. It is directly connected to the [PSC] through the [OAS, as the] international executing agency of the Project. It is located in Montevideo, Uruguay.¹²⁵

National coordinators forming the aforementioned Coordination Group work with the General Secretariat to implement and “guarantee the fluency” of the Member States’ operation of the Project. This Group periodically determines regional and country operating plans. National Coordinators also are responsible for the administration of each Member State’s National Project Executing Unit (“NPEU”). These Coordinators also act as liaisons with civil society and the national governmental bodies, involving a variety of civil society elements in their respective countries.¹²⁶

For Argentina, institutional responsibility for implementing the Project resides with the Under Secretary of Water Resources of the Federal Ministry of Planning, Public Investments and Services. In Brazil, such responsibility is held by the Secretariat of Water Resources of the Ministry of Environment. In Paraguay, the General Directorate for Protection and Conservation of Water Resources of the Secretariat of Environment is tasked with responsibility for the Project. Lastly, in Uruguay responsibility rests with the National Directorate of Hydrography of the Ministry of Transport and Public Works.¹²⁷

ii) GAS Strategic Action Program

The SAP outlines a structure for continued GAS cooperation among the Member States. At the top of the structure, the Member States plan to create a Regional Cooperation Council, maintaining the structure of the GAS Project Steering Committee. At the next level, the Member States plan to have national (or for federal states, state or regional) support units (based on the National Project Execution Units of the GAS Project), and local support commissions. Mirroring the role of the OAS Secretary-General, the Member States plan to create a Coordination Office (Oficina de Articulación) which will oversee various

¹²⁵ <http://www.sg-guarani.org/index/site/proyecto/pto002.php>. (viewed and current on 1 February 2009).

¹²⁶ See <http://www.sg-guarani.org/index/site/proyecto/pto002.php>. (viewed and current on 1 February 2009).

¹²⁷ See <http://www.sg-guarani.org/index/site/proyecto/pto002.php>. (viewed and current on 1 February 2009).

committees tasked with managing information systems, monitoring, local support, and capacity-building.¹²⁸

7. Relationships

The GAS Project is dependent on international donor collaboration and funds to operate. *See **Funding and Financing**.*

8. Decision Making

The Project Steering Committee is the highest level decision-maker with respect to the execution of a GAS project. *See **Organizational Structure**.*

9. Dispute Resolution

There is no dispute resolution provision regarding the GAS Project generally, but the Global Environment Facility Trust Fund Grant Agreement (*see **Funding and Financing***) provides that any dispute arising out of or related to the agreement that cannot be settled shall be finally settled by arbitration in Washington, D.C. in accordance with the UNCITRAL Arbitration Rules in force on the date of the agreement. Each of the subordinate participation agreements between the OAS and the four Member States contains a dispute resolution provision providing for possible arbitration.

The SAP does not provide specific details regarding dispute resolution among the four countries for GAS cooperation going forward.

10. Data Information Sharing, Exchange, and Harmonization

The GAS Project components include the joint development and implementation of a Guaraní Aquifer System Management Framework. In the new SAP structure, the Member States will maintain databases and the GAS information system. *See **Functions** and **Organizational Structure**.*

11. Notifications

The GAS Project components include the evaluation and monitoring of the Project and dissemination of the Project results. *See **Functions**.*

12. Funding and Financing

The GAS Project's budget is approximately US \$27.2 million, of which approximately US \$13.9 million is contributed by GEF and US \$12.1 million by the four Member States. The IAEA, OAS, Netherlands/World Bank Cooperation Project, and the German Ministry for Economic Cooperation and Development/Federal Institute for Geosciences and Natural Resources contribute collectively

¹²⁸ *See SAP Executive Summary. [Plans for the structure of cooperation, functioning, and coordination]*

approximately US \$1.2 million.¹²⁹ According to the IAEA, its contribution to the Project is to assist the project develop analytical techniques of isotope hydrology.¹³⁰

In 2002, the World Bank and OAS concluded the GEF Trust Fund Grant Agreement for the Environmental Protection and Sustainable Development of the Guaraní Aquifer System Project and stipulated the grant's terms. Pursuant to this agreement, OAS entered into separate participation agreements with the four Member States. The 2008 SAP states that GAS cooperation going forward will be funded by the four Member States.¹³¹ The SAP also estimates the annual costs of operations at US \$288,000 per year.¹³²

13. Benefit Sharing

No specific provision.

14. Compliance and Monitoring

The GAS Project envisioned a “comprehensive Operational Monitoring and Evaluation System” to ensure supervision and assessment of outcomes, including the tracking of GEF-IW indicators. The monitoring system would be coordinated centrally within the General Secretariat working in close coordination with NPEUs for monitoring at the local level.¹³³

As mentioned above, the SAP envisions continued monitoring and implementation efforts to be overseen by the Coordination Office and committees on information sharing and monitoring. *See also Functions and Organizational Structure.*

15. Participation and the Role of Multiple Stakeholders

The World Bank notes that national and sub-national governments of the participating countries, as well as “the population in the [GAS] region, local communities, NGOs, and academic institutions interested in

¹²⁹ GEF—Managing Groundwater Resources: The Guaraní Aquifer, Jan. 2006, *available at* http://www.gefweb.org/Projects/focal_areas/iw/documents/Guarani_Aquifer.pdf; *see also* Presentation by Luiz Amore—Information to Support Sustainable Water Management: From Local to Global Levels, 15-18 Sep. 2003 (citing funding of USD 26.7 million), *available at* http://www.mtm-conference.nl/mtm4/docs/Sh_Amore.pdf; Uso Sostenible del Sistema Acuífero Guaraní, *available at* <http://www.sag-py.org>. (viewed and current on 28 April 2009)

¹³⁰ More specifically, the IAEA aims to enhance scientific knowledge by defining key hydrodynamic features of the aquifer; assessing water quality; improving analysis of groundwater age, origin, evolution, geothermal character, etc.; assembling a comprehensive, multilateral database to be shared among the four countries; and supporting the training and participation of experts. *See* Guarding the Guaraní: Improving Management of South America's Precious Groundwater, *available at* <http://www.iaea.org/Publications/Booklets/Ssp/guarani.html>. (viewed and current on 28 April 2009)

¹³¹ *See* SAP Executive Summary, at 13.

¹³² *See* SAP, at 93.

¹³³ *See* WB Project Appraisal, at 27-28.

sustainable groundwater use in the region—have been, and continue to be, involved in the project design and institutional arrangements for project implementation.”¹³⁴ The GAS Project design provided for NGO, individual, private sector, and indigenous community involvement through the NPEUs.¹³⁵ Also, as mentioned under **Functions**, a Guaraní Citizens’ Fund was established to support small projects to be implemented by NGOs (including community-based public education and awareness campaigns). Other project components, including expansion of the knowledge base, development of monitoring systems, and capacity-building have involved the academic community.

See also **Functions** and **Organizational Structure**.

16. Dissolution and Termination

The GAS Project’s implementation was set to run until February 2009. The four Member States plan to continue implementation of strategic actions and basic principles indefinitely under the SAP.

17. Additional Remarks

N/A

18. Websites and References

- Antonion Herman Benjamín, et al., *The Water Giant Awakes: An Overview of Water Law in Brazil*, 83 TEX. L. REV. 2185 (2004).
- Brazil’s Agência Naciocal de Aguas—Projeto Aquífero Guaraní, *available at* <http://www.ana.gov.br/guarani/index.htm>.
- IW: Learn Environmental Protection and Sustainable Integrated Management of the Guaraní Aquifer, *available at* http://www.iwlearn.net/iw-projects/Fsp_112799467571.
- Lilian del Castillio-Laborde, *Emerging Legal Principles for Transboundary Aquifers and the South American Guaraní Aquifer*, *available at* <http://www.inweb.gr/twm4/abs/DEL%20CASTILLO%20LABORDE%20Lilian2.pdf>.
- Secretaría General—Proyecto Sistema Acuífero Guaraní, *available at* www.sg-guarani.org.
- The World Bank—The Guaraní Aquifer Initiative for Transboundary Groundwater Management, Case Profile No. 9 in *Sustainable Groundwater Management: Lessons from Practice*, *available at* http://siteresources.worldbank.org/INTWRD/Resources/GWMATE_English_CP9.pdf.

¹³⁴ WB Project Appraisal, at 25.

¹³⁵ The World Bank also worked into its component on stakeholder participation a specific “Indigenous Peoples Strategy.” See WB Project Appraisal, at 26-27.

International Commission for the Conservation of Atlantic Tunas (ICCAT)

1. Legal Basis

The International Commission for the Conservation of Atlantic Tunas (“ICCAT” or the “Commission”) is a regional fisheries management organization (“RFMO”) established by the International Convention for the Conservation of Atlantic Tunas, prepared and adopted at a Conference of Plenipotentiaries in Rio de Janeiro, Brazil in 1966.¹³⁶ The Convention entered into force in 1969.

2. Member States

As of 31 December 2008, ICCAT had 48 Member States: Albania, Algeria, Angola, Barbados, Belize, Brazil, Canada, Cape Verde, China, Côte d’Ivoire, Croatia, Egypt, Equatorial Guinea, European Community, France (St. Pierre & Miquelon), Gabon, Ghana, Guatemala, Guinea, Honduras, Iceland, Japan, Korea Republic, Libya, Mauritania, Mexico, Morocco, Namibia, Nicaragua, Nigeria, Norway, Panama, Philippines, Russia, Senegal, Sierra Leone, South Africa, St. Tome and Principe, St. Vincent and the Grenadines, Syria, Trinidad and Tobago, Tunisia, Turkey, United Kingdom (Overseas Territories), United States, Uruguay, Vanuatu and Venezuela.¹³⁷

Pursuant to Article XIV of the Convention, the Convention remains open for signature by the Government of any State which is a member of the United Nations or any of its Specialized Agencies.¹³⁸ Instruments of ratification or approval are to be deposited with the Director-General of the Food and Agriculture Organization of the United Nations (“FAO”).¹³⁹

Article XIV of the Convention also permits “any inter-governmental economic integration organization constituted by States that have transferred to it competence over the matters governed by th[e] Convention, including the competence to enter into treaties in respect of those matters” to sign and/or adhere to the Convention.¹⁴⁰ Upon deposit of formal confirmation or adherence, any such organization will be considered a full Contracting Party. However, that organization’s member states shall thereby cease to be separate parties to the Convention, and are to transit a formal notification to that effect to the Director General of the FAO.¹⁴¹

¹³⁶ ICCAT, Introduction, *available at*: <http://iccat.int/en/introduction.htm>; International Convention for the Conservation of Atlantic Tunas (“Convention”), 14 May 1966 (673 U.N.T.S. 63), art. III(1).

¹³⁷ ICCAT, Report for Biennial Period, 2008-09, Part I (2008) – Vol. 1 (2009) (“ICCAT 2008-09 Biennial Report”), at 1.

¹³⁸ Convention, art. XIV(1).

¹³⁹ Convention, art. XIV(2).

¹⁴⁰ Convention, art. XIV(4); *see also* Protocol adopted by the Conference of Plenipotentiaries of the States Parties to the International Convention for the Conservation of Atlantic Tunas (“Paris Protocol”), 10 July 1984 (OJ L 162/41), art. XIV.

¹⁴¹ Convention, art. XIV(5)-(6).

In addition, pursuant to the 2003 Recommendation by ICCAT on Criteria for Attaining the Status of Cooperating Non-Contracting Party, Entity or Fishing Entity in ICCAT, the Commission will also grant the special status of “Cooperator” to interested parties, which bestows many of the same rights and obligations enjoyed by Contracting Parties.¹⁴²

3. Geographical Scope

The Convention applies to “all waters of the Atlantic Ocean, including the adjacent seas.”¹⁴³

4. Legal Personality

ICCAT is an intergovernmental organization responsible for the conservation of tunas and tuna-like species in the Atlantic Ocean and adjacent waters.¹⁴⁴

Pursuant to a 1971 agreement between ICCAT and Spain, the Commission’s permanent seat is located in Madrid, pursuant to which the Spanish Government has recognized ICCAT’s juridical personality and its capacity to enter into contracts, purchase and dispose of personal property and real estate, and initiate legal action.¹⁴⁵ In addition, the Spanish Government has recognized the inviolability of the Commission’s premises and its correspondence; agreed not to impede the passage to or from the Seat persons having official functions to perform therein or otherwise invited by ICCAT; accorded jurisdictional immunity and immunity from execution to the Commission’s property and assets; and exempted the Commission from all taxes.¹⁴⁶ The Spanish Government has also recognized the diplomatic privileges and immunities of the ICCAT Chairman and Vice-Chairmen, and the representatives of Member States attending meetings of the Commission or its subsidiary bodies.¹⁴⁷

5. Functions

ICCAT is committed to maintaining tuna populations at levels which permit the maximum sustainable catch for food and other purposes and to ensure the effective exploitation of those fishes in a manner consistent with that catch.¹⁴⁸ In order to carry out the objectives of the Convention, ICCAT monitors and studies the populations of approximately thirty fish species, including Atlantic bluefin, skipjack, yellowfin, albacore, bigeye tuna, swordfish, blue marlin, various mackerals and Atlantic bonito. To do

¹⁴² ICCAT, *Becoming a Member*, *available at*: www.iccat.int/en/membership.htm.

¹⁴³ Convention, art. I; *see also* ICCAT, *Convention Area*, *available at*: <http://iccat.int/en/convarea.htm>.

¹⁴⁴ ICCAT, *Introduction*, *available at*: <http://iccat.int/en/introduction.htm>.

¹⁴⁵ Agreement on Seat between the Spanish State and the International Commission for the Conservation of Atlantic Tunas, done March 29, 1971, entered into force October 28, 1971 (“Seat Agreement”), art. 1.

¹⁴⁶ Seat Agreement, arts. 5-6, 8-13.

¹⁴⁷ Seat Agreement, art. 15.

¹⁴⁸ Convention, preamble, art. V(2).

so, ICCAT oversees and coordinates research on various aspects of Atlantic tuna fisheries with an eye to the effects of fishing on stock abundance.¹⁴⁹ Such studies include “research on the abundance, biometry and ecology of the fishes; the oceanography of their environment; and the effects of natural and human factors upon their abundance.”¹⁵⁰ ICCAT also compiles statistics on other fish species caught during tuna fishing (i.e., bycatch).

Article IV of the Convention specifically authorizes ICCAT to utilize the technical and scientific services and information provided by its Member States and other public and private institutions in carrying out its tasks, and permits the Commission, where possible, to supplement such research with its own studies.¹⁵¹

Pursuant to Article VIII of the Convention, the Commission is empowered, “on the basis of scientific evidence, [to] make recommendations designed to maintain the populations of tuna and tuna-like fishes that may be taken in the Convention area at levels which will permit the maximum sustainable catch.”¹⁵² These recommendations may be made only on the proposal of an appropriate Panel(s), if established, and with the approval of at least two-thirds of the Member States.¹⁵³ (See **Decision Making.**)

ICCAT, however – along with other RFMOs – has at times been criticized for failing to adequately protect the fishing stocks under its purview, ensure member compliance with its recommendations, and prevent illegal, unregulated and unreported (IUU) fishing, particularly with respect to bluefin tuna.¹⁵⁴ Member States have not always complied with ICCAT measures, and although ICCAT may recommend that Member States prohibit imports from other Member States that have exceeded their quotas for two consecutive reporting periods, it has utilized this measure only once, against Equatorial Guinea.¹⁵⁵

In response to some of these criticisms, ICCAT announced at its 2009 annual meeting in Recife, Brazil the adoption of further measures to safeguard bluefin tuna stocks and to strengthen controls, including: reduction of the total allowable catch from 22,000 to 13,500 tons for 2010; further reductions in fishing capacity and the number of authorized joint fishing operations; and shortening the fishing season for

¹⁴⁹ ICCAT, Introduction, *available at*: <http://iccat.int/en/introduction.htm>.

¹⁵⁰ Convention, art. IV(1).

¹⁵¹ Convention, art. IV(1).

¹⁵² Convention, art. VIII(1)(a).

¹⁵³ Convention, art. VIII(1)(b). If no appropriate Panel has been established, the Commission may make a recommendation on its own initiative.

¹⁵⁴ See, e.g., Vivienne Walt, *The Sushi Wars: Can the Bluefin Tuna be Saved?*, TIME, 28 Nov. 2008; Christine Goepp Towberman, *Fishing for a Solution: The Role of the United States in Preventing Collapse of the Eastern Atlantic Bluefin Fishery*, 38 ENVTL. L. REP. NEWS & ANALYSIS 10102, 10103-04 (2008); Christopher J. Carr & Harry N. Scheiber, *Dealing with a Resource Crisis: Regulatory Regimes for Managing the World's Marine Fisheries*, 21 STAN. ENVTL. L.J. 45, 53 (2002).

¹⁵⁵ Towberman, *supra*, at 10109.

purse seiners to one month each year.¹⁵⁶ ICCAT scientists also agreed, as a precautionary measure, to re-evaluate bluefin tuna stocks in 2010, and to suspend fishing completely if a serious risk of stock collapse was detected. These measures were nonetheless criticized by some environmental organizations as inadequate.¹⁵⁷

6. Organizational Structure

Each Member State to the Convention may be represented on the Commission by no more than three delegates, who in turn may be supported by experts and advisors.¹⁵⁸

Regular meetings of the Commission occur once every two years.¹⁵⁹ At each meeting ICCAT elects a Chairman, a first Vice Chairman and a second Vice Chairman to administer the procedural aspects of its meetings; those elected may not serve more than two consecutive terms.¹⁶⁰ Special meetings may also be called at the request of a majority of the Contracting Parties or by decision of the Council.¹⁶¹ Except as otherwise provided, decisions of the Commission are made by majority vote, with each Member State entitled to one vote.¹⁶² Two thirds of the Member States constitutes a quorum.¹⁶³

In addition to the Commission, the Convention provides for a Council, consisting of the Chairman and Vice-Chairmen of the Commission, along with the representatives of between four and eight of the Member States (other than the Member States of which the Chairman and Vice-Chairmen are nationals).¹⁶⁴ The Council, which meets at least once in between regular meetings of the Commission, determines the work to be carried out by ICCAT's staff; its decisions are communicated to the Executive

¹⁵⁶ ICCAT, "ICCAT fortifies its management of bluefin tuna fisheries," 2009 Annual ICCAT Meeting Press Release (Nov. 16, 2009); "Fisheries: Commission welcomes ICCAT's decisive action to save bluefin tuna and other marine species," Nieuwsbank (Nov. 16, 2009), *available at*: www.nieuwsbank.nl/en/2009/11/16/R017.htm.

¹⁵⁷ "ICCAT Proves Incapable of Managing Bluefin Tuna and Sharks," Oceana, Press Release (Nov. 15, 2009), *available at*: <http://na.oceana.org/en/news-media/press-center/press-releases/iccat-proves-incapable-of-managing-bluefin-tuna-and-sharks>; Anne Eckstein, "ICCAT conservatively settles for reducing bluefin tuna quotas," Europolitics (Nov. 18, 2009), *available at*: www.europolitics.info/sectorial-policies/iccat-conservatively-settles-for-reducing-bluefin-tuna-quotas-art254595-11.html.

¹⁵⁸ Convention, art. III(2); Rules of Procedure, Rule 1.

¹⁵⁹ Rules of Procedure, Rule 2.

¹⁶⁰ Convention, art. III(5); Rules of Procedure, Rules 6-7.

¹⁶¹ Convention, art. III(4); Rules of Procedure, Rule 3.

¹⁶² Convention, art. III(3).

¹⁶³ Rules of Procedure, Rule 9(3).

¹⁶⁴ Convention, art. V(1). If the number of Contracting Parties exceeds forty, the Commission is authorized to elect a further two Contracting Parties to be represented on the Council. *Id.*; *see also* Rules of Procedure, Rule 11(1).

[DRAFT]

Secretary.¹⁶⁵ Council members are elected at each regular Commission meeting, and in doing so the Commission is to give “due consideration to the geographic, tuna fishing and tuna processing interests of the Contracting Parties,” as well as “the equal right of the Contracting Parties to be represented on the Council.”¹⁶⁶

The Executive Secretary is appointed by the Commission and oversees ICCAT’s day-to-day administration and staff. As directed by the Commission, the Executive Secretary is authorized to: (a) coordinate programs of investigation by the Member States; (b) prepare budget estimates for the Commission; (c) account for and disburse funds of the Commission in accordance with its budget; (d) arrange for cooperation with other international organizations; (e) prepare the collection and analysis of data necessary to accomplish the Commission’s work, particularly data relating to the current and maximum sustainable catch of tuna stocks; and (f) prepare for approval by the Commission scientific, administrative and other reports of the Commission and its subsidiary bodies.¹⁶⁷ The Executive Secretary is also charged, in consultation with the Chairman, with preparing the provisional agenda for each regular meeting of the Commission, pursuant to the procedures set forth in Rule 8 of the Rules of Procedure.

The Convention also provides for the establishment of several Panels, grouped by species and/or geographic area, to carry out the Convention’s objectives. Individual Panels: (a) are responsible for collecting and reviewing scientific information relating to the species or geographic area under their purview; (b) may propose to the Commission recommendations for joint action by Member States on the basis of their scientific investigations; and (c) may recommend to the Commission studies and investigations, or coordination of such studies and investigations among Member States, necessary to obtain information relating to their mandate.¹⁶⁸

The Commission is charged with establishing individual Panels, which hold regular meetings in conjunction with the regular meetings of the Commission.¹⁶⁹ Membership on any particular Panel is open to all Member States who wish to join, upon written notification to the Chairman of the Commission. Each Member State may be represented on a Panel by its delegates or alternates, as assisted by experts or advisers.¹⁷⁰ Currently, four such Panels have been established: Tropical Tunas (yellowfin, bigeye and skipjack); Northern Temperate Tunas (albacore and Atlantic bluefin); Southern temperate tunas (albacore and southern bluefin); and Other Species (swordfish, billfishes and small tunas).¹⁷¹

¹⁶⁵ Convention, art. V(2).

¹⁶⁶ Convention, art. V(1).

¹⁶⁷ Convention, art. VII; Financial Regulations, Regulations 2-3.

¹⁶⁸ Convention, art. VI.

¹⁶⁹ Rules of Procedure, Rule 12.

¹⁷⁰ Rules of Procedure, Rule 12.

¹⁷¹ ICCAT, Organization, *available at*: www.iccat.int/en/organization.htm.

ICCAT has also established two standing committees. The first, the Standing Committee on Finance and Administration, is responsible for advising the Commission on matters relating to the Executive Secretary and staff, the budget of the Commission, the time and place of meetings of the Commission and Commission publications.¹⁷² In addition, ICCAT has established a Standing Committee on Research and Statistics (“SCRS”), which develops and recommends to the Commission policies and procedures relating to the collection, compilation, analysis and dissemination of fishery statistics for the Convention area, and reviews the Commission’s various research programs.¹⁷³ Any Member State may join either standing committee.

Importantly, as noted in the ICCAT Field Manual, “[p]ractically all of the Commission’s scientific work and data collection efforts are accomplished by the Contracting Parties themselves. The Secretariat’s role is more of being a focal point for data collation/assimilation and coordinating access by scientists to the common databases.”¹⁷⁴ This reliance on ICCAT’s Member States for the bulk of the scientific data underpinning the Commission’s reports and recommendations has been criticized by some for leading to Commission recommendations that are too biased towards the economic interests of states.¹⁷⁵

ICCAT’s official languages are English, French and Spanish.¹⁷⁶

7. Relationships

Article XI of the Convention specifically contemplates a “working relationship” between the Commission and the FAO.¹⁷⁷ To that end, in 1973 ICCAT and the FAO entered into an agreement to “ensure cooperation . . . by consultation, coordination of effort, mutual assistance and joint action in fields of common interest.”¹⁷⁸ Pursuant to that agreement, ICCAT is entitled to send observers to sessions of the FAO Committee on Fisheries and its subsidiary bodies, to sessions of the FAO Conference and Council and other meetings of the FAO which deal with matters relating to the conservation and management of the living resources of the sea; in return, the FAO is entitled to send representatives to all meetings of

¹⁷² Rules of Procedure, Rule 13(1).

¹⁷³ Rules of Procedure, Rule 13(2). Reporting to the SCRS are several species groups, which review available fishery data and carry out stock assessments for species of interest to the Commission. Specific groups include: tropical tunas; albacore; bluefin tuna; billfishes; swordfish; sharks; small tunas; and southern bluefin tuna. ICCAT, Standing Committee on Research and Statistics (SCRS), *available at*: www.iccat.int/en/SCRS.htm.

¹⁷⁴ ICCAT Field Manual, Section 1.1, at 3.

¹⁷⁵ See, e.g., Elizabeth deLone, *Improving the Management of the Atlantic Tuna: The Duty to Strengthen the ICCAT in Light of the 1995 Straddling Stocks Agreement*, 6 N.Y.U. ENVTL. L.J. 656, 661 (1998) (also criticizing the non-binding nature of the Commission’s recommendations); Jon Van Steenis, *Pirates as Poachers: International Fisheries Law and the Bluefin Tuna*, 29 CAP. U. L. REV. 659, 662-64 (2001).

¹⁷⁶ Convention, art. III(6).

¹⁷⁷ Convention, art. XI(1).

¹⁷⁸ Agreement Between the Food and Agriculture Organization of the United Nations and the International Commission for the Conservation of Atlantic Tunas, adopted by the FAO Conference at its Third Regular Meeting (Paris, Nov.-Dec. 1973) (“FAO Agreement”), art. 1.

ICCAT and its subsidiary bodies.¹⁷⁹ The Agreement further endorses the “fullest exchange of information and documents concerning matters of common interest,” close and regular cooperation and consultation, and, where possible, arrangements for joint action.¹⁸⁰

The Convention also explicitly endorses cooperation between the Commission and other international fisheries commissions and relevant scientific organizations, and authorizes the Commission to enter into agreements with such organizations.¹⁸¹ It also authorizes the Commission to invite “any appropriate international organization and any Government which is a member of the United Nations or of any Specialized Agency of the United Nations” to send observers to meetings of the Commission and its subsidiary bodies.¹⁸² Such observers may address the meeting and otherwise participate in its work, but may not vote.¹⁸³

8. Decision Making

As noted above, ICCAT decisions are taken by a majority of the Member States of the Commission, except as provided by Article VIII(1)(b)(i) of the Convention, with each Member State entitled to one vote.¹⁸⁴

ICCAT recommendations become effective for all Member States six months after notification by the Commission, subject to the provisions of Article VIII(3).¹⁸⁵ Pursuant to that article, any Member State member of a Panel (or, in the case of recommendations made on the initiative of the Commission, any Member State) may object to a recommendation within the six-month notification period; should such an objection be made, the recommendation will not become effective for a further sixty days.¹⁸⁶ Once an objection is made, any other Member State may likewise object, either within the sixty-day period or within forty-five days of the last objection, whichever is later; the recommendation in question will then become effective upon the expiration of the extended period(s) for objection, except for those Member States that have objected.¹⁸⁷

¹⁷⁹ FAO Agreement, art. 2.

¹⁸⁰ FAO Agreement, arts. 3-6.

¹⁸¹ Convention, art. XI(2).

¹⁸² Convention, art. XI(3); Rules of Procedure, Rule 5.

¹⁸³ Rules of Procedure, Rule 5.

¹⁸⁴ Rules of Procedure, Rule 9(1)-(2).

¹⁸⁵ Convention, art. VIII(2).

¹⁸⁶ Convention, art. VIII(3)(a).

¹⁸⁷ Convention, art. VIII(3)(b)-(c).

In the event that less than one-fourth of the Member States object, those Member States will be provided with a further sixty-day period to reaffirm their objections; upon the expiration of that further period, the recommendation shall become effective, except with respect to those Member States who reaffirm their objections.¹⁸⁸

In the event that more than one-fourth but less than a majority of the Member States object, the recommendation shall become effective, except with respect to those Member States who have objected.¹⁸⁹

If a majority of Member States object, the recommendation shall not become effective.¹⁹⁰

Any Member State may withdraw an objection to a recommendation at any time. The recommendation will become effective with respect to that Member State if it is already in effect, or at such time as it becomes effective pursuant to the terms of Article VIII.¹⁹¹ The Commission will notify the Member States upon receipt of each objection (as well as any withdrawals) and the entry into force of any recommendation.

In “cases of special necessity, where a decision cannot be deferred until the next meeting of the Commission,” a matter may be decided between regular meetings by intersessional vote (either electronically or via other means of communication), pursuant to the procedures set forth in Rule 9 of the Procedural Rules.

9. Dispute Resolution

No specific provision.

10. Data Information Sharing, Exchange, and Harmonization

Every two years, ICCAT submits a report on its work and findings, which is transmitted by the Executive Secretary at the end of the meeting to all Member States of the Commission, FAO and any government or international organization invited to send observers to the meeting.¹⁹² The Council, Panels and other subsidiary bodies also adopt reports at the end of each meeting, which are then submitted to the appropriate parent body.¹⁹³

¹⁸⁸ Convention, art. VIII(3)(d)-(e).

¹⁸⁹ Convention, art. VIII(3)(f).

¹⁹⁰ Convention, art. VIII(3)(g).

¹⁹¹ Convention, art. VIII(4).

¹⁹² Rules of Procedure, Rule 15. The reports may be downloaded from the ICCAT site. *See* ICCAT, ICCAT Biennial Reports, *available at*: www.iccat.int/en/pubs_biennial.htm.

¹⁹³ Rules of Procedure, Rule 15.

Generally speaking, ICCAT collects two main types of data. Fishery independent data includes research vessel surveys and other studies, such as those conducted with tagging programs.¹⁹⁴ However, given the migratory behavior and wide spatial distribution of most large tunas, ICCAT generally must rely on fishery-dependent data sources, such as logbooks, observer programs, port sampling, factory/market sampling and international trade (import/export) statistics.¹⁹⁵

ICCAT also maintains a number of statistical databases, containing data on fleet characterization (number and type of fishing vessels); nominal catch (by species, region, gear, flag), catch and effort (fishing fleet, time, gear and time and area strata); and fish size (size samples and catch-at-size estimates).¹⁹⁶ These databases are accessible through the Commission's website.

11. Notifications

(See Data Information Sharing, Exchange, and Harmonization.)

12. Funding and Financing

The Commission is charged with adopting a budget for the two years that follow each regular meeting.¹⁹⁷ The Council reviews the second half of the biennial budget at its regular meeting between Commission meetings, and may reappportion amounts in the budget for the second year within the total budget approved by the Commission. In accounting for the expenditures of the Commission, the Financial Regulations authorize the establishment of a General Fund, a Working Capital Fund and such trust funds as are necessary.¹⁹⁸ The total budget for 2009 was 2,714,756 euros.¹⁹⁹

Each Member State is obligated to contribute annually to the budget in an amount calculated in accordance with a scheme provided for in the Financial Regulations adopted by the Commission, as modified by the Madrid Protocol.²⁰⁰ Pursuant to those regulations, individual appropriations are determined in part by "each Contracting Party's fixed basic fees for Commission and Panel

¹⁹⁴ Tunas and billfishes are tagged in order to learn more about their movements, migrations, stock structure, growth, population size, mortality, schooling behavior, and physiology. Tagging is also used to study the effects of fishing patterns on the fish and fisheries. Currently ICCAT has developed a cooperative tagging program in the Atlantic Ocean and adjacent seas, through which various states participate. ICCAT, Tagging, *available at*: www.iccat.int/en/Tag-Desc.htm.

¹⁹⁵ ICCAT Field Manual, Section 1.2, at 3.

¹⁹⁶ ICCAT, Access to ICCAT Statistical Databases, *available at*: www.iccat.int/en/accessingdb.htm; ICCAT Field Manual, Section 1.3, at 4-5.

¹⁹⁷ Convention, art. X(1).

¹⁹⁸ Financial Regulations, Regulations 5-8.

¹⁹⁹ ICCAT, Finances, *available at*: www.iccat.int/en/finances.htm.

²⁰⁰ See Protocol adopted by the Conference of Plenipotentiaries of the Contracting Parties to the International Convention for the Conservation of Atlantic Tunas ("Madrid Protocol"), done at Madrid, June 5, 1992, art. 1.

membership”²⁰¹ and in part by taking into account “the total round weight of catch and net weight of canned products of Atlantic tuna and tuna-like fishes and the degree of economic development of the Contracting Parties.”²⁰² For the purposes of the latter calculation, each ICCAT member is assigned to one of four groups, depending on the respective sizes of its GNP and catch.²⁰³ The scheme of annual contributions is established and may be modified only by the agreement of Member States present and voting.²⁰⁴ The Executive Secretary notifies each Member State of its yearly assessment.

The Commission is also authorized to finance appropriations for any financial period from voluntary contributions from Member States of the Commission or from other sources, including income accruing to the Commission.²⁰⁵

The Commission may suspend the voting rights of any Member State whose arrears are greater or equal to the amount due from it for the preceding two years.²⁰⁶

13. Benefit Sharing

No specific provision.

14. Compliance and Monitoring

Pursuant to Article IX of the Convention, each Member State agrees to “take all action necessary to ensure the enforcement of the Convention” and to “transmit to the Commission . . . a statement of the action taken by it for these purposes.”²⁰⁷

²⁰¹ Convention, art. X(2); Financial Regulations, Regulation 4(1)(a) (providing that “each Contracting Party shall contribute annually to the Budget of the Commission an amount equivalent to US\$ 1,000 for the Commission membership and an amount equivalent to US\$ 1,000 for each panel membership”).

²⁰² Convention, art. X(2).

²⁰³ Financial Regulations, Regulation 4(1)(b)(i) (“Group A: members defined as developed market economies by the appropriate United Nations economic organizations. Group B: members not included in Group A whose GNP per capita exceeds [US\$ 2,000] (adjusted to 1991 dollar values) and whose combined round weight of catch and net weight of canned products of Atlantic tuna and tuna-like fishes exceeds [5,000 t]. Group C: whose GNP per capita exceeds [US\$ 2,000] or whose combined round weight of catch and net weight of canned products of Atlantic tuna and tuna-like fishes exceeds [5,000 t]. Group D: members not included in groups A, B and C.”); *id.*, Regulation 4(1)(b)(ii) (assigning 0.25 percent of the total budget to each member of Group D; 1.0 percent of the total budget to each member of Group C; 3.0 percent of the total budget to each member of Group B; and assigning the remaining budget to the members of Group A).

²⁰⁴ Convention, art. X(2).

²⁰⁵ Financial Regulations, Regulation 4(6).

²⁰⁶ Convention, art. X(8); Rules of Procedure, Rule 9(20).

²⁰⁷ Convention, art. IX(1).

[DRAFT]

The Member States also have agreed to furnish to the Commission any available statistical, biological and other scientific information necessary for the Commission to carry out its functions under the Convention, or, if unable to obtain and/or furnish such information, to allow the Commission (through its Member States) to obtain it on a voluntary basis directly from companies and individual fishermen.²⁰⁸

The Member States also have agreed to collaborate with each other in implementation of the Convention, including measures to “set up a system of international enforcement to be applied to the Convention area.”²⁰⁹

ICCAT has increasingly adopted a number of resolutions and recommendations that require Member States to report various types of information such as vessel lists and compliance reports in order to ensure its recommendations are being implemented adequately. For example, ICCAT members are obligated to inspect all tuna fishing vessels in their ports, including those of non-ICCAT members, and report violations to the Commission.²¹⁰ If a non-Member ship is found to have fish managed by ICCAT on board, it may not land or transship those fish unless it can prove that they were caught outside the Convention area or in compliance with ICCAT rules.²¹¹ To facilitate the assimilation of this information and to assist in answering questions regarding ICCAT regulations, the Commission has created a Department of Compliance.

Pursuant to various resolutions and recommendations, ICCAT maintains a number of databases, including:

- ICCAT Record of Vessels over 24m (the so-called “white list”) (lists vessels over 24 meters authorized to fish for tuna or tuna-like species in the Convention area),²¹²
- ICCAT Record of Carrier Vessels (lists vessels authorized to receive transshipments of tuna and tuna-like species in the Convention area from large-scale tuna longline vessels),²¹³

²⁰⁸ Convention, art. IX(2).

²⁰⁹ Convention, art. IX(3).

²¹⁰ Recommendation by ICCAT for a Revised ICCAT Port Inspection Scheme [Rec. 97-10 (1998)].

²¹¹ Towberman, *supra* at 10108 (*citing* Recommendation by ICCAT Concerning the Ban on Landings and Transshipments of Vessels from Non-Contracting Parties Identified as Having Committed a Serious Infringement [Rec. 98-11 (1999)]).

²¹² Recommendation by ICCAT Concerning the Establishment of an ICCAT Record of Vessels over 24 Meters Authorized to Operate in the Convention Area [Rec. 02-22 (2003)].

²¹³ Recommendation by ICCAT Establishing a Programme for Transshipment [Rec. 06-11(2007)]. In addition, in 2006 ICCAT established a Regional Observer Programme for At-Sea Transshipments, pursuant to which all transshipments must take place in port unless properly monitored under the Regional Observer Programme (ROP). *See id.*; ICCAT, ICCAT Regional Observer Programme for At-Sea Transshipments, *available at*: www.iccat.int/en/ROP.htm.

- ICCAT Record of BFT Catching Vessels (lists vessels authorized to fish actively for bluefin tuna in the eastern Atlantic and Mediterranean Sea);²¹⁴
- ICCAT Record of BFT Other Vessels (lists all other fishing vessels authorized to operate for bluefin tuna in the eastern Atlantic and Mediterranean Sea);²¹⁵
- ICCAT Record of BFT Farming Facilities (lists facilities authorized to operate for farming of bluefin tuna caught in the Convention area);²¹⁶
- ICCAT Record of BFT Traps (lists traps authorized to fish east Atlantic and Mediterranean bluefin tuna);²¹⁷
- ICCAT Record of Ports (lists ports designated by Contracting Parties in which transshipping and landing of bluefin tuna is authorized);²¹⁸
- ICCAT Record of Joint Fishing Operations (lists joint fishing operations, i.e., “any operation between two or more catching vessels flying the flag of different flag States [Contracting Parties] where the catch of one catching vessel is attributed to one or more other catching vessels in accordance with an allocation key”).²¹⁹

ICCAT also maintains an IUU Vessel List (the so-called “black list”), which contains a list of vessels presumed to have engaged in illegal, unreported and unregulated fishing activities in the Convention Area.²²⁰

²¹⁴ Recommendation Amending the Recommendation by ICCAT to Establish a Multi-Annual Recovery Plan for Bluefin Tuna in the Eastern Atlantic and Mediterranean [Rec. 08-05].

²¹⁵ Recommendation Amending the Recommendation by ICCAT to Establish a Multi-Annual Recovery Plan for Bluefin Tuna in the Eastern Atlantic and Mediterranean [Rec. 08-05]. In addition, in 2008 ICCAT established a Regional Observer Programme for Bluefin Tuna, pursuant to which all purse seiners over 24m during the annual fishing season, all purse seiners involved in joint fishing operations, and all transfers of bluefin tuna to cages and all harvest of fish from cages will be subject to monitoring. *See id.*; ICCAT, ICCAT Regional Observer Programme for Bluefin Tuna, *available at*: www.iccat.int/en/ROPbft.htm.

²¹⁶ Recommendation by ICCAT Concerning Bluefin Tuna Farming [Rec. 06-07 (2007)].

²¹⁷ Recommendation Amending the Recommendation by ICCAT to Establish a Multi-Annual Recovery Plan for Bluefin Tuna in the Eastern Atlantic and Mediterranean [Rec. 08-05].

²¹⁸ Recommendation Amending the Recommendation by ICCAT to Establish a Multi-Annual Recovery Plan for Bluefin Tuna in the Eastern Atlantic and Mediterranean [Rec. 08-05].

²¹⁹ Recommendation Amending the Recommendation by ICCAT to Establish a Multi-Annual Recovery Plan for Bluefin Tuna in the Eastern Atlantic and Mediterranean [Rec. 08-05].

²²⁰ Recommendation by ICCAT Amending the Recommendation by ICCAT to Establish a List of Vessels Presumed to Have Carried Out Illegal, Unreported and Unregulated Fishing Activities in the ICCAT Convention Area [Rec. 06-12 (2007)].

In addition to the above databases, ICCAT has also utilized non-discriminatory trade-restrictive measures to combat IUU fishing.²²¹ Using Member State reporting on the source of their tuna imports, ICCAT identifies those member states that have failed to discharge their obligations or non-member states that have undermined ICCAT conservation measures. It then may recommend that the Member States adopt non-discriminatory trade-restrictive measures against the identified states.²²² In 1996, for example, the Commission recommended that ICCAT members prohibit the importation of bluefin tuna from Belize, Honduras and Panama.²²³

Finally, ICCAT has established two compliance bodies. The Conservation and Management Measures Compliance Committee “reviews all aspects of compliance with ICCAT conservation and management measures in the ICCAT Convention Area, with particular reference to compliance with such measures by ICCAT Contracting Parties.”²²⁴ The Permanent Working Group for the Improvement of ICCAT Statistics and Conservation Measures “obtains, compiles and reviews all available information for the fishing activities of *non*-Contracting Parties, for species under the purview of ICCAT, including details on the type, flag and name of vessels and reported or estimated catches by species and area.”²²⁵

15. Participation and the Role of Multiple Stakeholders

(See **Relationships**.)

16. Dissolution and Termination

Pursuant to Article XII of the Convention, the Convention will remain in force until a majority of the Member States agree to terminate it.²²⁶ Member States may also withdraw from the Convention, pursuant to the procedures provided in Article XII.²²⁷

17. Additional Remarks

At its 2007 annual meeting in Antalya, Turkey, the Commission appointed three independent experts with knowledge of international fisheries instruments, management and science to conduct a performance

²²¹ See Towberman, *supra* at 10108-09; Carr & Scheiber, *supra* at 73-74; Patrick A. Nickler, *A Tragedy of the Commons in Coastal Fisheries: Contending Prescriptions for Conservation, and the Case of the Atlantic Bluefin Tuna*, 26 B.C. ENVTL. AFF. L. REV. 549, 557-58 (1999).

²²² Recommendation by ICCAT Concerning Trade Measures [Rec. 06-13 (2007)].

²²³ *But see* Towberman, *supra* at 10108 (questioning effectiveness given anecdotal evidence that IUU vessels simply reflag in countries not covered by the import ban).

²²⁴ ICCAT, Organization, *available at*: www.iccat.int/en/organization.htm.

²²⁵ ICCAT, Organization, *available at*: www.iccat.int/en/organization.htm.

²²⁶ Convention, art. XII(1).

²²⁷ Convention, art. XII(2)-(3). Article XIII further sets forth procedures for amending the Convention, which requires the approval of three-fourths of the Member States.

review of ICCAT.²²⁸ The subsequent report of this independent review panel, consisting of Mr. Moritaka Hayashi, Mr. Jean-Jacques Maguire and Mr. Glenn Hurry, was transmitted to the Heads of Delegations in September 2008, and presented to the Commission at a Special Meeting in Marrakech, Morocco in November 2008.²²⁹

The independent panel noted several areas in which ICCAT was fundamentally “not meeting its objectives.”²³⁰ The independent panel recommended that the Convention be “modernised, or otherwise supplemented, to reflect current approaches to fisheries management” and that a “strict penalty regime” be adopted so that Member States “understand that they will suffer significant economic consequences if their actions are in breach of ICCAT rules.”²³¹ The independent panel was also critical of the failure of Member States to “provide timely and accurate data” to the Commission, “implement monitoring, control and surveillance (MCS) arrangements on nationals and national companies,” and comply with many of the Commission’s directives.²³²

Notwithstanding these faults, the independent panel did observe that ICCAT had developed “reasonably sound conservation and fisheries management practices,” that the “standing committee and panel structure [wa]s sound” and that the Commission’s subsidiary bodies “provide timely advice to ICCAT.”²³³ The performance of the Secretariat was also considered sound, efficient and effective.

Judging from a “simple reading of the state of the stocks under ICCAT’s purview,” the independent panel concluded that ICCAT “ha[d] failed in its mandate as a number of these key fish stocks are well below MSY.”²³⁴ However, the independent panel largely attributed this state of affairs to the “systemic failures by [Member States] to implement [ICCAT] rules and recommendations” and urged Member States to “develop[] the political will to fully implement and adhere to the letter and spirit of the rules and recommendations of ICCAT.”²³⁵

The independent panel’s recommendations were provided to a newly formed Working Group on the Future of ICCAT, which has further continued the Commission’s efforts to improve its efficacy and

²²⁸ ICCAT 2008-09 Biennial Report, at 8-9.

²²⁹ ICCAT 2008-09 Biennial Report, at 9, 39-40.

²³⁰ ICCAT 2008-09 Biennial Report, at 244.

²³¹ ICCAT 2008-09 Biennial Report, at 244, 247.

²³² ICCAT 2008-09 Biennial Report, at 244-45.

²³³ ICCAT 2008-09 Biennial Report, at 244.

²³⁴ ICCAT 2008-09 Biennial Report, at 245.

²³⁵ ICCAT 2008-09 Biennial Report, at 245.

efficiency.²³⁶ ICCAT members have also taken part in joint meetings of other tuna RFMOs, in an effort to harmonize and standardize the way those organizations assess and manage fisheries.²³⁷

18. Websites and References

The International Commission for the Conservation of Atlantic Tunas, *available at* www.iccat.int.

ICCAT, Report for Biennial Period, 2008-09, Part I (2008) – Vol. 1 (2009).

ICCAT, “ICCAT fortifies its management of bluefin tuna fisheries,” 2009 Annual ICCAT Meeting Press Release (Nov. 16, 2009).

Christopher J. Carr & Harry N. Scheiber, *Dealing with a Resource Crisis: Regulatory Regimes for Managing the World’s Marine Fisheries*, 21 STAN. ENVTL. L.J. 45, 53 (2002).

Elizabeth deLone, *Improving the Management of the Atlantic Tuna: The Duty to Strengthen the ICCAT in Light of the 1995 Straddling Stocks Agreement*, 6 N.Y.U. ENVTL. L.J. 656, 661 (1998).

Anne Eckstein, “ICCAT conservatively settles for reducing bluefin tuna quotas,” Europolitics (Nov. 18, 2009), *available at*: www.europolitics.info/sectorial-policies/iccat-conservatively-settles-for-reducing-bluefin-tuna-quotas-art254595-11.html

Patrick A. Nickler, *A Tragedy of the Commons in Coastal Fisheries: Contending Prescriptions for Conservation, and the Case of the Atlantic Bluefin Tuna*, 26 B.C. ENVTL. AFF. L. REV. 549, 557-58 (1999).

“Fisheries: Commission welcomes ICCAT’s decisive action to save bluefin tuna and other marine species,” Nieuwsbank (Nov. 16, 2009), *available at*: www.nieuwsbank.nl/en/2009/11/16/R017.htm.

“ICCAT Proves Incapable of Managing Bluefin Tuna and Sharks,” Oceana, Press Release (Nov. 15, 2009), *available at*: <http://na.oceana.org/en/news-media/press-center/press-releases/iccat-proves-incapable-of-managing-bluefin-tuna-and-sharks>.

Christine Goepp Towberman, *Fishing for a Solution: The Role of the United States in Preventing Collapse of the Eastern Atlantic Bluefin Fishery*, 38 ENVTL. L. REP. NEWS & ANALYSIS 10102 (2008).

Jon Van Steenis, *Pirates as Poachers: International Fisheries Law and the Bluefin Tuna*, 29 Cap. U. L. Rev. 659, 662-64 (2001).

Vivienne Walt, *The Sushi Wars: Can the Bluefin Tuna be Saved?*, Time (Nov. 28, 2008).

²³⁶ ICCAT 2008-09 Biennial Report, at 40.

²³⁷ ICCAT, “ICCAT fortifies its management of bluefin tuna fisheries,” 2009 Annual ICCAT Meeting Press Release (Nov. 16, 2009).

Joint (Fisheries) Development Zone between Jamaica and Colombia

1. Legal Basis

The Maritime Delimitation Treaty between Jamaica and the Republic of Colombia was signed on 12 November 1993 and came into force on 14 March 1994 in Bogotá, Colombia when Jamaica and Colombia exchanged the instruments of ratification.²³⁸

2. Member States

The Member States are Jamaica and Colombia.

3. Geographical Scope

The geographical scope of the development zone is constituted by geodesic lines drawn between the following points: Point 1, Latitude 14° 29' 37", Longitude 78° 38' 00"; Point 2, Latitude 14° 15' 00", Longitude 14° 19' 30"; Point 3, 14° 05' 00"; Point 4, Latitude 14° 44' 10", Longitude 74° 30' 50". From point 4, the delimitation line proceeds by a geodesic line in the direction to another point which coordinates with 15° 02' 00"N, 73° 27' 30"W, as far as the delimitation line between Colombia and Haiti is intercepted by the delimitation line to be decided between Jamaica and Haiti.

Within this area is a joint regime area which "constitutes along the arc of 12 nautical miles radius" excluding the cays of Serranilla Bank and Bajo Nuevo. The Joint Regime Area is one of Jamaica's central fishery zones.²³⁹

4. Legal Personality

The Member States agreed to establish a Joint Commission for the purposes of implementing the provisions of the Treaty. For information on the role of the Commission, see **Functions**.²⁴⁰

5. Functions

The Joint Commission "shall elaborate the modalities for the implementation and carrying out" of the following activities:

- The exploration and economic exploitation of natural resources in the waters and seabed of the Joint Regime Area;

²³⁸ Maritime Delimitation Treaty between Jamaica and the Republic of Colombia ("Maritime Delimitation Treaty"), 12 Nov. 1993, 1776 U.N.T.S. 17.

²³⁹ Limits In The Seas: Jamaica's Maritime Claims and Boundaries—U.S. Department of State, Office of Ocean Affairs, No. 125, 5 Feb. 2004, at 9, *available at* <http://www.state.gov/documents/organization/57677.pdf>; *see also* Maritime Delimitation Treaty, art. 3.

²⁴⁰ Maritime Delimitation Treaty, art. 4.

- The establishment and use of artificial islands, installations and structures;
- Marine scientific research;
- The protection of the marine environment; and
- The conservation of living resources.

The Member States may agree on other measures necessary for ensuring compliance with and enforcement of the regime. Additionally, where hydrocarbon or natural gas deposits are discovered on both sides of the delimitation line, the resources shall be distributed so that each Member State receives an amount proportional to the amount of the resource found on each side of the line.²⁴¹

The Member States also agree not to authorize third states and international organizations to carry out the above listed activities unless acting as an agent of one of the Member States. The Joint Commission may adopt measures that ensure that nationals and vessels of third states comply with regulations adopted by the Member States for implementing the agreement. The Member States may agree to further regulate conduct relating to exploitation and exploration of non-living resources, marine scientific research, and protection of the marine environment.²⁴²

6. Organizational Structure

The Joint Commission consists of one representative appointed by each Member State. Each Member State representative has jurisdiction over its nationals and vessels flying its flag, and vessels over which it exercises management and control under international law.²⁴³

7. Relationships

Jamaica and Colombia can regulate the activities of other states and international organizations in the development zone. *See Functions.*

8. Decision Making

Conclusions of the Joint Commission are adopted by consensus and are considered to be non-binding recommendations to the Member States. When conclusions are adopted by the Member States, they become binding.²⁴⁴

²⁴¹ Maritime Delimitation Treaty, art. 2-4.

²⁴² Maritime Delimitation Treaty, art. 3.

²⁴³ Maritime Delimitation Treaty, art. 4.

²⁴⁴ Maritime Delimitation Treaty, art. 4.

9. Dispute Resolution

When one Member State alleges that the other Member State has breached or is breaching the provisions of the Treaty as well as measures adopted for its implementation, the Member State alleging the breach shall bring it to the attention of the other Member State. Both Member States will consult with each other and attempt to reach a settlement within 14 days. When a Member State receives notice that it is alleged to have breached the Treaty, it should ensure that the complained of activities do not reoccur. Or, if there are allegations that the Member State is currently in breach, that Member State should discontinue the alleged activities.²⁴⁵

10. Data Information Sharing, Exchange, and Harmonization

No specific provision.

11. Notifications

When one Member State alleges that the other Member State has breached the agreement, it should bring the breach to the attention of that other Member State.²⁴⁶

12. Funding and Financing

No specific provision.

13. Benefit Sharing

No specific provision.

14. Compliance and Monitoring

No specific provision.

15. Participation and the Role of Multiple Stakeholders

No specific provision.

16. Dissolution and Termination

No specific provision.

17. Additional Remarks

N/A

²⁴⁵ Maritime Delimitation Treaty, art. 7.

²⁴⁶ Maritime Delimitation Treaty, art. 3.

18. Websites and References

- Decreto 1330 de 1994—Colombia decree implementing the Treaty, *available at* www.presidencia.gov.co/prensa_new/decretoslinea/1994/junio/27/dec1330271994.doc. [Spanish only].
- Limits In The Seas: Jamaica's Maritime Claims and Boundaries—U.S. Department of State, Office of Ocean Affairs, No. 125, 5 Feb. 2004, *available at* <http://www.state.gov/documents/organization/57677.pdf>.
- Maritime Delimitation Treaty between Jamaica and the Republic of Colombia, *available at* <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/JAM-COL1993MD.PDF>.
- Socio-economic indicators in integrated coastal zone and community-based fisheries management: Case studies from the Caribbean, Study on Jamaica—Technical Paper No. 491, 2006, at 47-64, *available at* <http://www.fao.org/docrep/009/a0690e/a0690e00.htm>.

Rio Grande/Rio Bravo

1. Legal Basis

There are two main applicable international treaties. The first is the Boundary Convention, which was signed in Washington on 1 March 1889 and entered into force on 24 December 1890. The Boundary Convention established the International Boundary Commission (“IBC”) to apply the rules in the 1884 Convention between the United States and Mexico and was later modified by the Banco Convention of 20 March 1905 to retain the Rio Grande and the Colorado River as the international boundary.²⁴⁷

The second is the Treaty relating to the utilization of the waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, to the Gulf of Mexico (which was signed in Washington on 3 February 1944) and the Supplementary Protocol (which was signed in Washington on 14 November 1944). This Treaty (the “Water Treaty”) came into force on 8 November 1945 by the exchange of ratifications between the United States and Mexico.²⁴⁸ The Water Treaty distributed the waters in the international segment of the Rio Grande from Fort Quitman, Texas to the Gulf of Mexico. The Water Treaty authorized Mexico and the United States to construct, operate, and maintain dams on the main channel of the Rio Grande. The Water Treaty also changed the name of the IBC to the International Boundary And Water Commission (“IBWC”), and in Article 3, the two Member States entrusted the IBWC to give preferential attention to border sanitation problems.

Additional bilateral treaties that are relevant to the Rio Grande include the following:

- The Treaty of 2 February 1848 established the United States-Mexico international boundary. The Treaty of 30 December 1853 modified the boundary to where it exists today.²⁴⁹
- The Convention of 29 July 1882 established another temporary commission to resurvey and place additional monuments along the western land boundary from El Paso, Texas/Ciudad Juárez, Chihuahua to San Diego, California/Tijuana, Baja California.²⁵⁰
- The Convention of 12 November 1884 established the rules for determining the location of the boundary when the meandering rivers transferred tracts of land from one bank of the river to the other.²⁵¹

²⁴⁷ Convention to avoid the difficulties occasioned by reason of the changes which take place in the beds of the Rio Grande and Colorado Rivers (“Boundary Convention”), 1 Mar. 1889, 26 Stat. 1512.

²⁴⁸ Treaty relating to the utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande, and supplementary protocols (“Water Treaty”), 3 Feb. 1944 and 14 Nov. 1944, 3 U.N.T.S. 313.

²⁴⁹ Treaty between the United States of America and the Mexican Republic—Peace, Friendship, Limits, and Settlement, 2 Feb. 1848, 9 Stat. 922.

²⁵⁰ Convention between the United States of America and the United States of Mexico Providing for an International Boundary Survey to Relocate the Existing Frontier Line Between the Two Countries West of the Rio Grande, 29 July 1882, *available at* http://www.ibwc.state.gov/Files/TREATY_OF_1882.pdf.

- The Convention of 21 May 1906 provided for the distribution between the United States and Mexico of the waters of the Rio Grande above Fort Quitman, Texas to the El Paso-Juárez Valley. This Convention allotted to Mexico 60,000 acre-feet annually of the waters of the Rio Grande to be delivered in accordance with a monthly schedule at the headgate to Mexico's Acequia Madre just above Juárez, Chihuahua. To facilitate such deliveries, the United States constructed, at its expense, the Elephant Butte Dam in U.S. territory. This Convention also provides that in case of extraordinary drought or serious accident to the irrigation system in the United States, the amount of water delivered to the Mexican Canal shall be diminished in the same proportion as the water delivered to lands under the irrigation system in the United States downstream of Elephant Butte Dam.²⁵²
- In the Convention of 1 February 1933, Mexico and the United States agreed to jointly construct, operate, and maintain, through the IBC, the Rio Grande Rectification Project, which straightened, stabilized, and shortened the river boundary in the El Paso-Juárez area.²⁵³
- The Chamizal Convention of 29 August 1963 resolved the 100 year-old Chamizal Boundary Dispute at El Paso, Texas/Ciudad Juárez, Chihuahua. The IBWC relocated and placed concrete lines on 4.4 miles of the channel of the Rio Grande in order to transfer 437 acres to Mexico.²⁵⁴
- The Treaty of 23 November 1970 resolved all the pending boundary differences between Mexico and the United States and maintained the Rio Grande and the Colorado River as the international boundary. The Treaty designed procedures to avoid the loss or gain of territory by either Mexico or the United States incident to future changes in the course of the river. The Treaty charges the IBWC with carrying out its provisions.²⁵⁵

The decisions of the IBWC, subject to the approval of both the Mexican and the U.S. Governments, are recorded in the form of Minutes written in both English and Spanish. Minutes are signed by each Commissioner and attested to by the Secretaries. Copies are forwarded to both Mexico and the United States within three days after being signed. Once approved by both Governments, the Minutes enter into

²⁵¹ Convention between the United States of America and the United States of Mexico Touching the International Boundary Line Where It Follows the Bed of the Rio Colorado, 12 Nov. 1884, *available at* http://www.ibwc.state.gov/Files/TREATY_OF_1884.pdf.

²⁵² Convention providing for the equitable distribution of the waters of the Rio Grande for irrigation purposes, 21 May 1906, 34 Stat. 2953.

²⁵³ Convention for the rectification of the Rio Grande (Rio Bravo del Norte) in the El Paso-Juarez Valley, 1 Feb. 1933, 48 Stat. 1621.

²⁵⁴ Convention between the United States of America and Mexico on Boundary Solution of the Problem of the Chamizal, 29 Aug. 1963, 505 U.N.T.S. 185.

²⁵⁵ Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary Between the United States of America and Mexico, 23 Nov. 1970, 23 U.S.T. 371.

force as binding obligations on both Member States. There are more than 300 binding Minutes as of April 2009.²⁵⁶

2. Member States

The Member States are Mexico and the United States.

3. Geographical Scope

The jurisdiction of the IBWC extends to the border parts of the Rio Grande (Rio Bravo) and the Colorado River, to the land boundary between the Member States, and to the works located upon their common boundary. Each Member State, however, retains jurisdiction over the works in its territory.

4. Legal Personality

The IBWC has the status of an international body and consists of a Mexican and a United States section. The Commissioners and the staff enjoy certain diplomatic privileges and immunities. All materials and equipment intended for the construction, operation, and maintenance of works constructed through the IBWC are exempt from import and export customs duties.²⁵⁷

The IBWC succeeded the IBC established under the 1889 Convention. The responsibilities of the former IBC were limited almost exclusively to the resolution of boundary problems. The 1944 Treaty extended the 1889 Convention indefinitely and extended the reach of the Commission to water issues. The IBWC has retained the duties and powers vested in the former IBC by the 1889 Convention and by other treaties and agreements in force between the Member States.²⁵⁸

5. Functions

The IBWC is responsible for applying the boundary and water treaties between the United States and Mexico and settling differences that may arise in their application. The IBWC has the following functions:

- Initiating and carrying out investigations, and developing plans for the construction and establishment of joint boundary and water works;
- Constructing, operating, and maintaining the joint boundary and water works, including international storage dams, reservoirs, and hydroelectric power plants. The works also

²⁵⁶ See Minutes between the United States and Mexican Sections of the IBWC, *available at* http://www.ibwc.state.gov/Treaties_Minutes/Minutes.html.

²⁵⁷ Stefano Burchi and Melvin Spreij, FAO Legal Office, Institutions for International Freshwater Management (“Burchi and Spreij Report”), 2003, at 33, *available at* http://webworld.unesco.org/water/wwap/pccp/cd/pdf/legal_tools/institutions_for_int_freshwater_management_2.pdf.

²⁵⁸ Burchi and Spreij Report, at 33.

include stream-gauging stations that provide hydrographical data, necessary for determining the national ownership of the waters;

- Regulating and exercising other rights and obligations assumed by the Member States in the Convention and the Treaty for the solution of water and boundary problems, in particular those related to border sanitation and other water quality problems, the demarcation of the land boundary, the protection of lands along the rivers from floods by means of levee and floodway projects, and the preservation of the Rio Grande and Colorado River as the international boundary;
- Jointly reporting to the Member States on general or particular matters whenever deemed necessary or when requested by the Member States; and
- Settling differences between the Member States concerning the interpretation or application of the Treaty.

6. Organizational Structure

The IBWC is an international body composed of the United States Section and the Mexican Section, each headed by an Engineer-Commissioner appointed by the respective presidents of the two Member States. Each Section is administered independently of the other. The United States Section of the International Boundary and Water Commission (“USIBWC”) is a federal government agency and is headquartered in El Paso, Texas. The USIBWC operates under the foreign policy guidance of the Department of State. The Mexican Section is under the administrative supervision of the Mexican Ministry of Foreign Affairs and is headquartered in Ciudad Juarez, Chihuahua, Mexico.

In addition, each Section consists at least of two principal engineers, a legal adviser and a secretary, as well as such other staff as the Section deems necessary. The Treaty does not contain any provisions concerning the frequency of meetings of the Commissioners. The proceedings of the IBWC are governed by the 1889 Convention. In addition, the IBWC has established a body of internal rules and regulations to govern its procedure.

The United States Section currently consists of three departments. The Engineering Department, headed by a Principal Engineer, has divisions for the following activities: environmental management; investigations, design and construction; technical planning; and program and project management. The Operations Department, also headed by a Principal Engineer, has divisions for: occupational safety and health; water accounting; boundary and realty; and operations and maintenance. The Administration Department, headed by an Executive Engineer, has divisions for: budget matters; information management; financial services; and general services.

7. Relationships

The U.S. and Mexican Commissioners are in continuous contact. *See Functions.*

8. Decision Making

Implementation by the IBWC of broad provisions of treaties and other international agreements frequently requires specific agreements by the IBWC for planning, construction, operation, cost sharing,

and maintenance of joint works. Decisions are taken in the form of “Minutes” of the IBWC, which contain recommendations to the Member States. Each Minute is submitted to the governments of the Member States within three days of being signed. Except where the specific approval of the two Member State governments is stipulated in the Treaty, if not approved or disapproved within thirty days, the minute is considered to be approved.

In addition to cooperative projects undertaken to implement existing treaties and international agreements, the United States and Mexican Commissioners make recommendations to their respective Governments for resolution of new or anticipated boundary or water problems. Early detection and evaluation of the problem and the development of a resolution are a part of the mission of the IBWC. Most problems are resolved by the development of new projects. If the findings of the IBWC joint investigations, recorded in a joint report of the Principal Engineers of the two Sections, demonstrate that a cooperative project is necessary, feasible, and can be justified as an international project, the IBWC may endorse the findings in a Minute and recommend the project to the two Member States.

Once the project is authorized and funded by both Member States, each Member State through its Section begins performing its share of the works as determined in the approved agreement, under the supervision of the IBWC.

The two Member States generally share the total costs of the projects in proportion to their respective benefits, unless the Member States have predetermined by treaty the division of costs according to the nature of a project. In cases of man-made works in one country or operations in one country causing or threatening to cause damage in the other country, the cost is borne by the Member State in whose territory the problem originated.

9. Dispute Resolution

The IBWC is tasked with settling all differences that may arise between the United States and Mexico with respect to the interpretation or application of the Treaty, subject to approval of both Member States. In the event that the Commissioners cannot reach an agreement, the Sections will each inform their governments so that discussion of the differences can begin through diplomatic channels and, where appropriate, Member States can reach general or special agreements to settle the differences.

10. Data Information Sharing, Exchange, and Harmonization

Data on water flow and reservoir condition are collected and updated daily on the website.²⁵⁹ The collated stream gaging record and records of waters in storage, rainfall and evaporation stations and of the measurements of the quality of waters are published annually in the *Flow of the Rio Grande and Tributaries and Related Data*, a IBWC bulletin.²⁶⁰ Data on water quality and quantity is also available on GIS.²⁶¹

²⁵⁹ Rio Grande Basin Conditions, *available at* http://www.ibwc.state.gov/Water_Data/Reports/RG_Flow_data.html.

²⁶⁰ See IBWC Water Resources, *available at* http://www.ibwc.state.gov/wad/water_resources.htm.

²⁶¹ Geographic Information System (GIS) Program, *available at* http://www.ibwc.state.gov/GIS_Maps/GIS_Program.html.

11. Notifications

The IBWC submits an annual report on its activities to the Member States.

12. Funding and Financing

The two Member States generally share the total costs of the projects. *See Decision Making.* The two Commissioners meet frequently, alternating the place of meetings and are in almost daily contact. The U.S. and Mexican Sections each maintain their own staff, and each Member State funds the cost of the operation of its Section of the IBWC, while the cost of joint projects is shared between the Member States.

13. Benefit Sharing

Under the 1906 Convention, the United States—barring extraordinary drought or serious accidents to the United States irrigation system—agreed to deliver 60,000 acre-feet of water annually to Mexico from the Rio Grande at the Acequia Madre head works, close to the International Dam in El Paso, Texas.

Under the provisions of the 1944 Treaty, the United States is allotted all the waters from the Pecos River, Devils River, and five other United States tributaries reaching the Rio Grande, as well as one-third of the flow reaching the Rio Grande from the Conchos River and other tributaries for at least 1,750,000 acre-feet over a five-year period. Conversely, the United States agreed to provide an annual volume of 1,500,000 acre-feet from the Colorado River to Mexico—barring extraordinary drought or serious accidents to the United States irrigation system.

14. Compliance and Monitoring

The Commission monitors ownership in waters stored at the international dams, and this data is available on the Commission's website.²⁶² The Commission determines ownership in the reservoirs on a weekly basis. The Commission also oversees the collection of filed data, the exchange of data between the Member States, and the computation of national ownership on a weekly basis.

15. Participation and the Role of Multiple Stakeholders

Four citizens' *fori* have been established to facilitate the exchange of information between the Commission and the members of the public in the United States. The Mexican section includes an external relations section which keeps the public informed. On both sides, much information is publicly available on the website.

16. Dissolution and Termination

The Treaty remains in force until terminated by another treaty concluded for the same purpose between the Member States.

²⁶² Updated Rio Grande National Ownership of Waters Stored at The International Amistad and Falcon Dams, available at <http://www.ibwc.gov/wad/storage.htm>.

[DRAFT]

17. Additional Remarks

N/A

18. Websites and References

- Mexican Section, *available at* <http://www.sre.gob.mx/cila/>.
- U.S. Section, *available at* <http://www.ibwc.state.gov/>.

B. Europe

Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution

1. Legal Basis

The Convention for the Protection of the Mediterranean Sea Against Pollution (Barcelona Convention (1976)) was signed on 16 February 1976 in Barcelona, Spain, and entered into force on 12 February 1978.²⁶³ This agreement was amended on 9 and 10 June 1995, and renamed the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention, or Convention); the amended version entered into force on 9 July 2004.²⁶⁴

The parties to the Barcelona Convention (“Contracting Parties,” or “Parties”) have adopted seven protocols within the Convention framework,²⁶⁵ of which five have entered into force²⁶⁶: i) Protocol for the Prevention of Pollution in the Mediterranean Sea by Dumping from Ships and Aircraft (“Dumping Protocol”) (amendments adopted in 1995 have not entered into force); ii) Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea (“Emergency Protocol”); iii) Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities (“Land-Based Sources Protocol”); iv) Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean (“Specially Protected Areas and Biodiversity Protocol”); v) Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal (“Hazardous Wastes Protocol”) (ratified by only 6 member states).

The Contracting Parties have adopted the text of the Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (“Offshore Protocol”)²⁶⁷ and the Protocol on Integrated Coastal Zone Management in the

²⁶³ Convention for the Protection of the Mediterranean Sea Against Pollution, 1102 U.N.T.S. 27 (1978).

²⁶⁴ Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean [“Barcelona Convention, as amended”], *available at* http://195.97.36.231/dbases/webdocs/BCP/bc95_Eng_p.pdf.

²⁶⁵ Barcelona Convention (1976), art. 15, and Barcelona Convention, as amended, art. 21 (providing for adoption of additional protocols).

²⁶⁶ *See* UNEP, Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and Its Protocols, *available at* http://195.97.36.231/dbases/webdocs/BCP/BCP_eng.pdf. Not all parties have signed or ratified all the Protocols. *See* Status of Signatures and Ratifications of the Barcelona Convention and its Protocols, *available at* UNEP Mediterranean Action Plan Website, “Protocols” page, “Related Links” section, <http://195.97.36.231/dbases/webdocs/BCP/StatusOfSignaturesAndRatifications.doc>.

²⁶⁷ *Id.*

Mediterranean (“Integrated Coastal Zone Management Protocol”), but few countries have ratified these protocols and they are not yet in force.²⁶⁸

The Barcelona Convention was born out of an intergovernmental congress initiated by the United Nations Environment Program (“UNEP”) in 1975. The congress participants adopted recommendations for joint action and requests for further UNEP assistance.²⁶⁹ This resolution came to be known as the Mediterranean Action Plan (“MAP I”). The scope of practical actions taken jointly under the auspices of the Barcelona Convention and its Protocols is referred to as the “MAP Program.” The first MAP was replaced on 10 June 1995 by the second Mediterranean Action Plan (“MAP II”).²⁷⁰

2. Member States

The original signatories of the Barcelona Convention included Cyprus, Egypt, the European Commission, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Morocco, Spain, Tunisia, and Turkey. Additional signatories now include: Albania, Algeria, Bosnia and Herzegovina, Croatia, Montenegro, Slovenia, and Syria. (Bosnia and Herzegovina has not accepted the amendments to the Barcelona Convention.²⁷¹)

Notably, the recently amended Treaty of the European Union grants the EU exclusive competence in the area of “conservation of marine biological resources under the common fisheries policy.”²⁷²

3. Geographical Scope

The Barcelona Convention covers the Mediterranean Sea, including its gulfs and seas (other than the Black Sea), bounded to the west by the Straits of Gibraltar.²⁷³ The amended Barcelona Convention

²⁶⁸ See Integrated Coastal Management Protocol, *available at* http://195.97.36.231/dbases/webdocs/BCP/ProtocolICZM08_eng.pdf. This Protocol has been ratified by France and Slovenia. See Status of Signatures and Ratifications of the Barcelona Convention and its Protocols.

²⁶⁹ Report of the Intergovernmental Meeting on the Protection of the Mediterranean 28 Jan.-4 Feb. 1975, Annex: Action Plan (MAP I), *available at* http://195.97.36.231/acrobatfiles/75WG2_5_Eng.pdf.

²⁷⁰ Report of the Ninth Ordinary Meeting of the Contracting Parties to the Barcelona Convention dated 8 June 1995, Annex IX: Action Plan for the Protection of the Marine Environment and the Sustainable Development of the Coastal Areas of the Mediterranean (MAP II), *available at* http://195.97.36.231/acrobatfiles/95IG5_16_Eng.pdf; *id.*, Annex XI: Barcelona Resolution on the Environment and Sustainable Development in the Mediterranean Basin (adopting MAP II).

²⁷¹ Status of Signatures and Ratifications of the Barcelona Convention and its Protocols.

²⁷² Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, done at Lisbon on 13 Dec. 2007, entered into force on 1 Dec. 2009, 2007 (C 306) 1, art. 3(d).

²⁷³ Barcelona Convention (1976), art. 1(1) (extending coverage westward to the meridian passing through the Cape Spartel lighthouse, and limited by a boundary extending between the Mehmetcik and Kumkale lighthouses at the south end of the Straits of the Dardanelles, below the Black Sea).

permits any Contracting Party to extend the Convention's application within its own territory.²⁷⁴ Various Protocols also extend the Convention's geographic coverage²⁷⁵ to include:

- the land that is drained into the Mediterranean Sea Area (the “hydrologic basin”);²⁷⁶
- the waters on the landward side of the area's boundaries and extending, in the case of watercourses, up to the freshwater limit;²⁷⁷
- any waters, including marshes and ground waters, communicating with the Mediterranean Sea.²⁷⁸
- the seabed and subsoil;²⁷⁹ and
- the coastal areas, including wetlands, designated by the Contracting Parties.²⁸⁰

Moreover, the Land-Based Sources Protocol applies to polluting discharges from anywhere within the territory of the Contracting Parties into the atmosphere, so long as a hazardous amount of the substance “could be transported to the Mediterranean Sea Area under prevailing meteorological conditions.”²⁸¹

The Integrated Coastal Management Protocol would cover the “coastal zone,” defined to cover “ecological and resource systems” involving marine, land, and human interaction.²⁸² This zone expressly includes territorial seas, while the landward boundary remains subject to each party's discretion.²⁸³

²⁷⁴ Barcelona Convention, as amended, art. 1(2).

²⁷⁵ Barcelona Convention, as amended, art. 1(3) (permitting geographic extension by protocol).

²⁷⁶ Land-Based Sources Protocol, art. 3.

²⁷⁷ Land-Based Sources Protocol, art. 3; Specially Protected Areas and Biodiversity Protocol, art. 2; Offshore Protocol, art. 2(1) (not yet entered into force).

²⁷⁸ Land-Based Sources Protocol, art. 3.

²⁷⁹ Specially Protected Areas and Biodiversity Protocol, art. 2 (including beds and subsoil of covered watercourses); Offshore Protocol, art. 2(1) (not yet entered into force).

²⁸⁰ Specially Protected Areas and Biodiversity Protocol, art. 2.

²⁸¹ Land-Based Sources Protocol, art. 4(1)(b); *id.*, Annex III, art. 1.

²⁸² *See* Integrated Coastal Management Protocol, art. 2(e), 3(1), and 3(2).

²⁸³ *See* Integrated Coastal Management Protocol, art. 2(e), 3(1), and 3(2).

4. Legal Personality

The Contracting Parties agreed that UNEP would act as Secretariat of the Barcelona Convention.²⁸⁴ UNEP acts through the Mediterranean Action Plan Coordinating Unit (“MEDU”),²⁸⁵ based in Greece. Greece accords the Secretariat diplomatic status.²⁸⁶ See **Organizational Structure**, *infra*.

5. Functions

The essential functions of the Barcelona Convention structure, which includes the Protocols, are described in the MAP II. These include²⁸⁷:

- integration of environmental priorities and economic development in national policy;
- assessment, prevention, and elimination of pollution;
- conservation of nature, landscapes and sites of ecological or cultural value; and
- broadening both public awareness of threats to the Mediterranean and public participation in conservation and remedial measures.

The Barcelona Convention broadly defines “pollution” to mean “the introduction by man, directly or indirectly, of substances or energy into the marine environment . . . which results, or is likely to result, in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of seawater and reduction of amenities.”²⁸⁸

6. Organizational Structure

A network of international, regional, and national entities facilitates the functions envisioned by the Convention and its Protocols.²⁸⁹ The roles and coordination of these entities were renovated by the Contracting Parties in 2008.²⁹⁰

²⁸⁴ Barcelona Convention (1976), art. 13; Barcelona Convention, as amended, art. 17.

²⁸⁵ For ease of use, references to the Secretariat include the Coordinating Unit.

²⁸⁶ See UNEP: Mediterranean Action Plan for the Barcelona Convention Website, Structure tab, *available at* <http://www.unepmap.org/index.php?module=content2&catid=001017>.

²⁸⁷ MAP II at 2.

²⁸⁸ See Barcelona Convention, as amended, art. 2(a).

²⁸⁹ See generally, UNEP: Mediterranean Action Plan for the Barcelona Convention Website, Structure tab, *available at* http://www.unepmap.org/index.php?module=content2&catid=001017&ocat_id=001017; see also MAP II at 24-25 (describing the Institutional Arrangements and Financial Arrangements under which MAP II was initiated in 1995).

i. Meeting of Contracting Parties

The Contracting Parties meet at least biannually to, among other things: i) review national inventories of marine pollution; ii) review progress on implementing the Convention, its Protocols, and recommendations adopted by the parties; iii) consider amendments to the Convention, its Protocols, and annexes; iv) establish additional working groups as needed; and v) approve a budget.²⁹¹

ii. Secretariat

The Convention and certain Protocols designate UNEP, as the Secretariat, to perform various roles relevant to their implementation, including:

- advise regarding development of national legislation or policy, and international rules implementing the Convention and its Protocols;²⁹²
- monitor implementation by the Contracting Parties;²⁹³
- coordinate with other international bodies²⁹⁴ and act as repository of other relevant agreements entered into by any of the Parties;²⁹⁵
- represent the Barcelona Convention to the public and non-governmental organizations (NGOs);²⁹⁶

²⁹⁰ Decision IG 17/5 and Annex: Governance paper, reported in Report of the 15th Ordinary Meeting of the Contracting Parties dated 18 Jan. 2008, Annex V, at 141-177, *available at* http://195.97.36.231/acrobatfiles/08IG17_10_eng.pdf.

²⁹¹ Barcelona Convention, as amended, art. 18.

²⁹² *See, e.g.*, Barcelona Convention, as amended, art. 14(2); Land-Based Sources Protocol, art. 6(3) (providing for Secretariat's assistance, upon request, with establishing regime of authorization or regulation of land-based pollution); *id.*, art. 15 (empowering Secretariat to propose action plans and measures for eliminating land-based pollution); Specially Protected Areas and Biodiversity Protocol, art. 9(4)(b), 9(4)(c), and 25 (empowering Secretariat to oversee and coordinate plans to protect fragile areas and species); Offshore Protocol, art. 23(1) (permitting cooperation through Secretariat to establish "international rules, standards and recommended practices and procedures"); Integrated Coastal Zone Management Protocol, art. 27(2) (requiring Secretariat to support definition of coastal zone management indicators).

²⁹³ *See, e.g.*, Barcelona Convention, as amended, art. 17(vi); Hazardous Wastes Protocol, art. 13 (requiring Parties to report to Secretariat breach of obligations, and empowering Secretariat to verify such allegations).

²⁹⁴ *See, e.g.*, Barcelona Convention, as amended, art. 17(viii); *see also* Hazardous Wastes Protocol, 9(8) (requiring coordination with Secretariat of Basel Convention regarding prevention of illegal traffic in hazardous waste).

²⁹⁵ *See, e.g.*, Barcelona Convention, as amended, art. 3(2).

²⁹⁶ *See, e.g., id.*, art. 17(iv); Integrated Coastal Zone Management Protocol, art. 32 (empowering the Secretariat to establish cooperation relationships with NGOs).

- disseminate information amongst the Parties²⁹⁷ as well as lessons learned in implementation;²⁹⁸
- coordinate meetings and reports of the Contracting Parties;²⁹⁹
- advise regarding financial arrangements of the Barcelona Convention;³⁰⁰

The Secretariat is also generally responsible for coordinating implementation of the Specially Protected Areas and Biodiversity Protocol and the Integrated Coastal Zone Management Protocol.³⁰¹

iii. Bureau

The Contracting Parties are directly represented on an ongoing basis by six rotating members of the Bureau.³⁰² The Bureau regularly consults with and advises the Secretariat in anticipation of the Meeting of the Contracting Parties based on status reports prepared by the Secretariat.³⁰³

²⁹⁷ See, e.g., Barcelona Convention, as amended, art. 9(2) (pollution emergencies); *id.*, Annex A, art. 2 (disputes arbitrated under the Convention); Dumping Protocol, art. 8, 9 (exceptional discharge of pollution at sea); Specially Protected Areas and Biodiversity Protocol, art. 9(4)(c) (proposals to create specially protected areas); Offshore Protocol, art. 21(b) (information regarding specially protected areas); Hazardous Wastes Protocol, art. 4 (hazardous wastes regulated by domestic law); *id.*, art. 8(2) (hazardous waste produced and transferred by each Party); *id.*, art. 9(6), 9(7) (illegal traffic in hazardous waste); Offshore Protocol, art. 6(4) (authorization of offshore exploration and exploitation); *id.*, art. 14(3) (disposals at sea in circumstances of *force majeure* or to minimize damage from pollution); *id.*, art. 20(2) (buried pipelines); Integrated Coastal Zone Management Protocol, art. 8(2)(c) (variation from agreed construction-free zone along the waterline); *id.*, art. 18 (coastal zone management strategies); *id.*, art. 24(2) (relevant contact information in case of natural disasters).

²⁹⁸ See, e.g., Land-Based Sources Protocol, art. 13; Offshore Protocol, art. 25; Hazardous Wastes Protocol, art. 11.

²⁹⁹ Barcelona Convention, as amended, art. 17(i), 17(ii), 21(2), 22(1).

³⁰⁰ *Id.*, art. 24(2).

³⁰¹ Specially Protected Areas and Biodiversity Protocol, art. 25; Integrated Coastal Zone Management Protocol, art. 32. The Integrated Coastal Zone Management Protocol specifically authorizes the Secretariat to coordinate programs to increase public awareness, scientific research, exchange of scientific information and best practices, coastal management strategies, and technology transfer to developing countries, as requested. *Id.*, art. 15(2), 16(2), 25, 26, 27(1), 28.

³⁰² Barcelona Convention, as amended, art. 19.

³⁰³ See, e.g., Report of the Meeting of the Bureau of the Contracting Parties dated 18 Mar. 2009, *available at* http://195.97.36.231/acrobatfiles/09BUR68_4_eng.pdf; see also Progress Report by the Secretariat on Activities Carried Out since the Last Meeting of the Bureau (Madrid, Spain, 2008) and Specific Issues (July 2008 – December 2008) dated 15 Jan. 2009 [hereinafter Progress Report to the Bureau of January 2009], *available at* http://195.97.36.231/acrobatfiles/09BUR68_3_eng.pdf.

iv. MED POL and the Regional Activity Centres (RACs)

As part of MAP I, the Contracting Parties authorized the UNEP Programme for the Assessment and Control of Marine Pollution in the Mediterranean (“MED POL”).³⁰⁴ Through MED POL, UNEP monitors and studies pollution in the Mediterranean Sea Area, and facilitates National Action Plans to prevent and remedy pollution as part of the Parties’ implementation of the Dumping Protocol, the Land-Based Sources Protocol, and the Hazardous Wastes Protocol.³⁰⁵

Several Regional Activity Centres (“RACs”) have also been created over time to support implementation of the MAP;³⁰⁶ they provide the following services:

- data collection and modeling of the relationship between the environment and development,³⁰⁷
- planning of integrated coastal management and training of local bodies,³⁰⁸
- management plans for protected species, monitoring tools, data sharing among specialists and other organizations, and public awareness of biodiversity issues;³⁰⁹
- communication services and technical support, including website development, to the Secretariat and other entities associated with the Barcelona Convention and related public awareness projects;³¹⁰

³⁰⁴ Report of the Intergovernmental Meeting on the Protection of the Mediterranean 28 Jan.-4 Feb. 1975, at 7-9; *id.*, Annex: Action Plan (MAP I), at 2-3.

³⁰⁵ See UNEP: Mediterranean Action Plan for the Barcelona Convention Website, Structure tab, MED POL page, available at <http://www.unepmap.org/index.php?module=content2&catid=001017003>; Decision IG.19/5: Mandates of the Components of MAP and Appendices, reported in Report of the 16th Ordinary Meeting of the Contracting Parties dated 24 Nov. 2009, Annex II, at 48 (establishing current mandate of MED POL), available at http://195.97.36.231/acrobatfiles/09IG19_8_Eng.pdf; see also Decision IG 17/7 and Annex: Operational Document of MED POL Phase IV (2006-2013), reported in Report of the 15th Ordinary Meeting, Annex V, at 181-221.

³⁰⁶ See MAP II at 102; Decision IG.19/5: Mandates of the Components of MAP and Appendices, reported in Report of the 16th Ordinary Meeting, Annex II, at 49 *et seq.*; UNEP: Mediterranean Action Plan for the Barcelona Convention Website, Structure tab, Regional Activity Centres page, available at <http://www.unepmap.org/index.php?module=content2&catid=001017004>.

³⁰⁷ See Blue Plan RAC Website, Methodology tab, Introduction page, available at <http://www.planbleu.org/methodologie/introduction.html>.

³⁰⁸ See Priority Actions Programme RAC Website, About PAP tab, available at http://www.pap-thecoastcentre.org/about.php?blob_id=13&lang=en. The Integrated Coastal Zone Management Protocol formalizes a central implementation role for this Centre. See Integrated Coastal Zone Management Protocol, art. 2(d), 15(2), 17, 30, 32.

³⁰⁹ See Specially Protected Areas RAC Website, About RAC/SPA tab, Missions page, available at http://www.rac-spa.org/index.php?option=com_content&task=view&id=80&Itemid=135. The Specially Protected Areas and Biodiversity Protocol formalizes a central implementation role for this Centre. See Specially Protected Areas and Biodiversity Protocol, art. 9, 11(7), 20-22, 25.

- development and dissemination of clean technology through research, training, and expert exchange;³¹¹
- assistance to states to prevent and respond to marine pollution emergencies;³¹² and
- protection and sustainable development of historic sites approved by the Contracting Parties.³¹³

Some RACs are, or report to, national agencies. One is an NGO.³¹⁴ One is also a U.N. international centre.³¹⁵ In response to a governance review, all the Centres will soon be associated under a “host country agreement” to clarify the legal relationship with UNEP and the MAP Program.³¹⁶

³¹⁰ See INFO RAC Website, About us tab, *available at* <http://www.inforac.org/index.asp>. The functions of INFO RAC are in transition to a different Italian agency, Institute for Environmental Protection and Research (ISPRA), whose website is available at <http://www.isprambiente.it/site/en-GB>. See Progress Report to the Bureau of January 2009 at 11.

³¹¹ See Cleaner Production RAC Website, Presentation tab, Goals page, *available at* http://www.cprac.org/eng/01_objectius.htm.

³¹² See Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea Website, About REMPEC tab, *available at* <http://www.rempec.org/about.asp>. The Emergency Protocol and Offshore Protocol formalize a central implementation role for REMPEC. See Emergency Protocol, art. 4(3), 7-12, 16-17; Offshore Protocol, art. 18, 26.

³¹³ The Programme for the Protection of Coastal Historic Sites that provides these services was not established as a Regional Activity Centre, but has a similar working partnership with the MAP Program. See UNEP Regional Report, Mediterranean Region, sec. 1.4.5.8, *available at* http://www.unep.org/regionalseas/programmes/unpro/mediterranean/instruments/r_profile_med.pdf; see also Report of the First Meeting of the Executive Coordination Panel, Annex III, Draft Terms of Reference, at 1-2 (establishing 100 Historic Sites programme coordinator as member of Executive Coordination Panel along with RAC directors), reported in Reports of the Meetings of the Executive Coordination Panel during the 2008-2009 Biennium, *available at* http://195.97.36.231/acrobatfiles/09IG19_Inf9_Eng.pdf.

³¹⁴ See Audit Report dated 3 June 2009, at 8, *available at* http://195.97.36.231/acrobatfiles/09BUR69_Inf7_eng.pdf.

³¹⁵ See REMPEC Website, About REMPEC tab, Mandate page, *available at* http://www.rempec.org/rempec.asp?theIDS=1_91&theName=About%20REMPEC&theID=6&daChk=1&pgType=1.

³¹⁶ Decision IG 17/5 and Annex: Governance paper, reported in Report of the 15th Ordinary Meeting, Annex V, at 152 (concluding that “harmonization” of institutional status of Regional Activity Centres “along with a clarification of their specific roles” was “a crucial prerequisite for a fully functional and consolidated system of good governance for MAP”); Audit Report dated 3 June 2009, at 8 (concluding that absence of host agreements exposes UNEP to reputational and financial risks); see also See Progress Report by the Secretariat on Activities Carried Out during the 2008-2009 Biennium dated 19 Oct. 2009, at 10-11 (reporting preparation of template host country agreement), *available at* http://195.97.36.231/acrobatfiles/09IG19_Inf3_Eng.pdf.

v. Executive Coordination Panel

In 2008, the Contracting Parties agreed to establish an Executive Coordination Panel chaired by the Secretariat and made up of the directors of MED POL and the Regional Activity Centres.³¹⁷ This body meets quarterly to coordinate their operation, improving accountability to the Contracting Parties.³¹⁸

vi. National Focal Points

Each Contracting Party has established a National Focal Point responsible for domestic implementation of the MAP goals.³¹⁹ Representatives of the National Focal Points consult with the Secretariat between Meetings of Contracting Parties to review output of working groups commissioned by the Parties and to draft decisions for the Parties' adoption.³²⁰ The Contracting Parties also approved a role for National Focal Points to coordinate directly with MED POL and the Regional Activity Centres.³²¹

vii. Mediterranean Commission on Sustainable Development (MCSD)

In 1996, the Contracting Parties established a Mediterranean Commission on Sustainable Development ("MCSD").³²² The MCSD includes representatives of the 22 Contracting Parties. 21 additional members represent local authorities, business, the scientific community, NGOs, and intergovernmental organizations. Three additional members are selected for expertise specific to the topical focus of the MCSD during its term.

The MCSD provides input to the Contracting Parties regarding the alignment of the MAP activities with sustainable development goals and makes proposals within the MAP framework.³²³ The MCSD

³¹⁷ See Decision IG 17/5 and Annex: Governance paper, reported in Report of the 15th Ordinary Meeting, Annex V, at 146.

³¹⁸ See, e.g., Reports of the Meetings of the Executive Coordination Panel during the 2008-2009 Biennium, available at http://195.97.36.231/acrobatfiles/09IG19_Inf9_Eng.pdf; see also Audit Report dated 3 June 2009, at 6 (noting that Executive Coordination Panel resolves recommendation for greater involvement of MAP components (RACs) in planning Programme of Work and budget).

³¹⁹ See UNEP: Mediterranean Action Plan for the Barcelona Convention Website, Structure tab, Regional Activity Centres page, available at <http://www.unepmap.org/index.php?module=content2&catid=001017004>; MAP II, at 28.

³²⁰ See, e.g., Report of the Meeting of MAP Focal Points, 28 Aug. 2009, available at http://195.97.36.231/acrobatfiles/09WG337_20_eng.pdf.

³²¹ See Decision IG 17/5 and Annex: Governance paper, reported in Report of the 15th Ordinary Meeting, Annex V, at 141, 159-173 (adopting mandates for focal points for each Regional Activity Centre and MED POL to support MAP national focal points); see also Integrated Coastal Zone Management Protocol, art. 30 (requiring parties to designate a focal point as liaison to the Priority Actions Programme RAC).

³²² See UNEP/MAP Website, Structure tab, MCSD page, <http://www.unepmap.org/index.php?catid=001017002&module=content2>.

³²³ See Decision IG 17/5 and Annex: Governance paper, reported in Report of the 15th Ordinary Meeting, Annex V, at 175 (describing revised mandate and composition of the MCSD).

facilitated adoption in 2005 of a Mediterranean Strategy for Sustainable Development (“MSSD”)³²⁴ and assists individual Contracting Parties to develop a National Strategy for Sustainable Development.³²⁵

7. Relationships

i. European Union – Union for the Mediterranean

In 1995, the EU established the Euro-Med Partnership for engaging the countries of the Mediterranean basin.³²⁶ In 2008, the partners re-launched the framework as the Union for the Mediterranean, and placed specific emphasis on cooperation in the use and protection of the Mediterranean Sea.³²⁷ EU legislation ties all financial assistance to its Mediterranean neighbors to the agreements made within this framework.³²⁸

In 2005, the Union for the Mediterranean (then Euro-Med) adopted a five-year work program, committing to implement the Mediterranean Strategy for Sustainable Development established under the Barcelona Convention. The partnership agreed to share lessons learned about sustainable development in the Baltic Sea and Black Sea across the Mediterranean.³²⁹ The EC Environment Directorate-General has taken on these goals under the Horizon 2020 initiative.³³⁰ The partnership further agreed to develop a “road map for de-polluting the Mediterranean by 2020 . . . using inter alia the MSSD and the UNEP Mediterranean

³²⁴ See Mediterranean Strategy for Sustainable Development, available at http://195.97.36.231/dbases/acrobatfiles/05IG16_7_eng.pdf; see also Decision IG 17/17: MSSD Implementation Plan and Annex, (Contracting Parties adopting plan to implement the MSSD), reported in Report of the 15th Ordinary Meeting, Annex V, at 353 *et seq.*

³²⁵ Progress Report to the Bureau of January 2009, at 18-24 (noting activities with respect to seven countries).

³²⁶ See Europa, Summaries of EU Legislation Website, Barcelona Declaration and the Euro-Mediterranean Partnership, available at http://europa.eu/legislation_summaries/external_relations/relations_with_third_countries/mediterranean_partner_countries/r15001_en.htm.

³²⁷ See Joint Declaration of the Paris Summit for the Mediterranean, Paris, 13 July 2008, at 17-18 (calling for Mediterranean water strategy and establishing initiatives to de-pollute the Mediterranean and to develop maritime and coastal highways), available at http://www.ue2008.fr/webdav/site/PFUE/shared/import/07/0713_declaration_de_paris/Joint_declaration_of_the_Paris_summit_for_the_Mediterranean-EN.pdf.

³²⁸ Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument, art. 13, available at http://ec.europa.eu/world/enp/pdf/oj_l310_en.pdf.

³²⁹ Euromed, Five Year Work Programme dated November 2005, subparagraph 8(j), available at http://ec.europa.eu/external_relations/euromed/summit1105/five_years_en.pdf.

³³⁰ See EC Environment Directorate-General Website, Horizon 2020 tab, The Initiative page, available at http://ec.europa.eu/environment/enlarg/med/initiative_en.htm; see also Communication from the Commission to the Council and the European Parliament Establishing an Environment Strategy for the Mediterranean, at 5-6, COM (2006) 475 final (5 Sept. 2006) (describing the relationship of Horizon 2020 with the MAP Program), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0475:FIN:EN:PDF>.

Action Plan . . . while providing adequate financial and technical assistance to this end.”³³¹ Consistent with this commitment, the European Commission directly contributes to the MAP Program budget. *See Funding and Financing, infra.*

Meanwhile, the Contracting Parties have tasked MED POL with improving coordination of the MAP Program with the EU member states’ implementation of the Water Framework Directive, the Marine Strategy Directive, and the Horizon 2020 initiative.³³² The EC has also recently dedicated a special consultant to coordinate the EC’s Horizon 2020 initiative with the MAP Program.³³³

ii. The Global Environment Facility (“GEF”)

The GEF provides significant financing for implementation of the Barcelona Convention goals.³³⁴ *See Funding and Financing, infra.* Consistent with its role as an independent international organization, GEF focuses incremental assistance on transboundary issues to achieve global benefits, as distinct from domestic issues.³³⁵ The GEF-led project, Strategic Partnership for the Mediterranean Large Marine Ecosystem (“SP Med LME”) addresses the trans-border priorities of the Contracting Parties developed as part of the MAP.³³⁶ GEF justifies this partnership precisely because the MAP Program is developed through a multilateral, regional framework.³³⁷

³³¹ Euromed, Five Year Work Programme dated November 2005, subpara. 8(j).

³³² *See* Decision IG 17/7 and Annex: Operational Document of MED POL Phase IV (2006-2013), at 203; *see also* Marrakesh Declaration, reported in Report of the 16th Ordinary Meeting, Annex I, at 4, (calling for “better coordination” with the “Horizon 2020 initiative, [and] the Mediterranean component of the European Union Water Initiative” and “synergies between Barcelona Convention and the Union for the Mediterranean and the European Neighbourhood Policy”).

³³³ *See* Report of the Meeting of MAP Focal Points dated 28 Aug. 2009, at 7, *available at* http://195.97.36.231/acrobatfiles/09WG337_20_eng.pdf.

³³⁴ *See* UNEP/MAP Website, GEF Project tab, *available at* <http://www.unepmap.org/index.php?module=content2&catid=001015>.

³³⁵ *See* UNEP/MAP, Transboundary Diagnostic Analysis for the Mediterranean Sea, 2005, at ii, *available at* <http://www.medsp.org/english/scheda.asp>; GEF, Project Document: Strategic Partnership for the Mediterranean Large Marine Ecosystem – Regional Component, at 21-23 (describing fit of project with GEF transboundary strategies and global conventions), *available at* <http://www.medsp.org/english/scheda.asp>.

³³⁶ *See* GEF, Project Document: Strategic Partnership for the Mediterranean Sea Large Marine Ecosystem – Regional Component, at ii-iii and 1-2 (describing transboundary analysis and jointly developed Strategic Action Programmes that form basis for GEF intervention); *see also* UNEP, Strategic Action Programme for the Conservation of Biological Diversity in the Mediterranean Region, at 2 (elaborating “principles, measures and concrete and coordinated actions at national, transboundary and regional level”), *available at* http://195.97.36.231/dbases/webdocs/GEF/SAP_BIO.pdf; UNEP, Strategic Action Programme to Address Pollution from Land Based Activities dated 1998, at 2 (basing programme on “regionally prepared transboundary diagnostic analysis”), *available at* http://195.97.36.231/dbases/webdocs/GEF/SAP_MED.pdf.

³³⁷ *See* GEF, Request for CEO Endorsement/Approval dated 13 Feb. 2008, at 19 (noting that since the regional priorities were jointly defined under the Barcelona Convention, “[t]his enhances the probability that the incremental

The GEF project is executed through the Secretariat, Med-POL, the MAP RACs and other international and regional non-governmental organizations.³³⁸

iii. European Investment Bank

The European Investment Bank (“EIB”) has agreed to finance bankable projects addressing particularly severe pollution in coastal areas identified by the Secretariat. The EIB’s Mediterranean Hot Spot Investment Program involves Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine Authority, Syria and Tunisia.³³⁹

iv. International Maritime Organization

The International Maritime Organization participates in the MAP Program by administering the Regional Activity Centre in Malta.³⁴⁰

8. Decision Making

The Meeting of the Contracting Parties is the decision-making body under the Barcelona Convention and the MAP. Meetings take place at least biannually.³⁴¹ Two-thirds of the Contracting Parties constitute a quorum³⁴² and substantive decisions require a two-thirds majority of the Contracting Parties present who vote or abstain.³⁴³ Secret ballots are permitted.³⁴⁴ A Contracting Party more than 24 months in arrears with its contributions to the budget is not permitted to vote unless the Meeting concludes that the arrears

[i.e., non-domestic] benefits of project activities are maximized and that GEF support will be devoted both to supporting the region in promulgating collective action towards regional priorities”), *available at* <http://195.97.36.231/dbases/webdocs/GEF/CEOendorsement.doc>.

³³⁸ See *id.* at 1 (noting partnership with UN Educational Scientific and Cultural Organization – International Hydrological Program; World Wildlife Fund; Global Water Partnership for the Mediterranean; Mediterranean Information Office for Environment, Culture and Sustainable Development; U.N. Food and Agricultural Organization and its General Fisheries Commission for the Mediterranean; the World Bank; and the Mediterranean Environmental Technical Assistance Program).

³³⁹ European Investment Bank, Final Report: Horizon 2020 – Elaboration of a Mediterranean Hot Spot Investment Programme (MeHSIP) dated Jan. 2008, at 9-10, *available at* http://www.eib.org/attachments/country/femip_horizon_2020_en.pdf.

³⁴⁰ MAP II at 121; UNEP: Mediterranean Action Plan for the Barcelona Convention Website, Structure tab, Regional Activity Centres page, *available at* <http://www.unepmap.org/index.php?module=content2&catid=001017004>.

³⁴¹ Barcelona Convention, as amended, art. 18.

³⁴² Rules of Procedure for meetings and conferences of the Barcelona Convention, rule 30.

³⁴³ *Id.*, rule 43.

³⁴⁴ *Id.*, rule 45.

are due to circumstances beyond the Party's control.³⁴⁵ Besides binding decisions, the Contracting Parties also adopt "recommendations" regarding the implementation of the Barcelona Convention, its Protocols, and the MAP Program generally.³⁴⁶

The Secretariat plays a significant role in decision making under the Barcelona Convention. The Secretariat prepares reports to the National Focal Points and to the Bureau, which in turn, with the assistance of the Secretariat, prepare draft decisions for consideration at the Meeting of the Contracting Parties.³⁴⁷ The Contracting Parties may only consider substantive decisions that are supported by a report from the Executive Director of the Secretariat on the administrative and financial implications.³⁴⁸

9. Dispute Resolution

The Parties are obliged to "seek" a "peaceful" settlement of disputes about the interpretation or application of the Convention or its Protocols.³⁴⁹ The Convention also proposes an ad hoc arbitration procedure by which a three-person tribunal will decide disputes "according to the rules of international law and, in particular, those of this Convention and the protocols concerned."³⁵⁰ The putative tribunal may award interim protective measures.³⁵¹

The Land-Based Sources Protocol additionally provides that a party whose "interests" are "likely to be prejudice[d]" by land-based pollution originating from another may require the parties to this protocol to address the matter at the Meeting of the Contracting Parties.³⁵²

³⁴⁵ *Id.*, rule 42(2.A.).

³⁴⁶ See Barcelona Convention, as amended, art. 18(2)(iv); *see, e.g.*, Decision IG 17/16: Recommendations of the 12th Meeting of the MCSD and Annexes, reported in Report of the 15th Ordinary Meeting, Annex V, at 345 *et seq.* (adopting recommendations regarding Water Demand Management, Energy and Climate Change, and Energy and Sustainable Development).

³⁴⁷ *See, e.g.*, Report of the Meeting of the MAP Focal Points dated 28 Aug. 2009, at 7-15 (describing MAP Focal Points debate of draft decisions proposed by Secretariat), *available at* http://195.97.36.231/acrobatfiles/09WG337_20_eng.pdf; Report of the Meeting of the Bureau of the Contracting Parties dated 29 June 2009, Annex III, at 3 (approving with guidance the approach to draft decision proposed by Secretariat), *available at* http://195.97.36.231/acrobatfiles/09BUR69_5_eng.pdf.

³⁴⁸ Rules of Procedure for meetings and conferences of the Barcelona Convention, as amended, rule 16, *available at* http://195.97.36.231/Acrobatfiles/MAPDocAcrobatfiles/Rules_of_Procedure_Eng.pdf.

³⁴⁹ Barcelona Convention, as amended, art. 28.

³⁵⁰ Barcelona Convention, as amended, Appendix A, art. 5(1); *see also* art. 5(2) (requiring the tribunal to draw up its own procedural rules).

³⁵¹ Barcelona Convention, as amended, Appendix A, art. 6(2).

³⁵² Land-Based Sources Protocol, art. 12(2).

The Integrated Coastal Zone Management Protocol (not yet in force) addresses disputes other than inter-state disputes, broadly providing that “[m]ediation or conciliation procedures and a right of administrative or legal recourse should be available to *any stakeholder* challenging decisions, acts or omissions, subject to the participation provisions established by the Parties with respect to plans, programmes or projects concerning the coastal zone.”³⁵³

10. Data Information Sharing, Exchange, and Harmonization

The Barcelona Convention requires the Contracting Parties to “promote cooperation . . . on the basis of notification, exchange of information and consultation.”³⁵⁴ The Protocols require parties to share of specific information relevant to their subject matter.

- The Dumping Protocol requires each party to report dumping permits issued and actual dumping that occurs.³⁵⁵ *See Compliance and Monitoring, infra.* The Dumping Protocol also provides that each party “shall, if it considers it appropriate” report suspicions of illegal dumping to other concerned parties.³⁵⁶
- The Emergency Protocol obliges its parties to exchange information – through the Regional Activity Centre in Malta – about domestic regulations, responsible authorities, and best practices regarding prevention of pollution and emergency response.³⁵⁷ The Emergency Protocol further requires parties to warn the nearest coastal State (and other parties likely to be affected) of incidents that may result in pollution.³⁵⁸ Parties must also inform each other of their planned response to a pollution incident.³⁵⁹ The Offshore Protocol requires parties to ensure that persons on offshore installations follow similar procedures.³⁶⁰
- The Hazardous Wastes Protocol requires its parties to report to the Secretariat “as soon as possible” information relating to illegal traffic in hazardous waste.³⁶¹ Parties must also share annual statistics on waste generation and transfer.³⁶²

³⁵³ Integrated Coastal Zone Management Protocol, art. 14(3).

³⁵⁴ Barcelona Convention, as amended, art. 3(5).

³⁵⁵ Dumping Protocol, art. 14.

³⁵⁶ *Id.*, art. 12.

³⁵⁷ Emergency Protocol, art. 7.

³⁵⁸ *See id.*, art. 9.

³⁵⁹ *Id.*, art. 10.

³⁶⁰ *See* Offshore Protocol, art. 17; *see also id.*, art. 16 (requiring application of the Emergency Protocol).

³⁶¹ Hazardous Waste Protocol, art. 9(6).

³⁶² *Id.*, art. 8(2).

- The Specially Protected Areas and Biodiversity Protocol obliges parties to regularly exchange information about “the characteristics of protected areas and species,” and to communicate “at the earliest opportunity” any situation that might endanger the protected ecosystems.³⁶³
- The Integrated Coastal Zone Management Protocol requires parties to assess and report the status of coastal erosion³⁶⁴ and to share information about major natural disasters.³⁶⁵

Under the Barcelona Convention, the Contracting Parties undertake “as far as possible to cooperate . . . in the fields of science and technology and to exchange data as well as other scientific information for the purpose of this Convention,” and further agree to cooperate in the development and sharing of “clean” production technology.³⁶⁶ The Protocols elaborate the required cooperation in their respective domains.³⁶⁷ The MED POL and Regional Activity Centres participate in research coordination, information generation, and information sharing. *See Organization Structure, supra.*

The Protocols expressly provide that progress and lessons learned in implementation will be shared at regular meetings of their respective parties.³⁶⁸ The Parties have also recently begun to coordinate national library resources related to marine science.³⁶⁹

³⁶³ Specially Protected Areas and Biodiversity Protocol, art. 21(1), 21(2).

³⁶⁴ Integrated Coastal Zone Management, art. 23(4).

³⁶⁵ *Id.*, art. 24(2).

³⁶⁶ Barcelona Convention, as amended, art. 13(1)-(3).

³⁶⁷ *See* Emergency Protocol, art. 7(f) (requiring sharing of information about “new ways in which pollution of the sea by oil and hazardous and noxious substances may be avoided, new measures for combating pollution, new developments in the technology of conducting monitoring and the development of research programmes”); Land-Based Sources Protocol, art. 9 (requiring cooperation in “research on inputs, pathways and effects of pollutants and on the development of new methods for their treatment, reduction or elimination, as well as the development of clean production processes to this effect.”); Specially Protected Areas and Biodiversity Protocol, art. 20, (requiring coordination “to the fullest extent possible” of research and monitoring of protected areas and species); Offshore Protocol, art. 22 (requiring cooperation in research of new technology and emergency procedures); Hazardous Wastes Protocol, art. 8 (requiring cooperation in development and implementation of “clean production methods”); Integrated Coastal Zone Management, art. 25(2) (requiring cooperation in research on integrated coastal zone management).

³⁶⁸ *See* Dumping Protocol, art. 14(2); Emergency Protocol, art. 18(2); Land-Based Sources Protocol, art. 13, 14(2); Specially Protected Areas and Biodiversity Protocol, art. 26(2); Offshore Protocol, art. 26; Hazardous Wastes Protocol, art. 11; *cf.* Integrated Coastal Zone Management Protocol, art. 33 (requiring parties at regular meetings “to consider the efficiency of the measures adopted”).

³⁶⁹ *See* Report of the First Workshop/Meeting of the Mediterranean Marine and Aquatic Science Libraries and Information Centres Network dated 17-18 Nov. 2008, *available at* <http://www.mediterranean-marine-science-libraries-meeting-cadiz-november-17-18-2009>.

In 1996, the Contracting Parties and the EU commissioned the development of a data coordinating structure,³⁷⁰ which led to the Euro Mediterranean Water Information System (“EMWIS”).³⁷¹ The decision-making and operational structure of EMWIS is independent of the Barcelona Convention structure,³⁷² but its objectives include developing national water information systems and proactive efforts to transfer know-how in the water sector.³⁷³

The Barcelona Convention also establishes principles to harmonize domestic environmental policy, including the precautionary principle,³⁷⁴ the “polluter pays” principle,³⁷⁵ and a technology-based approach

³⁷⁰ Decisions of the ministers and delegation representatives to the Euro-Mediterranean Conference on Water Management on 25 and 26 November 1996 in Marseilles, *available at* http://www.ufm-water.net/download/DCL_Marseille1996_en.pdf.

³⁷¹ Euro Mediterranean (Water) Information System on know-how in the water sector: Handy Guide, at 2, *available at* http://www.semide.net/overview/fol226852/handy_guide.pdf.

³⁷² *See* EMWIS Website, Decision-Making level tab (describing Steering Committee of 13 countries with rotating presidency), *available at* <http://www.semide.net/overview/fol226852/fol720468>; EMWIS Website, Operational level tab (describing National Focal Points in each participating country and permanent Technical Unit consisting of agencies from Spain, France, and Italy), *available at* <http://www.semide.net/overview/fol226852/fol335117>.

³⁷³ *See* EMWIS Website, Present Priorities tab, Orientations page dated 22 Aug. 2006, *available at* <http://www.semide.net/overview/fol350157/doc064667> (listing priorities as participative approaches in integrated water resources management; prevention and risk management related to both water scarcity and floods; development of unconventional water resources, including desalination and waste water re-use; and local management of sanitation services and prevention of domestic pollution).

³⁷⁴ Barcelona Convention, as amended, art. 4. *See also, e.g.*, Marrakesh Declaration, reported in Report of the 16th Ordinary Meeting, Annex I, at 3 (resolving with respect to climate change to “[p]romote new mitigation technologies . . . to ensure a better evaluation of their impact on the Mediterranean ecosystem, taking into account the precautionary principle); Dumping Protocol, Annex, sub-para. B(9) (requiring parties “when issuing a permit for dumping, to endeavor to determine whether an adequate scientific basis exists for assessing the consequences”); Emergency Protocol, Preamble, (“Applying the precautionary principle”); Hazardous Waste Protocol, art. 8(3) (obliging parties to implement precautionary approach); Specially Protected Areas and Biodiversity Protocol, Preamble (“Conscious that when there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be invoked as a reason for postponing measures to avoid or minimize such a threat”). *But cf. id.*, Annex I, sub-para. A(b) (providing that “Specially Protected Areas of Mediterranean Importance” “will be selected on a scientific basis”); *id.*, art. 13(2) (requiring efforts to “eradicate” non-indigenous species when “*after scientific assessment*, it appears that such species cause or are likely to cause damage to ecosystems, habitats or species” (emphasis added)); Five-Year Programme of Work 2010-2014, at 4 (“It is essential that a more scientific basis should be provided for the decisions taken at Contracting Party level. . . The same applies for the strategies adopted by MAP. The MCS D’s work must also be based on indisputable data”), reported in Report of the 16th Ordinary Meeting, Annex III, Appendix 1, at 4.

³⁷⁵ Barcelona Convention, as amended, art. 4. *See also, e.g.*, Offshore Protocol, art. 27 (requiring parties to impose liability for pollution on operators); Decision IG 17/4 and Annex: Guidelines on Liability and Compensation for Damage Resulting from Pollution of the Marine Environment in the Mediterranean Sea Area, ¶ 9 (proposing strict liability of polluter for damages, including indirect damages), reported in Report of the 15th Ordinary Meeting, Annex V, at 136.

considerate of sustainable development needs.³⁷⁶ To facilitate such harmonization, the Convention suggests that the Secretariat may assist Parties to draft environmental legislation “in compliance with the Convention and its Protocols.”³⁷⁷

The Protocols generally establish or call for development of baseline measures to be implemented in national regulations³⁷⁸ but do not require absolute harmonization of law.³⁷⁹ For example, the pollution standards in EU regulations are in certain cases higher than those provided by the Protocols.³⁸⁰

The Convention and certain Protocols promote harmonization by requiring technical assistance to developing countries,³⁸¹ which appears to be a goal of the Barcelona Convention framework.³⁸² MED

³⁷⁶ Barcelona Convention, as amended, art. 4. *See also, e.g.*, Emergency Protocol, Preamble, (“utilizing the best available techniques and the best environmental practices”); Land-Based Sources Protocol, art. 7(2) and 7(3) (providing that common standards and action plans shall take into account the “need for development”); *id.*, at Annex IV (defining criteria for identifying best available techniques and best environmental practices); Offshore Protocol, art. 3 (obliging parties to take “all appropriate measures” to ensure “that the best available techniques, environmentally effective and economically appropriate, are used”).

³⁷⁷ Barcelona Convention, art. 14(2).

³⁷⁸ *See, e.g.*, Dumping Protocol, art. 11 (requiring national regulation of ships and aircraft to implement agreed measures); Land-Based Sources Protocol, art. 6 and Annex II (requiring parties to authorize or regulate discharge of agreed substances considering agreed factors); *id.*, art. 7 (requiring common guidelines, standards or criteria for regulating certain aspects of land-based pollution); Offshore Protocol, art. 10 (requiring parties to adopt common standards for disposal of oil/oily mixtures, and the use and disposal of drilling fluids and drill cuttings); *id.*, art. 23(2) (requiring parties to harmonize domestic law with jointly identified standards for regulating activities of exploration and exploitation in the Mediterranean, “as soon as possible”); Specially Protected Areas and Biodiversity Protocol, art. 16 (requiring agreement to guidelines for which areas and species to protect, and how to do so).

³⁷⁹ *See, e.g.*, Emergency Protocol, art. 20 (permitting stricter regulations under domestic law); Specially Protected Areas and Biodiversity Protocol, art. 27 (same); Integrated Coastal Zone Management Protocol, art. 4(3) (same); *id.*, 8(2)(a) (permitting broader definition of protected coastal zone); Offshore Protocol, art. 10(3) (permitting more restrictive standards regarding use and disposal of oil/oily mixtures, drilling fluids and drill cuttings); *cf.* Dumping Protocol, art. 13 (“Nothing in this Protocol shall affect the right of each Party to adopt *other* measures, in accordance with international law, to prevent pollution due to dumping.” (emphasis added)).

³⁸⁰ *Compare, e.g.*, Regional Plan on the reduction of BOD₅ from Urban Waste Water, Annex, art. III(3), reported in Report of the 16th Ordinary Meeting, Annex II, at 72, with EU Directive 91/271/CEE, as amended 22 Oct. 2008, Annex 1, Table 1 (permitting only half the effluent BOD₅ permitted under the Regional Plan), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=consleg:199110271:20081211:en:pdf>; *see also* Hazardous Wastes Protocol, art. 6(1) (permitting exceptional export of hazardous waste from only developing countries).

³⁸¹ *See* Barcelona Convention, as amended, art. 13(3) (“The Contracting Parties undertake to cooperate in the provision of technical and other possible assistance in fields relating to marine pollution, with priority to be given to the special needs of developing countries in the Mediterranean region.”); Land-Based Sources Protocol, art. 10; Specially Protected Areas and Biodiversity Protocol, art. 22; Offshore Protocol, art. 24; Hazardous Waste Protocol, art. 10; *see also* Emergency Protocol, art. 13(4) (requiring parties to consider needs of developing countries when requested to waive or defer reimbursement of emergency assistance costs); *cf.* Integrated Coastal Zone Management Protocol, art. 26 (providing for assistance to any Parties “requiring such assistance”). The Hazardous Wastes

POL and the RACs are providing training, technical assistance, and financial assistance to implement pollution monitoring, reporting, and mitigation.³⁸³ The Contracting Parties recently acknowledged, meanwhile, that financing instruments available to support the goals of adaption to climate change and emissions reduction remain “broadly underutilized.”³⁸⁴

11. Notifications

The following Protocols require giving of notice:

- The Offshore Protocol (not yet in force) requires notification of other parties through a registry at the Secretariat when authorizing exploration or exploitation of the Mediterranean Sea Area.³⁸⁵
- Under the Hazardous Wastes Protocol (not widely ratified), a party permitting the export or import of hazardous waste must notify and receive approval of the state through whose waters the waste should be transported.³⁸⁶
- The Integrated Coastal Zone Management Protocol (not yet in force) obliges parties to “cooperate by means of notification, exchange of information and consultation” when proposed plans “are likely to have a significant adverse effect on the coastal zones” of other parties.³⁸⁷

12. Funding and Financing

The Meeting of Contracting Parties biannually approves a Programme Budget.³⁸⁸ The MAP Program is primarily funded by the Parties’ contributions to the Mediterranean Trust Fund (“MTF”), of which UNEP

Protocol identifies “developing countries” as those countries that are not members of the OECD. Hazardous Wastes Protocol, art. 1(v).

³⁸² See, e.g., Decision IG 17/17: MSSD Implementation Plan and Annex, reported in Report of the 15th Ordinary Meeting, Annex V, at 367 (“tak[ing] into consideration the need to reduce the gap between developed and developing countries in the region”).

³⁸³ See, e.g., Progress Report by the Secretariat on Activities Carried Out during the 2008-2009 Biennium dated 19 Oct. 2009, at 6 (reporting financial and technical assistance provided to 7 countries to prepare implementation reports); *id.* at 34 (reporting training in clean technologies in 3 assisted countries); *id.* at 36 (reporting training in 1 assisted country in management of wastewater); *id.* at 40 (reporting technical assistance with plans for desalination facilities); *id.* at 42 (noting agreements for financial assistance to monitor marine pollution finalized or pending with 9 countries).

³⁸⁴ Marrakesh Declaration, reported in Report of the 16th Ordinary Meeting, Annex I, at 1.

³⁸⁵ Offshore Protocol, art. 6(4).

³⁸⁶ Hazardous Waste Protocol, art. 6(4).

³⁸⁷ Integrated Coastal Zone Management Protocol, art. 29.

³⁸⁸ Barcelona Convention, as amended, art. 18(2)(vii).

is the trustee.³⁸⁹ The Parties' relative contribution levels derive from the United Nations assessment scale.³⁹⁰ The budget was frozen in 2004, but in 2009, recognizing progress in implementing governance reforms, the Contracting Parties agreed to consider an increase in the 2012-2013 biennium budget.³⁹¹ They also agreed to establish an operating reserve of 15% of annual expenditures.³⁹²

The Contracting Parties approved expenditures over 2010-2011 of approximately 15.7 million euros.³⁹³ Allocation of human resource and overhead costs brings the total budget to 15.7 million euros for 2010.³⁹⁴ The Parties expect to fund 40% of the total budget through contributions to the Mediterranean Trust Fund.³⁹⁵ (France, Spain, and Italy are the largest donors.³⁹⁶) The in-kind contributions of the countries hosting the Secretariat and Regional Centres will fund another 40% of the budget.³⁹⁷ UN agencies UNEP, WHO, and IAEA will also provide about 2% of the budget through in-kind and cash contributions.³⁹⁸ The European Community will directly contribute approximately 4% to the Barcelona Convention budget,³⁹⁹ and the GEF will contribute another 2%.⁴⁰⁰ Drawdown on and interest from the revolving fund is

³⁸⁹ See Decision IG.19/17: Decision on the adoption of the Five-Year Programme of Work and Programme Budget for the 2010-2011 biennium, reported in Report of the 16th Ordinary Meeting, Annex III, at 1 (requesting UNEP to extend Mediterranean Trust Fund through 2011).

³⁹⁰ See Barcelona Convention, as amended, art. 24(2) (establishing legal basis for contributions); MAP II, sec. III(2) (setting out financial arrangements of MAP Program); Audit Report dated 3 June 2009, at 3 (confirming current arrangements).

³⁹¹ Decision IG.19/17: Decision on the adoption of the Five-Year Programme of Work and Programme Budget for the 2010-2011 biennium, reported in Report of the 16th Ordinary Meeting, Annex III, at 1; *see also* Audit Report dated 3 June 2009, Cover Note, at 1-2 (noting actions in response to recommendations from audit by U.N. Office of Internal Oversight Services).

³⁹² Decision IG.19/17: Decision on the adoption of the Five-Year Programme of Work and Programme Budget for the 2010-2011 biennium, reported in Report of the 16th Ordinary Meeting, Annex III, at 1; *see also* Audit Report dated 3 June 2009, at 5 (describing historically ad hoc operational reserve and need for policy).

³⁹³ Decision IG.19/17: Decision on the adoption of the Five-Year Programme of Work and Programme Budget for the 2010-2011 biennium, reported in Report of the 16th Ordinary Meeting, Annex III, at 1.

³⁹⁴ See *id.*, Appendix 3, at 23-64 (itemizing total budget, including human resource costs), *available at* http://195.97.36.231/acrobatfiles/09IG19_8_Eng.pdf.

³⁹⁵ *Id.* at 69 (summarizing the contributions for 2010-2011, which includes an estimation of arrears collected).

³⁹⁶ *Id.* at 70 (itemizing contributions of the Contracting Parties).

³⁹⁷ *Id.* at 70, 71 (listing the counterpart contributions of the host countries (the contribution of Greece is listed separately)).

³⁹⁸ *Id.*

³⁹⁹ *Id.*

⁴⁰⁰ See *id.* at 23-64 (identifying budgeted contributions from GEF).

expected to provide another 4%.⁴⁰¹ The 2010 budget nevertheless foresees a 1.4 million euro shortfall (over 8% of the total budget),⁴⁰² which the Secretariat expects to raise from these and other donors.⁴⁰³

Besides direct contribution to the Barcelona Convention budget, GEF is currently committed to a 5-year funding program (2008-2013) of over US\$ 12.5 million for regional activities under the Strategic Partnership for the Mediterranean Large Marine Ecosystem (“SP for the Med LME”).⁴⁰⁴ GEF’s participation also mobilizes partnership funding from other international and private organizations.⁴⁰⁵ The GEF project includes a separate Investment Fund to finance implementation of technologies and methodologies to reduce pollution (particularly wastewater) and manage biodiversity.⁴⁰⁶ GEF has committed up to US\$ 85 million and expects to leverage its own contribution by three times with contributions from other donors.⁴⁰⁷

GEF justifies its intervention based on its experience with other international waters projects demonstrating that the lack of funds in participating countries would delay or prevent implementation of National Action Plans and investment in projects with transborder impact.⁴⁰⁸

The SP Med LME program objectives closely track the MAP Program, and the Contracting Parties plan to co-invest in activities within the SP Med LME, both collectively and individually.⁴⁰⁹

⁴⁰¹ *Id.* at 69 (noting as source of income “Provision from the MTF”).

⁴⁰² *See id.* (bracketing amounts still unfunded)

⁴⁰³ *See* Decision IG.19/17: Decision on the adoption of the Five-Year Programme of Work and Programme Budget for the 2010-2011 biennium, reported in Report of the 16th Ordinary Meeting, Appendix 2, at 21-22 (introducing the programme of work and budget for the 2010-2011 biennium).

⁴⁰⁴ *See* Project Document: Strategic Partnership for the Mediterranean Sea Large Marine Ecosystem – Regional Component.

⁴⁰⁵ *See* Project Document: Strategic Partnership for the Mediterranean Sea Large Marine Ecosystem – Regional Component, at ii (identifying cash contributions to the Regional Component from a private foundation, the Basel Convention, UNESCO, the Global Water Partnership, and others).

⁴⁰⁶ *See* GEF, Project Executive Summary of the Investment Fund for the Mediterranean Sea Large Marine Ecosystem Partnership dated 21 Mar. 2007, at 4-5, *available at* http://195.97.36.231/dbases/webdocs/GEF/InvestmentFund_ExecutiveSummary.doc; Partnership Investment Fund Brief on a Proposed Grant from the Global Environment Facility Trust Fund in the Amount of USD 30 Million for the First Tranche of a GEF USD 85 Million Investment Fund for the Mediterranean Sea Large Marine Ecosystem Partnership dated April 28, 2006, *available at* http://195.97.36.231/dbases/webdocs/GEF/InvestmentFund_ProjectBrief.doc.

⁴⁰⁷ *See* GEF, Project Executive Summary of the Investment Fund for the Mediterranean Sea Large Marine Ecosystem Partnership, at 12.

⁴⁰⁸ *See* Project Document: Strategic Partnership for the Mediterranean Sea Large Marine Ecosystem – Regional Component, at 24; GEF, Project Executive Summary of the Investment Fund for the Mediterranean Sea Large Marine Ecosystem Partnership, at 4.

13. Benefit Sharing

No specific provision.

14. Compliance and Monitoring

The Contracting Parties have deliberately set up mechanisms for monitoring and enforcement of compliance with their obligations under the Convention and its Protocols. Certain Protocols establish independent means for monitoring compliance.

i. Compliance Committee

The Contracting Parties in 2008 established a Compliance Committee⁴¹⁰ to consider, among other things, “actual or potential non-compliance by individual Parties with the provisions of the Convention and its Protocols.”⁴¹¹ The Committee consists of seven representatives of different Parties on a rotating basis.⁴¹² The Compliance Committee sees its role as “to facilitate implementation and compliance with obligations under the Barcelona Convention, taking into account the special situation of each of the Contracting Parties, in particular those which are developing countries.”⁴¹³

The Committee will consider reports of non-compliance from one Contracting Party regarding another, inquiries from a Contracting Party regarding its own compliance efforts, and referrals from the Secretariat based on its national assessments, and will also on its own evaluate the biannual reports submitted by the Parties.⁴¹⁴ The Committee must report its findings to the Contracting Parties but may not apply sanctions.

⁴⁰⁹ See GEF, Project Document: Strategic Partnership for the Mediterranean Large Marine Ecosystem – Regional Component, at i-ii (listing contributions of various Contracting Parties and the Mediterranean Trust Fund); *see also* Decision IG.19/17: Decision on the adoption of the Five-Year Programme of Work and Programme Budget for the 2010-2011 biennium, Appendix 3, reported in Report of the 16th Ordinary Meeting, Annex III, at 69 (committing funds to GEF Strategic Partnership).

⁴¹⁰ *See generally*, Decision IG 17/2: Procedures and mechanisms on compliance under the Barcelona Convention and its Protocols and Annex, reported in Report of the 15th Ordinary Meeting, Annex V, at 21-27; Decision IG.19/1: Rules of Procedure for the Compliance Committee and its work during 2010-2011 biennium and Annexes, reported in Report of the 16th Ordinary Meeting, Annex II, at 1 *et seq.*

⁴¹¹ Decision IG 17/2: Procedures and mechanisms on compliance under the Barcelona Convention and its Protocols, Annex, ¶ 17(a).

⁴¹² *Id.*, ¶¶ 3, 7, 9.

⁴¹³ *See* Report of the Compliance Committee to the 16th Meeting of the Contracting Parties dated 24 Oct. 2009, at 1, available at http://195.97.36.231/acrobatfiles/09IG19_7_Eng.pdf.

⁴¹⁴ *Id.*, ¶¶ 18, 23; *see also* Decision IG.19/1: Rules of Procedure for the Compliance Committee and its work during 2010-2011 biennium, Annex II, (reporting Committee’s plan to focus on “assessment of the reasons of non-compliance by the Contracting Parties with reporting obligations”).

Instead, it may take steps to facilitate compliance such as requesting an action plan and interim progress reports.⁴¹⁵ The Committee will not act without consensus except “as a last resort.”⁴¹⁶

The Meeting of Contracting Parties may act on the Committee’s report with further facilitative steps, including “capacity building,” and may meanwhile publicize the conclusion that a Party is not observing its obligations.⁴¹⁷ In cases of “serious, ongoing or repeated” non-compliance, the Parties will “consider and undertake any action that may be required for achievement of the purposes of the Convention and the Protocols.”⁴¹⁸

ii. Uniform Reporting Format and Effectiveness Indicators

Each Party is obliged to report to the Meeting of Contracting Parties its progress implementing the Convention, its Protocols, and adopted recommendations.⁴¹⁹ The Contracting Parties in 2008 adopted a uniform and comprehensive reporting format⁴²⁰ that is expected to contribute to effective compliance evaluations.⁴²¹ Timely reporting, meanwhile, remains a challenge for certain Parties.⁴²² Online reporting systems are being developed.⁴²³ *See Compliance and Monitoring, infra.*

The Convention moreover requires reporting on “the effectiveness of the measures” taken by Parties.⁴²⁴ In 2009 the Parties provisionally adopted quantitative indicators of effective implementation of the Convention and its Protocols.⁴²⁵ The process for using these indicators remains under development.⁴²⁶

⁴¹⁵ Decision IG 17/2: Procedures and mechanisms on compliance under the Barcelona Convention and its Protocols, Annex, ¶ 32.

⁴¹⁶ Decision IG.19/1: Rules of Procedure for the Compliance Committee, Annex I, Rule 21(1) (“The Committee shall make every effort to reach agreement by consensus on its findings, measures and recommendations. If all efforts to reach consensus have been exhausted, the Committee shall *as a last resort* adopt its findings, measures and recommendations by at least six members present and voting.” (emphasis added)).

⁴¹⁷ *Id.*, ¶ 33(a) and (d).

⁴¹⁸ *Id.*, ¶ 34(c).

⁴¹⁹ Barcelona Convention, as amended, art. 26. *See also* Land-Based Sources Protocol, art. 13 (requiring biannual reports of measures taken).

⁴²⁰ Decision IG 17/3: Format for the Implementation of the Barcelona Convention and its Protocols, reported in Report of the 15th Ordinary Meeting, Annex V, at 29-131.

⁴²¹ *See* Report of the Compliance Committee to the 16th Meeting of the Contracting Parties, *supra* note at 6, (urging harmonized reporting “to enable the [Compliance] Committee to undertake a relevant evaluation”).

⁴²² *Id.* at 3, 6.

⁴²³ *See* Progress Report by the Secretariat on Activities Carried Out during the 2008-2009 Biennium dated 19 Oct. 2009, at 6 (reporting operational online reporting system available for testing as of February 2009).

⁴²⁴ Barcelona Convention, as amended, art. 26.

iii. Mutual Verification by the Contracting Parties

The Hazardous Wastes Protocol obliges the Secretariat of the Barcelona Convention to verify the compliance of a party with the Protocol at the request of another any other party.⁴²⁷ The Dumping Protocol requires the parties to review, at each ordinary meeting, the permits issued by each party and dumping that occurred in the interim.⁴²⁸

iv. Domestic Liability and Compensation Regimes for Damage Resulting from Pollution of the Marine Environment

The Barcelona Convention addresses compliance of private actors, as well as member states, by obliging the Contracting Parties to “cooperate in the formulation and adoption of appropriate rules and procedures for the determination of liability and compensation for damage resulting from pollution of the marine environment in the Mediterranean Sea Area.”⁴²⁹ In 2008, the Contracting Parties adopted “Guidelines” for such regimes, but did not go so far as to require implementation of such a regime.⁴³⁰ The Contracting Parties have adopted a uniform questionnaire to regularly evaluate the liability regime of each Party.⁴³¹

The Guidelines expressly do not provide for “subsidiary liability” of the Contracting Parties,⁴³² but the Explanatory Text to the Guidelines recommends broad liability for private actors.⁴³³ The Explanatory

⁴²⁵ Decision IG.19/4: Testing MAP Effectiveness Indicators, (listing effectiveness indicators adopted for testing purposes) reported in Report of the 16th Ordinary Meeting, Annex II, at 31-43.

⁴²⁶ See UNEP, Meeting of the MAP Focal Points dated 28 Aug. 2009, at 8 (noting concern of the Focal Points that responsibility for implementation remains unclear); Report of the Meeting of the Network on Compliance and Enforcement of Regulations for the Control of Pollution Resulting from Land-Based Activities dated 17 Nov. 2009, at 8 (noting need to integrate proposed indicators under Barcelona Convention with “used and tested” indicators under Land-Based Sources Protocol), *available at* http://195.97.36.231/acrobatfiles/09WG346_1_eng.pdf.

⁴²⁷ Hazardous Waste Protocol, art. 13.

⁴²⁸ Dumping Protocol, art. 14.

⁴²⁹ Barcelona Convention, as amended, art. 16.

⁴³⁰ See Decision IG 17/4: Guidelines on Liability and Compensation for Damage Resulting from Pollution of the Marine Environment in the Mediterranean Sea Area and Annex, reported in Report of the 15th Ordinary Meeting, Annex V, at 133.

⁴³¹ Decision IG.19/3: Implementation of and reporting on Guidelines for the determination of Liability and Compensation for damages resulting from pollution of the Marine Environment in the Mediterranean Sea Area, Annex I, reported in Report of the 16th Ordinary Meeting, Annex II, at 17-26.

⁴³² *Id.*, ¶ 2.

⁴³³ See Explanatory Text to Draft Guidelines on Liability and Compensation for Damage Resulting from Pollution of the Marine Environment in the Mediterranean Sea Area dated 14 Dec. 2007, at 14 (stating the Convention supports liability for “all activities which could cause environmental damage,” including for “thermal or physically induced

Text clarifies that a regime satisfying the obligation of the Barcelona Convention must “contain more stringent provisions” than instruments already in force⁴³⁴ but suggests that “[g]iven its exemplarity, non-EU Contracting Parties should consider adopting national legislation mirroring as far as possible the provisions of the [Environmental Liability Directive].”⁴³⁵

v. Legally Binding Measures and Timetables under the Land-Based Sources Protocol

Finding non-compliance with qualitative and general undertakings in the Barcelona Convention and its Protocols may be difficult.⁴³⁶ The current version of the Land-Based Sources Protocol is notable by contrast because it obligates the Parties to adopt national and regional plans to “eliminate pollution from land-based sources and activities,” and specifies that those plans must contain legally binding “measures and timetables for their implementation.”⁴³⁷ In November 2009, the Contracting Parties adopted three regional plans with binding targets for waste water treatment and the use of certain pollutants.⁴³⁸

15. Participation and the Role of Multiple Stakeholders

The Barcelona Convention and its Protocols expressly provide for significant involvement of multiple stakeholders.⁴³⁹ The Parties included as an objective within MAP II “to mobilize and ensure the participation and involvement of major actors concerned (local and provincial communities, economic

disturbances to the environment,” “harmful impacts on the living and distribution patterns of marine fauna and the peaceful enjoyment by coastal inhabitants and tourists due to intense water ripple activity as a result of speeding boats and large ships,” and “noise pollution”), *available at* http://195.97.36.231/acrobatfiles/08IG17_Inf11_eng.pdf.

⁴³⁴ *Id.*

⁴³⁵ *Id.* at 28.

⁴³⁶ See Report of the Compliance Committee to the 16th Meeting of the Contracting Parties, at 5 (noting that “a large number of provisions of the Barcelona Convention and its Protocols leave a broad margin to the Parties in which manner they are to implement the provision in question”).

⁴³⁷ Land-Based Sources Protocol, as amended, art. 5(1) and 5(2). Algeria, Bosnia and Herzegovina, Egypt, Lebanon, and Libya have not ratified the amended Land-Based Sources Protocol. See **Member States**, *supra*.

⁴³⁸ Decision IG.19/7: Regional Plan on the reduction of BOD5 from urban waste water, Decision IG.19/8: Regional Plan on the elimination of Aldrin, Chlordane, Dieldrin, Endrin, Heptachlor, Mirex and Toxaphene, and Decision IG.19/9: Regional Plan on the phasing out of DDT, Annexes and Appendices, reported in Report of the 16th Ordinary Meeting, Annex II, at 69 *et seq.*

⁴³⁹ See MAP/Civil Society Cooperation Assessment dated 26 Jan. 2009, at 15 (Annex) (cross-referencing the Convention and Protocol provisions related to stakeholder involvement) *available at* http://195.97.36.231/acrobatfiles/09BUR68_Inf3_eng.pdf. The Integrated Coastal Zone Management Protocol (not entered into force), obliges parties to take “the necessary measures to ensure the appropriate involvement” of the public, NGOs, local authorities, “social actors,” “territorial communities,” and “economic operators.” See Integrated Coastal Zone Management Protocol, Preamble and art. 3(3), 6(d), 7(1)(c), 12(1), 14(1), 14(2), 15(1), 15(2), 15(3), 16(4), 18(2), 24(3), 30, 32(2).

and social groups, consumers, etc).”⁴⁴⁰ As the entity responsible for “maintain[ing] relations and coordinat[ing] activities with international and non-governmental organizations,”⁴⁴¹ the Secretariat is ultimately responsible under MAP II to “ensure . . . IGOs and NGOs have appropriate access to information concerning MAP, and actively participate in MAP activities accordingly”⁴⁴²

The organizational structure of the Barcelona Convention provides for involvement of multiple stakeholders. Most importantly, the majority of delegates to the MCSD represent non-state actors,⁴⁴³ whose recommendations to the Contracting Parties are regularly adopted.⁴⁴⁴ See **Organizational Structure**, *supra*. Also, private citizens other than civil servants may serve as members of the Compliance Committee.⁴⁴⁵ In addition, representatives of international organizations and NGOs regularly attend and may contribute to the Meetings of the Contracting Parties and the interim meetings of the National Focal Points.⁴⁴⁶

Perhaps the most significant coordinated action involving multiple stakeholders was the development in 2005 of the Mediterranean Strategy for Sustainable Development by the MCSD. This plan is now a point of orientation for the Contracting Parties,⁴⁴⁷ the Euro-Med process,⁴⁴⁸ and the GEF partnership.⁴⁴⁹ See **Relationships**, *supra*.

⁴⁴⁰ MAP II at 25.

⁴⁴¹ MAP II at 24.

⁴⁴² MAP II at 22; *see also* Decision IG 17/5 and Annex: Governance paper, reported in Report of the 15th Ordinary Meeting, Annex V, at 148 (establishing mandate of Secretariat (as Coordinating Unit) to “[l]iais[e] with non-governmental organizations (NGOs), local authorities and private actors”).

⁴⁴³ *See* Decision IG 17/5 and Annex: Governance paper, reported in Report of the 15th Ordinary Meeting.

⁴⁴⁴ *See, e.g.*, Decision IG 17/16: Recommendations of the 12th Meeting of the MCSD (adopting recommendations regarding Water Demand Management, Energy and Climate Change, and Energy and Sustainable Development), reported in Report of the 15th Ordinary Meeting, Annex V, at 345 *et seq.*

⁴⁴⁵ Procedures and mechanisms on compliance under the Barcelona Convention and its Protocols, ¶ 8.

⁴⁴⁶ *See, e.g.*, Report of the 15th Meeting of the Contracting Parties, at 1 (noting observers from international organization and NGOs); Report of the Meeting of the MAP Focal Points dated 28 Aug. 2009, at 1 (same), *available at* http://195.97.36.231/acrobatfiles/09WG337_20_eng.pdf.

⁴⁴⁷ *See* Decision IG 17/17: MSSD Implementation Plan and Annex, reported in Report of the 15th Ordinary Meeting, Annex V, at 353 (adopting plan to implement the MSSD); Decision IG 17/6: Implementation of the ecosystem approach to the management of human activities that may affect the Mediterranean marine and coastal environment, reported in Report of the 15th Ordinary Meeting, Annex V, at 179 (adopting priorities set out in the MSSD).

⁴⁴⁸ Euromed, Five Year Work Programme dated November 2005, subpara. 8(j).

⁴⁴⁹ GEF, Project Document: Strategic Partnership for the Mediterranean Large Marine Ecosystem – Regional Component at 15.

Approximately 80 NGOs partnered with MAP in 2008.⁴⁵⁰ In November 2009, with the input of NGO representatives, the Contracting Parties adopted a formal procedure for involvement of “civil society,” NGOs in particular.⁴⁵¹ The new procedure includes criteria for accreditation of partner NGOs, a “code of conduct” detailing the rights and responsibilities of NGO partners, and provides a process for resolution of disputes between NGOs and MAP bodies.⁴⁵² In the 2010-2011 biennium budget, the Contracting Parties approved 105,000 euros in “support to NGOs” to promote “NGO participation in MAP decision making process.”⁴⁵³

Despite this renewed emphasis on engaging NGOs, the 2009 assessment of cooperation between the MAP Program and “civil society” reiterated a 2003 finding that “cooperation with business and private companies is still very limited and remains one of the most critical issues within the context of the MCSD.”⁴⁵⁴ The new procedure for involvement of civil society does not address cooperation with the private sector.⁴⁵⁵

16. Dissolution and Termination

The Barcelona Convention contains no provision for its dissolution; however, Parties may withdraw from the Convention with written notification. Any Party that withdraws from the Convention is considered to have withdrawn from all Protocols to which it was a party, and withdrawal from all the Protocols constitutes withdrawal from the Barcelona Convention.⁴⁵⁶

17. Additional Remarks

The Contracting Parties have broadened the scope of their cooperation over time in several ways. First, the geographic coverage of their agreements has been extended under certain protocols. *See Geographic Scope, supra*. Second, the objectives of their cooperation have grown, from “prevent[ion], abate[ment], and combat” of pollution in the Mediterranean area,⁴⁵⁷ to “eliminate[ion]” of pollution and

⁴⁵⁰ See MAP/Civil Society Cooperation Assessment at 11, 13.

⁴⁵¹ See Decision 19/6: MAP/Civil society cooperation and partnership, Annexes and Appendix, reported in Report of the Meeting of the 16th Ordinary Meeting of the Contracting Parties, Annex II, at 59 *et seq.*

⁴⁵² Decision 19/6: MAP/Civil society cooperation and partnership, Annexes and Appendix. *See id.* at 62-63 (providing for appointment of mediator by Bureau if the Secretariat is unable to resolve a dispute).

⁴⁵³ Decision IG.19/17: Decision on the adoption of the Five-Year Programme of Work and Programme Budget for the 2010-2011 biennium, reported in Report of the 16th Ordinary Meeting, Annex III, at 26.

⁴⁵⁴ See MAP/Civil Society Cooperation Assessment at 9 (citing UNEP(DEC)MED IG 15/inf.5) *available at* http://195.97.36.231/acrobatfiles/09BUR68_Inf3_eng.pdf.

⁴⁵⁵ *Cf.* Decision 19/6: MAP/Civil society cooperation and partnership, Annexes and Appendix.

⁴⁵⁶ Barcelona Convention, as amended, art. 34.

⁴⁵⁷ Barcelona Convention (1976), art. 4.

“enhance[ment] of the marine environment . . . to contribute towards its sustainable development.”⁴⁵⁸ This wider goal incorporates a new emphasis on “protect[ion] and preserv[ation] of biological diversity.”⁴⁵⁹ In addition, the Parties now foresee cooperation on all matters involving risk to coastal development, including natural disasters,⁴⁶⁰ and the global issue of climate change.⁴⁶¹ This has led to coordinated action by the Contracting Parties beyond the regional level.⁴⁶²

Finally, the Parties’ optimism regarding the effectiveness of their cooperation under the Barcelona Convention is worth noting. The most recent declaration of the Contracting Parties contemplates extension of national jurisdiction over international waters as a means to extend environmental protection.⁴⁶³

18. Websites and References

- United Nations Environment Programme, Mediterranean Action Plan for the Barcelona Convention Website, *available at* <http://www.unepmap.org>.
- Euro-Mediterranean Information System on know-how in the Water sector, International portal, *available at* <http://www.semide.net>. The EMWIS website usefully aggregates information on projects, resources, and partners focused on water issues in the Mediterranean area.

⁴⁵⁸ Barcelona Convention, as amended, art. 4(1).

⁴⁵⁹ Barcelona Convention, as amended, art. 10; *see generally*, Specially Protected Areas and Biodiversity Protocol.

⁴⁶⁰ Integrated Coastal Zone Management Protocol, art. 22.

⁴⁶¹ *See* Marrakesh Declaration, reported in Report of the 16th Ordinary Meeting, Annex I, at 3.

⁴⁶² *See id.* (committing to “work together” at the United Nations Climate Change Conference and to “cooperate” and “strengthen consultations . . . with a view to the convergence of viewpoints” with other parties to the United Nations Framework Convention on Climate Change (UNFCCC)).

⁴⁶³ *See id.* at 4.

Black Sea

1. Legal Basis:

In 1992, the riparian states of the Black Sea participated in the Diplomatic Conference on the Protection of the Black Sea Against Pollution. Out of this conference came the Convention on the Protection of the Black Sea Against Pollution (the “Black Sea Convention”)—the primary legal document that underlies the framework surrounding the environmental protection of the Black Sea.⁴⁶⁴ In addition to the Black Sea Convention itself (which went into effect on 15 January 1994), there are four protocols and five resolutions to which the parties agreed.

i) Protocols

- Protocol on Protection of the Black Sea Marine Environment Against Pollution From Land Based Sources;⁴⁶⁵
- Protocol on Cooperation in Combating Pollution of the Black Sea Marine Environment by Oil and other Harmful Substances in Emergency Situations;⁴⁶⁶
- Protocol on the Protection of the Black Sea Marine Environment Against Pollution by Dumping; and⁴⁶⁷
- Protocol on Black Sea Biodiversity and Landscape Conservation Protocol (not yet ratified by all states).⁴⁶⁸

⁴⁶⁴ Convention on the Protection of the Black Sea Against Pollution (“Black Sea Convention”), 21 Apr. 1992, 1764 U.N.T.S. 1694.

⁴⁶⁵ Protocol on Protection of the Black Sea Marine Environment Against Pollution From Land-based Sources, 21 Apr. 1992, 32 I.L.M. 1122.

⁴⁶⁶ Protocol on Cooperation in Combating Pollution of the Black Sea Marine Environment by Oil and other Harmful Substances in Emergency Situations, 21 Apr. 1992, 32 I.L.M. 1127. In addition to adopting this protocol as part of the Black Sea Convention, the Member States also agreed to adopt the Black Sea Contingency Plan to help respond promptly and effectively to marine pollution incidents that may affect the Black Sea environment. *See* Black Sea Contingency Plan, *available at* <http://www.blacksea-commission.org/main.htm>. The Member States also made Maps that show possible sources of pollution in the area, environmentally sensitive areas and priorities for protection publicly available. *See* Annex 2 of Black Sea Contingency Plan, *available at* http://www.blackseacommission.org/OfficialDocuments/ContingencyPlan_iframe_annex2.htm.

⁴⁶⁷ Protocol on the Protection of the Black Sea Marine Environment Against Pollution by Dumping, 21 Apr. 1992, 32 I.L.M. 1129.

⁴⁶⁸ Black Sea Biodiversity and Landscape Conservation Protocol to the Convention on the Protection of the Black Sea Against Pollution, *available at* <http://www.blacksea-commission.org/main.htm>.

ii) Resolutions⁴⁶⁹

- Resolution 1: Elaboration of a Protocol concerning transboundary movement of hazardous wastes and cooperation in combating illegal traffic thereof;
- Resolution 2: Establishment of cooperation with Danube States for promoting the objectives of the Convention on the Protection of the Black Sea Against Pollution;
- Resolution 3: Cooperation with intergovernmental organizations;
- Resolution 4: Institutional arrangements related to the Convention on the Protection of the Black Sea against Pollution; and
- Resolution 5: Initiation of action within the International Maritime Organization concerning prevention of pollution from ships which belong to countries not signatory to the Convention.

The Black Sea Convention created a Commission on the Protection of the Black Sea Against Pollution (the “Commission”) to help realize the goals articulated in the Convention and its Protocols.⁴⁷⁰ This Commission is granted “such legal capacity as may be necessary for the exercise of its functions.”⁴⁷¹

The Black Sea Convention may be amended by the Member States. Any Member State may propose an amendment to either the Convention or its Protocols. An amendment must be adopted by unanimous decision at a conference convened within 90 days of the proposal of the amendment. The amendment will enter into force 30 days after notification of its acceptance.⁴⁷²

2. Member States

The Member States to the Black Sea Convention are Bulgaria, Georgia, Romania, Russia, Turkey, and Ukraine. These countries represent all of the Black Sea riparian states.

There were also a number of foreign states and representatives of other interested bodies who attended the conference as observers. These observers were Armenia, Greece, Moldova, Yugoslavia (former), Danube Commission, the United Nations Environment Programme, the International Maritime Organization, the World Health Organization, the Intergovernmental Oceanographic Commission, the World Meteorological Organization, and the United Nations Development Programme.

3. Geographical Scope

⁴⁶⁹ Black Sea Convention, Final Act—Resolutions 1-5.

⁴⁷⁰ Black Sea Convention, art. XVII.

⁴⁷¹ Black Sea Convention, art XVII (10).

⁴⁷² Black Sea Convention, art. XX.

The Commission has a specific mandate to protect the Black Sea located in southeast Europe. The Black Sea Convention applies to the Black Sea proper, and also includes the territorial sea and exclusive economic zones of the contracting states. There is no control regarding inland waterways that may have an effect on the Black Sea.⁴⁷³

4. Legal Personality

The Member States to the Black Sea Convention created the Commission on the Protection of the Black Sea Against Pollution to oversee the implementation of Treaty provisions.⁴⁷⁴ The Black Sea Convention also called for the creation of a Permanent Secretariat to be established to assist the Commission in attaining the goals of the Black Sea Convention.⁴⁷⁵

5. Functions

The functions of the Commission are defined explicitly in the Black Sea Convention.⁴⁷⁶ There are eight main functions identified by the Member States:

- Promote the implementation of the Convention;
- Make recommendations necessary for achieving the aims of the Convention;
- Recommend amendments to the Convention and to Protocols;
- Elaborate criteria pertaining to control of pollution, and recommend measures to achieve this;
- Promote adoption of additional measures to protect the marine environment by Member States;
- Cooperate with competent international organizations;
- Consider any questions raised by a Member State; and

⁴⁷³ See Draft Memorandum of Understanding between the International Commission for the Protection of the Black Sea (ICPBS) and the International Commission for the Protection of the Danube River (ICPDR) on common strategic Goals (“ICPBS-ICPDR MOU”), 26 Nov. 2001, at 1, *available at* http://www.blacksea-commission.org/OfficialDocuments/MOU_ICPDR.htm.

⁴⁷⁴ Black Sea Convention, art. XVII(1).

⁴⁷⁵ Black Sea Convention, art. XVII(6).

⁴⁷⁶ Black Sea Convention, art. XVIII.

- Perform any other function as declared in the Convention or decided upon unanimously by the Member States.

6. Organizational Structure⁴⁷⁷

The Commission is made up of one representative appointed by each Member State to the Black Sea Convention. This representative can be accompanied at the Commission meetings by a support staff of alternates, advisers, and experts. The Chairmanship of the Commission is held by each Member State, in alphabetical order, for a one year term. The Chairman cannot act as representative for his Member State while also acting as Chairman.

Decisions and recommendations of the Commission must be adopted unanimously by the Member States, and the Black Sea Convention requires the Commission to meet once a year. At these meetings the members of the Commission review the implementation of the Black Sea Convention and its Protocols and prepare a report of the Commission. Extraordinary meetings can be convened by the Chairman at the request of any Member State.⁴⁷⁸

The Black Sea Convention also created a Permanent Secretariat to assist the Commission. The members of the Commission nominate the Secretariat's Executive Director and other officials. The Executive Director, in turn, may appoint technical staff according to the Rules of Procedure adopted by the Commission. The staff of the Secretariat must be made up of nationals of all the Member States.

The headquarters of the Commission and Permanent Secretariat are in Istanbul, Turkey.

7. Relationships

The Member States created a Strategic Action Plan for the Rehabilitation and Protection of the Black Sea (the "2002 BSSAP"). First created in 1996 and then updated in 2002, there is now a current draft with further revisions due to be considered and potentially adopted by the Member States at the 2009 meeting. In the BSSAP, the Member States elaborated on the goals and objectives that were laid out in the Black Sea Convention.⁴⁷⁹ Much of the plan was focused on how best to establish working relationships between the national frameworks of the Member States, outside states, and other groups that would be important in achieving the goals set out in the Convention.

⁴⁷⁷ See Black Sea Convention, art. XVII.

⁴⁷⁸ Black Sea Convention, art. XIX.

⁴⁷⁹ The BSSAP was originally adopted in 1996 and updated in 2002. See Strategic Action Plan for the Rehabilitation and the Protection of the Black Sea ("2002 BSSAP"), 26 June 2002, *available at* <http://www.blacksea-commission.org/main.htm>. Currently there is a new version of the BSSAP that is to be considered for adoption at the 2009 Ministerial meeting of the Commission. See Draft Revised Strategic Action Plan for the Environmental Protection and Rehabilitation of the Black Sea, 31 Dec. 2008 (hereinafter "Draft BSSAP 2009"), *available at* <http://ps.blacksea-commission.org/ministerialmeeting2009/documents/UpdBSAP2009/SAP2009.pdf>.

The 2002 BSSAP mandated the Commission to establish seven Regional Advisory Groups (“RAGs”) that would focus on topics deemed to be a priority under the Convention and the 2002 BSSAP. Each Member States would have at least one of the RAGs in its territory.⁴⁸⁰ These RAGs include:

- an Advisory Group on the Environmental Safety Aspects of Shipping, coordinated by the Activity Centre in Varna, Bulgaria;
- an Advisory Group on Pollution Monitoring and Assessment, coordinated by the Activity Centre in Odessa, Ukraine;
- an Advisory Group on Control of Pollution from Land Based Sources, coordinated by the Activity Centre in Istanbul, Turkey;
- an Advisory Group on the Development of Common Methodologies for Integrated Coastal Zone Management, coordinated by the Activity Centre in Krasnodar, Russia;
- an Advisory Group on the Conservation of Biological Diversity, coordinated by the Activity Centre in Batumi, Georgia;
- an Advisory Group on Fisheries and other Marine Living Resources, coordinated by the Activity Centre in Constanta, Romania; and
- an Advisory Group on Information and Data Exchange, coordinated by the Commission Secretariat.

The 2002 BSSAP also called for the Commission and all the Member States individually to encourage and pursue coordination amongst various regional bodies, non-governmental organizations, the United Nations and other agencies on the topic of sustainable development of the Black Sea region. One group identified in all of the BSSAPs is the Organization of Black Sea Economic Cooperation (“BSEC”).⁴⁸¹ BSEC includes all of the Member States as well as many other regional states. BSEC was created to increase economic cooperation in the Black Sea regional states. Coordination between BSEC and the Commission is important since successful sustainable development of the Black Sea is heavily intertwined with the economic development in the region.⁴⁸²

The Commission is also tasked with preparing a report at regular intervals on the implementation of the BSSAPs. A report was adopted by the Commission in 2002 and currently an updated report (in its draft form) will be considered by the Commission in April 2009.⁴⁸³ The 2002 and 2009 Draft Implementation

⁴⁸⁰ 2002 BSSAP, sec. II (22).

⁴⁸¹ *See generally*, Organization of the Black Sea Economic Cooperation (“BSEC”), *available at* <http://www.bsec-organization.org/Pages/homepage.aspx>.

⁴⁸² BSEC Homepage, *available at* <http://www.bsec-organization.org/Pages/homepage.aspx>.

⁴⁸³ The Black Sea Commission, Implementation of the Strategic Action Plan for the Rehabilitation and Protection of the Black Sea 1996-2001 (“2002 Implementation Report”), 2002, *available at* <http://www.blacksea-commission.org/Publications/ImplBSSAP.htm>; The Black Sea Commission, Implementation of the Strategic Action Plan for the

Reports indicated that a change is necessary for better implementation of the Treaty goals. The 2009 Draft Implementation Report highlights the issues that were encountered in trying to set up and manage the Regional Activity Centers and the Regional Advisory Groups, and discusses the need to improve the structure and functioning of these subsidiary bodies.⁴⁸⁴

In the 2009 Draft BSSAP that will also be under consideration at the Commission's April 2009 meeting, the Commission has set out a number of points for the Member States to agree on in order to better implement the BSSAP and to improve the functioning of the various components of the Commission.⁴⁸⁵ Generally, the new plan calls for:

- Establishing Inter-Ministerial Coordination committees to help with integration of the Plan's objectives into national laws;
- Appoint or nominate National Focal Points to coordinate the BSSAP implementation;
- Further develop or incorporate into the National BSSAPs the objectives contained in the updated BSSAP;
- Ensure expert support for the Commission's Advisory Groups; and
- Nominate national institutions to provide data and information to the Commission focal points and to the Commission.

In addition to the BSSAPs, a joint task force (known as the DABLAS task force) was established in 2001 with the specific goal of coordinating the protection of the water and water related ecosystems of the Danube River Basin and the Black Sea Basin.⁴⁸⁶ Coordination between groups focused on these two water systems is important because the Danube is a significant contributor to the Black Sea water environment.

Because of the recent accession of Romania and Bulgaria to the EU and Turkey also being a candidate for EU accession, the European Commission obtained observer status in the Black Sea Convention.⁴⁸⁷ The European Union is considered an "important partner of the Black Sea Commission, and provides

Rehabilitation and Protection of the Black Sea 2002-2007 ("2009 Draft Implementation Report"), 2009, *available at* http://ps.blacksea-commission.org/ministerialmeeting2009/documents/implementation%20of%20SAP%202002-2007/SAP_IR_.pdf.

⁴⁸⁴ 2009 Draft Implementation Report, at 15.

⁴⁸⁵ For additional details on the specific objectives and policy areas, *see* Draft BSSAP 2009, at sec. 4.2.

⁴⁸⁶ *See* DABLAS Task Force—Overview of Activities, Mandate, *available at* http://ec.europa.eu/environment/enlarg/dablas/overview_en.htm.

⁴⁸⁷ European Commission: Black Sea Synergy—A New Regional Cooperation Initiative, 11 Apr. 2007, *available at* http://ec.europa.eu/world/enp/pdf/com07_160_en.pdf.

substantial contribution to the protection of the Black Sea.”⁴⁸⁸ In 2007, the European Commission prepared a Black Sea Synergy statement for the European Council and the European Parliament—urging that the EU join the Black Sea Convention as a formal member in order to further strengthen its involvement in the region.

In addition, the Member States all realize that additional water ecosystems (such as the Don, Dnieper, and Danube Rivers) can have a significant impact on the Black Sea. In recognition of this fact, the Commission, with the help of UNEP/GEF, drafted a Memorandum of Understanding with the International Commission for the Protection of the Danube River (“ICPDR”) to agree on common goals for protection of the two water systems.⁴⁸⁹

8. Decision Making

The Member States must unanimously approve decisions and recommendations of the Commission.⁴⁹⁰

9. Dispute Resolution

Any dispute between the Member States concerning the interpretation and implementation of the Black Sea Convention is to be resolved through negotiations, or any other peaceful means chosen by the parties in dispute.⁴⁹¹

10. Data Information Sharing, Exchange, and Harmonization

One of the RAGs called for in the 2002 BSSAP is for an advisory group that is focused solely on information and data exchange. *See Relationships.*

11. Notifications

Notifications regarding amendment proposals, acceptance of proposals, ratification of the Convention and additional protocols, and denunciations are sent through a depository (Turkey), and then transmitted to each Member State through diplomatic channels.⁴⁹²

⁴⁸⁸ Ahmet Kideys, Presentation on the Implementation of the Bucharest Convention: Revision of major documents by the Contracting Parties—DABLAS Task Force Meeting, 28-29 Oct. 2008, *available at* http://ec.europa.eu/environment/enlarg/dablas/pdf/docum/2008/2_kideys_bucharest.pdf.

⁴⁸⁹ ICPBS-ICPDR MOU, at 1.

⁴⁹⁰ Black Sea Convention, art. XVII (5).

⁴⁹¹ Black Sea Convention, art. XXV.

⁴⁹² Black Sea Convention, arts. XX, XXVI, XXVIII, XXX.

12. Funding and Financing

The Black Sea Convention provides only that the “contracting states shall decide upon all financial matters on the basis of unanimity, taking into account the recommendations of the Commission.”⁴⁹³

In the 2002 BSSAP the Member States laid out a set of principles, policies and actions to help achieve the goals set by the Black Sea Convention. One section of the 2002 BSSAP addressed financing issues—stating that funding for the actions may be provided through public funding from the Member States and from grants and loans.⁴⁹⁴

Additionally, the 2002 BSSAP, distributed to the Member States, includes the requirement to provide specific funding information in each Member State’s National Black Sea Strategic Action Plans. The 2002 BSSAP called for each Member State to individually draft a national strategic action plan to implement the policies and actions contained in the 2002 BSSAP.⁴⁹⁵ This same requirement is also contained in the 2009 revision of the BSSAP that is due to be discussed in the April 2009 Commission meeting.⁴⁹⁶ However, the new Draft 2009 BSSAP goes further and specifically identifies international assistance as playing an important financial role in implementing the Black Sea environmental policy.⁴⁹⁷ The new plan calls for greater coordination regarding international donations at both the domestic and international level.⁴⁹⁸

Finally, there was a call to determine the feasibility of a Black Sea Environmental Fund by 2000. The source of this fund was to be through national laws adopted by the Member States. This national funding could be supplemented by funding from the international community. The fund would finance the Commission, and the development of projects and proposals.⁴⁹⁹ However, establishment of the fund failed, and in the 2002 Implementation Report, it was decided that such a fund was not a feasible source of financing.⁵⁰⁰

⁴⁹³ Black Sea Convention, art. XXIII.

⁴⁹⁴ 2002 BSSAP, at sec. V.

⁴⁹⁵ 2002 BSSAP, at sec. IV.

⁴⁹⁶ Draft BSSAP 2009, at sec. 5.1.

⁴⁹⁷ Draft BSSAP 2009, at sec. 5.2.

⁴⁹⁸ Draft BSSAP 2009, at sec. 5.2.

⁴⁹⁹ 2002 BSSAP, at sec. V.

⁵⁰⁰ 2002 Implementation Report, at VII(B).

13. Benefit Sharing

The Black Sea Convention provides that all of the Member States take part “on the basis of full equality of rights and duties....”⁵⁰¹

14. Compliance and Monitoring

The Commission regularly reviews the implementation of the BSSAPs and issues an implementation report that discusses the progress towards meeting the goals established in the plan.⁵⁰² In addition to the Commission, the DABLAS task force has been actively involved in reviewing the implementation of the action plans and has worked with the Commission to increase coordination and funding for Black Sea projects.⁵⁰³

15. Participation and the Role of Multiple Stakeholders

There are a number of official observers to the Black Sea Convention itself, *see* **Member States**. Further, the DABLAS Task Force, in addition to being under the auspices of the European Commission, has partnerships with several States, financial institutions, NGOs and regional groups. Examples include the World Bank, the European Bank for Reconstruction and Development, the Council of Europe Development Bank, UNDP, GEF, Austria, Hungary, and Slovenia.⁵⁰⁴

16. Dissolution and Termination

Five years after the Black Sea Convention has been in force, any Member State may, by written notification, denounce the Convention. The denouncement takes effect on 31 December of the year in which notification of the denouncement was received.⁵⁰⁵

17. Additional Remarks

In April 2009, the ministers of the Member States are scheduled to meet in Kiev, Ukraine. Some important issues on the agenda include:

- Proposed Amendments to Convention Articles II, XXVIII,

⁵⁰¹ Black Sea Convention, art. III.

⁵⁰² *See generally* 2002 Implementation Report and 2008 Draft Implementation Report.

⁵⁰³ *See e.g.*, DABLAS Task Force Workplan 2005/2006, 5 June 2005, *available at* http://ec.europa.eu/environment/enlarg/dablas/downloads/taskforce_workplan2005_en.pdf; DABLAS Priority Project Pipeline, *available at* http://ec.europa.eu/environment/enlarg/dablas/downloads/0512_pipeline_status_en.pdf (discussing the highest priority projects).

⁵⁰⁴ For a full list of the partners, *see* DABLAS Task Force Website, Partners, *available at* http://ec.europa.eu/environment/enlarg/dablas/partners_en.htm; DABLAS Task Force Website, Bilateral Donors, *available at* http://ec.europa.eu/environment/enlarg/dablas/partners_bilateral_en.htm.

⁵⁰⁵ Black Sea Convention, art. XXX.

- Revisions to the Protocol for the Protection of the Black Sea Against Pollution from Land-Based Sources and Activities,
- An Agreement on Immunities and Privileges,
- The Financial Rules of the Commission,
- A Biodiversity Protocol,
- The Contingency Plan,
- Adoption of the Report on the Implementation of the BSSAP from 2001-2006, and
- Revision of the BSSAP.⁵⁰⁶

It is expected that the legal framework may change at the local level. For example, all Member States may sign the 2003 Black Sea Biodiversity and Landscape Conservation Protocol (as an additional protocol to the Convention) and adopt and ratify the Protocol on the Protection for the Marine Environment of the Black Sea from Land-Based Sources and Activities.⁵⁰⁷

18. Websites and References

- Black Sea Economic Cooperation, *available at* <http://www.bsec-organization.org/Pages/homepage.aspx>.
- Black Sea Forum, *available at* <http://www.blackseaforum.org/>.
- Black Sea NGO Network, *available at* <http://www.bseanetwork.org/links.html>.
- DABLAS Task Force, *available at* http://ec.europa.eu/environment/enlarg/dablas/index_en.htm.
- The Commission for the Protection of the Black Sea Against Pollution, *available at* <http://www.blacksea-commission.org/>
- United Nations, International Agreements involving Black Sea States, *available at* http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/black_sea.htm

⁵⁰⁶ For more detailed information on this meeting, and for updated documents, *see* <http://ps.blacksea-commission.org/ministerialmeeting2009/>.

⁵⁰⁷ Draft BSSAP 2009, at sec. 4.1.

Caspian Sea

1. Legal Basis:

In 2003 the littoral states of the Caspian Sea signed the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (the “Caspian Sea Convention” or the “Convention”).⁵⁰⁸ The Convention is the main legal document providing a coordinating framework among the riparian states for protecting the Caspian Sea environment. The Convention is also known as the Tehran Convention after the location where it was adopted.⁵⁰⁹ This is the “first legally binding regional agreement” signed by the states bordering the Caspian Sea.⁵¹⁰ The Convention went into force on August 12, 2006, once all of the signatory states ratified it.⁵¹¹

i) Protocols: Four protocols are currently under development, and have been assigned priority by the Member States:

- Protocol on Land-Based Sources of Pollution;
- Protocol Concerning Regional Cooperation in Case of Emergency;
- Protocol on Environmental Impact Assessment in a Transboundary Context; and
- Protocol on Protection of the Caspian Biodiversity.

2. Member States

The Caspian littoral states, all of whom have signed and ratified the Caspian Sea Convention, are: Azerbaijan, Iran, Kazakhstan, Russia and Turkmenistan.⁵¹²

3. Geographical Scope

The Convention applies to the “marine environment of the Caspian Sea, taking into account its water level fluctuations, and pollution from land based sources.”⁵¹³ Pursuant to the Strategic Action Programme

⁵⁰⁸ Framework Convention for the Protection of the Marine Environment of the Caspian Sea (12 Aug. 2006), *available at* <http://www.caspianenvironment.org/newsite/Convention-FrameworkConventionText.htm>.

⁵⁰⁹ Tehran Convention Website, History of the Convention.

⁵¹⁰ Tehran Convention Website, History of the Convention.

⁵¹¹ Caspian Sea Convention, arts. 31, 33; Entry of the Framework Convention into Force, *available at* <http://www.caspianenvironment.org/newsite/Convention-EntryIntoForce.htm>.

⁵¹² Caspian Sea Convention, Introduction.

⁵¹³ Caspian Sea Convention, Introduction, art. 3.

(“SAP”) originally drafted and approved at the Tehran Steering Committee Meeting where the Convention was adopted, the scope also extends, in addition to the Caspian Sea proper, to “the coastal areas up to 100 km inland.”⁵¹⁴ The SAP further provides that should there be activities impacting the environment of the Caspian Sea beyond this 100 km delineation requiring intervention, those activities would also fall within the scope of the Convention and the SAP.⁵¹⁵

4. Legal Personality

The Member States have created a governing body, “A Conference of the Parties” (the “Conference”), for the purpose of applying the Convention and an administrative body, the Secretariat, to assist with that task.⁵¹⁶

5. Functions

As identified in the Convention, the functions of the Conference include:⁵¹⁷

- reviewing the content and implementation of the Convention, its protocols and the Action Plan;
- considering and adopting additional protocols or amendments to the Convention or its protocols, and adopting and amending the annexes to the Convention and its protocols;
- receiving and considering reports submitted by the Contracting Parties and reviewing and evaluating the state of the marine environment, in particular the state of pollution and its effects;
- considering reports prepared by the Secretariat on matters relating to the Convention;
- where appropriate, seeking the technical and financial assistance of relevant international bodies and scientific institutions for the purposes of implementing the objectives of the Convention;
- establishing such subsidiary bodies as may be necessary for implementing the Convention and its protocols;
- appointing the Executive Secretary of the Convention and other personnel as necessary; and
- performing such other functions as necessary to achieve the objectives of the Convention.

⁵¹⁴ Strategic Action Programme for the Caspian Sea (“SAP”), as approved at the Tehran Steering Committee Meeting, 5 Nov. 2003, art 1.2, *available at* http://www.caspianenvironment.org/reports/SAP_eng.doc.

⁵¹⁵ SAP, art. 1.2.

⁵¹⁶ Caspian Sea Convention, art. 22.

⁵¹⁷ Caspian Sea Convention, art. 22(10)(a)-(i).

The functions of the Secretariat include:⁵¹⁸

- arranging for and servicing meetings of the Conference and its subsidiary bodies;
- preparing and transmitting to the Member States notifications, reports and other information;
- considering enquiries from the Member States and consulting with them on matters relating to the implementation of the Convention and its protocols;
- preparing and transmitting reports on matters relating to the implementation of the Convention and its protocols;
- establishing, maintaining the database of and disseminating national laws of the Member States and international laws relevant to the protection of the Caspian Sea;
- arranging, upon request by any Member State, for the provision of technical assistance and advice for the effective implementation of the Convention and its protocols;
- carrying out functions as may be established under the protocols to the Convention;
- cooperating, as appropriate, with relevant regional and international organizations and programmes; and
- performing such other functions as may be determined by the Conference.

6. Organizational Structure

The Conference is made up of one representative from each Member State.⁵¹⁹ The Convention directs that the Conference must meet “at regular intervals” as determined at the initial meeting of the Conference.⁵²⁰ Meetings of the Conference “shall be held in the territories of the countries of the Contracting Parties on the basis of rotation in alphabetical order of English language or at the location of the Secretariat.”⁵²¹

The Convention also created a Secretariat to assist with administrative tasks and other functions.⁵²² The Secretariat is headed by the Executive Secretary of the Convention and any additional necessary personnel.⁵²³ The Executive Secretary and the Secretariat personnel are appointed by the Conference.⁵²⁴

⁵¹⁸ Caspian Sea Convention, art. 23(4)(a)-(h).

⁵¹⁹ Caspian Sea Convention, art. 22(1)-(2).

⁵²⁰ Caspian Sea Convention, art. 22(3).

⁵²¹ Caspian Sea Convention, art. 22(5).

⁵²² Caspian Sea Convention, art. 23.

7. Relationships

Member States to the Caspian Sea Convention had a long running relationship with the UNDP, UNEP and the GEF in the years leading up to the drafting and signing of the Convention. Beginning in 1995 UNDP and UNEP made specific trips to the regions to develop the concept paper upon which the eventual Convention and Strategic Action Programme were based upon. Over the subsequent eight years, revised drafts were prepared through consultations with the five eventual member states, ultimately culminating in the signing of the Caspian Sea Convention and adoption of the Strategic Action Programme in November 2003.⁵²⁵

These relationships continue. Although the Caspian Environment Programme (“CEP”) is considered an independent programme that is not actively administered by UNEP, there continues to be a relationship and the members of the CEP participate in meetings administered by UNEP, share findings and experience, and exchange policy advice.⁵²⁶

8. Decision Making

Decisions made by the Conference must be unanimous.⁵²⁷

9. Dispute Resolution

Any dispute arising between Member States regarding the “application or interpretation of the provisions” of the Caspian Sea Convention will be “settle[d] by consultations, negotiations or by any other peaceful means of their own choice.”⁵²⁸

10. Data Information Sharing, Exchange, and Harmonization

The Convention has a number of articles dealing specifically with the exchange of information among the parties, cooperation on environmental policies and harmonization of local laws.⁵²⁹ Member States are directed to harmonize local laws and work together to develop specific rules and standards to protect the environment of the Caspian Sea. One such action is to jointly develop a strategic action programme to

⁵²³ Caspian Sea Convention, art. 23(2).

⁵²⁴ Caspian Sea Convention, art. 22(10)(h).

⁵²⁵ Strategic Action Programme, Revised 2006, *available at* <http://www.caspianenvironment.org/autoindex/index.php?dir=NewSite/DocCenter/MajDoc/Updated%20SAP/&file=Updated%20SAP-PCU.doc>.

⁵²⁶ United Nations Environment Programme Website, Regional Seas Programmes, Independent Programs, *available at* <http://www.unep.org/regionalseas/programmes/independent/default.asp>.

⁵²⁷ Caspian Sea Convention, art. 22(8).

⁵²⁸ Caspian Sea Convention, art 30.

⁵²⁹ *See generally* Caspian Sea Convention, arts. 18-21.

help implement the requirements of the Convention.⁵³⁰ The information gathered, and any resulting reports, are exchanged among the Member States through the Secretariat. The Member States, in conjunction with the Secretariat, are to provide public access to much of the information and action plans developed by the Member States.⁵³¹

The Strategic Action Programme (“SAP”) adopted by the Member States and revised in 2006 forms the core of efforts to implement the goals of the Convention.⁵³²

The SAP “is a regional policy framework that lays down the principles of environmental management and cooperation; notes the challenges to the sustainable integrated management of the Caspian Sea environment; sets the regionally agreed Environmental Quality Objectives . . . and proceeds to define a set of targets, interventions and indicators to meet these objectives.”⁵³³

The SAP is supported by the National Caspian Action Plans (“NCAPs”) of each Member State. The NCAPs constitute the voluntary implementation of the SAP within the rubric of each Member State’s law.⁵³⁴

In mid 2006, the Member States undertook a “review of the SAP original targets, interventions and indicators in view of the perceived changes in the environmental, social and economic situations in the region and taking note of the SAP/NCAP national implementation reports.”⁵³⁵ The result was a revised SAP and directives to update and revise the national action plans as well. In November 2008 there was another conference of the parties in which a revised SAP was finalized; that SAP is intended to “serve as the guidance document for the implementation of the Convention and its future Protocols over the next 10 years.”⁵³⁶

⁵³⁰ Caspian Sea Convention, art. 18.

⁵³¹ Caspian Sea Convention, art. 21.

⁵³² SAP Revised 2006, § 1.

⁵³³ SAP Revised 2006, § 1.

⁵³⁴ SAP Revised 2006, § 4.1; *see generally* National Caspian Action Plans, *available at* <http://www.caspianenvironment.org/newsite/DocCenter/Reports/2008/NCAPs%20Update/>.

⁵³⁵ SAP Revised 2006, Annex 1, at 21.

⁵³⁶ COP II Final Report (10-12 Nov. 2008), at 2, *available at* http://www.tehranconvention.org/cop2/TC%20COPII%20INF%205%20Final%20report%20%20eng%20_.pdf.

11. Notifications

The Caspian Sea Convention requires that each Member State submit, at regular intervals determined by the Conference, “reports on measures adopted for the implementation of the provisions” of the Convention.⁵³⁷

Additionally, each Member State is required to provide an environmental impact assessment for any potential activity impacting the Caspian. UNEP and the Caspian Environment Programme have developed guidelines for preparing and implementing environmental impact assessments.⁵³⁸ The results from each assessment must be disseminated to the other Member States.

12. Funding and Financing

The Convention requires the Member States to agree upon and set financial rules at the first meeting of the Conference.⁵³⁹ At the first meeting in May 2007, also known as the First Conference of the Parties or COP I, the Conference adopted a set of financial rules that, among other things, established a Trust, to be run by a Trustee designated by the Conference, to fund the implementation of the Convention and the activities of the Secretariat.⁵⁴⁰ The Trust is funded by direct contributions from Member States on an equal share basis, and allows additional funds to be voluntarily deposited by any individual State. The Rules also permit States not party to the Convention, or NGOs or intergovernmental organizations, to make contributions to the Trust.⁵⁴¹

Budget proposals are prepared by the Secretariat and submitted to the Conference for approval or revision.⁵⁴² The rules dictate specific time limits on preparing budgets and reporting as well as specific provisions for terminating or amending the terms of the Trust.⁵⁴³

13. Benefit Sharing

⁵³⁷ Caspian Sea Convention, art. 27.

⁵³⁸ Caspian Sea Convention, art. 17; Guidelines on Environmental Impact Assessment in a Transboundary Context in the Caspian Sea Region: Step by Step Procedures (2003), at 8.

⁵³⁹ Caspian Sea Convention, art. 22(9).

⁵⁴⁰ Financial Rules for the Administration of the Trust Fund for the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (2007) (“Financial Rules”), *available at* [http://www.caspianenvironment.org/autoindex/index.php?dir=NewSite/DocCenter/Meetings/2007/COP1/&file=Fin%20Rules%20\(final%2025.5.07\).doc](http://www.caspianenvironment.org/autoindex/index.php?dir=NewSite/DocCenter/Meetings/2007/COP1/&file=Fin%20Rules%20(final%2025.5.07).doc).

⁵⁴¹ Financial Rules, Rule 4(c).

⁵⁴² Financial Rules, Rules, 8-9; *see, e.g.*, COP II Final Report (12 December 2008), at 3 (referring to the Convention Programme of Work (23 October 2008)), *available at* http://www.tehranconvention.org/cop2/TC%20COPII%20INF%205%20Final%20report%20%20eng%20_.pdf.

⁵⁴³ *See generally* Financial Rules.

A common theme running through the negotiations, the development and signing of the Caspian Sea Convention and much of the work performed in implementing the goals of the Convention is that of transparency. Most of the documentation relating to the Convention itself, as well as subsequent documentation generated by the Member States in their activities to implement the Convention is publicly available through the Convention's website, www.caspianenvironment.org. (See also **Data Information Sharing, Exchange, and Harmonization.**)

14. Compliance and Monitoring

Each Member State is required to “designate a National Authority to coordinate implementation of the provisions” of the Caspian Sea Convention.⁵⁴⁴

The Convention explicitly requires Member States to identify pollutants that need to be monitored and to carry out assessments of the environmental conditions of the Caspian Sea to identify any changes in pollutant level.⁵⁴⁵ The Convention states that the Member States “shall endeavor to establish and implement individual and/or joint programmes for monitoring the environmental conditions of the Caspian Sea.”⁵⁴⁶ The Member States have also adopted and revised a SAP identifying environmental concerns, and requiring an environmental impact assessment to be performed by each State prior to any potentially polluting action.⁵⁴⁷ Each Member State has also prepared and implemented a National Caspian Action Program specifically addressing each State's obligations under the Convention.⁵⁴⁸ (See also **Data Information Sharing, Exchange, and Harmonization; Functions.**)

15. Participation and the Role of Multiple Stakeholders

Additional groups have been actively involved in the subsequent meetings of the Conference. At the most recent meeting, COP II, in November 2008, participants included: the Food and Agriculture Organization, International Maritime Organization, the World Bank, the Commission on the Protection of the Black Sea Against Pollution, and the Caspian Map.⁵⁴⁹

⁵⁴⁴ Caspian Sea Convention, art. 26(1).

⁵⁴⁵ Caspian Sea Convention, art. 19.

⁵⁴⁶ Caspian Sea Convention, arts. 19(1), 28.

⁵⁴⁷ See generally SAP Revised 2006; Environmental Impact Assessment in a Transboundary Context in the Caspian Sea Region (2003).

⁵⁴⁸ See, e.g., Ministry of Ecology and Natural Resources, National Caspian Action Plan of the Republic of Azerbaijan, 2007-2017 (Baku 2007); Ministry of Environment Protection, National Action Plan on Environment Protection of the Caspian Sea – Updated Draft (Astana 2007).

⁵⁴⁹ See COP II Final Report, Annex 6 List of Participants (10-12 Nov. 2008), at 4-5, available at <http://www.tehranconvention.org/cop2/Annex%206%20List%20of%20Participants.pdf>. A number of other entities, including UNOPS, UNDP, GEF, UNEP, and IPECA, CASPCOM, EU, and British Petroleum attended COP I in April 2007. See Report of the Meeting, List of Participants (23-25 May 2007), at 5-7, available at http://www.tehranconvention.org/cop1/List_participants_eng_final.doc; Report of the Meeting, List of Observers (23-25 May 2007), available at http://www.tehranconvention.org/cop1/List_observers.doc.

16. Dissolution and Termination

No specific provision. Accordingly, the methods for terminating or denouncing the treaty would be those articulated in the Vienna Convention on the Law of Treaties (“Vienna Convention”).⁵⁵⁰ Under the Vienna Convention termination can occur at “any time by consent of all the parties after consultation. . .”⁵⁵¹ The Vienna Convention also provides that if a Treaty does not provide for denunciation within the text of the document, then “it is not subject to denunciation or withdrawal” unless one of two situations exists. It must either be shown that the parties to the treaty “intended to admit the possibility of denunciation or withdrawal” or that this right was “implied by the nature of the treaty.” If either situation is shown to exist, then the denouncing or withdrawing party must give at least twelve months notice.⁵⁵²

17. Additional Remarks

A specific provision in the Convention provides “Nothing in this Convention shall be interpreted as to prejudice the outcome of the negotiations on the final legal status of the Caspian Sea.” Most likely this is intended to limit the Treaty, the cooperation required under it, and any potential disputes to the environmental arena alone. Ownership of the seabed and the attendant energy reserves believed to be under the Caspian continues to be a hotly debated issue among the littoral states.⁵⁵³

18. Websites and References

- <http://www.caspianenvironment.org/newsite/index.htm>
- <http://www.tehranconvention.org/>
- <http://www.unep.org/regionalseas/programmes/independent/caspian/default.asp>
- http://waterwiki.net/index.php/Towards_a_Convention_and_Action_Programme_for_the_Protection_of_the_Caspian_Sea_Environment_Phase_II

⁵⁵⁰ Vienna Convention on the Law of Treaties (“Vienna Convention”), 1155 U.N.T.S. 331 (27 Jan. 1980), art 1.

⁵⁵¹ Vienna Convention, art. 54(b).

⁵⁵² Vienna Convention, art. 56.

⁵⁵³ See, e.g., Energy overshadows Caspian border disputes, UPIAsia.com (5 August 2009) (noting that “demarcation of disputed waters in the Caspian Sea between [Turkmenistan] and [Azerbaijan] should not delay potential joint development of oil and gas fields.”).

Danube River Basin

1. Legal Basis

The Danube River Basin has been governed by multilateral agreements and various forms of international administration almost continuously since 1856.⁵⁵⁴ The history of bilateral treaties governing the basin stretches back even further.⁵⁵⁵ These historical treaties and agreements largely focused on improving navigation, flood control, hydro power, and commerce along the region's waterways.⁵⁵⁶

Currently, the non-navigational use of waterways in the Danube River Basin is governed by the Convention on Cooperation for the Protection and Sustainable Use of the Danube (the Danube River Protection Convention or "DRPC"), signed on June 29, 1994 in Sofia, Bulgaria.⁵⁵⁷ The DRPC, which entered into force in October 1998, "forms the overall legal instrument for co-operation and

⁵⁵⁴ See *Jurisdiction of the European Commission of the Danube Between Galatz and Biala*, 1927 P.C.I.J. (ser. B) No. 14 (detailing the history of the European Commission of the Danube established by the Treaty of Paris in 1856 to govern the lower portion of the Danube River); Stephen Gorove, *Internationalization of the Danube: A Lesson in History*, 8 J. PUB. L. 125, 129-34 (1959) (describing the evolution of the European Commission of the Danube prior to World War I and the subsequent creation of two post-war Danube Commissions). Significant multilateral agreements governing the waters of the Danube over the last century have included: the Convention Instituting the Definitive Statute of the Danube, 23 June 1921, 17 A.J.I.L. (Supp.) 13 (1921); the Convention Regarding the Regime of Navigation on the Danube, Aug. 18, 1948, 32 U.N.T.S. 181 (English text begins at 32 U.N.T.S. 197); and the Convention Concerning Fishing in the Waters of the Danube, Jan. 29, 1958, Bulg.-Rom.-U.S.S.R.-Yugo., 339 U.N.T.S. 23.

⁵⁵⁵ See Josef L. Kunz, *The Danube Regime and the Belgrade Conference*, 43 AM. J. INT'L L. 104, 104 (1949) (referencing early bilateral treaties concerning the Danube River Basin that date back more than three centuries).

⁵⁵⁶ Bilateral agreements concerning the Danube have been a particular source of localized controversy and cooperation over the last century. One such agreement—concerning the construction of dams and hydroelectric plants along a shared stretch of the river—was the source of a long-standing dispute that eventually made its way to the International Court of Justice. See Treaty concerning the construction and operation of the Gabčíkovo-Nagymaros System of Locks, Sept. 16, 1977, Hung.-Czecho., 1109 U.N.T.S. 211, available at http://untreaty.un.org/unts/60001_120000/1/1/00000038.pdf; Case Concerning the Gabčíkovo-Nagymaros Project (Hung. v. Slovak.) (I.C.J. Sept. 25, 1997), available at <http://www.icj-cij.org/docket/files/92/7375.pdf?PHPSESSID=ad35084c2f2843dcce034c1478191358>. Other agreements have proved more successful at facilitating cooperation between riparian states. See, e.g., Agreement Between the Government of the Republic of Austria and the Government of the Republic of Germany and of the Free State of Bavaria Concerning the Donaukraftwerk-Jochenstein-Aktiengesellschaft ("Danube Power-Plant and Jochenstein Joint-Stock Company"), available at <http://waterlaw.org/documents/regionaldocs/danube-austria-germany.html>; Anton Mitteregger, *50 years of the Jochenstein hydroelectric power station*, 15 HYPOWER 36, 36-37 (February 2007), available at http://www.voithhydro.com/media/Hypower_15_36.pdf ("Even after 50 years of operation, the Jochenstein power station continues to be a model for environmentally friendly, long-term energy generation at the highest level of efficiency.").

⁵⁵⁷ The text of the DRPC is available at <http://www.icpdr.org/icpdr-files/6787>. Navigation on the Danube River is governed by the separate Danube Commission established by the Convention Regarding the Regime of Navigation on the Danube, Aug. 18, 1948, 32 U.N.T.S. 181 (English text begins at 32 U.N.T.S. 197).

transboundary water management in the Danube River Basin.” The Agreement’s main objective is “to ensure that surface waters and groundwater within the Danube River Basin are managed and used sustainably and equitably.”⁵⁵⁸ To accomplish these objectives, the DRPC established the International Commission for the Protection of the Danube River (“ICPDR”).⁵⁵⁹

Overall, the DRPC was an outgrowth of earlier commitments made by the riparian states to address the region’s environmental problems. These commitments began with the 1985 Bucharest Declaration, which committed the states to developing an integrated water management system. Six years later, further commitments were made to strengthen cooperation in the basin through the Environmental Programme for the Danube River Basin (“EPDRB”), a program requiring each state to adopt or define uniform monitoring systems, laws on liability for cross-border pollution, rules for the protection of wetland environments, and guidelines for the conservation of areas of ecological or aesthetic importance or value. The EPDRB also required the development and maintenance of a Strategic Action Plan (“SAP”) listing concrete measures and short-term goals. When this plan was completed, the newly-established ICPDR was entrusted with its implementation.⁵⁶⁰

In addition to the ICPDR, states in the Danube River Basin are also signatories to the Ramsar Convention on Wetlands,⁵⁶¹ the Epsoo Convention,⁵⁶² the U.N. Convention on the Protection and Use of Transboundary Watercourses and International Lakes,⁵⁶³ the European Agreement on Main Inland Waterways of International Importance (AGN),⁵⁶⁴ and the EU Water Framework Directive (“WFD”).⁵⁶⁵

⁵⁵⁸ International Commission for the Protection of the Danube River (“ICPDR”), *The Convention*, <http://www.icpdr.org/icpdr-pages/drpc.htm>.

⁵⁵⁹ DRPC, art. 18(1).

⁵⁶⁰ See, ICPDR, *Short History of Cooperation*, http://www.icpdr.org/icpdr-pages/history_of_cooperation.htm. See also DRPC, art. 19.

⁵⁶¹ Convention on Wetlands of International Importance Especially as Waterfowl Habitat, 2 Feb., 1971, 996 U.N.T.S. 245. The current text of the convention as amended is *available at* http://www.ramsar.org/cda/ramsar/display/main/main.jsp?zn=ramsar&cp=1-31-38^20671_4000_0__. A list of contracting parties to the Convention is *available at* http://www.ramsar.org/cda/ramsar/display/main/main.jsp?zn=ramsar&cp=1-36-123^23808_4000_0__.

⁵⁶² U.N. Convention on Environmental Impact Assessment in a Transboundary Context, 10 Sept., 1997, 1989 U.N.T.S. 309. With the exception of Bosnia-Herzegovina and Moldova, all current members of the ICPDR are also members of the Epsoo Convention. A current list of contracting parties to the Epsoo Convention is *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-4&chapter=27&lang=en.

⁵⁶³ 31 I.L.M. 1599 (1992). Except for Serbia, all current members of the ICPDR are also members of this convention.

⁵⁶⁴ 19 Jan., 1996, 2072 U.N.T.S. 315. The amended text of this agreement is *available at* <http://www.unece.org/trans/conventn/agn.pdf>.

2. Member States

DRPC Contracting Parties include Austria, Bosnia-Herzegovina, Bulgaria, Croatia, the Czech Republic, Germany, Hungary, Moldova, Montenegro, Romania, Serbia, the Slovak Republic, Slovenia, and Ukraine. The European Union is also a Contracting Party of the DRPC. All of these entities are also Contracting Parties of the ICPDR. In addition, countries in the catchment area of the Danube River Basin that cooperate with the ICPDR under the EU Water Framework Directive include Albania, Italy, Macedonia, Poland, and Switzerland.⁵⁶⁶

3. Geographical Scope

The Danube River Basin is shared by nineteen countries, covering approximately 801,463 square kilometers.⁵⁶⁷ The Danube River Basin extends from the origination of the Danube River in Germany to the Romanian and Ukrainian shores along the Danube Delta and the Black Sea.⁵⁶⁸

4. Legal Personality

The DRPC established the ICPDR to implement the Convention's objectives and provisions, and the Convention provides that the Contracting Parties "shall cooperate in the framework" of the ICPDR.⁵⁶⁹ Article 18 and Annex IV (the ICPDR Statute) of the DRPC establish the structures and procedures of the commission. The Statute of the ICPDR specifically sets forth the ICPDR's legal capacity and representation, giving it "such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes in accordance with the law applicable at the headquarters of its Secretariat."⁵⁷⁰ Headquartered in Vienna, Austria, the organization is more specifically recognized to have the legal capacity "(a) to contract; (b) to acquire and dispose of immovable and movable property; (c) to institute or respond to legal proceedings; and (d) to take such other action as may be necessary or useful for its purposes and activities."⁵⁷¹ The ICPDR is represented by its president, with representation further determined by the ICPDR's rules of procedure.⁵⁷²

⁵⁶⁵ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327 22.12.2000, *available at* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:327:0001:0072:EN:PDF>.

⁵⁶⁶ See ICPDR, *Contracting Parties*, http://www.icpdr.org/icpdr-pages/contracting_parties.htm.

⁵⁶⁷ ICPDR, *Countries of the Danube River Basin*, <http://www.icpdr.org/icpdr-pages/countries.htm>.

⁵⁶⁸ ICPDR, *River Basin*, http://www.icpdr.org/icpdr-pages/river_basin.htm.

⁵⁶⁹ DRPC, art. 18(1).

⁵⁷⁰ DRPC, Annex IV, art. 10(1).

⁵⁷¹ Agreement between the International Commission for the Protection of the Danube River and the Republic of Austria regarding the Headquarters of the International Commission for the Protection of the Danube River, Nov. 1, 2001, art. 2, *available at* <http://www.icpdr.org/icpdr-files/6872>.

⁵⁷² Danube River Protection Convention, Annex IV, art. 10(2).

5. Functions

The ICPDR is tasked with implementing the DRPC and its goals generally include: protecting the Danube Basin's water resources for future generations by preserving the natural balance of those waters, addressing risks from toxic chemicals, preventing the environmental and ecological damages caused by floods, and maintaining the health and sustainability of the region's river systems.⁵⁷³ To accomplish these goals, the ICPDR has initiated or supported the following basin-wide programs and projects:

- The Danube Pollution Reduction Programme (1997-1999): An outgrowth of the original UNDP-GEF efforts in connection with the ratification of the DRPC and the creation of the ICPDR, this UNDP-GEF supported program involved several studies into water pollution problems across the basin. The information from these studies was used to set priorities for addressing pollution problems in the region. On a practical level, this included dividing the basins into specific sub-river basins for the region and creating a comprehensive ICPDR information system cataloguing: information related to pollution problems; local projects addressing those problems; and potential sources of financing for such projects.⁵⁷⁴
- The Joint Action Programme ("JAP") (2001-2005): This program outlined the "specific steps that were agreed to be taken over the period 2001-2005 to achieve the environmental objectives outlined in the Danube River Protection Convention." The JAP involved countries' investment of more than 4.404 billion Euro in large-scale measures designed for pollution reduction, wetland conservation, restoring the ecosystem, and sustainable environmental management. The JAP Final Report was produced in 2006.⁵⁷⁵
- The Danube Regional Project ("DRP") (2002-2006): The UNDP-GEF launched five-year DRP for "Strengthening the Implementation Capacities for Nutrient Reduction and Transboundary Cooperation in the Danube River Basin." This project, carried out in two phases, is intended to complement the activities of the ICPDR. Specifically, the first phase was focused on basin-wide capacity-building with "particular attention to the development and implementation of policies for pollution reduction, effective legal and economic instruments, mechanisms for monitoring and evaluation, the creation of inter-ministerial committees as well as the development of programmes for public participation and NGO strengthening." The second phase was designed to "set up institutional and legal instruments at the national and regional level to assure nutrient reduction and sustainable management of water bodies and ecological resources, involving all stakeholders and building up adequate monitoring and information systems."⁵⁷⁶

⁵⁷³ ICPDR—About Us, *available at* http://www.icpdr.org/icpdr-pages/about_us.htm.

⁵⁷⁴ See ICPDR, *UNDP-GEF Danube Pollution Reduction Programme*, http://danubis.icpdr.org/pls/danubis/docs/FOLDER/UNDP_DRP/PROJECT/OVERVIEW/DPRP.HTM.

⁵⁷⁵ See ICPDR, *Joint Action Programme*, <http://www.icpdr.org/icpdr-pages/jap.htm>; ICPDR, *Joint Action Programme: Final Implementation Report*, *available at* <http://www.icpdr.org/icpdr-files/15042>.

⁵⁷⁶ See UNDP-GEF Danube Regional Project, *Why the Project?*, http://www.undp-drp.org/drp/project_why_the_project.html.

- The Joint Danube Surveys (“JDS”): In 2001, the ICPDR initiated a survey (JDS1) to analyze the water quality and ecological status of the Danube River to “improve the validity and comparability of water quality data received from its regular monitoring programme (Trans-National Monitoring Network).” This survey was followed by a second survey (JDS2) to “produce comparable and reliable information on water quality for the entire Danube and many of its tributaries.” The results were to be used to determine what measures need to be taken to comply with EU law by 2015 and to implement the DRPC.⁵⁷⁷
- The Flood Action Programme (“FAP”): Developed in 2004 in the wake of the extensive damage caused by floods to the Danube River Basin in 2002, the ICPDR has developed and started to implement a comprehensive plan to address flood prevention, protection, and warning across the basin.⁵⁷⁸
- The Danube River Basin District Management Plan (2009): This comprehensive management plan is intended to achieve good water status for the basin by 2015 and to ensure a sufficient supply of clean water for future generations. The DRPC Contracting Parties nominated the ICPDR as the coordinating body for the development of a comprehensive management plan using the EU Water Framework Directive principles. The DRBM Plan will be updated every six years “according to EU legislation.”⁵⁷⁹
- Educational Programs: The ICPDR also educates the general public about the threats to the Danube River Basin and how the public can help. These educational programs include the establishment of an International Danube Day to “pay tribute to the vital role the Danube and its tributaries play in people’s lives” and the creation of the Danube Box, an innovative teaching toolkit to “give local schoolchildren a greater understanding of the river, the threats posed to the river, and the need to preserve water resources.”⁵⁸⁰

Several separate initiatives address specific sub-regions of the Danube River Basin with unique problems, concerns, or needs. These include:

- The Bioindicators Study: A collaborative July 2000 study, funded by governments of Germany and Austria, and in cooperation with local authorities, to investigate and analyze

⁵⁷⁷ See ICPDR, *JDS1*, <http://www.icpdr.org/icpdr-pages/jds.htm>; ICPDR, *JDS2*, <http://www.icpdr.org/icpdr-pages/jds2.htm>.

⁵⁷⁸ See ICPDR, *Floods*, <http://www.icpdr.org/icpdr-pages/floods.htm>; Flood Action Programme, *available at* <http://www.icpdr.org/icpdr-files/8115>.

⁵⁷⁹ See ICPDR, *River Basin Management*, http://www.icpdr.org/icpdr-pages/river_basin_management.htm. The plan as approved on December 10, 2009, is *available at*

⁵⁸⁰ See ICPDR, *Danube Day*, http://www.icpdr.org/icpdr-pages/danube_day.htm; ICPDR, *Danube Box*—“*Danube Goes School*”, http://www.icpdr.org/icpdr-pages/danube_box.htm.

the accumulation and impact of certain micropollutants in the area of the Danube that was impacted by the Kosovo conflict.⁵⁸¹

- The Danube Black Sea Task Force (“DABLAS”): DABLAS was established in November 2001 in response to a European Commission Communication outlining environmental problems in and priorities for the Danube-Black Sea Region.⁵⁸² The task force includes representatives of countries in the region, the ICPDR Secretariat, other interested EU member states, the European Commission, international financing institutions, and other organizations and parties, including civil society. The overall goal is to develop financing mechanisms for pollution reduction and ecosystem rehabilitation in the wider Black Sea region.⁵⁸³
- The Tisza Investigation: An international expedition conducted as a direct follow-up to JDS1 under the supervision of the ICPDR. Specifically, the efforts were intended to investigate the sub-region’s water quality and pollution levels after serious cyanide and heavy metal pollution incidents occurred on the Szamos and Tisza rivers in February and March 2000. The survey was financed by the EU, Germany and with contributions of Tisza basin governments.⁵⁸⁴
- The Tisza River Basin Management Plan: In 2004, the countries of the Tisza River Basin—a sub-region of the Danube River Basin—signed a Memorandum of Understanding agreeing to “co-operate more closely in the framework of the ICPDR in order to produce a Tisza River Basin Management Plan by 2009 aiming at the objectives set by the EU Water Framework Directive as implemented through the [DRPC] and the ICPDR Flood Action Programme and thereby complementing the efforts of the ICPDR.”⁵⁸⁵ As a first step towards drafting the plan, a comprehensive Tisza Analysis Report was prepared with financial support from the European Union in 2007.⁵⁸⁶
- The UNDP-GEF Tisza Medium-Size Project (“MSP”): Though organized under the umbrella of the ICPDR, this project—focused on wetlands and flood plain restoration and management

⁵⁸¹ See ICPDR, *Bioindicators Study*, <http://www.icpdr.org/icpdr-pages/item20050412145020.htm>. The study was a follow-up to the UNEP/OCHA Balkan Task Force Mission that investigated the environmental impacts of the Kosovo conflict in Former Republic of Yugoslavia in 1999.

⁵⁸² European Commission, *Environmental Co-operation in the Danube-Black Sea Region*, 30 Nov., 2001, COM(2001) 615 final, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0615:FIN:EN:PDF>.

⁵⁸³ See ICPDR, *DABLAS*, <http://www.icpdr.org/icpdr-pages/dablas.htm>; European Commission, *The DABLAS Task Force*, http://ec.europa.eu/environment/enlarg/dablas/index_en.htm.

⁵⁸⁴ See ICPDR, *Tisza Investigation*, http://www.icpdr.org/icpdr-pages/tisza_investigation.htm.

⁵⁸⁵ This Memorandum of Understanding (“Towards a River Basin Management Plan for the Tisza river supporting sustainable development of the region”) is available at <http://www.icpdr.org/wim07-mysql/download.php?itemid=8200&field=file1>.

⁵⁸⁶ See ICPDR, *Tisar 2007*, http://www.icpdr.org/icpdr-pages/tisar_2007.htm.

in the Tisza River Basin—is also supported and funded by the beneficiary countries, the UNDP, the UNEP, and the European Commission.⁵⁸⁷ On a practical level, this initiative includes of a series of smaller projects, including the Bodrog Project (mitigating the consequences of floods in the Bodrog river basin),⁵⁸⁸ the Upper Tisza Project (demonstrating cost effective measures to address the main environmental concerns in the area around two polluted villages in the upper Tisza region),⁵⁸⁹ and the Integrated Land Development Project (building upon and spreading lessons learned for integrated land management in the Tisza region).⁵⁹⁰ Overall, however, the MSP is intended to work towards the development of an Integrated River Management Plan.⁵⁹¹

In addition to the programs and projects listed above, the ICPDR conducts much of its work through relationships with other organizations. *See Relationships.*

6. Organizational Structure

The ICPDR is comprised of delegations from each of the Contracting Parties to the DRPC. Each Contracting Party can send a maximum of five delegates to the Commission and technical experts for special matters when necessary. The ICPDR is led by the Chair of the Commission, which rotates among the Contracting Parties in English alphabetical order. The Chair's delegation nominates one of its members to become the Commission's President.⁵⁹²

The expert bodies of the ICPDR include a Standing Working Group and Expert Groups, consisting of delegates and experts nominated by the ICPDR.⁵⁹³ The technical work of the ICPDR is carried out by such Expert Groups, as well as by *ad hoc* Expert Groups that address specific questions and support the work of the other Expert Groups or ICPDR bodies on request. Current Expert Groups include the Expert Group on River Basin Management ("RBM EG"), the Pressures and Measures Expert Group ("PM EG"), the Monitoring and Assessment Expert Group ("MA EG"), the Expert Group on Flood Protection ("FLOOD EG"), the Information Management and Geographical Information System Expert Group

⁵⁸⁷ See UNDP, *UNDP-GEF Medium-Size Project (MSP): Integrating multiple benefits of wetlands and floodplains into improved transboundary management for the Tisza River Basin*, at *6, available at <http://www.carpathianconvention.org/NR/rdonlyres/F69F79F1-B3A4-45B4-A79D-CD847F95B094/0/UNDPGEFprojectTiszaRiver.pdf>.

⁵⁸⁸ See ICPDR, *Bodrog Project*, http://www.icpdr.org/icpdr-pages/bodrog_kick_off_meeting.htm.

⁵⁸⁹ See ICPDR, *Upper Tisza Project*, http://www.icpdr.org/icpdr-pages/ukraine_kick_off_meeting.htm.

⁵⁹⁰ See ICPDR, *Integrated Land Development Project*, http://www.icpdr.org/icpdr-pages/integrated_land_development.htm.

⁵⁹¹ See ICPDR, *UNDP/GEF Tisza MSP*, http://www.icpdr.org/icpdr-pages/tisza_undp_gef.htm.

⁵⁹² DRPC, Annex IV, art. 1(1), 2(1).

⁵⁹³ DRPC, Annex IV, art. 6(1)-(3). The Standing Working Group coordinates and provides guidance to the other expert groups in between ordinary meetings of the ICPDR.

(“IM + GIS EF”), the Public Participation Expert Group (“PP EG”), and the *ad hoc* Strategic Expert Group (“S EG”).⁵⁹⁴

The overall work of the ICPDR is administered by its Permanent Secretariat, which is headquartered in Vienna. The ICPDR appoints an Executive Secretary, among provisions for the appointment of additional personnel. The Executive Secretary is entrusted to “perform the functions that are necessary for the administration of [the DRPC] and for the work of the [ICPDR]” as well as other tasks entrusted to the officer by the ICPDR.⁵⁹⁵

7. Relationships

The ICPDR has strong and continuing relationships with both the UNDP-GEF and the European Commission. *See Functions.* The ICPDR also has developed formal and informal relationships with other international organizations and corporate partners to further its mission, including with the Danube Commission with regard to their mutual responsibilities regarding environmental protection and inland navigation,⁵⁹⁶ and with the Institute of Freshwater Ecology and Inland Fisheries of Leibniz, Germany and the Institute for Water Quality and Waste Management at the Technical University of Vienna regarding specific Danube River Basin research projects.⁵⁹⁷

The ICPDR has also established a “Friends of the Danube” program in 2008 that seeks to foster beneficial relationships with local businesses to help preserve and protect the environment of the Danube River Basin. Members of this program are required at a minimum to provide a “partnership donation” of 25,000 Euros and to work towards the responsible use of water in their own business operations. Current Business Friends of the Danube include the Coca-Cola Company, Coca-Cola Hellenic, ORF, and Borealis.⁵⁹⁸

In addition to these relationships, nineteen organizations have been granted observer status with the ICPDR, including the Black Sea Commission, the Central Dredging Association, the Danube Environmental Forum, the Danube Commission, the Danube Tourist Commission, the European Anglers Alliance, the European Barge Union, the European Water Association, Friends of Nature International, the Global Water Partnership, the International Association for Danube Research, the International Association of Water Supply Companies in the Danube River Catchment Area, the International Hydrological Programme of the UNESCO, the International Sava River Basin Commission, the RAMSAR Convention on Wetlands, the Regional Environmental Center for Central and Eastern Europe,

⁵⁹⁴ See ICPDR, *Expert Groups*, http://www.icpdr.org/icpdr-pages/expert_groups.htm.

⁵⁹⁵ DRPC, Annex IV, art. 7(1)-(4).

⁵⁹⁶ See, e.g., *Joint Statement on Guiding Principles for the Development of Inland Navigation and Environmental Protection in the Danube River Basin*, http://www.danubecommission.org/uploads/doc/72/Joint%20Statement/EN/Joint_Statement_FINAL.pdf.

⁵⁹⁷ See ICPDR, *daNUbs*, <http://www.icpdr.org/icpdr-pages/danubs.htm>; ICPDR, *MONERIS*, <http://www.icpdr.org/icpdr-pages/item20080506172727.htm>.

⁵⁹⁸ ICPDR, *Business Friends of the Danube*, <http://www.icpdr.org/icpdr-pages/item20090729122242.htm>.

VGB PowerTech e.V., Via Donau, and the World Wide Fund for Nature – Danube-Carpathian Programme.⁵⁹⁹ These organizations are entitled to receive certain information from the ICPDR and to participate in various meetings, programs, and projects carried out under the DRPC, but they are not permitted to take part in the Commission process of adopting decisions.⁶⁰⁰

8. Decision Making

ICPDR meetings are held once a year, with extraordinary meetings convened by the President on the request of at least three delegations.⁶⁰¹ Each ICPDR delegation has one vote, with special rules for voting for the EU. An ICPDR quorum exists when delegations of two-thirds of the Contracting Parties are present.⁶⁰² ICPDR decisions and recommendations are adopted by consensus. If efforts are exhausted and consensus is not reached, the ICPDR adopts decisions or recommendations by a four-fifths majority of the delegations present and voting, unless otherwise provided by the Convention. Each decision is binding on the first day of the eleventh month following its adoption for “all Contracting Parties that voted for it and have not within that period notified the Executive Secretary that they are unable to accept” the decision.⁶⁰³

9. Dispute Resolution

The DRPC provides that in the event of disputes between two or more Contracting Parties regarding the interpretation or application of the Convention they shall seek resolution through negotiation or any other means acceptable to the parties to the dispute, with assistance of the ICPDR, if appropriate. If such efforts are not successful in resolving the dispute after twelve months following notification to the ICPDR, the dispute is submitted for compulsory decision either to the International Court of Justice (“ICJ”) or private arbitration subject to the arbitration procedures set forth in Annex V to the DRPC.⁶⁰⁴

The DRPC gives Contracting Parties the option to declare its acceptance of one or both means of dispute settlement (ICJ or arbitration) in advance. If all parties to the dispute have accepted both means of dispute settlement, the dispute will be submitted to the ICJ unless the parties agree otherwise. Where parties to the dispute have not accepted the same means of dispute settlement, the dispute is submitted to arbitration. If a Contracting Party fails to declare, it is considered to have accepted arbitration.⁶⁰⁵

⁵⁹⁹ ICPDR, *Observers*, <http://www.icpdr.org/icpdr-pages/observers.htm>.

⁶⁰⁰ ICPDR, *Guidelines for Observership*, at § 3.1, § 4.1, available at <http://www.icpdr.org/icpdr-files/9144..>

⁶⁰¹ DRPC, Annex, art. 3(1)-(2).

⁶⁰² DRPC, Annex IV, art. 4(1)-(3).

⁶⁰³ DRPC, Annex IV, art. 5; *see also* DRPC, art. 22 (“Conference of the Parties”), pursuant to which Contracting Parties review policy issues and DRPC implementation and may adopt recommendations or decisions. As provided by this article, decisions with financial implications may *only* be adopted only by consensus.

⁶⁰⁴ DRPC, art. 24(1)-(2)(a).

⁶⁰⁵ DRPC, art. 24(2)(b)-(e).

10. Data Information Sharing, Exchange, and Harmonization

The Contracting Parties to the DRPC are required to report to the ICPDR on issues necessary for the ICPDR to comply with its tasks. Reports involve a variety of data and information including on other bilateral or multilateral agreements affecting the Danube, information on Contracting Parties' laws and regulations concerning the protection and water management of the river, communication concerning the domestic implementation of ICPDR decisions, designation of competent institutions for cooperation in the framework, and communication on planned activities likely to cause transboundary impacts.⁶⁰⁶

Similarly, as required by the ICPDR, the Contracting Parties are required to share with other Parties any "reasonably available data" relating to: (a) the environmental conditions within the catchment area of the Danube River Basin; (b) the experience gained from the application of best techniques and results of research; (c) emission and monitoring data; (d) measures taken and planned to address transboundary impacts; (e) regulations for the discharge of waste water; and (f) accidents that involve substances hazardous to water. Additionally, the Contracting Parties are also required to exchange information on regulations to harmonize emission limits. Moreover, provision is made to enable a Contracting Party to request data not available from another Contracting Party on the condition that the requesting Party agrees to pay reasonable charges for collecting and processing such data or information. The objectives of the DRPC are also promoted by the facilitation of the exchange of "best available techniques" via promotion and commercial exchange, technical assistance, and joint training programs.⁶⁰⁷

In addition, the DRPC requires that Contracting Parties make available all information concerning the state or quality of the river environment "to any natural or legal person, with payment of reasonable charges, in response to any reasonable request."⁶⁰⁸ At the same time, the DRPC includes provisions for the protection of certain information and data, including personal data, industrial and commercial secrets and information affecting public or national security.⁶⁰⁹

The DRPC also establishes obligations for coordinated or joint communication, warning and alarm systems and obligations to consult on "ways and means of harmonising domestic communication, warning and alarm systems and emergency plans." In this regard, Contracting Parties must supply competent authorities or points of contact for emergency events including accidental pollution or critical water conditions such as floods and ice-hazards. Competent authorities identifying increases in hazardous substances or floods or forecasts of ice-hazards are obligated to inform downstream Danubian States.⁶¹⁰

Overall, information sharing, exchange, and harmonization have been primary objectives of the ICPDR from its inception. In particular, the establishment of uniform standards for data collection and exchange has been a prime focus of the Contracting Parties since the beginning of the Danube Pollution Reduction

⁶⁰⁶ DRPC, art. 10.

⁶⁰⁷ DRPC, art. 12(1)-(4).

⁶⁰⁸ DRPC, art. 14(1).

⁶⁰⁹ DRPC, arts. 12(5)-(6), 13, 14(3).

⁶¹⁰ DRPC, art. 16(1)-(4).

Programme in 1992. That said, this goal has been forwarded both through joint data collection and survey efforts and through a technical body—the Information Management and Geographical Information System Expert Group—which is charged with maintaining its overall data information system.⁶¹¹ *See* **Functions and Organization.**

11. Notifications

In addition to the communication requirements detailed above, *see* **Data Information Sharing, Exchange, and Harmonization**, the DRPC requires certain notifications or communications of Contracting Parties in connection with: their inability to accept decisions adopted by the ICPDR or the Conference of Parties;⁶¹² proposals to amend the DRPC or any amendment's acceptance or ratification;⁶¹³ disputes among Contracting Parties;⁶¹⁴ or Contracting Party withdrawal.⁶¹⁵

More importantly, the DRPC provides that relevant Contracting Parties shall, at the request of one or more concerned Contracting Parties, enter into consultations on certain planned activities likely to cause trans-boundary impacts. The relevant competent authorities must wait for the results of such consultations unless they are not finalized after a year or the activities are required by pending danger.⁶¹⁶

12. Funding and Financing

The Statute of the ICPDR specifies that the Contracting Parties to the DRPC (excluding the European Union, for which there is a ceiling contribution towards administrative costs) are expected to contribute to the budgets of the ICPDR in equal parts unless there is unanimous agreement to the contrary. Contracting Parties are further expected to pay their own costs of participation and the costs of monitoring and assessment undertaken in their territories.⁶¹⁷

⁶¹¹ *See* ICPDR, *Terms of Reference of the ad hoc Information Management and Geographical Information System Expert Group (ad hoc IM+GIS EG) of the ICPDR*, at *2 (“The overall objective of the ad hoc IM+GIS EG is to support ICPDR activities related to the operation and further development of the ICPDR information system. It comprises control over the development, implementation, testing and maintenance of a common Danube River Basin Geographical Information System (DRB GIS).”), available at <http://www.icpdr.org/icpdr-files/9237>.

⁶¹² DRPC, art. 22(5) (specifically, a Contracting Party must notify the Commission by the first day of the eleventh month after an ICPDR decision that it will be unable to accept the decision).

⁶¹³ DRPC, art. 23(1), (4)-(5).

⁶¹⁴ DRPC, art. 24(2)(a).

⁶¹⁵ DRPC, art. 29.

⁶¹⁶ DRPC, art. 11(1)-(2).

⁶¹⁷ DRPC, Annex IV, art. 11(3)-(6).

Much of the ICPDR's work on particular projects is also subsidized and financially managed by the UNDP-GEF,⁶¹⁸ the European Commission,⁶¹⁹ the World Bank,⁶²⁰ and other public⁶²¹ and private partners.⁶²² See **Functions and Relationships**.

13. Benefit Sharing

No specific provision, although the DRPC provides for several forms of cooperation including consultations and joint activities, the exchange of information and technical assistance. See **Functions and Data Information Sharing, Exchange, and Harmonization**. The DRPC also obligates the Contracting parties to establish "complementary or joint programmes of scientific or technical research" and transmit to the ICPDR the results of such research (access to which is open for public authorities) and relevant parts of other programs or scientific and technical research.⁶²³ Finally, the DRPC obligates Contracting Parties to provide mutual assistance on requests to facilitate compliance with the Convention's obligations, particularly where a critical situation of river conditions may arise.⁶²⁴

⁶¹⁸ See, e.g., UNOPS, *Danube River Basin Project*, at *1 (noting the UNDP-GEF's contribution of \$17,240,000 of the overall \$36,718,000 cost on the Danube River Project between 2001 and 2007), available at http://www.unops.org/SiteCollectionDocuments/Factsheets/English/Success%20Stories/GBL_PJFS_Danube_EN.pdf. The UNDP-GEF has long supported individual projects in the Danube River Basin. See ICPDR, *15 Years of Managing the Danube River Basin*, at *3, *12 (explaining the importance of international donors like the UNDP-GEF and noting that the Danube River Basin was reportedly the "site of the first 'IW regional programme' ever funded by the GEF in 1992."), available at <http://www.icpdr.org/icpdr-files/14831>.

⁶¹⁹ See, e.g., Danube Watch, *The ICPDR Joint Action Programme*, at *23 (Feb. 2007) ("EU grant financing has played a large role in funding several projects throughout the EU countries."), available at <http://www.icpdr.org/wim07-mysql/download.php?itemid=13797&field=file1>.

⁶²⁰ See, e.g., The World Bank, *Black Sea and Danube Basin GEF Partnership*, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/EXTECAREGTOPENENVIRONMENT/EXTBLACKSEA/0,,menuPK:634978~pagePK:64168427~piPK:64168435~theSitePK:634972,00.html> (providing ten examples of successful projects funded by the GEF and financially managed by the World Bank in the Black Sea and Danube River Basin regions).

⁶²¹ See, e.g., ICPDR, *15 Years of Managing the Danube River Basin*, at *13 (noting the contributions of more than 174 NGOs through the Danube Environmental Forum ("DEF")), available at <http://www.icpdr.org/icpdr-files/14831>; U.N. Information Service, *Alcoa Foundation Assists in Cleaning up the Danube*, Apr. 26, 2004, <http://www.unis.unvienna.org/unis/pressrels/2004/unisinf8.html> (noting \$100,000 grant by the Alcoa Foundation to purchase technical equipment to connect a local laboratory in Romania to the overall Transnational Monitoring System maintained by the ICPDR).

⁶²² See, e.g., ICPDR, *ICPDR Principles for Cooperation and Relations with Business and Industry* (setting forth guidelines on the ICPDR's relations with private partners), available at <http://www.icpdr.org/icpdr-files/9197>. See also *Memorandum of Understanding for a Partnership to Conserve & Protect the Danube River & Danube River Basin*, at *1 (providing the terms of agreement for the partnership between the ICPDR and two branches of the Coca-Cola company), available at <http://www.icpdr.org/icpdr-files/9198>.

⁶²³ DRPC, art. 15.

⁶²⁴ DRPC, art. 17.

14. Compliance and Monitoring

The DRPC has several provisions on monitoring, including requiring the Contracting Parties to monitor the progress of joint action programs and the establishment of periodic progress reviews in the context of emissions,⁶²⁵ and requirements in connection with domestic activities to cooperate in monitoring and assessment by:

- Harmoni[zing] or mak[ing] comparable their monitoring and assessment methods as applied on their domestic levels, in particular in the field of river quality, emission control, flood forecast and water balance, with a view to achieving comparable results to be introduced into the joint monitoring and assessment activities;
- Develop[ing] concerted or joint monitoring systems applying stationary or mobile measurement devices, communication and data processing facilities;
- Elaborat[ing] and implement[ing] joint programmes for monitoring the riverine conditions in the Danube catchment area concerning both water quality and quantity, sediments and riverine ecosystems, as a basis for the assessment of transboundary impacts such as transboundary pollution and changes of the riverine regimes as well as of water balances, floods and ice-hazards;
- Develop[ing] joint or harmonised methods for monitoring and assessment of waste water discharges including processing, evaluation and documentation of data taking into account the branch specific approach of emission limitation (Annex II, Part 1);
- Elaborat[ing] inventories on relevant point sources including the pollutants discharged (emission inventories) and estimate[ing] the water pollution from non-point sources taking into account Annex II, Part 2;
- Review[ing] these documents according to the actual state.⁶²⁶

Additionally, the Contracting Parties are obligated “to agree upon monitoring points, river quality characteristics and pollution parameters” to be evaluated regularly.⁶²⁷

The Secretariat is required to monitor all programs and activities of the ICPDR and to produce a comprehensive report each year for review by the Contracting Parties.⁶²⁸ The Secretariat in turn is authorized to rely on entrusted experts to evaluate program results.⁶²⁹ For particular programs, however, additional oversight may be exercised by programs partners. *See* **Functions** and **Funding and Financing**.

⁶²⁵ DRPC, art. 8(4).

⁶²⁶ DRPC, art. 9(1).

⁶²⁷ DRPC, art. 9(2).

⁶²⁸ DRPC, Annex IV, art. 9.

⁶²⁹ DRPC, Annex IV, art. 8.

15. Participation and the Role of Multiple Stakeholders

No specific provision, although ICPDR programs and projects are designed to include and often rely upon multiple public and private stakeholders in determining policy priorities and implementing specific programs. *See Functions and Relationships.*

16. Dissolution and Termination

There is no specific provision related to the overall dissolution or termination of the DRPC or the ICPDR. Any DRPC Party may withdraw from the Convention once that party has been a member for five years and provides notice of withdrawal a year in advance.⁶³⁰

17. Additional Remarks

N/A

18. Websites and References

- The ICPDR, <http://www.icpdr.org/>
- The UNDP-GEF Danube Regional Project, <http://www.undp-drp.org/>
- The Danube Commission, <http://www.danubecommission.org/>
- Joanne Linnerooth-Bayer & Susan Murcott, *Danube River Basin: International Cooperation or Sustainable Development*, 36 NAT. RESOURCES J. 521 (1996)
- Chris Hudson, *The Role of International Environmental Law in the Protection of the Danube River Basin: The Baia Mare Cyanide Spill*, 12 COLO. J. INT'L ENVTL. L. & POL'Y 367 (2001)

⁶³⁰ DRPC, art. 29.

Franco-Swiss Genevese Aquifer

1. Legal Basis

The Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer (Arrangement relatif à la Protection, à l'Utilization et à la Realimentation de la Nappe souterraine franco-suisse du Genevois) was signed on 9 June 1977 in Geneva, Switzerland and St. Julien-en-Genevois, Haute-Savoie, France and went into effect on 1 January 1978.⁶³¹

2. Member States

The Member States are France (the Prefect of Haute-Savoie) and Switzerland (the Canton of Geneva).

3. Geographical Scope

The Genevese Aquifer extends over 19 kilometers underneath the southern extremity of Lake Geneva and the Rhône river across the border between France and Switzerland. The width of the aquifer varies between 1 and 3.5 kilometers. The subterranean aquifer contains approximately 16.8 million cubic meters of usable water.⁶³²

4. Legal Personality

The Genevese Aquifer Management Commission is comprised of three Swiss and three French members designated by the Council of State of the Canton of Geneva and by the Prefect of Haute-Savoie.⁶³³ At least two of the three members designated must be technicians specializing in water matters.⁶³⁴ Each delegation reports to its respective Member State, which makes sovereign decisions on new projects.⁶³⁵

5. Functions

The Genevese Aquifer Management Commission shall propose an annual aquifer utilization program that takes into account the needs of various users. The Commission may propose measures to protect the waters in the aquifer or to remedy causes of pollution. The Commission also gives its technical opinion

⁶³¹ Arrangement relative a la Protection, a l'Utilization et a la Realimentation de la Nappe souterraine franco-suisse du Genevois ("Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer"), 9 June 1977, *reprinted in* INTERNATIONAL GROUNDWATER LAW (Ludwik A. Teclaff and Albert E. Utton, eds., 1981).

⁶³² Bernard J. Wohlwend, An Overview of Groundwater in International Law – A Case Study: The Franco-Swiss Genevese Aquifer 2, Workshop III on Harmonization of Diverging Interests in the Use of Shared Water Resources, 17-19 Dec. 2002, *available at* <http://www.bjwconsult.com/The%20Genevese%20Aquifer.pdf>.

⁶³³ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer, art. 1.1.

⁶³⁴ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer, art. 1.2.

⁶³⁵ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer, art. 2.4.

on the construction of new extraction works on the aquifer and on the modification of existing equipment. The Commission audits construction and operation costs for the purposes of cost sharing.⁶³⁶

The Commission maintains an inventory of all waterworks and equipment, public and private, used to extract the Genevise Aquifer's resources. The inventory details the terms and conditions governing the waterworks including authorized extraction volume, installed power and protected areas.⁶³⁷ All waterworks are equipped with a device that records the volume of water extracted from the aquifer and the Commission periodically records the volumes in a register.⁶³⁸ All waterworks are also equipped with a device that records variations in the water-level of the aquifer and the recordings sent to the operator of the recharge installation, designated by the Canton of Geneva, who presents them to the Commission in an annual report.⁶³⁹

The Commission issues a technical opinion on every proposed new waterwork or equipment. The respective Member State, subject to the provisions of the Arrangement, then makes a sovereign decision regarding the projects submitted to it. The Commission oversees the construction of new equipment until it becomes operational.⁶⁴⁰

The Canton of Geneva is solely responsible for the construction and operation of an artificial recharge installation, the operation of which it may entrust in a third party operator.⁶⁴¹

The Commission also establishes a standard qualitative analysis criteria to be used by both Member States to analyze the water extracted from the aquifer. The Commission establishes fixed intervals when analyses of the water extracted are to be made, the results of which are then exchanged and recorded. Water injected into the aquifer is subject to the same type of analysis.⁶⁴²

The parties also maintain a monitoring network, installed by local authorities, intended to warn of accidental pollution that may affect the quality of water in the aquifer. Both Member States must take appropriate measures without restrictions in the event of a pollution warning.⁶⁴³

⁶³⁶ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevise Aquifer, art. 2.

⁶³⁷ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevise Aquifer, art. 4.

⁶³⁸ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevise Aquifer, art. 6.

⁶³⁹ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevise Aquifer, art. 7.

⁶⁴⁰ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevise Aquifer, art. 5.

⁶⁴¹ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevise Aquifer, art. 8.

⁶⁴² Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevise Aquifer, art. 16.

⁶⁴³ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevise Aquifer, art. 17.

6. Organizational Structure

The Commission designates representatives on an equal basis authorized to control the volume of water extracted by various users. The Commission meets periodically and upon the request of either of its Member State delegations in either Geneva or St.-Julien-en-Genevois. The conclusions of the Commission's meetings are published in a joint report.⁶⁴⁴

The Canton of Geneva is solely responsible for the operation of an artificial recharge installation and may appoint a third-party operator.⁶⁴⁵

7. Relationships

The Commission has an advisory relationship with the governments in the Canton of Geneva and the Prefect of Haute-Savoie.⁶⁴⁶ The Commission also works with local authorities to maintain a pollution monitoring network.⁶⁴⁷ Users of the aquifer also work with the Commission by providing their estimated volume of extractions at the beginning of each year.⁶⁴⁸

8. Decision Making

The six members of the Commission issue joint reports and technical opinions that are then supplied to their respective Member States.⁶⁴⁹ The Canton of Geneva and the Prefect of Haute-Savoie ultimately make independent decisions regarding new projects based on the opinions of the Commission.⁶⁵⁰

9. Dispute Resolution

Any dispute relating to the Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevise Aquifer is to be submitted to the Franco-Genevise Regional Committee for Conciliation. If the settlement cannot be reached, the dispute is to be referred to the Franco-Swiss Consultative Commission for Problems of Neighborliness.⁶⁵¹

⁶⁴⁴ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevise Aquifer, art. 3.

⁶⁴⁵ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevise Aquifer, art. 8.

⁶⁴⁶ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevise Aquifer, art. 2.4.

⁶⁴⁷ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevise Aquifer, art. 17.

⁶⁴⁸ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevise Aquifer, art. 10.

⁶⁴⁹ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevise Aquifer, art. 2.3.

⁶⁵⁰ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevise Aquifer, art. 5.2.

⁶⁵¹ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevise Aquifer, art. 20.

10. Data Information Sharing, Exchange, and Harmonization

The Commission maintains an inventory of all waterworks and equipment that is available to both Member States.⁶⁵² Additionally, the volume of water extracted by each waterwork is periodically recorded in a register kept in two originals, one for each Member State.⁶⁵³ Although the Canton of Geneva designates an operator of the artificial recharge installation who is responsible for monitoring the water-levels of the aquifer, the operator issues an annual report to the Commission.⁶⁵⁴ Each user or group of users also informs the Commission of their estimated volume of extractions from the aquifer at the beginning of each year.⁶⁵⁵

11. Notifications

The Commission members issue joint reports that are distributed to the Member States. *See Decision Making; see also Data Information Sharing, Exchange, and Harmonization.*

12. Funding and Financing

Each Member State assumes for itself the operational costs of the Commission.⁶⁵⁶ The Canton of Geneva is entitled to cost sharing with France for the construction and operating of the artificial recharge installation.⁶⁵⁷ Construction costs for the artificial recharge installation include studies, civil engineering, electro-mechanical equipment, buildings, drainage, and landscape. The investment costs are to be amortized in constant yearly installments, with interest included, over a thirty year period.⁶⁵⁸ The operating costs of the artificial recharge installation are to be computed yearly and include power supply, chemicals, treatment and disposal of sediment, labor, spare parts, maintenance, transportation, insurance, and rental costs.⁶⁵⁹

The annual French contribution for the construction and operation of the artificial recharge installation is based on the percentage of water extracted by French users out of the total volume extracted. However, in the event that French users extract less than 70% of their reserved water volume, the French contribution will be for 70% of the reserved water volume rather than the lesser amount actually

⁶⁵² Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer, art. 4.

⁶⁵³ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer, art. 6.

⁶⁵⁴ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer, arts. 7-8.

⁶⁵⁵ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer, art. 10.

⁶⁵⁶ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer, art. 3.1.

⁶⁵⁷ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer, art. 14.

⁶⁵⁸ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer, art. 12.

⁶⁵⁹ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer, art. 13.

extracted.⁶⁶⁰ The French contribution is to be paid in advance at the beginning of each year proportional to the reserved water volumes. At the end of the year, the Canton of Geneva shall establish the balance of the total French and Swiss contributions and present it to the Commission. Any balance due by France is to be paid within sixty days.⁶⁶¹

13. Benefit Sharing

French users are entitled to an amount not to exceed 5 million cubic meters per annum, including 2 million cubic meters that are not included in calculating the percentage of water extracted by French users for cost-sharing purposes.⁶⁶²

In exceptional circumstances, through the Commission, Swiss users may request that French users forfeit part of their allocation of water. Upon acceptance by French users, the Swiss users will pay the equivalent cubic meter production cost obtained from French waterworks.⁶⁶³

14. Compliance and Monitoring

All waterworks are equipped with a device that monitors the volume of water extracted from the aquifer. The Commission records these volumes in a register kept in two originals. Furthermore, each Member State has its own seal to ensure that the recording devices are not tampered with.⁶⁶⁴

15. Participation and the Role of Multiple Stakeholders

Each user or group of users informs the Commission of their estimated volume of extraction from the aquifer for the next twelve months. The Commission then formulates an annual aquifer utilization program that allocates the reserved water volumes by user. The Commission designates representatives responsible for controlling the volume of water extracted by various users. Each user is entitled to a 20% extraction margin with respect to its reserved water volume. Extractions in excess of the 20% margin are subject to approval by the Commission based on the technical opinion of the artificial recharge installation operator.⁶⁶⁵

16. Dissolution and Termination

The Arrangement is for a thirty year period, after which it automatically renews for five year periods absent a notice of termination. Either Member State may serve a notice of termination on the other

⁶⁶⁰ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer, art. 14.

⁶⁶¹ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer, art. 15.

⁶⁶² Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer, art. 9.1.

⁶⁶³ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer, art. 9.2.

⁶⁶⁴ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer, art. 6.

⁶⁶⁵ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer, art. 10.

Member State at least one year prior to expiration of the Arrangement. Either Member State may request at any time the opening of negotiations to modify or supplement the Arrangement. Such negotiations are to begin within six months of the request.⁶⁶⁶

17. Additional Remarks

N/A

18. Websites and References

- Arrangement relative a la Protection, a l'Utilization et a la Realimentation de la Nappe souterraine franco-suisse du Genevois ("Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer"), 9 June 1977, *reprinted in* INTERNATIONAL GROUNDWATER LAW (Ludwik A. Teclaff and Albert E. Utton, eds., 1981)
- Bernard J. Wohlwend, An Overview of Groundwater in International Law – A Case Study: The Franco-Swiss Genevese Aquifer 2, Workshop III on Harmonization of Diverging Interests in the Use of Shared Water Resources, 17-19 Dec. 2002, *available at* <http://www.bjwconsult.com/The%20Genevese%20Aquifer.pdf>.

⁶⁶⁶ Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer, art. 19.

The Rhine

1. Legal Basis

The Convention on the Protection of the Rhine (the “Convention”) was opened for signature at Berne, Switzerland on 12 April 1999 and entered into force on 1 January 2003.⁶⁶⁷

2. Member States

The Member States of the International Commission for the Protection of the Rhine (“ICPR”) are Switzerland, France, Germany, Luxembourg, the Netherlands, and the European Community. In addition, Belgium, Liechtenstein and Austria, in whom parts of the Rhine watershed are located, enjoy observer status and the same rights in the Rhine Coordination Committee as the Member States to the ICPR Convention.⁶⁶⁸

3. Geographical Scope

Under Article 2, the Convention applies to the Rhine; groundwater, aquatic and territorial ecosystems interacting with the Rhine; and the Rhine catchment area.

4. Legal Personality

Pursuant to Article 6.2 of the Convention, the ICPR is granted legal personality. While in the territory of its Member States, the ICPR is represented by its Chairman and enjoys the legal capacity conferred on legal persons by domestic law.

5. Functions

According to its Preamble, the goal of the Convention is to increase multilateral cooperation in the sustainable development of the Rhine’s ecosystem, using a comprehensive approach. As specified in Article 3, the aims of the Convention include:

- Protecting species diversity;
- Reducing contamination from pollution;

⁶⁶⁷ The Convention on the Protection of the Rhine, 12 Apr. 1999, O.J. L. 289/31, 16.11.2000. The Convention repealed the Agreement of 29 April 1963 concerning the International Commission for the Protection of the Rhine against Pollution; the Additional Agreement of 3 December 1976 to the Agreement of 29 April 1963 concerning the International Commission for the Protection of the Rhine against Pollution; and the Convention of 3 December 1976 for the protection of the Rhine against chemical pollution. However the decisions, recommendations, limit values, and other arrangements adopted under these agreements continue to apply unless expressly repealed. Convention, art. 19.

⁶⁶⁸ ICPR – International Cooperation: Observers – States, 17 Apr. 2009, *available at* <http://www.iksr.org/index.php?id=156&L=3>.

- Conserving and improving natural habitats for wild fauna and flora;
- Ensuring environmentally sound management of water resources;
- Taking ecological requirements into account when developing the waterway;
- Producing drinking water from the Rhine;
- Improving sediment quality; and
- Coordinating with measures to protect the North Sea (as the Rhine empties into the North Sea).

In addition under Article 5, the Member States agree to:

- Cooperate in taking actions to protect the Rhine;
- Implement programs and studies concerning the river;
- Identify the causes of and parties responsible for pollution;
- Ensure that technical measures liable to have a serious effect on the ecosystem (as well as discharges of waste water and hazardous substances) receive prior authorization; and
- Reduce the risks of environmental accidents (and, in the event of an accident, notify the ICPR and Member States likely to be affected).

In implementing the Convention, Member States are to be guided by the following principles: (a) the precautionary principle; (b) the principle of preventive action; (c) the principle of rectification (i.e., managing the flow of the river); (d) the polluter pays principle; (e) the principle of not increasing damage; (f) the principle of compensation for major technical measures; (g) the principle of sustainable development; (h) the application and development of the state of the art and best environmental practices; (i) and the principle of not transferring environmental pollution from one environment to another. The updated ICPR regime reflects developments in international environmental law and in some instances, such as its embrace of state of the art technology and compensation principles, goes even further than other international instruments.⁶⁶⁹

Under Article 8, the ICPR is responsible for:

- Preparing international measurement programs and studies of the Rhine ecosystem;
- Making proposals for actions;
- Coordinating Member States' warnings and alerts;

⁶⁶⁹ Elli Louka, *International Instruments*, INTERNATIONAL ENVIRONMENTAL LAW: FAIRNESS, EFFECTIVENESS, AND WORLD ORDER 234 (2006).

- Evaluating the effectiveness of actions taken;
- Informing the public as to the state of the Rhine and the results of its work; and
- Carrying out any other tasks entrusted to it by its Member States.

In January 2001, Member States adopted “Rhine 2020” – a sustainable development program detailing objectives and measures of a Rhine protection policy. Core parts of the “Rhine 2020” program include:

- The implementation of Rhine habitat patch connectivity (i.e., maintaining, upgrading and linking habitat types along the Rhine from Lake Constance, at the northern foot of the Alps, to the North Sea). The ICPR program includes actions to: (a) preserve freely flowing river sections; (b) restore river dynamics; (c) permit a more varied design of the structure of river banks and bottom; (d) open old alluvial areas (low-lying river meadows characterized by floods and low water) to the river; (e) introduce more extensive agriculture in the floodplain; (f) remove obstacles to the migration of river fauna; and (g) reconnect old river branches and torrents. Habitat patch connectivity will provide ecological continuity, thereby allowing animals to move upstream and downstream and plants to be carried away by the currents.⁶⁷⁰
- Salmon 2020 –aimed at creating an almost stable wild salmon population in the Rhine ecosystem by 2020. This program builds upon the Salmon 2000 initiative which assisted natural salmon reproduction in several Rhine tributaries. The goals of Salmon 2020 are: (a) 7,000-21,000 upstream migrating salmon; (b) free upstream migration for salmon as far as Basel, Switzerland; (c) self-sustaining salmon stocking; and (d) the return of wild salmon by 2020.⁶⁷¹
- The improvement of flood mitigation by implementing the Action Plan on Floods. In response to the Rhine floods in 1993 and 1995, the ICPR, under the old treaty regime, adopted the Action Plan on Floods at a Conference of Rhine Ministers on 22 January 1998. The Action Plan will be undertaken in phases and will be implemented by all Rhine bordering countries at a projected cost of 12 billion euros. The first phase was successfully completed in 2005. The objectives for 2020 are to: (a) reduce damage risks by 25%; (b) reduce by up to 70 centimeters the impounded sections of the extreme flood stages downstream; (c) warn the population living near the Rhine of flood dangers and point out areas of risk; and (d) prolong the period of flood forecasting to avoid potential damage.⁶⁷²
- Further improving water quality. In the last 30 years, there has been improvement in the water quality of the Rhine and its tributaries (such as a reduction in heavy metals pollution). But, there needs to be further reduction in micro-pollutants (synthetic organic substances used in daily life – such as residues of pharmaceuticals and cleaning products) and agricultural pollutants and

⁶⁷⁰ICPR - Habitat patch connectivity, 22 Feb. 2009, *available at* <http://www.iksr.org/index.php?id=71&L=3>.

⁶⁷¹ ICPR – Salmon 2020, 22. Feb. 2009, *available at* <http://www.iksr.org/index.php?id=124&L=3>.

⁶⁷² ICPR – Action Plan on Floods, 22 Feb. 2009, *available at* <http://www.iksr.org/index.php?id=123&L=3>.

nutrients that seep into the water. The water quality of the Rhine will be judged against target values and environmental quality standards.⁶⁷³

- Groundwater protection. Targets include: (a) protecting groundwater from the infiltration of polluted Rhine water; (b) maintaining the dynamic and quantitative interrelation between running waters and groundwater; (c) protecting, improving and restoring groundwater status; (d) restoring the balance between groundwater extraction and recharge; (e) enhancing rainwater seepage and infiltration without causing damage; (f) improving the soil ecosystem by restoring natural floodplain dynamics; (g) accounting for the vulnerability of groundwater when new surfaces are subjected to industrial or commercial use; (h) maintaining the high level of security when stocking and transporting water polluting substances; and (i) protecting groundwater when flooded gravel pits are used in the floodplain of the Rhine.⁶⁷⁴
- Continual monitoring of the Rhine, including effects on plants and animals. When an accident along the Rhine or one of its major tributaries occurs, the Warning and Alarm Plan is applied. Approved by the ICPR, the Warning and Alarm Plan alerts downstream users of serious water pollution events. The Warning and Alarm Plan also provides a forum for Member States to exchange information gathered by monitoring stations along the river on water pollution levels.⁶⁷⁵

6. Organizational Structure

The ICPR is composed of delegations appointed by its Member States, with each State serving as chair and appointing the presiding Chairman for three years in turn. The ICPR has drafted rules of procedure and financial regulations to govern its operation.⁶⁷⁶

Since 1972, the Conference of Ministers (composed of the Member State ministers in charge of water protection) has met periodically to determine commitments for the Member States and tasks for the ICPR to undertake. The most recent conference was in Bonn, Germany in 2007.⁶⁷⁷

The ICPR holds one Plenary Assembly a year in which it prepares resolutions to be passed by the Ministers in charge of the Rhine in the Member States.⁶⁷⁸ Extra sessions can be convened by the

⁶⁷³ ICPR – Water Quality, 22 Feb. 2009, *available at* <http://www.iksr.org/index.php?id=17&L=3>.

⁶⁷⁴ ICPR – Groundwater Targets, 20 Mar. 2009, *available at* <http://www.iksr.org/index.php?id=137&L=3>.

⁶⁷⁵ ICPR – Monitoring of the state, 5 May 2009, *available at* <http://www.iksr.org/index.php?id=80&L=3>; ICPR – Warning and Alarm Plan Rhine, Jul. 2009, *available at* <http://www.iksr.org/index.php?id=86&L=3> and http://www.iksr.org/fileadmin/user_upload/Dokumente_en/International_Warning-_and_Alarm_Plan.pdf.

⁶⁷⁶ Convention, art. 7. The Member States assume the role of chair in the order the countries were listed in the preamble of the 1999 Rhine Convention (Germany, France, Luxembourg, the Netherlands, Switzerland, and then the European Community)

⁶⁷⁷ ICPR – Conference of ministers, 12 May 2009, *available at* <http://www.iksr.org/index.php?id=27&L=3>.

⁶⁷⁸ Rules of procedure and financial regulations of the ICPR (“Procedural Rules”), art. 1.4, 8-9 July 2004, *available at* http://www.iksr.org/fileadmin/user_upload/Dokumente_en/Gesch_fts-Finanzordnung-e.pdf.

Chairman or at the request of any two delegations. Although the Chairman proposes the agenda for the meeting, each Member State has the right to include any items it wishes to discuss.⁶⁷⁹

The Rhine Coordination Committee further coordinates the tasks of the ICPR by establishing various project groups.⁶⁸⁰ The Strategy Group in turn prepares decisions taken for the Plenary Assembly and the Rhine Coordination Committee. The Strategy Group is also responsible for: (a) preparing solutions for budget and staff issues; (b) coordinating, managing and overseeing the ICPR's work – for example, activities related to Rhine 2020, the European Water Framework Directive, and the European Community Flood Management Directive; and (c) facilitating public relations and information exchange.⁶⁸¹

Various working groups and expert groups handle technical questions. There are currently groups addressing floods, water quality/emissions, ecology, data management, and other aspects of implementing the Rhine 2020 program.⁶⁸² In addition, the ICPR has also established a project group on micro-pollutants charged with developing, by the end of 2010, a comprehensive strategy for reducing micro-pollutants from urban wastewater and other sources in the Rhine and its tributaries through improved knowledge on emissions, eco-toxicological reactions and suitable treatment methods.⁶⁸³

The international secretariat of the ICPR is headquartered in Koblenz, Germany.⁶⁸⁴ The secretariat provides support services to the Chairman, Plenary Assembly, and Rhine Coordination Committee. The secretariat is also responsible for public relations efforts and serves as the point of contact for experts and interested parties. The secretariat is headed by a Secretary General appointed for a four year term with the option of renewal. The Secretary General is appointed by the Chairman and approved by the ICPR on the recommendation of the Dutch delegation and a selection committee.

7. Relationships

⁶⁷⁹ Convention, art. 9.

⁶⁸⁰ Procedural Rules, art. 4.

⁶⁸¹ ICPR – Mandate for the Strategy Group SG, 20 Mar. 2009, *available at* <http://www.iksr.org/index.php?id=229&L=3>.

⁶⁸² ICPR – Mandate for the working group Floods (H), 20 Mar. 2009, *available at* <http://www.iksr.org/index.php?id=227&L=3>; ICPR – Mandate for the working group Water Quality/Emissions (S), 30 Mar. 2009, *available at* <http://www.iksr.org/index.php?id=226&L=3>; ICPR – Mandate for the working group Ecology (B), 20 Mar. 2009, *available at* <http://www.iksr.org/index.php?id=225&L=3>; ICPR – Mandate of the expert group Data Management (GIS) and Mandate of the expert group Integrated Economical Approach (E), 20 Mar. 2009, *available at* <http://www.iksr.org/index.php?id=224&L=3>.

⁶⁸³ ICPR strategy on micro-pollutions: Mandate for the MIKRO project group, 20 Mar. 2009, *available at* <http://www.iksr.org/index.php?id=228&L=3>.

⁶⁸⁴ Convention, art. 19; Convention on the Protection of the Rhine, *available at* <http://www.iksr.org/index.php?id=33&L=3>.

Article 14 of the Convention specifically authorizes the ICPR to cooperate with other inter- and non-governmental organizations. In addition, when making decisions likely to have an important impact on certain non-governmental organizations, the ICPR is obligated to consult with them.

Certain European Union directives and regulations affecting watersheds also impact the work of the ICPR. For example, the 2000 European Water Framework Directive (2000/60/EC) establishes a framework for implementing comprehensive water protection in European river districts, requiring all European water bodies by 2015 to employ trans-boundary, integrated assessment techniques to manage rivers and maintain good ecological and chemical status. The ICPR Rhine 2020 meets these requirements.⁶⁸⁵ In addition, the European Community Flood Management Directive calls for flood risk assessments to be completed by 2012, draft maps by 2013, and flood management plans by 2015 for all international river basin districts.⁶⁸⁶ The ICPR has already drafted an Action Plan for Floods for the Rhine.

8. Decision Making

Under Article 10 of the Convention, decisions of the ICPR must be approved by a unanimous vote – with each delegation possessing one vote. A vote will still be considered unanimous if one delegation abstains. For decisions involving individual measures falling within the competency of the European Community, the European Community may vote with 4 votes (representing the number of countries that are both Member States of the Convention and of the European Community). But, the European Community may not vote in cases where those Member States vote and vice versa.

9. Dispute Resolution

Pursuant to Article 16 of the Convention, any dispute between Member States regarding the interpretation or application of the Convention should be resolved by negotiation or another form of dispute settlement. If the dispute persists, it may be referred to arbitration.

An annex to the Convention sets forth the applicable arbitration procedures (unless the parties to the dispute agree otherwise). Under its terms, the arbitral tribunal will consist of three members, one appointed by each party and a chair to be agreed by the two party-appointed arbitrators. The tribunal is to base its decisions on the provisions of the Convention and rules of international law. Decisions may be made by majority vote and are binding. Each party will be responsible for the costs of its appointed arbitrator and will equally share the costs of the tribunal.⁶⁸⁷

In 2004, an arbitral tribunal constituted under the 1976 Convention on the Protection of the Rhine against Pollution by Chlorides (the “Chlorides Convention”) ruled on a dispute between France and the

⁶⁸⁵ ICPR – European Water Framework Directive, 12 May 2009, *available at* <http://www.iksr.org/index.php?id=111&L=3>; ICPR – Targets and principles of the Water Framework Directive, 22 Feb. 2009, *available at* <http://www.iksr.org/index.php?id=148&L=3>; ICPR – Implementation of the Water Framework Directive, 20 Mar. 2009, *available at* <http://www.iksr.org/index.php?id=166&L=3>.

⁶⁸⁶ ICPR – Floods directive, 22 Feb. 2009, *available at* <http://www.iksr.org/index.php?id=110&L=3>.

⁶⁸⁷ 1999 Rhine Convention, Annex – Arbitration.

Netherlands regarding certain payments due under that convention. The Chlorides Convention was originally concluded in order to reduce the level of environmentally-damaging chloride ions in the Rhine; an Additional Protocol was added in 1991 modifying the reduction target to a fluctuating measure based on the quantity of chloride actually measured in the Rhine and providing that if the chloride concentration on the French-Dutch border reached a critical level France would stock the residual salts on land until the critical level had receded. Member States were obligated to share the costs of these measures according to a fixed formula and were to pay France in advance for the cost of storing the chlorides and their subsequent removal. In 1998, the accounts were audited and it was determined that the other countries had overpaid. A dispute arose between France and the Netherlands on how to calculate the amount of the reimbursement.⁶⁸⁸

Arbitration was initiated to determine the proper accounting method for calculating the reimbursement amount. After analyzing the text of the Additional Protocol and its preparatory documents, the object and purpose of the treaty, and the good faith of the parties, the tribunal adopted a compromise accounting method. Although noting the importance of the polluter pays principle, the tribunal concluded that the Additional Protocol had departed from this principle by sharing the costs of the chloride storage among all of the Member States.⁶⁸⁹ This arbitration has been one of the few international watercourse arbitrations ever conducted.

10. Data Information Sharing, Exchange, and Harmonization

Under Article 5(1) of the Convention, Member States agreed to cooperate and inform one another of actions taken in their territory to protect the Rhine. Under Article 5(2), Member States have also committed to implementing international monitoring programs and studies of the Rhine ecosystem in their territories and to inform the ICPR of the results.

The ICPR relies on data collection and monitoring efforts of the Member States. For example, the Warning and Alarm Plan allows the ICPR to gather information on water pollution levels collected by monitoring stations along the river. More than 100 substances are regularly monitored. In addition, the Rhine 2020 program contains numerous targets designed to improve the health and ecological balance of the Rhine requiring Member States to work in collaboration in order to meet the stated goals. (*See Functions.*)

11. Notifications

Under Article 5(6) of the Convention, Member States must immediately inform the ICPR and other affected Member States when there is an accident threatening the water quality of the Rhine or in the event of imminent flooding. The Warning and Alarm Plan provides detailed procedures for identifying, countering and mitigating pollution. An information, warning or search announcement is to be issued

⁶⁸⁸ Laurence Boisson de Chazournes, *The “Rhine Chlorides” Arbitration Concerning the Auditing of Accounts (Netherlands – France) – Its Contribution to International Law*, PERMANENT COURT OF ARBITRATION AWARD SERIES: THE RHINE CHLORIDES ARBITRATION CONCERNING THE AUDITING OF ACCOUNTS (NETHERLANDS-FRANCE) AWARD OF 2004 (2008).

⁶⁸⁹ *Id.*

when pollutants are released in sufficient quantities that they are likely to detrimentally impact the Rhine water quality, damage water organisms, or limit use of the river.⁶⁹⁰

There are seven international main water centers, located in Basel, Switzerland; Strasbourg, France; Karlsruhe, Germany; Wiesbaden, Germany; Koblenz, Germany; Düsseldorf, Germany; and Arnhem, the Netherlands. In the event of an accident, the international main water center in whose territory the incident occurs is responsible for preparing the initial report. Reports are immediately delivered to the regional and national warning authorities. The responding water center also faxes the report to the downstream international main water centers and the secretariat as rapidly as possible. (If the location of the accident is not clearly identified, the report is also sent to upstream international main water centers.) After the danger has passed, an “all clear” signal will be issued to all international main water centers receiving the initial report, as well as to the secretariat of the ICPR.⁶⁹¹

Under Article 8 of the Convention, the ICPR is to submit an annual activity report to its Member States. Member States are also required to report regularly to the ICPR concerning: (a) legislative, regulatory and other measures taken to implement the Convention and the ICPR’s decisions; (b) results of those measures; and (c) any problems arising in their implementation.⁶⁹²

12. Funding and Financing

Each Member State is responsible for the costs associated with its representation in the ICPR and for studies and other actions it undertakes within its territory. The distribution of the annual operating budget costs between Member States is set forth in the ICPR’s Procedural Rules. Switzerland’s share is 12% and the European Community’s is 2.5%. The remaining share is divided between Germany (32.5%), France (32.5%), Luxembourg (2.5%), and the Netherlands (32.5%).⁶⁹³

The Secretary General is responsible for drafting the annual budget and managing income and expenditures. The Secretary General submits the draft budget and budgetary planning for the following two years to the Member States at the beginning of each calendar year; the Plenary Assembly will then adopt the budget. Payments are due by mid-February.

The ICPR is also empowered to establish a reserve fund equal to 10% of the budget. During the course of a year, if the ICPR is confronted with higher than anticipated expenses, a supplementary budget may be drawn up and additional expenses covered by the reserve fund. The ICPR employs two auditors to manage bookkeeping.⁶⁹⁴

⁶⁹⁰ International Warning- And Alarm Plan Rhine (“Warning and Alarm Plan”), 1 July 2009, *available at* http://www.iksr.org/fileadmin/user_upload/Dokumente_en/International_Warning-_and_Alarm_Plan.pdf.

⁶⁹¹ Warning and Alarm Plan.

⁶⁹² Convention, art. 11(3).

⁶⁹³ Convention, art. 13; Procedural Rules, art. 9.

⁶⁹⁴ Procedural Rules, arts. 7, 10.

13. Benefit Sharing

The Rhine is the most intensively used river in Europe and serves as vital waterway across the northern part of the continent, flowing from the Alps to the North Sea basin. Approximately 58 million people currently live in the Rhine watershed. The Rhine is the location of numerous cities – such as Cologne and Düsseldorf in Germany, Rotterdam in the Netherlands, and Basel in Switzerland – and the home to six industrial centers – such as the Ruhr region which specializes in the petrochemical industry and metal and car production. The Rhine is the cheapest and most heavily used shipping route for mass goods and container ships in Europe. In addition, half of the watershed is used for agriculture, with fields and vineyards draining into the Rhine.⁶⁹⁵

This heavy use of the river, especially the discharges of pollutants and nutrients from industrial wastewater, has resulted in heavy pollution and poor water quality in the Rhine watershed. In 1987, for example, Rotterdam had to dredge 10 million cubic meters of polluted Rhine sludge from its harbor basin, and another 5 million in 1999.⁶⁹⁶ The ICPR aims to reduce such pollution by fostering cooperation among its Member States, thereby improving the quality and sustainable development of the river as a whole.⁶⁹⁷ If successful, its initiatives will benefit all countries in the Rhine watershed. Notably, the water quality of the Rhine and many of its tributaries has greatly improved over the past thirty years.⁶⁹⁸

14. Compliance and Monitoring

Under Article 11 of the Convention, the ICPR conveys to its Member States directives on measures that are to be implemented by individual States in their territories. The ICPR maintains a list of these decisions, which is updated on an annual basis. The ICPR may impose timetables for implementation and/or require other forms of coordination. Member States must also report regularly to the ICPR on: (a) the legislative, regulatory and other measures taken to implement the Convention and the ICPR's decisions; (b) the results of these measures; and (c) any problems arising from their implementation. If a Member State cannot implement a decision, it must inform the ICPR and state the reasons for its inability to comply. In certain situations, the ICPR may assist Member States in implementing its directives.

15. Participation and the Role of Multiple Stakeholders

Article 14 of the Convention permits the ICPR to consult experts and relevant non-governmental organizations, who are also allowed to participate as observers in ICPR meetings by invitation. The ICPR may also recognize as observers States and other intergovernmental organizations who work in related fields. Observers are allowed to submit relevant information and reports to the ICPR, but not to vote.

Pursuant to Article 8 of the Procedural Rules, observer status is granted in part on the basis of a State or organization's specific technical or scientific knowledge and acceptance of the Convention's targets and

⁶⁹⁵ ICPR – Uses, 22 Feb. 2009, *available at* <http://www.iksr.org/index.php?id=10&L=3>.

⁶⁹⁶ ICPR – Water Quality, 22 Feb. 2009, *available at* <http://www.iksr.org/index.php?id=17&L=3>.

⁶⁹⁷ ICPR – History, 22 Feb. 2009, *available at* <http://www.iksr.org/index.php?id=154&L=3>.

⁶⁹⁸ ICPR – Water Quality.

basic principles. Observer organizations include Greenpeace International, the European Chemical Industry Council, the European Union of National Associations of Water Suppliers and Waste Water Services, the International Commission of the Meuse, and the Oslo and Paris Commissions for the protection and conservation of the North-East Atlantic.⁶⁹⁹

Although meetings of the Plenary Assembly and other ICPR meetings are not public, the ICPR occasionally makes correspondence and other documents publicly available.

16. Dissolution and Termination

Under Article 18, a Member State may withdraw from the Convention by submitting a written declaration to Switzerland, the Convention's depository. This withdrawal takes effect at the end of the year following the submission.

17. Additional Remarks

Although a vital European waterway, by the middle of the twentieth-century the Rhine was heavily polluted. Notwithstanding the 1963 agreement establishing the ICPR and the additional agreements concluded in the 1970s, the Rhine was still referred to as "the open sewer of Europe."⁷⁰⁰

The extent of the Rhine's pollution became global news in November 1986 following a massive chemical spill on the river known as the Sandoz accident. One of the worst ecological accidents in Western European history, a warehouse fire near Basel, Switzerland washed approximately 20 tons of toxic agricultural chemicals into the river, forming a 35-mile long trail that snaked its way downstream, affecting Switzerland, France, West Germany, and the Netherlands. Drinking water was contaminated, a massive number of fish were killed and plant life along the river was severely damaged. Scientists estimated that the spill caused extensive damage along a 180-mile section of the river. Switzerland was also criticized for not warning neighboring countries quickly enough about the accident.⁷⁰¹

The Swiss Government and Sandoz officials later agreed to pay \$38 million in damages to French fisherman and the French Government, even though the settlement did not specify how much responsibility for the incident Switzerland accepted.

This accident sparked outrage across Western Europe and in 1987 spurred the ICPR's Member States to establish a Rhine Action Program ("RAP"). The RAP, a precursor to Rhine 2020, was designed to

⁶⁹⁹ NGO Nongovernmental organisations with an observer status to the ICPR, 22 Feb. 2009, *available at* <http://www.iksr.org/index.php?id=121&L=3>; Intergovernmental organisations with an observer status to the ICPR, 11 Mar. 2009, *available at* <http://www.iksr.org/index.php?id=157&L=3>.

⁷⁰⁰ ICPR – History, 22 Feb. 2009, *available at* <http://www.iksr.org/index.php?id=154&L=3>; Renate I. Mreschar, *Cleaning up the Rhine: how this famous river has been restored to its former glory*, MAX PLANCK RESEARCH, Jan. 2001, *available at* http://www.mpg.de/english/illustrationsDocumentation/multimedia/mpResearch/2001/heft01/mpr01_1_054_057.pdf.

⁷⁰¹ Jennifer B. Hull, Don Kirk and Ellen Wallace, *Environment: A Proud River Runs Red*, TIME, 24 Nov. 1986, *available at* <http://www.time.com/time/magazine/article/0,9171,962910,00.html>.

rehabilitate the river by 2000. The program's goals were to: (a) return fauna species, such as salmon, to the Rhine; (b) continue drinking water production; and (c) reduce the pollutant contents of river sediments. The ICPR established concrete targets and measures for compliance.⁷⁰²

Since the program's implementation, the health and condition of the Rhine has drastically improved. Water quality has improved, fish stocks have recovered and migratory fish, such as salmon and sea trout, are able to migrate upstream again. In addition, the Rhine 2020 program has continued to combat some of the environmental issues that are still outstanding and to further reinvigorate the health and sustainable development of the river. The ICPR has credited the Rhine's rehabilitation to precise targets, periodic reporting by Member States, collaboration among experts, and efforts to inform the public and engage industrial actors, environmental groups, and municipalities.⁷⁰³

Others, however, have argued that the steep drop in pollution was a result of comprehensive and voluntary protection measures undertaken by chemical companies based along the Rhine, much of which took place in the 1970s and 1980s, long before the Sandoz accident.⁷⁰⁴ Nonetheless, because of the profound improvement in the health of the Rhine, other river commissions (such as those for the Elbe, Danube, Meuse, Scheldt, and Odra in Europe) have used the ICPR as a model in structuring their frameworks.

18. Websites and References

International Commission for the Protection of the Rhine, *available at* <http://www.iksr.org/index.php?id=58&L=3&cHash=455fdab52c>.

EUROPA: Summary of Treaty – Convention on the Protection of the Rhine, *available at* <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=634>.

Laurence Boisson de Chazournes, *The “Rhine Chlorides” Arbitration Concerning the Auditing of Accounts (Netherlands – France) – Its Contribution to International Law*, PERMANENT COURT OF ARBITRATION AWARD SERIES: THE RHINE CHLORIDES ARBITRATION CONCERNING THE AUDITING OF ACCOUNTS (NETHERLANDS-FRANCE) AWARD OF 2004 (2008).

Elli Louka, *International Instruments*, INTERNATIONAL ENVIRONMENTAL LAW: FAIRNESS, EFFECTIVENESS, AND WORLD ORDER, 231-235 (2006).

⁷⁰² Upstream: Outcome of the Rhine Action Programme, 2003, *available at* http://www.iksr.org/fileadmin/user_upload/Dokumente_en/apr_iksr_engl.pdf.

⁷⁰³ Upstream: Outcome of the Rhine Action Programme.

⁷⁰⁴ See, e.g., Marco Verweij, TRANSBOUNDARY ENVIRONMENTAL PROBLEMS AND CULTURAL THEORY: THE PROTECTION OF THE RHINE AND GREAT LAKES (Palgrave Macmillan: 2000); Renate I. Mreschar, *Cleaning up the Rhine: how this famous river has been restored to its former glory*, MAX PLANCK RESEARCH, Jan. 2001, *available at* http://www.mpg.de/english/illustrationsDocumentation/multimedia/mpResearch/2001/heft01/mpr01_1_054_057.pdf.

[DRAFT]

Mark Cioc, THE RHINE: AN ECO-BIOGRAPHY 1815-2000 (2002).

Marco Verweij, TRANSBOUNDARY ENVIRONMENTAL PROBLEMS AND CULTURAL THEORY: THE PROTECTION OF THE RHINE AND GREAT LAKES (2000).

Renate I. Mreschar, *Cleaning up the Rhine: how this famous river has been restored to its former glory*, MAX PLANCK RESEARCH, Jan. 2001, *available at* http://www.mpg.de/english/illustrationsDocumentation/multimedia/mpResearch/2001/heft01/mpr01_1_054_057.pdf.

C. Africa

Abidjan Convention

1. Legal Basis

The Convention for the Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (“Abidjan Convention”) was signed on 23 March 1981 in Abidjan, Cote d’Ivoire and went into effect on 5 August 1984.⁷⁰⁵

In addition, the Member States adopted the Protocol Concerning Co-operation in Combating Pollution in Cases of Emergency in the Western and Central African Region (“Protocol”)⁷⁰⁶ and the Action Plan for the Protection and Development of the Marine Environment and Coastal Areas of the West and Central African Region (“Action Plan”).⁷⁰⁷

2. Member States

The Member States that have ratified the Abidjan Convention are Benin, Cameroon, Congo, Cote d’Ivoire, Gabon, Gambia, Ghana, Guinea, Nigeria, Senegal, Sierra Leone, South Africa and Togo.

Angola, Cape Verde, Democratic Republic of Congo, Equatorial Guinea, Guinea-Bissau, Mauritania, Namibia, and Sao Tome and Principe are participants in the Convention but have not yet ratified the Convention.

3. Geographical Scope

The geographical scope of the Convention is the marine environment, coastal zones and related inland waters within the jurisdiction of the Member States of the West and Central African region.⁷⁰⁸ For the Action Plan, the geographic limitation of the marine environment and coastal areas to be considered as part of the region will be identified by the Member States concerned on an ad hoc basis depending on the type of activities to be carried out.⁷⁰⁹ At the 5th Meeting of the Contracting Parties in March 2000, the

⁷⁰⁵ Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (“Abidjan Convention”), 23 Mar. 1981, 20 I.L.M. 729, 746.

⁷⁰⁶ Abidjan Protocol Concerning Co-operation in Combating Pollution in Cases of Emergency (“Abidjan Protocol”), 23 Mar. 1981, 20 I.L.M. 729, 756.

⁷⁰⁷ Action Plan for the protection and development of the marine environment and costal areas of the West and Central African Region (“Abidjan Action Plan”), 23 Mar. 1981, 20 I.L.M 729, 738.

⁷⁰⁸ Abidjan Convention, art. 1.

⁷⁰⁹ Abidjan Action Plan, art. 5.

geographical scope of the Abidjan Convention was expanded to enable the participation of South Africa.⁷¹⁰

4. Legal Personality

Under Article 16 of the Abidjan Convention, the United Nations Environment Programme (“UNEP”) is designated as the Secretariat of the Abidjan Convention. The UNEP is a division of the United Nations authorized to address environmental issues at the regional and international levels and has legal personality.

5. Functions

The Abidjan Convention obligates the Member States to take all appropriate measures to prevent, reduce, combat and control pollution and to ensure the sound environmental management of natural resources in the Convention Area. To meet their obligations, the Member States are called upon to cooperate with relevant international, regional, and sub-regional organizations to establish and adopt recommended practices, procedures, and measures designed to fight pollution. These initiatives should be supported by the national laws.⁷¹¹

The Abidjan Convention focuses on: pollution caused by normal or accidental discharge from ships; dumping from ships and aircraft; discharge from rivers, estuaries, coastal establishments and outfalls, or emanating from any other sources on their territories; pollution from activities relating to the exploration and exploitation of the sea-bed; pollution from or through the atmosphere; and coastal erosion caused by human activity such as land reclamation and coastal engineering. In addition, Member States should work towards establishing protected areas for fragile ecosystems and endangered species and controlling activity likely to have adverse effects on endangered species, ecosystems, or biological processes.⁷¹²

With the assistance of relevant international and regional organizations, the Member States shall cooperate with each other in the fields of scientific research, monitoring, and the assessment of pollution in the Convention Area.⁷¹³ In addition, for any planning activity for projects within its territory (particularly in the coastal areas), the Member States should conduct an assessment of the potential environmental effects for any activity that may cause substantial pollution or significant and harmful changes to the Convention Area.⁷¹⁴

⁷¹⁰ See Fifth Meeting of the Contracting Parties to the Convention for Cooperation in the Protection, Management and Development of the Marine and Coastal Environment of the West and Central African Region, 6 July 2000, at 21, available at <http://www.unep.org/AbidjanConvention/docs/COP5englishversion.pdf>.

⁷¹¹ Abidjan Convention, art. 4.

⁷¹² Abidjan Convention, arts. 5-11.

⁷¹³ Abidjan Convention, art. 14.

⁷¹⁴ Abidjan Convention, art. 13.

There are three large marine ecosystems in Western and Central Africa: the Canary Current Large Marine Ecosystem, the Guinea Current Large Marine Ecosystem, and the Benguela Current Large Marine Ecosystem. The projects in the Canary Current (the nutrient-rich up-welling of deep cold oceanic waters off the Canary Islands west of Morocco and Western Sahara) are focused on protecting the ecosystem from degradation from over-fishing and pollution. The projects in the Guinea Current (the water from the Bijagos Archipelago in Guinea Bissau to Cape Lopez in Gabon) are designed to improve the sustainability of the fisheries and to reduce land and sea-based pollution. The projects in the Benguela Current (the mineral-rich coastal up-swelling from Luanda in Angola to the Cape of Good Hope in South Africa) are concentrated on implementing integrated, sustainable management and use of resources.⁷¹⁵

i) Regional Seas Action Plan

Under Article 2 of the Action Plan, the principal objective of the Regional Seas Action Plan for the West and Central Africa region, developed in 1983, is to provide a framework for comprehensive, environmentally-sound coastal area development and to protect the marine environment and the coastal areas of the West and Central African region. The Action Plan is designed to assess the state of the environment (including the impact of development activities on environmental quality) in order to assist Member States in dealing with environmental problems.⁷¹⁶ As described in Articles 12 and 13 of the Action Plan, the top priority under this prong is the development of a regional program of basic and applied research based on various United Nations pilot projects. This environmental assessment program is focused on a survey of national capabilities and activities in the region related to marine pollution and coastal area development. An example of this focus is the preparation of directories of national institutional infrastructure and a survey of the present and planned socio-economic development activities that may have an impact on the quality of the marine and coastal environments. To accomplish these aims, the plan is for local scientists and technicians to be trained in a wide variety of techniques for measuring pollution and assessing the health of ecosystems. The Action Plan was intended to be implemented primarily through national and regional institutions of the Member States by way of coordinated national, sub-regional, and regional activities.⁷¹⁷

In addition, under Article 4.2, the Action Plan aims to promote socio-economic development activities that respect environmental quality and encourage the sustainable use of resources. To achieve this aim, the Member States agree to strengthen or expand existing development projects which demonstrate sound environmental practices, regional workshops on coastal area development and management, and training courses on the reduction and control of pollution. Plus, Member States may establish other cooperative programs to encourage sustainable management. For example, the Action Plan envisions, among other proposals, a program to provide assistance to Member States for them to establish and strengthen national coordinating structures and mechanisms to deal with environmental affairs and to formulate guidelines and standards for management and control of industrial, agricultural and domestic wastes.⁷¹⁸ Under

⁷¹⁵ Abidjan Convention - Large Marine Ecosystem Projects, *available at* http://www.unep.org/AbidjanConvention/The_Convention/Institutional_Structure/LMEs.asp.

⁷¹⁶ Abidjan Convention, art. 4.1.

⁷¹⁷ Abidjan Action Plan, art. 8.

⁷¹⁸ Abidjan Action Plan, arts. 18-19.

Article 4.3, the Action Plan also calls for the development of regional agreements and improvements in national legislation for the protection and development of the marine environment and coastal areas of the region.

ii) Protocol Concerning Co-operation in Combating Pollution in Cases of Emergency

Negotiated in conjunction with the Abidjan Convention, the Member States also agreed to the Protocol Concerning Co-operation in Combating Pollution in Cases of Emergency. Under Article 4 of the Protocol, the Member States will cooperate in taking all necessary and effective measures to deal with marine emergencies in the Convention Area and to work to reduce or eliminate the resulting damage. A marine emergency is defined as any incident resulting in substantial pollution, or imminent threat of substantial pollution, to the marine and coastal environment by oil or other harmful substance.⁷¹⁹ To achieve this aim, under Article 7 of the Protocol, each Member State undertakes to require masters of ships flying its flag, pilots of aircraft registered in its territory, and persons in charge of offshore structures operating under its jurisdiction to report, using the most rapid and adequate channels: (a) all accidents causing, or likely to cause pollution, of the sea by oil or other harmful substances; and (b) the presence, characteristics and extent of spillages of oil or other harmful substances observed at sea which are likely to present a serious and imminent threat to the marine environment, coast, or related interests of the Contracting Parties.

Under Article 7 of the Protocol, any Member State receiving such a report must promptly inform the UNEP (as the Secretariat) and, either through the UNEP or directly to the fellow Member State, the appropriate national authority of any Member State likely to be affected by the marine emergency. The Member States will develop standing instructions and procedures for their appropriate national authorities to follow when receiving and transmitting reports of pollution and other harmful substances. If a Member State needs assistance in dealing with the emergency, it may ask for assistance from the other Member States. Furthermore, Member States shall work to maintain and promote, either on a country level or through bilateral or multilateral cooperation, marine emergency contingency plans and means for combating pollution by oil and other harmful substances.⁷²⁰

6. Organizational Structure

The UNEP functions as the Secretariat under Article 16 of the Abidjan Convention. The UNEP has the responsibility to: prepare for meetings of the Member States; transmit to the Member States certain notifications, reports, and other relevant information; communicate with the Member States about issues relating to the Abidjan Convention; coordinate the implementation of cooperative activities agreed upon by the Member States; enter into necessary administrative arrangements; and perform other functions as assigned by the Abidjan Convention.

The Member States hold ordinary meetings—called Conferences of Parties—once every two years, and can call extraordinary meeting whenever requested by the UNEP or at least four Member States. The Conference of Parties is obligated to: consider reports of Member States on measures adopted in implementing the Abidjan Convention; adopt and review annexes to the Abidjan Convention and its

⁷¹⁹ Abidjan Convention, art. 1-2.

⁷²⁰ Abidjan Protocol, arts. 8-9.

Protocols; make recommendations concerning the adoption of Protocols or amendments; establish working groups to consider any matter relevant to the Abidjan Convention or its Protocols; review the state of pollution in the Convention Area; (f) establish cooperative activities to be undertaken within the framework of the Abidjan Convention; and (g) undertake any additional action that may be necessary to achieve the purposes of the Abidjan Convention.⁷²¹

Each Member State must appoint an appropriate national authority—called a National Focal Point—to coordinate the national efforts of implementing the Abidjan Convention and its Protocols. This National Focal Point also serves as a channel of communication between that Member State and the UNEP.⁷²² The National Focal Point should be a senior government official with strong knowledge and experience in Abidjan Convention matters and should be supported with a budget to implement Convention activities. The National Focal Point also coordinates the preparation of the “state of the marine and coastal environment” report. These activities have been encouraged through the establishment of a Focal Points forum. The Focal Points forum is geared towards preparing a detailed work program for presentation to the Conference of Parties.⁷²³

The Regional Coordinating Unit (“RCU”), hosted in Cote d’Ivoire, is a cooperative body that oversees the implementation of the Action Plan and is in liaison with the Abidjan Convention Secretariat at the UNEP. The work of the RCU includes: strengthening programs in the Action Plan through support services and coordination; fundraising and liaising with bilateral and multilateral donors; enhancing cooperation with other major projects and initiatives involved with the protection and sustainable development of the marine and coastal environment in the region; improving working relationships with United Nations and other organizations on relevant projects; and establishing institutions throughout the region to conduct research and promote policies on coastal and marine environmental issues.⁷²⁴

7. Relationships

The Abidjan Convention relies heavily on the pre-existing capabilities that are already available throughout the region and the support of other regional and international organizations. Especially with the UNEP as the Secretariat, the Member States of the Abidjan Convention actively seek to engage with multilateral institutions to work towards the goals of protecting the marine environment and encouraging sustainable coastal development in Western and Central Africa. For example, the projects in the Benguela Current are being done in collaboration with the United Nations Development Programme (“UNDP”) and the multinational Benguela Environment Fisheries Interaction and Training Research Project.⁷²⁵ With the exception of the establishment of the RCU to oversee the implementation of the

⁷²¹ Abidjan Convention, art. 17.

⁷²² Abidjan Convention, art. 16.

⁷²³ Abidjan Convention—Focal Points, *available at* http://www.unep.org/AbidjanConvention/The_Convention/Institutional_Structure/Focal_Points.asp.

⁷²⁴ Abidjan Convention—Regional Coordinating Unit (RCU), *available at* http://www.unep.org/AbidjanConvention/The_Convention/Institutional_Structure/RCU.asp.

⁷²⁵ *See* Abidjan Convention—Large Marine Ecosystem Projects.

Action Plan, the Abidjan Convention provides for little independent institutional structure. On the domestic level, programs are meant to be primarily carried out through pre-existing national institutions. Even regional initiatives are meant to utilize existing organizations.

The Abidjan Convention has been working to integrate its work programs with those of the New Partnership for Africa's Development ("NEPAD") Environmental initiatives. In addition, the Abidjan Convention is engaged in collaborative efforts with many other multinational institutions. For example, it has partnered with the International Maritime Organization to work on institutional capacity building and resource development. It has also worked with the United Nations Industrial Development Organization on functional cleaner technologies, waste management, sustainable coastal tourism, strengthening institutional capacities, environmental management, and policy and legal frameworks.⁷²⁶

8. Decision Making

Under Article 18 of the Abidjan Convention, the Member States, at a Conference of Plenipotentiaries requested by two-thirds of the Member States, may adopt additional Protocols to the Convention. In addition, under Article 19, any Member State can propose an amendment to the Abidjan Convention. An amendment must be adopted by a two-thirds majority of the Member States and will enter into force twelve months after its approval.

The Abidjan Convention and its related texts emphasize cooperation with other organizations and between Member States. As there is no enforcement mechanism in the Abidjan Convention, in order for programs to be successful in practice, they need to have the support of most, if not all, of the Member States.

9. Dispute Resolution

When a dispute arises between Member States as to the interpretation or application of the Abidjan Convention or its related Protocols, the Member States shall seek a settlement of the dispute through negotiations or any other peaceful means of their choice. If the dispute still cannot be settled, the Member States shall submit the dispute to arbitration. Conditions for arbitration will be adopted by the Member States in an annex to the Abidjan Convention.⁷²⁷

10. Data Information Sharing, Exchange, and Harmonization

Under Article 22 of the Abidjan Convention, the Member States should transmit to the UNEP reports on the measures they adopted in implementing the Convention and its Protocols. The National Focal Point for each Member State is also responsible for submitting national status reports on the coastal and marine environment. In addition, as the Member States are meant to cooperate in the fields of scientific research and development, monitoring, and assessments of pollution in the Convention Area, Member States should exchange with each other relevant data and other scientific information related to the Abidjan

⁷²⁶ Abidjan Convention – Partners, Stakeholders and Donors, *available at* http://www.unep.org/AbidjanConvention/The_Convention/Institutional_Structure/Partners_Stakeholders.asp.

⁷²⁷ Abidjan Convention, art. 24.

Convention and its Protocols.⁷²⁸ Each Member State should also provide the UNEP and the other Member States with information concerning: (a) its appropriate national authority; (b) its relevant laws, regulations, and other legal instruments; (c) its national marine emergency contingency plan; and (d) environmental assessments of potentially hazardous activity. The UNEP will transmit to the Member States notifications, reports, and other relevant information that it has received.⁷²⁹

11. Notifications

Under Article 7 of the Protocol, each Member State must require masters of ships flying its flag, pilots of aircraft registered in its territory, and persons in charge of offshore structures operating under its jurisdiction to report, using the most rapid and adequate channels: (a) all accidents causing, or likely to cause pollution, of the sea by oil or other harmful substances; and (b) the presence, characteristics and extent of spillages of oil or other harmful substances observed at sea which are likely to present a serious and imminent threat to the marine environment, coast, or related interests of the Member States. After a Member State becomes aware of a pollution emergency in the Convention Area, it should notify the UNEP and, either indirectly through the UNEP or directly to the appropriate national authority, any other Member State likely to be affected by the pollution emergency. If there is a request for help during a marine emergency, the result of this request for assistance should be reported to the UNEP and the other Member States. This report should be supplemented with information about future developments about the incident.⁷³⁰

12. Funding and Financing

The Abidjan Convention is dependent on donor funds to fully operate. Recently, UNEP and the Swedish International Development Agency have developed a support program to improve coordination mechanisms in the Convention Area.⁷³¹ At the start of the Abidjan Convention, the Executive Director of the UNEP contributed US \$1.4 million (contingent upon matching funds from the Trust Fund) for the implementation costs of the Action Plan from 1981-1983. An Abidjan Convention Trust Fund was established and financed (from 1982-1983) by proportional contributions from members states. The majority of countries contributed 3.72% (US \$37,200 in 1982 and US \$55,800 in 1983).⁷³² Contributions to the Abidjan Convention Trust Fund have been limited and unpredictable – amounting to only US \$112,500 from 2004-2007. In the report for the Eighth Meeting of the Contracting Parties in November 2007, the UNEP reported that the Abidjan Convention Trust Fund was in a precarious financial situation as only three Member States had paid their contributions. Assessed annual contributions by the Member States are supposed to reach US \$1 million. The assessed amounts range from US \$37,200 (for small countries such as Benin, Guinea, and Cape Verde) to US \$61,600 (Cote d'Ivoire) to US \$220,100

⁷²⁸ Abidjan Convention, art. 14.

⁷²⁹ Abidjan Convention, arts. 3, 12, 16, 22.

⁷³⁰ Protocol, art. 7-8 and the Annex.

⁷³¹ Abidjan Convention—Partners, Stakeholders and Donors.

⁷³² See Final Act of the Conference of Plenipotentiaries on Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region - Resolutions Adopted by the Conference, 23 Mar. 1981, 20 I.L.M 729, 734.

(Nigeria). But because of the very small amount of actual contributions, the Secretariat of the Abidjan Convention must do most of its work through partnerships. For example, the UNEP and UNDP are funding the Guinea Current (US \$21.49 million) and the Benguela Current (US \$15 million) projects.⁷³³

13. Benefit Sharing

The Abidjan Convention is focused primarily on information sharing and collaborative programs to promote the marine environment and sustainable coastal development. It is not a zero-sum agreement between the Member States. While countries may compete for the allocation of project funds, it is the responsibility of the National Focal Point to implement the Action Plan.

14. Compliance and Monitoring

Under Article 22 of the Abidjan Convention, the Member States should provide the UNEP with reports on measures the Member States have adopted to implement the Convention and its Protocols. *See Data Information Sharing, Exchange, and Harmonization.*

15. Participation and the Role of Multiple Stakeholders

The Abidjan Convention strongly encourages the Member States to collaborate with other organizations, public or private, to protect the marine environment and to promote sustainable coastal development. The World Conservation Union and the World Wildlife Fund, among other organizations, have already worked to implement programs under the Abidjan Convention.⁷³⁴ In addition, the National Focal Point in each country has the opportunity to solicit participation from civil society and the private sector.

16. Dissolution and Termination

At any time after five years from the date of entry into force, the date of which was 5 August 1984, any Member State may withdraw from the Abidjan Convention or any Protocol by giving written notification of its withdrawal. The withdrawal will take effect ninety days after the date on which the notification of withdrawal is received by the Depository (Cote d'Ivoire). Any Member State which, upon its withdrawal from a Protocol, is no longer a party to any Protocol to the Abidjan Convention, will be considered to have withdrawn from the Abidjan Convention.⁷³⁵

17. Additional Remarks

The Abidjan Convention calls for Member States to adopt additional protocols to prevent, reduce, combat, and control pollution and to promote environmental management. Although the Abidjan

⁷³³ Report of the eighth meeting of the Contracting Parties to the Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region ("Report of the 8th Conference of Parties"), 12 Nov. 2007, at 11 and Annex XV, *available at* http://www.unep.org/AbidjanConvention/docs/COP8_Draft_Report.pdf.

⁷³⁴ Abidjan Convention—Partners, Stakeholders and Donors.

⁷³⁵ Abidjan Convention, art. 30.

Convention and its Protocol on pollution in emergency situations came into effect in 1984, no other protocols have yet been added. The Member States are currently negotiating a Draft Protocol to the Abidjan Convention Concerning Cooperation in the Protection of the Marine and Coastal Environment from Land-Based Sources and Activities. The Member States have recognized that pollution from land-based sources and activities pose major threats to the marine and coastal environment in the Convention Area. The initial draft of this protocol was first developed in 2005 and has been the subject of ongoing negotiations. The draft of the text is expected to be finalized at the meeting in Accra, Ghana from March 30 – April 1, 2009, and will then be submitted for adoption at a Conference of Plenipotentiaries.⁷³⁶

When the Abidjan Convention first came into effect, little progress was made in working towards the objectives of protecting the marine environment and encouraging sustainable coastal development. The region suffers from crushing poverty and there is a general lack of resources and many competing priorities. After years of inactivity, African governments renewed their commitment to the protection and management of the coastal and marine environment in “The Cape Town Declaration of December 1998.”⁷³⁷ Recent efforts, such as establishing a network of focal points, have aimed to reinvigorate the Abidjan Convention. In 2005, at the Seventh Conference of Parties, the Member States established a new ecosystem-based coordination structure focused on the Benguela, Guinea, and Canary Current ecosystems. There has been greater coordination with other regional initiatives such as the GEF-sponsored Large Marine Ecosystem projects implemented in the Convention Area.⁷³⁸

A recent UNEP comprehensive review of the Abidjan Convention recommended raising public awareness of the economic values of marine and coastal resources in order to encourage broad-based participation and support for environmental actions. The implementation of the Action Plan has suffered from a lack of effective coordination, a lack of political will and commitment, and the need to create new resources and funding mechanisms. To strengthen the institutional structure of the Abidjan Convention, the Member States have already started the process of strengthening the RCU and relocating the Secretariat from Nairobi (the headquarters of the UNEP) to Abidjan, Cote d’Ivoire (a city within the Convention Area). These reforms will make the Abidjan Convention more similar to other regional bodies. It is the hope that a stronger Secretariat will be able to secure financing mechanisms through active resource mobilization, negotiations for affordable contributions from Member States, and broadened membership to include additional partners and donors (such as multinational oil companies operating in the region). The UNEP review recommends that the Abidjan Convention should take advantage of the numerous other environmental initiatives in the region and function as the legal framework for all marine and coastal related projects through effective coordination and consultation.⁷³⁹

⁷³⁶ Abidjan Convention—Negotiations Meeting on the Abidjan Convention Draft Land Based Sources and Activities Protocol (LSBA), *available at* http://www.unep.org/AbidjanConvention/LBSA_Negotiation_Meeting/index.asp.

⁷³⁷ Report on the 8th Conference of Parties, at 63.

⁷³⁸ *See* Abidjan Convention Background, *available at* http://www.unep.org/AbidjanConvention/about/Convention_Background.asp.

⁷³⁹ Report of a Comprehensive review and Strategy Document for the Abidjan Convention, 27 Aug. 2007, at 5-7, *available at* <http://www.unep.org/AbidjanConvention/docs/AbidjanStrategyDocument.pdf>; Abidjan Convention – Extraordinary Meeting of the Contracting Parties to the Abidjan Convention, *available at* http://www.unep.org/AbidjanConvention/Extraordinary_Meeting/index.asp.

18. Websites and References

- Abidjan Convention, *available at* <http://www.unep.org/abidjanConvention/>.
- Benguela Current Large Marine Ecosystem Programme, *available at* <http://www.bclme.org/>.
- Interim Guinea Current Commission, *available at* <http://igcc.gclme.org/>.
- The UNEP website contains many discussions on the Abidjan Convention, *see* <http://www.unep.org/regionalseas/programmes/unpro/westernafrika/default.asp>.

Lake Tanganyika

1. Legal Basis

The Convention on the Sustainable Management of Lake Tanganyika (the “Convention”) was adopted in Dar es Salaam on 12 June 2003.⁷⁴⁰ The Convention entered into force in 2005 after the second instrument of ratification was deposited.⁷⁴¹

2. Member States

The Contracting States of the Convention are Burundi, the Democratic Republic of Congo (the “DRC”), Tanzania, and Zambia.⁷⁴² In November 2007, the DRC became the last of the Contracting States to ratify the Convention.⁷⁴³

3. Geographical Scope

Lake Tanganyika is located in Africa’s Western Great Rift Valley. The lake is divided between the four Contracting States, with the DRC and Tanzania possessing the majority of the lake’s area. Lake Tanganyika is the world’s longest lake, the second largest freshwater lake by volume (18,800 km³), and the second deepest (1,470 m).⁷⁴⁴

Article 3 specifies that the Convention applies to Lake Tanganyika and to its “Basin” in the Contracting States,⁷⁴⁵ which is defined as the geographical area bounded by the watershed limits of Lake Tanganyika.⁷⁴⁶ The Convention also applies to “activities, aircraft and vessels under the control of a

⁷⁴⁰ Convention on the Sustainable Management of Lake Tanganyika (“Lake Tanganyika Convention”), 12 June 2003.

⁷⁴¹ Convention, Art. 41(1).

⁷⁴² Convention, Preamble.

⁷⁴³ See Resolution No. 01/08 of the Lake Tanganyika Conference of Ministers on the Status of the Lake Tanganyika Authority Secretariat and the Regional Programme for the Integrated Management of Lake Tanganyika, *available at* <http://tazabuco.files.wordpress.com/2009/05/resolution-com2-2008-01-original.doc>, at 1.

⁷⁴⁴ K. West, Lake Tanganyika: Results and Experiences of the UNDP/GEF Conservation Initiative (RAF/92/G32) in Burundi, D.R. Congo, Tanzania, and Zambia, 28 Feb. 2001, ¶ 1.1.1.

⁷⁴⁵ Convention, Art. 3.

⁷⁴⁶ Convention, Art. 1.

Article 1 also includes a definition for “Lake Basin,” which is used throughout the Convention and is defined as “the whole or any component of the aquatic environment of Lake Tanganyika and those ecosystems and aspects of the environment that are associated with, affect or are dependent on, the aquatic environment of Lake Tanganyika, including the system of surface waters and ground waters that flow into the Lake from the Contracting States and the land submerged by these waters.”

Contracting State to the extent that these activities or the operation of such aircraft or vessels result or are likely to result in an adverse impact.”⁷⁴⁷

4. Legal Personality

The Contracting States established the Lake Tanganyika Authority with international legal personality and legal capacity necessary to perform its functions and mission.⁷⁴⁸ The Executive Director represents the Authority in the exercise of its legal personality.⁷⁴⁹

5. Functions

The Convention has the primary objective of “ensur[ing] the protection and conservation of the biological diversity and the sustainable use of the natural resources of Lake Tanganyika and its Basin by the Contracting States on the basis of integrated and co-operative management.”⁷⁵⁰ To that end, the Convention aims to facilitate the “development and implementation of harmonized laws and standards concerning the management of Lake Tanganyika and its Basin.”⁷⁵¹ The Convention addresses several aspects of the lake’s management, including:

- Sustainable fisheries management:
 - Article 7 directs the Contracting States to establish a framework fisheries management plan, develop and implement harmonized national fisheries policies and regulations, and promote community participation in fisheries management,⁷⁵²
- Prevention and control of pollution:
 - Article 8 requires the Contracting States to construct pollution reduction installations, prevent waste disposal in the lake, and develop legal, administrative, and technical measures for pollution reduction,⁷⁵³
- Prevention of sedimentation:

⁷⁴⁷ Convention, Art. 3.

⁷⁴⁸ Convention, Art. 23(4).

⁷⁴⁹ Convention, Art. 26(2).

⁷⁵⁰ Convention, Art. 2(1).

⁷⁵¹ Convention, Art. 2(2)(a).

⁷⁵² Convention, Art. 7(2).

⁷⁵³ Convention, Art. 8.

- Article 9 directs the Contracting States to take necessary legal, administrative, and technical measures to prevent excessive sedimentation from deforestation, land degradation, wetlands destruction, and other causes;⁷⁵⁴
- Conservation of biological diversity:
 - Article 10 requires the Contracting States to take appropriate legal, administrative, and technical measures to conserve biological diversity and prevent and control exotic species in the Lake Basin;⁷⁵⁵
- Protection and utilization of genetic and biochemical resources:
 - Article 11 obligates the Contracting States to cooperate in protecting and controlling access to genetic and biochemical resources in the Lake and its Basin and to share in a fair and equitable way in the utilization of those resources;⁷⁵⁶
- Navigation:
 - Article 12 directs the Contracting States to take steps to ensure freedom of navigation on the lake and to prevent pollution from lake vessels;⁷⁵⁷ and
- Environmental impact assessment:
 - Article 15 sets forth environmental impact assessment procedures to be followed by the Contracting States to avoid and minimize adverse impacts on the Lake and its Basin from proposed projects, policies, plans, programs, and other activities.⁷⁵⁸

In addition to setting forth certain actions and responsibilities to be taken in those areas of lake management, the Convention directs the Contracting States to prepare a Strategic Action Program elaborating the specific measures to be taken by the States to achieve the Convention's objectives.⁷⁵⁹ Establishing mechanisms for facilitating cooperative management in general—which are discussed under “Organizational Structure” (Item 6) and “Data Information Sharing, Exchange, and Harmonization” (Item 10)—is another significant function of the Convention.

⁷⁵⁴ Convention, Art. 9.

⁷⁵⁵ Convention, Art. 10.

⁷⁵⁶ Convention, Art. 11.

⁷⁵⁷ Convention, Art. 12.

⁷⁵⁸ Convention, Art. 15.

⁷⁵⁹ Convention, Art. 13.

6. Organizational Structure

The Convention established the Lake Tanganyika Authority as the implementing body of the Convention.⁷⁶⁰ The Lake Tanganyika Authority consists of the Conference of Ministers (the “Conference”), the Management Committee, and the Secretariat.⁷⁶¹

The Conference is the supreme body of the Lake Tanganyika Authority.⁷⁶² The Conference meets at least once a year, or as it otherwise decides,⁷⁶³ to adopt financial rules and determine the financial obligations of the Contracting States under the Convention,⁷⁶⁴ and to evaluate the implementation of the Convention.⁷⁶⁵ For those purposes, the Conference may adopt protocols or amendments to the Convention.⁷⁶⁶ Beyond specifying that each Contracting State shall have one vote,⁷⁶⁷ the Convention grants the Conference discretion to develop its own procedural rules.⁷⁶⁸ The first meeting of the Conference was held in Dar es Salaam, Tanzania, on 5 April 2007, and the second in Bujumbura, Burundi, on 24 – 25 April 2008.⁷⁶⁹

The Management Committee is responsible for supporting, coordinating, and monitoring the implementation of the Convention, including by: implementing the policies and decisions of the Conference; providing scientific and technical advice to the Conference; preparing a strategic action program for Lake Tanganyika for approval by the Conference; supervising the implementation of the strategic action program and proposing necessary revisions; proposing protocols, annexes, or amendments to the Convention for approval by the Conference; negotiating with donors; monitoring the implementation of the Convention; supervising the Secretariat; and undertaking any other tasks identified by the Conference.⁷⁷⁰ The Management Committee consists of three members appointed by each

⁷⁶⁰ Convention, Art. 23(1).

⁷⁶¹ Convention, Art. 23(2).

⁷⁶² Convention, Art. 24(1).

⁷⁶³ Convention, Art. 24(1).

⁷⁶⁴ Convention, Art. 24(4).

⁷⁶⁵ Convention, Art. 24(5).

⁷⁶⁶ Convention, Art. 24(5).

⁷⁶⁷ Convention, Art. 33.

⁷⁶⁸ Convention, Art. 24(4).

⁷⁶⁹ Regional Programme for the Integrated Management of Lake Tanganyika, Report on the Second Meeting of the Lake Tanganyika Conference of Ministers, 24 – 25 Apr. 2008, *available at* <http://tazabuco.files.wordpress.com/2009/05/2-com-meeting-report-english.pdf>.

⁷⁷⁰ Convention, Art. 25(7).

Contracting State.⁷⁷¹ Decisions are made on a consensus basis, or by a two thirds' majority vote at the next meeting if a consensus has not been reached on the issue.⁷⁷² The Executive Director serves as the secretary of the Management Committee but has no right to vote.⁷⁷³

The Secretariat is the executive organ of the Lake Tanganyika Authority.⁷⁷⁴ It consists of an Executive Director and a Deputy Executive Director, both of whom are appointed by the Conference,⁷⁷⁵ and any other staff required for its operation.⁷⁷⁶ The Executive Director is the chief executive officer of the Authority, answerable to the Management Committee, and represents the Lake Tanganyika Authority in the exercise of its legal personality. The Secretariat's functions include: carrying out the tasks assigned to it by the Management Committee or by any protocol; providing technical and scientific services and advice; performing necessary financial and administrative services; formulating annual work programs and budgets for the Lake Tanganyika Authority; preparing plans, projects, assessments, reports and the like as required by the Management Committee; obtaining and disseminating information relevant to the implementation of the Convention to the Contracting States; maintaining databases of information; arranging and supporting meetings of the Conference of Ministers and of the Management Committee; reporting on the execution of its functions to the Management Committee; and performing any other functions determined by the Conference.⁷⁷⁷

The Management Committee is assisted in the performance of its functions by Technical Committees responsible for advising the Committee on: socioeconomic aspects of the sustainable management of the Lake; fisheries management; biological diversity; and water quality.⁷⁷⁸ The Management Committee may also establish further committees with the consent of the Conference.⁷⁷⁹

7. Relationships

Article 37 specifies that the Convention “shall not affect the right of any Contracting States to implement, by bilateral or multilateral agreement where appropriate, more stringent measures than those of this Convention provided that such measures are not in conflict with this Convention.”

⁷⁷¹ Convention, Art. 25(1).

⁷⁷² Convention, Art. 25(5).

⁷⁷³ Convention, Art. 25(1).

⁷⁷⁴ Convention, Art. 26(2).

⁷⁷⁵ Convention, Art. 26(4)-(5).

⁷⁷⁶ Convention, Art. 26(1).

⁷⁷⁷ Convention, Art. 26(3).

⁷⁷⁸ Convention, Art. 27(1).

⁷⁷⁹ Convention, Art. 27(2).

The Convention also includes specific references to two existing agreements. It provides that the Contracting States shall “develop harmonized national fisheries policies based on the relevant principles set out in the Code of Conduct for Responsible Fisheries adopted by the Conference of the Food and Agriculture Organization of the United Nations.”⁷⁸⁰ It also directs the Contracting States to share in the utilization of the genetic and biochemical resources of the Lake and its Basin in accordance with the Convention on Biological Diversity.⁷⁸¹

Article 24(6) provides for the African Union, the United Nations, and their specialized agencies to be represented as observers at meetings of the Conference of Ministers. The Convention also provides for other States and non-governmental organizations to be represented as observers.⁷⁸²

Notable partner organizations include the United Nations Development Programme (UNDP), the Global Environment Facility (GEF), the African Development Bank, the Food and Agriculture Organization (FAO), the International Union for Conservation of Nature (IUCN), and the World Bank.

8. Decision Making

Article 34 sets forth the procedure for the Contracting States to adopt additional protocols or annexes to the Convention.⁷⁸³ It provides that decisions under any protocol shall be taken only by the parties to the protocol concerned.⁷⁸⁴

Article 36 concerns amendment of the Convention and its protocols. It provides that the Contracting States shall attempt to reach consensus on proposed amendments, but allows for amendments to be adopted by majority vote if efforts to reach consensus fail,⁷⁸⁵ in which case the amendment shall be submitted to all the Contracting States for ratification, acceptance or approval.⁷⁸⁶ The amendment will enter into force after the deposit of the second instrument of ratification, acceptance, approval or accession.⁷⁸⁷ (*See also Organizational Structure.*)

⁷⁸⁰ Convention, Art. 7(2)(b).

⁷⁸¹ Convention, Art. 11.

⁷⁸² Convention, Art. 24(6).

⁷⁸³ Convention, Art. 34; *see also* Convention, Art. 35(1) (specifying that annexes shall be proposed and adopted according to the procedure set forth in Article 34).

⁷⁸⁴ Convention, Art. 34(5).

⁷⁸⁵ Convention, Art. 33 (providing that each Contracting State shall have one vote).

⁷⁸⁶ Convention, Art. 36(3).

⁷⁸⁷ Convention, Art. 36(4).

9. Dispute Resolution

Dispute settlement is governed by Article 29 of the Convention. It provides that in the case of a dispute between Contracting States concerning the interpretation or implementation of the Convention, the States involved shall notify the Secretariat of the dispute and attempt to resolve it through negotiation.⁷⁸⁸ If the dispute persists, the States shall agree on a dispute resolution procedure, which may include: (1) jointly seeking mediation by a third party;⁷⁸⁹ (2) impartial fact-finding in accordance with the provisions of Annex III;⁷⁹⁰ or (3) arbitration in accordance with the procedure laid down in Annex IV. Notably, Article 29 does not appear to assure resolution of disputes. While arbitration is a form of binding dispute resolution, States are not obligated to agree on such a binding procedure, and may instead only agree to a form of non-binding dispute resolution such as mediation or fact-finding.

10. Data Information Sharing, Exchange, and Harmonization

Article 19 directs the Contracting States to provide the public with “adequate information . . . concerning the state of the Lake Basin, planned development activities, measures taken or planned to be taken to prevent, control and reduce adverse impacts, and the effectiveness of those measures.”⁷⁹¹ For that purpose, the States are obligated to make information available concerning: water and environmental quality objectives; compliance with permits; notifications concerning proposed activities likely to have trans-boundary adverse impacts; and environmental impact assessment reports of such activities.⁷⁹²

Article 20 addresses information exchange between the Contracting States, directing them to exchange data and information concerning sustainable management of the Lake Basin and implementation of the Convention. States are also directed to employ “best efforts” to provide data or information that is requested but not readily available.⁷⁹³ The Convention additionally obligates the Contracting States to report periodically to the Authority on certain measures relevant to the environmental management of the Lake Basin and the implementation of the Convention.⁷⁹⁴

⁷⁸⁸ Convention, Art. 29(1).

⁷⁸⁹ Convention, Art. 29(2)(b) (specifying that the “third party” shall be a Contracting State not involved in the dispute).

⁷⁹⁰ Annex III provides that the disputing States are obligated to “consider the recommendation of the Commission in good faith with a view to reaching agreement on the settlement of the dispute.”

⁷⁹¹ Convention, Art. 19(1).

⁷⁹² Convention, Art. 19(1).

⁷⁹³ Convention, Art. 20(2).

⁷⁹⁴ Convention, Art. 22.

Article 21 specifies that the Convention shall not affect the established rights or obligations of Contracting States to protect personal information, intellectual property, and confidential information. It also directs the States to respect the confidentiality of confidential information they receive.⁷⁹⁵

11. Notifications

Under Article 14, the Contracting States are obligated to notify the other Contracting States, through the Secretariat, of any planned activities—including policies, plans, or programs—that are likely to give rise to trans-boundary adverse impacts.⁷⁹⁶

12. Funding and Financing

The Convention specifies that the Contracting States are responsible for funding activities related to implementation of the Convention that are undertaken within their territory or for their exclusive benefit.⁷⁹⁷ However, the Convention also provides for cost-sharing. The Lake Tanganyika Authority—which is funded by equal contributions of the Contracting States,⁷⁹⁸ and any external funding that can be obtained⁷⁹⁹—is charged with funding “the incremental costs to each Contracting State of managing the Lake Basin.”⁸⁰⁰ The Authority also funds those “activities undertaken to implement the strategic action program in as far as these benefit more than one of the Contracting States.”⁸⁰¹

In addition to setting forth those basic funding principles, the Convention directs the Conference of Ministers to adopt financial rules “to determine, in particular, the financial obligations under the present Convention and protocols to which they are parties.”⁸⁰²

13. Benefit Sharing

The Convention refers to benefit sharing with local communities and between the Contracting States. Under “General Principles,” the Convention establishes the “principle of fair and equitable benefit sharing by virtue of which local communities are entitled to share in the benefits derived from local natural

⁷⁹⁵ Convention, Art. 21(2).

⁷⁹⁶ A list of activities which are presumed to result in adverse impacts is included in Part A of Annex I of the Convention.

⁷⁹⁷ Convention, Art. 28(4).

⁷⁹⁸ Convention, Art. 28(1) (specifying that the Contracting States “shall contribute in equal proportions to the budget of the Authority unless otherwise agreed”).

⁷⁹⁹ Convention, Art. 28(2) (directing the Authority to seek funding from donors and other sources).

⁸⁰⁰ Convention, Art. 28(3).

⁸⁰¹ Convention, Art. 28(3).

⁸⁰² Convention, Art. 24(4).

resources.”⁸⁰³ The reference to benefit sharing between Contracting States is more specific. Under Article 11 (“Access to Genetic Resources”), the Contracting States are required to cooperate “to share in a fair and equitable way the results of research and development and the benefits arising from the utilization of the genetic and biochemical resources of the Lake and its Basin in accordance with the Convention on Biological Diversity.”⁸⁰⁴

14. Compliance and Monitoring

The Contracting States are required to monitor the effectiveness of the Strategic Action Program.⁸⁰⁵ They are also obligated to report on their efforts to monitor and enforce the legal and administrative measures they take under the Convention, including with regard to environmental impact management and fisheries conservation and management.⁸⁰⁶ With regard to environmental impact assessment of specific projects and activities, Article 15 directs the Contracting States to “monitor compliance with and enforce any conditions in development consents or other authorizations that were imposed for the purpose of protecting the Lake Basin.”⁸⁰⁷

Monitoring implementation of the Convention is the responsibility of the Management Committee.⁸⁰⁸ To that end, the Management Committee is empowered to commission studies and assessments to monitor the Convention’s effectiveness.⁸⁰⁹ It is also responsible for monitoring the Secretariat’s execution of its annual work program.⁸¹⁰ For its part, the Secretariat is required to report on its own performance,⁸¹¹ and to “regularly obtain and update information relevant to the implementation of [the] Convention and ensure that it is disseminated to all Contracting States.”⁸¹²

15. Participation and the Role of Multiple Stakeholders

⁸⁰³ Convention, Art. 5(2)(f).

⁸⁰⁴ Convention, Art. 11(c).

⁸⁰⁵ Convention, Art. 13(3).

⁸⁰⁶ Convention, Art. 20(1)(e).

⁸⁰⁷ Convention, Art. 15(1)(c); *see also* Convention, Art. 15(1)(4) (directing the Contracting States to consult with each other and the Secretariat on impact prevention and mitigation measures, including post-project monitoring and analysis).

⁸⁰⁸ Convention, Art. 25(7).

⁸⁰⁹ Convention, Art. 25(7)(g).

⁸¹⁰ Convention, Art. 25(7)(h).

⁸¹¹ Convention, Art. 26(3)(j).

⁸¹² Convention, Art. 26(3)(f).

The Convention also provides for public participation in decision making processes. Under Article 17, the Contracting States are required to adopt measures to ensure that the public, particularly “those individuals and communities living within the Lake Basin,” have the right to participate in decision-making processes that affect them, including the environmental impact assessment process,⁸¹³ and are given “the opportunity to make oral or written representations before a final decision is taken.”⁸¹⁴ To support that objective, environmental impact assessments required by the Convention must convey “[t]he results of any consultations with the public, interested and affected persons, communities, organizations, and government agencies in the course of conducting the environmental impact assessment.”⁸¹⁵ Additionally, the Contracting States must provide appeal or review procedures enabling the public to challenge decisions by a public body authorizing “an activity that is likely to give rise to an adverse impact.”⁸¹⁶

16. Dissolution and Termination

Article 43 provides that Contracting States may withdraw from the Convention at any time after three years from the date of its entry by giving written notice to the Depositary.⁸¹⁷ A withdrawal takes effect one year after the notification of withdrawal is received by the Depositary.⁸¹⁸

17. Additional Remarks

N/A.

18. Websites and References

- The Lake Tanganyika Authority, *available at* <http://lta.iwlearn.org>.
- The Regional Programme for Integrated Management of Lake Tanganyika, *available at* <http://tazabuco.wordpress.com>.
- The Lake Tanganyika Biodiversity Project, *available at* www.ltbp.org/EINDEX.HTM.
- GEF, Regional – Partnership Interventions for the Implementation of the Strategic Action Programme (SAP) for Lake Tanganyika, *available at* www.gefonline.org/projectDetails.cfm?projID=1017.

⁸¹³ Convention, Art. 17(1)(a).

⁸¹⁴ Convention, Art. 17(1)(b).

⁸¹⁵ Convention, Annex I, Part B, ¶ 8.

⁸¹⁶ Convention, Art. 17(2).

⁸¹⁷ Convention, Art. 43(1); *see also* Convention, Art. 43(2) (providing a similar withdrawal procedure for protocols).

⁸¹⁸ Convention, Art. 43(3).

- African Development Bank, Project to Support the Lake Tanganyika Integrated Regional Development Program, *available at* www.afdb.org/en/projects-operations/project-portfolio/project/invasive-aquatic-weeds-gambia-572.
- FAO, Lake Tanganyika Research, *available at* www.fao.org/fi/oldsite/ltr/index.htm.
- IUCN, Lake Tanganyika Basin, *available at* www.uicn.org/about/work/programmes/water/wp_where_we_work/wp_our_work_projects/wp_our_work_ltb.
- K. West, *Lake Tanganyika: Results and Experiences of the UNDP/GEF Conservation Initiative (RAF/92/G32) in Burundi, D.R. Congo, Tanzania, and Zambia*, 28 Feb. 2001.
- S. E. Jorgensen, G. Ntakimazi, S. Kayombo, *Lake Tanganyika: Experience and Lessons Learned Brief*, in *MANAGING LAKES AND THEIR BASINS FOR SUSTAINABLE USE: A REPORT FOR LAKE BASIN MANAGERS AND STAKEHOLDERS* (M. Nakamura ed. 2005, ILEC).

Lake Victoria Basin Commission

1. Legal Basis

i. The EAC Treaty and the LVBC Protocol

The main agreements governing the Lake Victoria Basin fall under the institutional umbrella of the East African Community (“EAC”), a regional intergovernmental organization comprised of the Republic of Kenya, the Republic of Uganda, and the United Republic of Tanzania. The objectives of the EAC are to “develop policies and programmes aimed at widening and deepening cooperation among the Partner States in political, economic, social and cultural fields, research and technology, defence and legal and judicial affairs for mutual benefit.”⁸¹⁹ The EAC was established by the Treaty for the Establishment of the East African Community (the “Treaty”), signed on 30 November 1999 in Arusha, Tanzania.

The Lake Victoria Basin Commission (“LVBC” or the “Commission”) is a specialized institution of the EAC and part of the EAC’s Lake Victoria Development Programme (“LVDP”), a mechanism established in 2001 to coordinate various interventions in the Lake Victoria Basin region and to turn the Basin into an economic growth zone.⁸²⁰ The EAC has designated Lake Victoria and its Basin as “an area of common economic interest” and a “regional economic growth zone” to be developed by the Member States.⁸²¹

Under Article 114 (2) of the Treaty, the Member States agreed to establish a “body for the management of Lake Victoria.”⁸²² Accordingly, the LVBC was established by the Council of Ministers of the EAC through the Protocol for the Sustainable Development of the Lake Victoria Basin (the “Protocol”), signed on 29 November 2003.

The relationship between the Protocol and the Treaty is governed by Article 47 of the Protocol, which states that the Protocol is “an integral part of the Treaty and in case of an inconsistency between” the two, the Treaty prevails.⁸²³ The Protocol also states that the provisions of the Protocol “shall take precedence over any other existing agreements relating to Lake Victoria and in case any other agreement is inconsistent with [the] Protocol, it shall be null and void to the extent of its inconsistency.”⁸²⁴

ii. Other Agreements

⁸¹⁹ EAC - EAC LVBC Legal Capacity (internally prepared document from EAC, electronic copy available through White & Case LLP)

⁸²⁰ East African Community - Lake Victoria Basin Commission (LVBC) – About LVDP, *available at* <http://www.eac.int/lvdc.html?start=1>.

⁸²¹ LVBC - Overview of LVBC, *available at* http://www.lvbcom.org/index.php?option=com_content&view=article&id=59&Itemid=69.

⁸²² Treaty for the Establishment of the East African Community, 2144 U.N.T.S. I-37437, art. 114 (2)(b)(iv).

⁸²³ Protocol for the Sustainable Development of Lake Victoria Basin, art. 47.

⁸²⁴ Protocol for the Sustainable Development of Lake Victoria Basin, art. 48.

Apart from the Treaty and the Protocol, there are several other agreements affecting the Lake Victoria Basin, some of which fall under the EAC umbrella and others which do not. These agreements include:

- The Lake Victoria Fisheries Organisation (“LVFO”), an institution of the EAC, formed through a Convention signed in 1994;⁸²⁵
- The Lake Victoria Environmental Management Project (“LVEMP”) signed in 1994 between Kenya, Tanzania, Uganda and the World Bank.⁸²⁶ The second phase of this project, LVEMP II, is coordinated by the LVBC⁸²⁷;
- The Partnership Agreement on the Promotion of Sustainable Development in Lake Victoria (the “Partnership Agreement”) between the EAC and the Governments of Sweden, France and Norway, the World Bank and the East African Development Bank (“EADB”), signed 24 April 2001;
- The Nile Basin Initiative (“NBI”), whose “Strategic Action Programme” involves a number of projects located in the Lake Victoria Basin. The EAC also signed an agreement with the NBI to ensure the efficient management of the Lake Victoria Basin in 2006.⁸²⁸

There are also a number of other regional and local partnerships focusing on sustainable development of the Basin, such as OSIENALA (Friends of Lake Victoria), a Kenyan NGO that collaborates with other NGOs and institutions in the region.⁸²⁹ *See also Relationships.*

2. Member States

The Member States to the LVBC are the Member States of its parent organization, the EAC: the Republic of Kenya, the Republic of Uganda, and the United Republic of Tanzania.

3. Geographical Scope

The Protocol defines the Lake Victoria Basin as the geographical area extending within the territories of the Member States (Kenya, Uganda, and Tanzania) “determined by the watershed limits of the system of waters, including surface and underground waters flowing into Lake Victoria.”⁸³⁰

⁸²⁵ See Lake Victoria Fisheries Organization, *available at* <http://www.lvfo.org/>.

⁸²⁶ See World Bank - Transboundary Water Management: Lessons from Recent Projects and Programs, *available at* http://siteresources.worldbank.org/EXTWAT/Resources/4602122-1213366294492/5106220-1213649450319/5.6.1_Transboundary_Water_Management.pdf

⁸²⁷ See LVBC - LVEMP II, *available at* http://www.lvbcom.org/index.php?option=com_content&view=article&id=70&Itemid=80.

⁸²⁸ See East African Community and Nile Basin Initiative Sign Memorandum, July 20, 2006, *available at* <http://www.lake-victoria.info/page/153.html>.

⁸²⁹ See Osienala – Friends of Lake Victoria, *available at* <http://www.osienala.org/>.

4. Legal Personality

According to Article 34 of the Protocol, LVBC is an institution of the EAC as provided for in the Treaty. Article 4 of the Treaty granted the EAC legal capacity, including the capacity of a body corporate with perpetual succession. Under Article 9(4) of the Treaty, “[t]he organs and institutions of the Community shall perform the functions, and act within the limits of the powers conferred upon them by or under this Treaty.”

5. Functions

Overall, the LVBC is responsible for coordinating the sustainable development agenda of the Lake Victoria Basin.⁸³¹ Article 33(3) of the Protocol establishes the “broad functions” of the LVBC “to promote, facilitate and coordinate activities of different actors towards sustainable development and poverty eradication of the Lake Victoria Basin” through:

- Harmonization of policies, laws, regulations and standards;
- Promotion of stakeholders’ participation in sustainable development of natural resources;
- Guidance on implementation of sectoral projects and programmes;
- Promotion of capacity building and institutional development;
- Promotion of security and safety on the Lake;
- Promotion of research and development and demonstration;
- Monitoring, evaluation and compliance with policies and agreed actions;
- Preparation and harmonization of negotiating positions for the Member States against any other State on matters concerning the Lake Victoria Basin;
- Receipt and consideration of reports from Partner States’ institutions on their activities relating to the management of the Basin under the Protocol;
- Initiation and promotion of programmes that target poverty eradication; and
- Performance of any other functions that may be conferred upon it under the Protocol.⁸³²

⁸³⁰ Protocol for the Sustainable Development of Lake Victoria Basin, art. 1.

⁸³¹ See LVBC - Lake Victoria Basin Commission, *available at* <http://www.lvbcom.org/>.

⁸³² Protocol for the Sustainable Development of Lake Victoria Basin, art. 33.

6. Organizational Structure

Article 34 of the Protocol establishes the organizational structure of the LVBC, noting that it is “an institution of the East African Community as provided for in the Treaty,” and shall operate within the organizational structure formed by the Sectoral Council, the Coordination Committee, the Sectoral Committees, and the Secretariat of the Commission.⁸³³

The Sectoral Council, consisting of Ministers from the Member States, is the main policy and decision-making organ for the Commission.⁸³⁴ It is charged with providing overall policy direction for the implementation of projects and programs in the Lake Victoria Basin. It is also responsible for, *inter alia*, guiding the implementation of development programs; making regulations; issuing directives; making decisions and recommendations; considering and approving the budget and work programs of the Commission; considering and approving measures to be undertaken by Member States; formulating financial rules and regulations; and adopting annual progress reports from the Coordination Committee.⁸³⁵

The Coordination Committee submits reports and recommendations to the Sectoral Council on the implementation of the Protocol and implements the decisions of the Sectoral Council.⁸³⁶ It is also responsible for recommending to the Council the establishment of Sectoral Committees, which are composed of Senior Officials of Member States, heads of public institutions, representatives of regional institutions, representatives from sectors covered under Article 3 of the Protocol (which establishes the scope of cooperation relating to the Basin), and representatives from business, industry and civil society.⁸³⁷ The Coordination Committee also receives and considers the reports of the Sectoral Committees and assigns specific Sectoral Committees to deal with matters relevant to the Lake Victoria Basin. It meets at least twice a year preceding the meetings of the Council and may hold extraordinary meetings as necessary.⁸³⁸

The Sectoral Committees are in charge of coordinating regional activities and those of the “national focal points” (which are responsible for coordinating national initiatives related to the Basin); preparing comprehensive implementation of programmes and setting priorities for the Basin; monitoring and reviewing the implementation of programmes; and submitting reports and recommendations of working groups and national focal points.⁸³⁹

⁸³³ Protocol for the Sustainable Development of Lake Victoria Basin, art. 33.

⁸³⁴ See LVBC - About LVBC, *available at* http://www.lvbcom.org/index.php?option=com_content&view=article&id=46&Itemid=68.

⁸³⁵ Protocol for the Sustainable Development of Lake Victoria Basin, art. 35.

⁸³⁶ Protocol for the Sustainable Development of Lake Victoria Basin, art. 36.

⁸³⁷ Protocol for the Sustainable Development of Lake Victoria Basin, art. 37.

⁸³⁸ Protocol for the Sustainable Development of Lake Victoria Basin, art. 36.

⁸³⁹ Protocol for the Sustainable Development of Lake Victoria Basin, art. 38.

The Secretariat, who is the head of the Commission, is charged with coordinating all activities within the scope of the Protocol. It is also responsible for, *inter alia*, initiating the coordination and harmonization of policies and strategies related to the development of the Commission; promoting information and data sharing; convening meetings of the Sectoral Committees and other working groups; submitting reports to the Sectoral Council through the Coordination Committee; undertaking the administration and financial management of the Commission; and implementing the decisions of the Sectoral Council.⁸⁴⁰ The Secretariat also carries out such duties as are conferred by the Protocol or as may be directed by the Sectoral Council from time to time.⁸⁴¹

The Executive Secretary heads the Secretariat, and is appointed by the Council on a competitive and rotating basis.⁸⁴² The Executive Secretary implements the work of the Commission in accordance with the policies and decisions of the Sectoral Council; submits reports on the work of the Commission and audited accounts to the Council; and acts as the accounting officer of the Commission. The Executive Secretary serves a fixed five-year term and is assisted by the Deputy Executive Secretary, who must be of a different nationality from the Executive Secretary and serves a three year term, renewable once on a rotating basis.⁸⁴³

7. Relationships

The Protocol calls for the Member States to cooperate with development partners and for the Commission to cooperate with the objectives of the Partnership Consultative Committee, established under the Partnership Agreement between the EAC and its development partners, in promoting the development of the Lake Victoria Basin.⁸⁴⁴

The Protocol also recognizes the relationship between the Lake Victoria Basin and the Nile River Basin, and requires the Member States, negotiating as a bloc, to cooperate with other interested parties.⁸⁴⁵ Moreover, before the Protocol took effect, the EAC had already formed partnerships with various organizations and governments. In 2001, for instance, the EAC signed a Partnership Agreement with several of its development partners - Norway, Sweden, France, the World Bank and the EADB. Since the Protocol entered into force, the LVBC has signed, through the EAC, Memorandums of Understanding with various institutions and governments, including the International Union for Conservation of Nature

⁸⁴⁰ Protocol for the Sustainable Development of Lake Victoria Basin, art. 42.

⁸⁴¹ EAC - EAC LVBC Legal Capacity (internally prepared document from EAC, electronic copy available through White & Case LLP)

⁸⁴² Protocol for the Sustainable Development of Lake Victoria Basin, art. 39.

⁸⁴³ Protocol for the Sustainable Development of Lake Victoria Basin, art. 40.

⁸⁴⁴ Protocol for the Sustainable Development of Lake Victoria Basin, art. 44.

⁸⁴⁵ Protocol for the Sustainable Development of Lake Victoria Basin, art. 5(7).

(“IUCN”), Worldwide Fund for Nature – Eastern Africa Regional Programme Office (“WWF-EARPO”), and the International Centre for Research in Agroforestry (“ICRAF”).⁸⁴⁶ See also **Legal Basis**.

There is also coordination between the Member States and the LVDP. The national focal points are the main links between the LVDP and the Member States, and are “responsible for the coordination and harmonization of the Lake Victoria Basin activities of the various Ministries, NGOs, special interest groups and other development partners in the Partner States.”⁸⁴⁷

8. Decision Making

The Sectoral Council is the body within the LVBC charged with making decisions “in accordance with the provisions of the Protocol” under Article 35 of the Protocol, and is allowed to “promulgate its own rules and procedures of decision making consistent with the Treaty.”⁸⁴⁸

9. Dispute Resolution

Article 46 of the Protocol establishes the dispute resolution method for when disputes arise between Member States concerning the interpretation or application of the Protocol. First, the Member States must seek solution by negotiation. If negotiation fails to resolve the dispute, either Member State or the Secretary General may refer such dispute to the East African Court of Justice, whose decision on the dispute shall be final.⁸⁴⁹

10. Data Information Sharing, Exchange, and Harmonization

Article 24 of the Protocol deals with the exchange of data and information, mandating that the Member States, on a regular basis “exchange readily available and relevant data and information on existing measures on the condition of the natural resources of the Basin.” If one Member State receives a request from another for information that is not readily available, it “shall employ its best efforts to comply with the request but may condition its compliance upon payment by the requesting Member State of the reasonable costs” of collecting and processing the data. Member States are also charged with facilitating collaboration in research and the exchange of data, reports and information among stakeholders within the Member States. However, the exchange of information or data does not extend to information protected under any law of a Member State or an international treaty to which a Member State is a party.⁸⁵⁰

⁸⁴⁶ See LVBC - Current Partnerships, *available at* http://www.lvbcom.org/index.php?option=com_content&view=article&id=88&Itemid=97.

⁸⁴⁷ LVBC - About LVBC, *available at* http://www.lvbcom.org/index.php?option=com_content&view=article&id=46&Itemid=68.

⁸⁴⁸ Protocol for the Sustainable Development of Lake Victoria Basin, art. 35.

⁸⁴⁹ Protocol for the Sustainable Development of Lake Victoria Basin, art. 46.

⁸⁵⁰ Protocol for the Sustainable Development of Lake Victoria Basin, art. 24.

Additionally, one of the functions of the Secretariat is to establish a regional database and to promote the sharing of information and development of information systems and data exchange.⁸⁵¹

In terms of harmonization, Article 6 of the Protocol requires the Member States to harmonize their laws and policies through the institutional framework established under the Protocol.⁸⁵² Accordingly, one of the functions of the Commission listed under Article 33 is to harmonize the policies, laws, regulations and standards of all of the Member States.⁸⁵³ More specifically, Article 14 requires the Member States to harmonize their laws and regulations in order to conform to the guidelines formulated by the Community regarding environmental audits for operators of facilities within the Member States that are likely to have a significant impact on the environment;⁸⁵⁴ Article 16 requires them to “adopt standardized equipment and methods of monitoring natural phenomena;”⁸⁵⁵ Article 25 requires them to harmonize water quality standards;⁸⁵⁶ and Article 29 requires the harmonization of infrastructure and services within the Partner States.⁸⁵⁷

11. Notifications

One of the principles listed in Article 4 of the Protocol is the principle of prior notification concerning planned measures, which requires each Member State to notify the other Member States of planned activities within its territory that may have adverse effects upon the other States.⁸⁵⁸ This requirement is elaborated upon in Article 13, which requires the notifying Member State to provide “technical data and information concerning the planned project to enable the notified Member States to evaluate the effects of the planned measures,” followed by consultation among the States.⁸⁵⁹ The only other notification requirement in the Protocol is found in Article 26 (which requires each Member State to notify the other States when there is an emergency originating in its territory).⁸⁶⁰

Article 51 of the Protocol allows for amendment to the Protocol at “any time by the agreement of the Partner States in accordance with Article 150 of the Treaty” (which governs amendment of the Treaty).

⁸⁵¹ Protocol for the Sustainable Development of Lake Victoria Basin, art. 42.

⁸⁵² Protocol for the Sustainable Development of Lake Victoria Basin, art. 6.

⁸⁵³ Protocol for the Sustainable Development of Lake Victoria Basin, art. 33.

⁸⁵⁴ Protocol for the Sustainable Development of Lake Victoria Basin, art. 14.

⁸⁵⁵ Protocol for the Sustainable Development of Lake Victoria Basin, art. 16.

⁸⁵⁶ Protocol for the Sustainable Development of Lake Victoria Basin, art. 25.

⁸⁵⁷ Protocol for the Sustainable Development of Lake Victoria Basin, art. 29.

⁸⁵⁸ Protocol for the Sustainable Development of Lake Victoria Basin, art. 4.

⁸⁵⁹ Protocol for the Sustainable Development of Lake Victoria Basin, art. 13.

⁸⁶⁰ Protocol for the Sustainable Development of Lake Victoria Basin, art. 26.

But, there is no mechanism specified in the Protocol for notifying Member States or stakeholders of other changes to the framework.⁸⁶¹

12. Funding and Financing

The LVBC is funded from the EAC budget, stakeholders' contributions, development partners and "other such sources as shall be established by the Council."⁸⁶²

13. Benefit Sharing

Article 5 of the Protocol, entitled "Equitable and Reasonable Utilisation of Water Resources," attempts to set ground rules for how each Member State may use the resources of the Basin. The Member States are to use the resources of the Basin and their respective territories in an "equitable and reasonable manner," and develop and use the water resources "with a view to attaining optimal and sustainable utilisation thereof and benefits therefrom, taking into account the interests of the Member States."⁸⁶³

In determining what is reasonable and equitable use, the Member States are to keep in mind "all relevant factors and circumstances," including, for instance, geographic and other natural factors, the social and economic needs of each Member State, the population dependent on the water resources in each Member State, the effects of the use of the water resources in one Member State on the other States, and the "comparative costs and alternative means of satisfying the economic and social needs of each Member State."⁸⁶⁴

Member States are also required, in their respective territories, to "keep the status of their water utilisation under review in light of substantial changes and relevant factors and circumstances," and cooperate with other interested parties, regional or international bodies and programmes.⁸⁶⁵

14. Compliance and Monitoring

Although one of the "broad functions" of the LVBC listed under Article 33 of the Protocol is the "monitoring, evaluation and compliance with policies and agreed actions," there is no specific provision in the Protocol establishing a mechanism to monitor Member States' compliance.⁸⁶⁶ However, there is a

⁸⁶¹ Protocol for the Sustainable Development of Lake Victoria Basin, art. 51.

⁸⁶² Protocol for the Sustainable Development of Lake Victoria Basin, art. 43.

⁸⁶³ Protocol for the Sustainable Development of Lake Victoria Basin, art. 5.

⁸⁶⁴ Protocol for the Sustainable Development of Lake Victoria Basin, art. 5.

⁸⁶⁵ Protocol for the Sustainable Development of Lake Victoria Basin, art. 5.

⁸⁶⁶ Protocol for the Sustainable Development of Lake Victoria Basin, art. 33.

provision requiring Member States to periodically report on measures taken for the implementation of the Protocol and their effectiveness in meeting the objectives of the Protocol.⁸⁶⁷

15. Participation and the Role of Multiple Stakeholders

One of the main functions of the Commission is to promote stakeholders' participation in the sustainable development of natural resources in the Basin. The Protocol defines stakeholders as "all persons, legal or natural, and all other entities being governmental or non-governmental, residing, having interest or conducting business in the Basin."⁸⁶⁸ The Protocol provides for stakeholder involvement in several areas. One of the principles enumerated under Article 4, for instance, is that of public participation, "whereby decisions about a project or policy take into account the views of the stakeholders."⁸⁶⁹ This principle is reiterated in Article 22, which states that "[t]he Partner States shall create an environment conducive for stakeholders' views to influence government decisions on project formulation and implementation."⁸⁷⁰

The Protocol also targets certain groups of stakeholders, such as women. Article 23 ("Mainstreaming of Gender Concerns") requires Member States to "promote community involvement and mainstreaming of gender concerns at all levels of socio-economic development, especially with regard to decision-making, policy formulation and implementation of projects and programmes."⁸⁷¹ However, there does not appear to be any specific mechanism for facilitating or encouraging public participation or "mainstreaming of gender concerns," a term that is never actually defined in the Protocol.

Other areas of the Protocol highlight information sharing and coordination with stakeholders. Article 21, for instance, requires Member States to promote awareness of the sustainable development of the Basin through public education campaigns.⁸⁷² Article 24 refers to the formation of a conducive environment for data sharing among stakeholders.⁸⁷³ Under Article 37, which governs the establishment and composition of Sectoral Committees, the Member States are directed to establish "National Focal Points," responsible for coordinating national initiatives of the Basin and sharing information with the Commission and other stakeholders.⁸⁷⁴ *See also* **Data Information Sharing, Exchange, and Harmonization.**

⁸⁶⁷ Protocol for the Sustainable Development of Lake Victoria Basin, art. 45.

⁸⁶⁸ Protocol for the Sustainable Development of Lake Victoria Basin, art. 1.

⁸⁶⁹ Protocol for the Sustainable Development of Lake Victoria Basin, art. 4.

⁸⁷⁰ Protocol for the Sustainable Development of Lake Victoria Basin, art. 22.

⁸⁷¹ Protocol for the Sustainable Development of Lake Victoria Basin, art. 23.

⁸⁷² Protocol for the Sustainable Development of Lake Victoria Basin, art. 21.

⁸⁷³ Protocol for the Sustainable Development of Lake Victoria Basin, art. 24.

⁸⁷⁴ Protocol for the Sustainable Development of Lake Victoria Basin, art. 37.

16. Dissolution and Termination

No specific provision.

17. Additional Remarks

A substantial portion of the Protocol is devoted to ensuring that Member States act to preserve and sustain the natural environment of the Lake Victoria Basin. Several of the principles enumerated in Article 4 are focused on sustainable development and environmental monitoring, with a number of these principles being elaborated upon in greater detail later in the Protocol. For instance, Article 16 governs environmental monitoring and precautionary measures; Articles 17 and 18 deal with the application of the “Polluter Pays” and “User Pays” principles, respectively; and Articles 19 and 20 both deal with pollution prevention.

18. Websites and References

- EAC - EAC LVBC Legal Capacity (internally prepared document from EAC, electronic copy available through White & Case LLP)
- East African Community - Lake Victoria Basin Commission (LVBC), *available at* <http://www.eac.int/lvdc.html>.
- East African Community and Nile Basin Initiative Sign Memorandum, 20 July 2006, *available at* <http://www.lake-victoria.info/page/153.html>.
- Lake Victoria Fisheries Organization, *available at* <http://www.lvfo.org/>.
- LVBC - Lake Victoria Basin Commission, *available at* <http://www.lvbcom.org/>.
- Osienala – Friends of Lake Victoria, *available at* <http://www.osienala.org/>
- Partnership Agreement on the Promotion of Sustainable Development in Lake Victoria between the EAC and the Governments of Sweden, France and Norway, the World Bank and the East African Development Bank, signed on 24 April 2001.
- Protocol for the Sustainable Development of the Lake Victoria Basin, signed on 29 November 2003.
- Treaty for the Establishment of the East African Community, signed on 30 November 1999.
- World Bank - Transboundary Water Management: Lessons from Recent Projects and Programs, *available at* http://siteresources.worldbank.org/EXTWAT/Resources/4602122-1213366294492/5106220-1213649450319/5.6.1_Transboundary_Water_Management.pdf.

Niger Basin

1. Legal Basis

The Niger Basin has been governed by a series of agreements in the post-colonial era, including:

- Act Regarding Navigation and Economic Co-operation between the States of the Niger Basin, done at Niamey, 26 October 1963, entered into force 1 February 1966;⁸⁷⁵
- Agreement Concerning the Niger River Commission and the Navigation and Transport on the River Niger, done at Niamey, 25 November 1964, entered into force 12 April 1966;⁸⁷⁶
- Agreement Revising the Agreement Concerning the Niger River Commission and the Navigation and Transport on the River Niger of 25 November 1964, adopted at Niamey, 15 June 1973, entered into force 15 December 1973 (“Niamey Agreement”);⁸⁷⁷
- Convention Creating the Niger Basin Authority, concluded at Faranah, Guinea, 21 November 1980, entered into force 3 December 1982 (the “Convention”);⁸⁷⁸ and
- Protocol relating to the Development Fund of the Niger Basin, done in Faranah, 21 November 1980, entered into force 3 December 1982 (the “Protocol”).⁸⁷⁹

The Convention significantly revised, but did not replace, the Niamey Agreement. While the Convention established the Niger Basin Authority in lieu of the Niger River Commission, it did not displace provisions of the Niamey Agreement relating to navigation in particular. Additional revisions and supplementary provisions relating to aspects of the Convention include:

- Revised Financial Rules Of The Niger Basin Authority, concluded at Nndjamena, 27 October 1987;⁸⁸⁰ and

⁸⁷⁵ 587 U.N.T.S. 8506.

⁸⁷⁶ 587 U.N.T.S. 8507. The agreement was amended twice in 1968, and again in 1979. The text of the 1968 amendments are *available at* http://iea.uoregon.edu/pages/view_treaty.php?t=1968-AmendmentRectification-1964-NigerRiverCommissionNavigationTransportRiverNiger.EN.txt&par=view_treaty_html; http://iea.uoregon.edu/pages/view_treaty.php?t=1968-Amendments-1964-NigerRiverCommissionNavigationTransportRiverNiger.EN.txt&par=view_treaty_html.

⁸⁷⁷ 1346 U.N.T.S. 22674.

⁸⁷⁸ 1346 U.N.T.S. 22675.

⁸⁷⁹ 1346 U.N.T.S. 22675. *See also* Agreement Concerning a Study on the Navigability of the Central Portion of the Niger River, signed at Niamey, 22 September 1967, entered into force on 22 September 1967. This agreement was not basin-wide; the agreement was concluded among the Netherlands, Dahomey, Mali, Niger and Nigeria.

- Revised Convention Creating The Niger Basin Authority, concluded at Nndjamena, 27 October 1987.⁸⁸¹

2. Member States

The Niger Basin Authority (NBA) Member States include the following riparian States of the Niger River: Niger, Benin, Chad, Guinea, Ivory Coast, Mali, Nigeria, Cameroon and Burkina Faso.⁸⁸²

3. Geographical Scope

The Niger River is the third largest river in Africa, running 4,200 km with an average annual flow of 180 km³. The basin itself covers an area of 2.2 million km². The Niger River's two main branches constitute its hydrological system, reinforced by tributaries from Guinea, Ivory Coast, Burkina Faso and Benin. More than 100 million people currently reside in the Niger Basin.⁸⁸³

4. Legal Personality

The NBA is an intergovernmental organization created by the 1980 Convention to replace the earlier Niger River Commission (1964), and is headquartered in Niamey, Niger.⁸⁸⁴ The NBA inherited all of the assets and assumed all of the obligations of the Niger River Commission.⁸⁸⁵ The NBA enjoys legal personality, with the legal capacity to contract, acquire, enjoy and dispose of movable and immovable property, and the right to institute legal proceedings.⁸⁸⁶ The NBA exercises its legal authority through the Executive Secretary,⁸⁸⁷ who, along with NBA functionaries, is accorded certain privileges and immunities in the Member States.⁸⁸⁸

19. Functions

⁸⁸⁰ The French text is available at http://iea.uoregon.edu/pages/view_treaty.php?t=1987-RevisedFinancialRulesNigerBasinAuthority.FR.txt&par=view_treaty_html.

⁸⁸¹ The French text is available at http://iea.uoregon.edu/pages/view_treaty.php?t=1987-Revised-1980-NigerBasinAuthority.FR.txt&par=view_treaty_html.

⁸⁸² See www.abn.ne; see also Convention, Preamble, Art. 2.

⁸⁸³ World Bank Report No. 26675, Project Appraisal Document on a Proposed Grant from the Global Environment Facility Trust Fund in the Amount of US \$6.0 Million to the Niger Basin Authority (NBA) for the Reversing Land and Water Degradation Trends in the Niger River Basin (23 Apr. 2004), at 2.

⁸⁸⁴ Convention, Art. 1.

⁸⁸⁵ Convention, Art. 1(3).

⁸⁸⁶ Convention, as revised, Art. 15(1).

⁸⁸⁷ Convention, as revised, Art. 15(2).

⁸⁸⁸ Convention, as revised, Art. 16.

As provided in the Convention, the NBA's purpose is to promote cooperation among Member States and ensure an integrated development of the Niger Basin in the fields of energy, water resources, agriculture, animal husbandry, fishing and fisheries, forestry, transport, communications and industry.⁸⁸⁹ More specifically, the Convention provides that the NBA is responsible for harmonizing and coordinating national development policies; assisting in the development of an integrated development plan for the Basin; promoting projects of common interest; assuring the regulation of navigation consistent with the 1963 Act at Niamey; and requesting assistance and mobilizing financing for studies and research on Basin resources.⁸⁹⁰ The NBA is also tasked with maintaining contact with Member States and keeping them informed of its work.⁸⁹¹ Reciprocally, Member States have pledged to inform the Executive Secretary of projects they propose to carry out in the Basin.⁸⁹²

In the past, the NBA has implemented its objectives and responsibilities through the Development Fund of the Niger Basin, which was established by the Protocol accompanying the Convention. All NBA Member States are also members of the Fund, which is tasked with collecting the necessary financial resources to implement NBA objectives and guarantee loans for NBA projects.⁸⁹³ Resources are derived, *inter alia*, from Member State contributions, external sources and income from the Fund's operations.⁸⁹⁴

In 2002 the Member States tasked the Executive Secretary of the NBA with developing a "Shared Vision" plan for the development of the Basin, principles of which have since become enshrined in the "Paris Declaration" and a "NBA Partners Cooperation Framework" starting in 2004.⁸⁹⁵

In 2008, at the Eight Heads of State and Government Summit, West African Heads of State of the Niger Basin riparian countries adopted a twenty year, 5.5 billion euro programme to reforest, rehabilitate and remove silt from the Niger River. Some eighty percent of the funding is to be earmarked for developing social and economic infrastructure, with a smaller amount to protect natural resources and ecosystems. The plan is to be implemented in four five-year phases. The 2008 Summit also resulted in the adoption of a "Water Charter" designed to ensure that NBA Member States share the river's resources fairly and responsibly. The Charter, when implemented, will restrict Member States' water usage and require Member States to notify and delay action on measures that may have "significant adverse effects" upon

⁸⁸⁹ Convention, as revised, Art. 3.

⁸⁹⁰ Convention, as revised, Art. 4(1).

⁸⁹¹ Convention, as revised, Art. 4(2).

⁸⁹² Convention, as revised, Art. 4(3).

⁸⁹³ Protocol, Arts. 1-2

⁸⁹⁴ Protocol, Art. 3.

⁸⁹⁵ ABN – Paris Declaration, *available at* <http://www.abn.ne/index.php/eng/Media/Files/Meetings/Head-of-states-summit-2008/04-2004/Paris-Declaration> (last visited 30 Sept. 2009); ABN – Cooperation Framework, *available at* <http://www.abn.ne/index.php/eng/Partners/Cooperation-Framework> (mainly in French); Peter Pieck, West Africa Sets an Example, 6/50 Development & Cooperation (2009), *available at* www.inwent.org/ez/articles/152306/index.en.shtml.

the other Basin States. In addition, any Member State consuming “excessive” amounts of water or polluting the river may face taxation or fines.⁸⁹⁶

20. Organizational Structure

The NBA is divided into several permanent institutions or organs, including the Summit of Heads of State and Government (the “Summit”), the Council of Ministers (the “Council”), the Technical Committee of Experts and the Executive Secretariat.⁸⁹⁷

The Summit is the supreme decision-making organ, comprised of the Heads of State or their duly accredited representatives.⁸⁹⁸ The Summit’s decisions are binding on the NBA.⁸⁹⁹ The Summit defines the NBA’s development policy and ensures control of its executive functions with a view to realizing its objectives. It meets once every two years in ordinary session in the Member State holding chairmanship with a simple majority quorum.⁹⁰⁰ The Summit elects its chairman every two years, rotating among its Member States.⁹⁰¹ The chairman represents the Summit between sessions and may make decisions on its behalf.⁹⁰²

The Council is the controlling organ of the NBA, comprised of Ministers or their representatives, with one vote on the Council for each Member State.⁹⁰³ The Council monitors the activities of the Executive Secretariat and reports to, as well as prepares the meetings of the Summit.⁹⁰⁴ The Council meets once a year in ordinary session, also with a simple majority quorum; recommendations and resolutions are adopted by consensus.⁹⁰⁵ Council chairmen, elected every two years on a rotating basis, are empowered to

⁸⁹⁶ AFP, West Africa adopts plan to save the Niger River, 30 Apr. 2008, *available at* http://afp.google.com/article/ALeqM5i99u4s9cGajrDim63UL4ENJ9j_Dg; Niger Basin Authority Announces 42 Projects in Cameroon, 18 Aug. 2009, *available at* <http://allafrica.com/stories/200908180274.html>; ABN – Water Charter, *available at* <http://www.abn.ne/index.php/eng/Media/Files/Meetings/Head-of-states-summit-2008/04-2008/Water-charter>.

⁸⁹⁷ Convention, as revised, Art. 5.

⁸⁹⁸ Convention, as revised, Art. 6(1)-(2).

⁸⁹⁹ Convention, as revised, Art. 6(6).

⁹⁰⁰ Convention, as revised, Art. 6(3)-(4).

⁹⁰¹ Convention, as revised, Art. 6(8).

⁹⁰² Convention, as revised, Art. 6(8).

⁹⁰³ Convention, as revised, Art. 7(1).

⁹⁰⁴ Convention, as revised, Art. 7(2).

⁹⁰⁵ Convention, as revised, Art. 7(3).

make decisions in between sessions according to the directives of the Summit, within the limits of their authority.⁹⁰⁶

The Technical Committee of Experts is comprised of representatives of the Member States and is tasked with preparing Council sessions and presenting reports and recommendations to the Council.⁹⁰⁷ The Technical Committee of Experts may meet as requested by the Executive Secretary according to a schedule approved by the Council.⁹⁰⁸

The Executive Secretariat, in turn, is run by an Executive Secretary appointed on the recommendation of the Council to the Summit for a four-year term, renewable once. Each Member State may present a candidate for Executive Secretary.⁹⁰⁹ The Executive Secretary may be removed by the Summit on the recommendation of the Council.⁹¹⁰ The Executive Secretary, is responsible for day-to-day administration and also undertakes studies and formulates proposals with a view to realizing the NBA's objectives.⁹¹¹

Finally, the Convention provides for a Commission and Financial Controller relating to the Secretariat's finances.⁹¹² The functions of the Commission and Financial Controller, as well as auditors and additional provisions concerning the Secretariat's budget, are detailed in the Financial Rules established by the Council.⁹¹³

21. Relationships

The NBA has secured a number of external partners and donors. The Bank of African Development has become a major NBA partner, providing 37 million euros to finance the NBA's plans in connection with silt removal. In 2007 the Islamic Development Bank approved funding for NBA's plans to build two dams, one in Niger and another in Mali.⁹¹⁴

⁹⁰⁶ Convention, as revised, Art. 7(5)-(6).

⁹⁰⁷ Convention, as revised, Art. 8(1).

⁹⁰⁸ Convention, as revised, Art. 8(2).

⁹⁰⁹ Convention, as revised, Art. 9(2).

⁹¹⁰ Convention, as revised, Art. 9(4).

⁹¹¹ Convention, as revised, Art. 9(7).

⁹¹² Convention, as revised, Art. 13.

⁹¹³ Convention, as revised, Art. 12 (obligating the Council to establish the Financial Regulation); Revised Financial Rules of the Niger Basin Authority, *supra*, n.7.

⁹¹⁴ AFP, West Africa adopts plan to save the Niger River, 30 Apr. 2008, *available at* http://afp.google.com/article/ALeqM5i99u4s9cGajrDim63UL4ENJ9j_Dg.

Other important NBA donors and partners include the World Bank, the EU, Germany's Development Ministry (which funds NBA capacity-building in particular), Canada and France.⁹¹⁵ In 2003, the NBA partnered with the Worldbank/UNDP and GEF to fund a project to reverse land and water degradation trends in the Niger River Basin. This joint project, set to be completed in 2009, involves several components, including institution and capacity building, data and knowledge management, regional fora, demonstration pilots and microgrant programs, and the preparation of a transboundary diagnostic analysis and strategic action plan.⁹¹⁶ The NBA also signed a Memorandum of Cooperation with the Bureau of the Convention on Wetlands (Ramsar) in 2002 concerning joint efforts on the sustainable use and management of basin wetlands.

22. Decision Making

See Organizational Structure.

23. Dispute Resolution

The Convention provides that any dispute among the Member States as to the interpretation or implementation of the Convention is to be settled amicably through direct negotiation. If such negotiations fail to settle the dispute, the matter is referred to the Summit, whose decision is final.⁹¹⁷

24. Data Information Sharing, Exchange, and Harmonization

The Convention charges the NBA with harmonizing and coordinating national policies to develop the resources of the Niger Basin, and requires it to maintain permanent contact with Member States to inform them of development plans in the Basin.⁹¹⁸ In turn, Member States undertake to inform the Executive Secretary of proposed projects in the Basin and agree not to undertake projects on portions of the Niger River in their jurisdiction likely to pollute the waters or adversely affect the biological characteristics of the flora or fauna.⁹¹⁹

Outside the Convention framework, the NBA has established "national focal structures," or teams in each country, including a point of contact and various experts, to liaise and ensure proper communication between the Executive Secretariat and national governments.⁹²⁰ Projects such as the one funded by

⁹¹⁵ Peter Pieck, West Africa Sets an Example, 6/50 Development & Cooperation (2009) *available at* www.inwent.org/ez/articles/152306/index.en.shtml.

⁹¹⁶ International Waters Learning Exchange and Resource Network, Project Description: Reversing Land and Water Degradation Trends in the Niger River Basin, *available at* http://www.iwlearn.net/iw-projects/Fsp_112799468181.

⁹¹⁷ Convention, as revised, Art. 20.

⁹¹⁸ Convention, as revised, Art. 4(1)-(2).

⁹¹⁹ Convention, as revised, Art. 4(3).

⁹²⁰ Peter Pieck, West Africa Sets an Example, 6/50 Development & Cooperation (2009) *available at* www.inwent.org/ez/articles/152306/index.en.shtml.

Worldbank/GEF also involve data sharing and regional cooperation. (See **Functions, Organizational Structure and Relationships.**)

25. Notifications

(See **Data Information Sharing, Exchange, and Harmonization.**)

26. Funding and Financing

The Convention establishes an annual budget for the NBA, the operating budget being financed by equal contributions from each Member State.⁹²¹ The NBA's expenses, including those of the Executive Secretariat, are approved by the Council and provided for in the budget according to the modalities established in the Financial Rules.⁹²²

According to the Protocol, the Development Fund has been funded in the past by Member State contributions, external resources, gifts and grants, trusts and income from the Fund's operations.⁹²³ Components of the NBA's recent Shared Vision and its twenty-year development plan for the basin are funded by a variety of international partners and foreign governments. (See **Relationships.**)

27. Benefit Sharing

No specific provision, although the recently adopted Water Charter apparently addresses the fair and responsible use of the Niger River's resources among the Member States.

28. Compliance and Monitoring

The NBA institutional organs are responsible in reporting to their superior organs and making recommendations. (See **Organizational Structure.**)

29. Participation and the Role of Multiple Stakeholders

The NBA structure allows for participation at various levels from representatives of all nine Member States. Additionally, the NBA has recently supported the formation of "national coordinating bodies," comprised of representatives of civil society, including farmer unions, fishermen and women's groups. These coordinating bodies are invited to attend all important NBA meetings as advisers.⁹²⁴ (See **Organizational Structure.**)

⁹²¹ Convention, as revised, Art. 10(1)-(2).

⁹²² Convention, as revised, Art. 10(3).

⁹²³ Protocol, Art. 3.

⁹²⁴ Peter Pieck, *West Africa Sets an Example*, 6/50 Development & Cooperation (2009) available at www.inwent.org/ez/articles/152306/index.en.shtml.

Additionally, projects such as the one funded by Worldbank/GEF also involve participation by multiple stakeholders at local, national and regional levels. (See **Relationships**.)

30. Dissolution and Termination

There is no termination provision in the Convention. The Convention may be amended or revised on the proposal of any Member State, which is then referred to the Council Chair and considered by the other Members. Any revision or amendment enters into force in the same manner as the Convention itself.⁹²⁵ Any Member may denounce the Convention before ten years have expired from the date of its entry into force.⁹²⁶

The Niamey Agreement may be amended upon the written request of one third of the riparian States, with any proposal requiring the approval of two thirds of all the riparian States.⁹²⁷

31. Additional Remarks

Portions of the Niamey Agreement not replaced with the Convention provide for freedom of navigation. Specifically the Niamey Agreement established non-discriminatory treatment in the payment of taxes or duties, and provided that infrastructure for traversing non-navigable portions of the River or improving sections of waterways, as integral parts of the River Niger, should be open to international traffic, with equal treatment also for nationals of all States regarding tolls.⁹²⁸ The Niger River Commission was also tasked with ensuring the safety and control of navigation and facilitating the movement of vessels.⁹²⁹

32. Websites and References

- Niger Basin Authority, available at www.abn.ne.
- International Environmental Agreements (IEA) Database Project, Niger Basin Agreements, available at http://iea.uoregon.edu/page.php?query=search_simple&where=start&InclusionIN=EA&Treaty_NameIN=Niger+Basin.
- Peter Pieck, West Africa Sets an Example, 6/50 Development & Cooperation (2009) available at www.inwent.org/ez/articles/152306/index.en.shtml.
- AFP, West Africa adopts plan to save the Niger River, dated 30 Apr. 2008, available at http://afp.google.com/article/ALeqM5i99u4s9cGajrDim63UL4ENJ9j_Dg.

⁹²⁵ Convention, as revised, Art. 17.

⁹²⁶ Convention, as revised, Art. 18.

⁹²⁷ Niamey Agreement, as revised, Art. 18.

⁹²⁸ Niamey Agreement, Arts. 13-14.

⁹²⁹ Niamey Agreement, Art. 15.

[DRAFT]

- International Waters Learning Exchange and Resource Network, Project Description: Reversing Land and Water Degradation Trends in the Niger River Basin, available at http://www.iwlearn.net/iw-projects/Fsp_112799468181.
- World Bank Report No. 26675, Project Appraisal Document on a Proposed Grant from the Global Environment Facility Trust Fund in the Amount of US \$6.0 Million to the Niger Basin Authority (NBA) for the Reversing Land and Water Degradation Trends in the Niger River Basin (23 Apr. 2004).
- Valentina Okaru-Bisant, Institutional and Legal Frameworks for Preventing and Resolving Disputes Concerning the Development and Management of Africa's Shared River Basins, 9 Colo. J. Int'l Env'tl. L. & Pol'y 331 (1998).
- Jonathan Lautze and Mark Giordano, Transboundary Water Law in Africa: Development, Nature, and Geography, 45 Nat. Resources J. 1053 (2005).
- Tiyanjana Maluwa, Legal Aspects of the Niger River Under the Niamey Treaties, 28 Nat. Resources J. 671 (1988).

Nile River Basin Initiative

19. Legal Basis

i) Treaties and Agreements Affecting the Nile

There are a series of historical, mainly colonial-era, bilateral and trilateral agreements affecting use of the Nile River.⁹³⁰ Two commonly cited agreements in terms of water allocation and the purported rights of riparians include:

- 1929 Exchange of Notes between His Majesty's Government in the United Kingdom and the Egyptian Government in Regard to the Use of the Waters of the River Nile for Irrigation Purposes⁹³¹
 - This Agreement was based on findings of the 1925 Nile Commission studying irrigation and other projects regarding Nile use by Sudan. It allocated 48 billion cubic meters ("BCM") of water annually to Egypt and 4 BCM annually to Sudan, while disregarding any other riparian countries.
- 1959 Agreement between the Republic of Sudan and the United Arab Republic (of Egypt) for the Full Utilization of the Nile Waters⁹³²
 - Following Sudan's independence, Sudan urged renegotiation of the terms of the 1929 Agreement. The new 1959 Agreement governs the control of certain projects as well as water allocation between Sudan and Egypt. Notably, the allocation of BCM was changed to 55.5 annually for Egypt

⁹³⁰ See, e.g., Christina M. Carroll, *Past and Future Legal Framework of the Nile River Basin*, 12 GEO. INT'L ENVTL. L. REV. 269 (1999) (citing, in addition to the 1929 and 1959 Agreements noted above, the 1891 Protocols between the Governments of Great Britain and Italy, a 1902 treaty between the Sudan, Ethiopia and Eritrea, a 1906 Agreement between Great Britain and His Majesty King Leopold II (Congo), a 1925 Exchange of Notes between Italy and the United Kingdom, a 1949 Exchange of Notes between Egypt and the United Kingdom concerning the Owen Falls Dam, the 1950 Exchange of Notes between Egypt and the United Kingdom Regarding Cooperation in Meteorological and Hydrological Surveys in Certain Areas of the Nile Basin, a 1953 Exchange of Notes between Egypt and the United Kingdom on the Owen Falls Dam, the 1967 Hydromet Agreement, and a 1977 Agreement between Burundi, Rwanda and Tanzania on the Creation of an Organization for the Management and Development of the Kagera Basin.) There is also a 1993 Framework for General Cooperation between the Arab Republic of Egypt and Ethiopia, which commits the parties to refrain from any activity causing the other party "appreciable harm" to its Nile interests. A list of Nile River Basin treaties, agreements and instruments is available at the Transboundary Freshwater Dispute Database. See <http://ocid.nacse.org/tfdd/treaties.php>.

⁹³¹ Exchange of Notes Regarding the Use of the Waters of the Nile for Irrigation, Egypt-United Kingdom ("1929 Agreement"), 7 May 1929, 93 L.N.T.S.

⁹³² Agreement on the Full Utilization of Nile Waters, Sudan-United Arab Republic, 8 Nov. 1959 ("1959 Agreement"), 453 U.N.T.S. 51.

and 18.5 annually for Sudan. Other riparian countries were still not allocated BCM. Notably, the 1959 Agreement also commits Egypt and Sudan to adopt a “united view” on the claims of upstream riparian states. The current status of these agreements is disputed among the riparian states.⁹³³

There is currently no significant multilateral agreement governing the Nile River Basin. None of the ten riparian states have signed the 1997 Convention on the Law of the Non-Navigational Uses of International Waterways.⁹³⁴

ii) Nile Basin Initiative

Although other informal cooperation among riparian countries of the Nile River Basin existed earlier,⁹³⁵ the main focus of today’s efforts centers around the Nile Basin Initiative (“NBI”). The NBI was launched in February 1999 by the water ministers of the nine countries that share the river—Egypt, Sudan, Ethiopia, Uganda, Kenya, Tanzania, Burundi, Rwanda, the Democratic Republic of Congo, and Eritrea (which participates as an “observer”). The NBI “seeks to develop the river in a cooperative manner, share substantial socioeconomic benefits, and promote regional peace and security.”⁹³⁶ The NBI “provides an institutional mechanism, a shared vision, and a set of agreed policy guidelines to provide a basinwide framework for cooperative action.”⁹³⁷

One of the goals of the NBI is to negotiate a “cooperative framework agreement” and hopes are that such a legal framework will supersede earlier bilateral treaties. Over the years, reports have indicated dissatisfaction among certain NBI Member States regarding elements of the agreement—including

⁹³³ See, e.g., Carroll, *Past and Future Legal Framework of the Nile River Basin*, at 278-279; Arthur Okoth-Owiro, *The Nile Treaty: State Succession and International Treaty Commitments: A Case Study of the Nile Water Treaties*, Kinrad Adenauer Stiftung and Law and Policy Research Foundation 13-21 (2004).

⁹³⁴ See, e.g., Carroll, *Past and Future Legal Framework of the Nile River Basin*, at 287. See also United Nations Treaty Collection—Convention on the Law of the Non-Navigational Uses of International Watercourses, available at http://treaties.un.org/Pages/ViewDetails.aspx?src=UNTS&tabid=2&mtmsg_no=XXVII12&chapter=27&lang=en#Participants.

⁹³⁵ For example, in 1992, the Council of Ministers of Water Affairs of the Nile Basin States (“NILE-COM”) began an initiative for cooperation involving six of the riparian countries, who formed the Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile Basin (“TECCONILE”). This initiative developed the Nile River Basin Action Plan in 1995 and implemented the program with United Nations Development Programme (“UNDP”) funding. In an effort to secure World Bank involvement and financing, several reviews of the Action Plan were undertaken, resulting in the establishment of a Technical Advisory Committee (“NILE-TAC”) to recommend appropriate action. In turn, the NILE-TAC developed a Shared Vision Program (“SVP”) and proposed the Nile Basin Initiative Policy Guidelines to establish the NBI. See Nile Basin Initiative—Background: Key Milestones, available at <http://www.nilebasin.org>.

⁹³⁶ Nile Basin Initiative—Background.

⁹³⁷ Nile Basin Initiative—Background.

apparent disagreement over the continued validity (or lack thereof) of colonial era treaties.⁹³⁸ According to NBI, in November 2008, the Nile Council of Ministers of Water Affairs had finalized “negotiations regarding the Nile River Basin Cooperative Framework Agreement (“CFA”) and expressed confidence that the few unresolved issues will be addressed soon to allow its adoption and ratification.”⁹³⁹

In November 2008, NBI Member States signed the non-binding Khartoum Declaration, which declares the support of the nine NBI Member States for the “clear environment functions of the future permanent Nile River Basin Organization that include,” among other things: harmonization of environment management policies; data and information exchange; environmental impact assessment; policy, institutional, and legal analysis; and coordinating role in climate change issues.⁹⁴⁰

20. Member States

The Member States to the NBI are Burundi, Democratic Republic of Congo, Egypt, Ethiopia, Kenya, Rwanda, Sudan, Tanzania, and Uganda. Eritrea, the tenth riparian country of the Nile River Basin, currently participates as an observer but has expressed a strong interest in joining the NBI.⁹⁴¹

21. Geographical Scope

The Nile River Basin extends through ten countries extending from its origination at Lake Victoria to where it empties into the Mediterranean Sea. The basin area covers about 3.3 million square kilometers.⁹⁴² The countries it passes through are Ethiopia, Sudan, Egypt, Rwanda, Tanzania, Uganda, Burundi, Democratic Republic of the Congo, Eritrea, and Kenya.

⁹³⁸ See, e.g., Patricia Kameri-Mbote, *From Conflict to Cooperation in the Management of Transboundary Waters: The Nile Experience*, in LINKING ENVIRONMENT AND SECURITY – CONFLICT PREVENTION AND PEACE MAKING IN EAST AND HORN OF AFRICA, 6 (The Heinrich Böll Foundation North America 2005) (“the current sticking point [of the framework agreement] is Principle 15, which states that all existing agreements which are inconsistent with the framework ... will be null and void. Egyptian and Sudanese members of the panel of experts have proposed that the principle instead states that the Framework shall be without prejudice to existing agreements.”).

⁹³⁹ See Environment Ministers Optimistic about the Finalization of the Cooperative Framework Agreement, available at <http://www.nilebasin.org>.

⁹⁴⁰ Khartoum Declaration, available at <http://www.sudanvisiondaily.com/modules.php?name=News&file=article&sid=41005>.

⁹⁴¹ Stefano Burchi and Melvin Spreij, FAO Legal Office, Institutions for International Freshwater Management (“Burchi and Spreij Report”), 2003, at 10, available at http://webworld.unesco.org/water/wwap/pccp/cd/pdf/legal_tools/institutions_for_int_freshwater_management_2.pdf. At the time of writing, no information indicating that Eritrea’s observer status has changed is available.

⁹⁴² See Earthtrends Website, available at http://earthtrends.wri.org/maps_spatial/maps_detail_static.php?map_select=299&theme=2.

22. Legal Personality

When NBI was established in 1999, the Ministers of Water Affairs for the Nile Basin Countries described it as a transitional institutional mechanism pending the conclusion of a Cooperative Framework Agreement. The NBI's purpose was to advance the Nile Basin Strategic Action Program.

In August 2002, the Council of Ministers of Water Affairs of the Nile Basin Countries ("Nile-COM") agreed in Agreed Minute No. 7 to "invest the NBI, on a transitional basis, with legal personality to perform all of the functions entrusted to it, including the power to sue and be sued, and to acquire or dispose of movable and immovable property."⁹⁴³

The Agreed Minute determined that NBI "shall enjoy in the territory of each Nile Basin State the legal personality referred to above and such privileges and immunities as are necessary for the fulfillment of its functions." The Executive Director of the Nile Basin Secretariat ("Nile-SEC") and the staff and officials of the NBI "shall enjoy in the territory of each Nile Basin State such privileges and immunities as are necessary for the fulfillment of their functions." The Agreed Minute also confirmed that the NBI headquarters would be at Entebbe, Uganda.

NBI signed a headquarters agreement with Uganda in 2002, and the Nile-SEC is located in Entebbe, Uganda. In October, 2002, the Uganda legislature passed the Nile Basin Initiative Act to "confer legal status in Uganda on the Nile Basin Initiative, and otherwise give the force of law in Uganda to the signed Agreed Minute No. 7 ...; and to provide for other connected or incidental matters."

Pursuant to the Act, in Uganda, the NBI has the capacity of "a body corporate with perpetual succession, and with power to acquire, hold, manage and dispose of movable and immovable corporate property, and to sue and be sued in its own name." The NBI also has the capacity in Uganda to "perform any of the functions conferred upon it by and under the Agreed Minute No. 7, and to do all things, including borrowing, that are, in the opinion of the Nile Basin States or the appropriate organ of the NBI, necessary or desirable for the performance of those functions." Additionally, the Act grants NBI staff and officials in Uganda "such privileges and immunities as are necessary for their functions," in accordance with the provisions of Uganda's Domestic Privileges Act of 1965.

23. Functions

According to NBI, its primary objectives are to develop the Nile Basin water resources in a sustainable and equitable way to ensure prosperity, security, and peace for all its peoples; to ensure efficient water management and optimal use of the resources; to ensure cooperation and joint action between the riparian countries; seeking win-win gains; to target poverty eradication and promote economic integration; and to ensure that the program results in a move from planning to action.⁹⁴⁴

The Strategic Action Program is designed to achieve these objectives by translating "this shared vision into concrete activities through a two-fold, complementary approach," namely the Shared Vision Program ("SVP") and investment in sub-basin activities such as the Eastern Nile ("ENSAP") and Nile Equatorial

⁹⁴³ As cited in the Nile Basin Initiative Act of Uganda (2002).

⁹⁴⁴ Nile Basin Initiative—NBI Background, *available at* <http://www.nilebasin.org>.

Lakes (“NELSAP”) programs. There are a variety of currently implemented projects under these umbrella programs.

According to the World Bank, the SVP is a basin-wide program that “focuses on building institutions, sharing data and information, providing training and creating avenues for dialogue and region-wide networks needed for joint problem-solving, collaborative development, and developing multi-sector and multi-country programs of investment to develop water resources in a sustainable way.”⁹⁴⁵ The Nile-SEC in Entebbe, Uganda coordinates the SVP projects which are hosted in several NBI Member States. There are currently eight SVP projects:

- Applied Training Project: According to an NBI project background description, the project’s goal is to ensure that “water professionals manage water in a sustainable and integrated manner.” The project provides support for “basin-wide capacity building through a network of training, education, and research institutions” in the basin.⁹⁴⁶
- Confidence-Building and Stakeholder Involvement Project: The project aims to provide “an avenue for participation of a wide variety of Stakeholders in NBI ... to publicize public examples of the benefits of Regional Cooperation as they emerge ...” and to provide “contemporary regional activities to build trust across country borders...”⁹⁴⁷
- Regional Power Trade Project: The project’s objectives are, *inter alia*, to facilitate the development of regional power markets “by concentrating on the delivery of technical assistance and supporting the development of required power trade infrastructure,” and to contribute “to poverty reduction in the region by improving access to reliable and low cost power in the Nile Basin in an environmentally sustainable manner...”⁹⁴⁸
- Shared Vision Coordination Project: Oversees (at the Nile-SEC) the implementation of the other seven projects and develops “generic procedures to ensure quality control and fiduciary responsibilities, conduct[s] monitoring and evaluation at the program level, and facilitate[es] information sharing within the NBI as well as with the public.”⁹⁴⁹

⁹⁴⁵ World Bank—NBI’s Programs, *available at* <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EXTREGINI/EXTAFRNILEBASINI/0,,contentMDK:21212081~menuPK:3426445~pagePK:64168445~piPK:64168309~theSitePK:2959951,00.html>.

⁹⁴⁶ For more information, *see* http://atp.nilebasin.org/index.php?option=com_frontpage&Itemid=1.

⁹⁴⁷ For more information, *see* http://cbsi.nilebasin.org/index.php?option=com_content&task=view&id=13&Itemid=37.

⁹⁴⁸ For more project information, *see* http://rpt.nilebasin.org/index.php?option=com_content&task=view&id=31&Itemid=42.

⁹⁴⁹ For more information, *see* http://svpcp.nilebasin.org/index.php?option=com_content&task=view&id=12&Itemid=29.

- Socioeconomic and Benefits Sharing Project: Aimed at building a network “from across the basin to explore alternative Nile development scenarios and benefit-sharing schemes.”⁹⁵⁰
- Transboundary Environmental Action Project: The largest of the SVP projects, whose aims are to, *inter alia*, increase: regional cooperation; basin-wide community action and networks; appreciation of river hydrology; information, knowledge and know how, and; awareness of transboundary water threats. The project currently has five components, including institutional strengthening, community-level conservation, environmental education, water quality monitoring, and wetlands and biodiversity.⁹⁵¹
- Efficient Water Use for Agriculture Project: The project’s objective is to “establish a forum to assist stakeholders at regional, national and community levels to address issues related to the efficient use of water for agricultural production in the Nile Basin.” The project’s desired outcomes include regional dialogue, the dissemination of best practices and irrigation policy development.⁹⁵²
- Water Resources Management Project: The project is to support development, management and protection of resources in an equitable, optimal, integrated, and sustainable manner. The desired outcomes are to improve national water policies based on good-practice guidelines, implement multicountry projects, and develop a Nile Basin Decision Support System to exchange information, support dialogue and identify cooperative projects.⁹⁵³

The Eastern Nile (“ENSAP”) and Nile Equatorial Lakes (“NELSAP”) programs support NBI cooperative investment projects. ENSAP includes Egypt, Ethiopia and Sudan, while NELSAP includes Burundi, Democratic Republic of Congo, Kenya, Rwanda, Tanzania and Uganda, as well as Egypt and Sudan.⁹⁵⁴

ENSAP is led by the Eastern Nile Council of Ministers (“ENCOM”), comprised of the Water Ministers in the three Eastern Nile countries, and an ENSAP Team (“ENSAPT”) formed of three technical country teams. ENSAP’s objective is to achieve joint action on the ground to promote poverty alleviation, economic growth and reversal of environmental degradation. ENCOM established the Eastern Nile

⁹⁵⁰ For more information, see http://sdbn.nilebasin.org/index.php?option=com_content&task=view&id=16&Itemid=39.

⁹⁵¹ For more information, see <http://nteap.nilebasin.org/index.php>.

⁹⁵² For more information, see http://ewuap.nilebasin.org/index.php?option=com_frontpage&Itemid=28.

⁹⁵³ For more information, see <http://wrpmp.nilebasin.org>.

⁹⁵⁴ See World Bank—NBI’s Programs, available at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EXTREGINI/EXTAFR/NILEBASIN/0,,contentMDK:21212081~menuPK:3426445~pagePK:64168445~piPK:64168309~theSitePK:2959951,00.html>.

Technical Regional Office (“ENTRO”) in 2001. ENTRO, based in Addis Ababa, manages and coordinates ENSAP projects.⁹⁵⁵

According to NBI, NELSAP’s objectives, as defined by the Nile Equatorial Lakes Council of Ministers, are to “contribute to the eradication of poverty, promote economic growth, and reverse environmental degradation.” The Nile Equatorial Lakes riparian states identified twelve NELSAP projects and in 2001 established a Coordination Unit (“NEL-CU”) in Entebbe, Uganda, subsequently relocated to Kigali, Rwanda, to facilitate project preparation and implementation.⁹⁵⁶

24. Organizational Structure

The Nile-COM is the highest decision-making body of, and provides policy guidance to, the NBI. The Chairpersonship of the Nile-COM rotates on an annual basis. The Technical Advisory Committee (“Nile-TAC”), established in 1998, renders technical advice and assistance to Nile-COM, and the Nile-SEC, established in 1999, renders administrative services to both Nile-COM and Nile-TAC. Nile-SEC’s core functions are self-financed by the NBI Member States.⁹⁵⁷

25. Relationships

NBI programs are supported by international donors as participants in the International Consortium for Cooperation on the Nile. *See* **Funding and Financing**.

26. Decision Making

The Nile-COM is the highest decision-making body of the NBI. *See* **Organizational Structure**.

27. Dispute Resolution

No specific provision.

28. Data Information Sharing, Exchange, and Harmonization

Numerous SVP projects involve data sharing – such as Transboundary Environmental Action, Efficient Water Use for Agriculture, and Water Resources Management. *See* **Functions**.

29. Notifications

No specific provision.

⁹⁵⁵ For more information on ENSAP, *see* http://www.nilebasin.org/index.php?option=com_content&task=view&id=75&Itemid=115.

⁹⁵⁶ For more information on NELSAP, *see* http://www.nilebasin.org/index.php?option=com_content&task=view&id=75&Itemid=115.

⁹⁵⁷ *See* Nile Basin Initiative—Operational Structure,” *available at* http://www.nilebasin.org/index.php?option=com_content&task=view&id=30&Itemid=77.

30. Funding and Financing

The costs of Nile-COM, Nile-TAC, and Nile-SEC are financed by the Nile Basin Member States through annual dues. The Nile Basin Member States also provide counterpart funds for all NBI projects and contribute additional funds to the NBI-SEC. The financing of the local costs of SVP project management units is also borne by the host NBI Member State.⁹⁵⁸

Nile-COM requested World Bank assistance to coordinate donor involvement, and in partnership with UNDP and the Canadian International Development Agency (“CIDA”), established the International Consortium for Cooperation on the Nile (“ICCON”), which held a Consultative Group meeting in 2001 where development partners committed about US \$130 million to the NBI.⁹⁵⁹

In 2003, a World Bank managed, multi-donor trust fund was established. The majority of funds supporting NBI programs and projects are administered through the Nile Basin Trust Fund (“NBTF”). The NBTF is overseen by a Committee comprised of contributors to the fund, the NBI, and the World Bank. The NBTF Committee Rules of Procedure outline the operation and responsibilities of the Committee.⁹⁶⁰ Formal NBTF Committee meetings are held once a year in one of the Basin Member States.⁹⁶¹

According to the World Bank, NBTF transfers funds to NBI, which then carries out the implementation of project activities since almost all (95%) of the project activities are recipient-executed.⁹⁶² The NBTF supports the implementation of the SVP, as well as sub-basin investment programs in the ENSAP and the NELSAP.⁹⁶³ As progress is made in program implementation and establishing a permanent institutional framework for the NBI, the goal is to transfer the NBTF to a NBI institution.⁹⁶⁴

31. Benefit Sharing

See Functions, discussing the SVP Socioeconomic and Benefits Sharing Project, an initiative to explore development options for the Nile River Basin and determine and evaluate benefit-sharing schemes.

⁹⁵⁸ See Nile Basin Initiative—How We Are Funded, *available at* http://www.nilebasin.org/index.php?option=com_content&task=view&id=43&Itemid=97.

⁹⁵⁹ Nile Basin Initiative—The World Bank and NBI, *available at* <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EXTREGINI/EXTAFRNILEBASINI/0,,contentMDK:21074410~menuPK:2993428~pagePK:64168445~piPK:64168309~theSitePK:2959951,00.html>.

⁹⁶⁰ Nile Basin Initiative—How We Are Funded.

⁹⁶¹ Nile Basin Trust Fund, *available at* <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EXTREGINI/EXTAFRNILEBASINI/0,,contentMDK:21076144~menuPK:2993455~pagePK:64168445~piPK:64168309~theSitePK:2959951,00.html>.

⁹⁶² Nile Basin Trust Fund.

⁹⁶³ Nile Basin Initiative—How We Are Funded.

⁹⁶⁴ Nile Basin Trust Fund; *see also* Nile Basin Initiative—How We Are Funded.

32. Compliance and Monitoring

Responsibility for compliance and monitoring of NBI's SVP projects rests with Nile-SEC under the banner of the Shared Vision Coordination Project. Oversight of the NBTF currently rests with the NBTF Committee through the World Bank. *See Funding and Financing.*

33. Participation and the Role of Multiple Stakeholders

Some affiliate initiatives have been organized with the aim of involving NGOs and civil society in the work of the NBI, including the Nile Basin Discourse ("NBD"), funded by international partners.⁹⁶⁵ It remains unclear what the longer-term impact of such initiatives will be.

See also Functions, especially the SVP Confidence-Building and Stakeholder Involvement and Efficient Water Use for Agriculture Projects.

34. Dissolution and Termination

No specific provision.

35. Additional Remarks

N/A

36. Websites and References

- Arthur Okoth-Owiro, *The Nile Treaty: State Succession and International Treaty Commitments: A Case Study of the Nile Water Treaties*, paper published by the Kinrad Adenauer Stiftung and Law and Policy Research Foundation (2004).
- Christina M. Carroll, *Past and Future Legal Framework of the Nile River Basin*, 12 GEO. INT'L ENVTL. L. REV. 269 (1999).
- Dahilon Yassin Mohamoda, *Nile Basin Cooperation: A Review of the Literature*, CURRENT AFRICAN ISSUES NO. 26 (2003).
- International Waters Learning Exchange and Resource Network, Nile Basin Initiative, *available at* <http://www.iwlearn.net/News/nile-basin-initiative>.
- Jutta Brunnee and Stephen J. Toope, *The Changing Nile Basin Regime: Does Law Matter?*, 43 HARV. INT'L L. J. 105 (2002).
- Nile Basin Bibliography, *available at* http://www.nilebasindiscourse.net/biblio_EN.php.
- Nile Basin Initiative, *available at* <http://www.nilebasin.org>.

⁹⁶⁵ See Kamei-Mbote, *From Conflict to Cooperation in the Management of Transboundary Waters: The Nile Experience*, at 7; *see also* http://www.nilebasindiscourse.org/index_EN.php.

[DRAFT]

- Valerie Knobelndorf, Note, *The Nile Waters Agreements: Imposition and Impacts of a Transboundary Legal System*, 44 COLUM. J. TRANSNAT'L L. 622 (2005).
- World Bank, Nile Basin Initiative, *available at* <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EXTREGINI/EXTAFRNILEBASINI/0,,menuPK:2960057~pagePK:64168427~piPK:64168435~theSitePK:2959951,00.html>.

Nubian Sandstone Aquifer System (NSAS)

1. Legal Basis

There are four primary documents that provide a framework for the Nubian Sandstone Aquifer System (“NSAS”):

- Bilateral Cooperation Agreement between Egypt and Libya—where agreed to establish a Joint Authority for the study and development of groundwater of the Nubian Sandstone Aquifer System [Arabic only],⁹⁶⁶
- Internal Regulation of the Joint Board for the Study and Development of the Nubian Sandstone Reservoir Waters;⁹⁶⁷
- Agreement #1: For the Monitoring and Exchange of Groundwater Information of the Nubian Sandstone Aquifer;⁹⁶⁸ and
- Agreement #2: on Monitoring and Data Sharing.⁹⁶⁹

2. Member States

The Member States are Egypt, Sudan, Libya (since 1998), and Chad (since 1999).

3. Geographical Scope

The NSAS is an aquifer system that covers a land area extending through Libya, Egypt, Chad and Sudan, between Latitudes 14 and 33, and Longitudes 19 and 34.

4. Legal Personality

The Internal Regulation created a Joint Board for the Study and Development of Nubian Sandstone reservoir waters (“Joint Board”), with its headquarters located in Tripoli, Libya.⁹⁷⁰ The Internal

⁹⁶⁶ Bilateral Cooperation Agreement Minutes between Egypt and Libya, 8 July 1991, *available at* <http://faolex.fao.org/docs/pdf/bi-53776A.pdf>. [Arabic only].

⁹⁶⁷ Regulation of the Joint Authority for the Study and Development of the Nubian Sandstone Aquifer (“Internal Regulation”), *available at* <http://faolex.fao.org/docs/pdf/lib39133E.pdf>.

⁹⁶⁸ Agreement #1, Terms of Reference For the Monitoring and Exchange of Groundwater Information of the Nubian Sandstone Aquifer System (“Agreement #1”), 5 Oct. 2000, *available at* <http://faolex.fao.org/docs/pdf/int39094E.pdf>.

⁹⁶⁹ Agreement #2, Terms of Reference for Monitoring and Data Sharing (“Agreement #2”), 5 Oct. 2000, *available at* <http://faolex.fao.org/docs/pdf/int39095E.pdf>.

⁹⁷⁰ Internal Regulation, arts. 1-2.

Regulation also provided that the Joint Board shall have a corporate body with the attendant rights and privileges, and that internal administrative and financial regulations shall be created, and shall be issued by the Board of Directors.⁹⁷¹

5. Functions

The Internal Regulation provides that the purpose of the Joint Board includes:⁹⁷²

- Collecting, classifying and analyzing information, data and study results;
- Preparing and executing studies on environmental groundwater development, desertification control, and energy;
- Developing and executing common policy and programs for the development and utilization of groundwater;
- Establishing cooperation in the field of training related to water resources;
- Undertaking to ration the consumption of the reservoir waters;
- Studying the environmental aspects of the reservoir development; and
- Disseminating information about the Aquifer.

6. Organizational Structure

According to the Internal Regulation, a Board of Directors manages the Joint Board. Each Member State appoints three ministerial-level directors to the Board. The Member States elect—on a rotating basis—one of the members to become Chair of the Board for a period of one year. The Chairperson represents the Joint Authority in its relationships with third parties and before the courts, and can sign contracts on behalf of the Joint Authority in accordance with the recommendations of the Board. Meetings are held once every four months and may be held at other times at the request of a Member State. Two-thirds of the members from each Member State form a quorum at meetings of the Board. However, if the required quorum is not met at the first meeting, the second meeting will be valid if attended by any number of members. The Board may invite representatives of international organizations and donor states and institutions to attend the meetings of the Board as observers.⁹⁷³

The Joint Board has an administrative secretariat as well as technical, administrative, legal, and other staff. The Board appoints an executive general manager for a renewable three-year period.⁹⁷⁴

⁹⁷¹ Internal Regulation, art. 24

⁹⁷² Internal Regulation, art. 3.

⁹⁷³ Internal Regulation, arts. 5-9.

⁹⁷⁴ Internal Regulation, arts. 13-14.

7. Relationships

The Joint Board and the Secretariat cooperate with the IAEA/UNDP/GEF Nubian Project, which has the long term goal of establishing a rational and equitable management of the NSAS for sustainable socio-economic development and the protection of biodiversity and land resources. The Project's four main short-term objectives are to: (a) identify priority transboundary threats and their root causes; (b) fill key gaps in data, methodology, and capacity for strategic planning decisions by using appropriate technical approaches with a focus on isotope techniques and applications under the supervision of the International Atomic Energy Agency ("IAEA"); (c) prepare a Strategic Action Program ("SAP"); and (d) establish a framework to implement the SAP.⁹⁷⁵

8. Decision Making

The decisions of the Board are taken by majority vote. However, a two-thirds majority is required for consideration and approval of the budget, proposals for cooperation with regional and international organizations and donor states, and the establishment of new offices.⁹⁷⁶

9. Dispute Resolution

No specific provision.

10. Data Information Sharing, Exchange, and Harmonization

Data is consolidated in the Nubian Aquifer Regional Information System ("NARIS")—which has the following functions:⁹⁷⁷

- stores and documents different data relating to the NSAS;
- processes, analyzes and displays the data;
- prepares input parameters for different models; and
- provides a link among the Member States to exchange information.

Additionally, the Member States have agreed to share information on yearly extractions, representative electrical conductivity measures, and water level measurements.⁹⁷⁸

⁹⁷⁵ See UNDP-GEF, Formulation of an Action Programme for the Integrated Management of the Shared Nubian Aquifer, (2004) at 3.

⁹⁷⁶ Internal Regulation, art. 8.

⁹⁷⁷ Agreement #1.

⁹⁷⁸ Agreement #2.

11. Notifications

No specific provision.

12. Funding and Financing

In addition to donations from national and international institutions, organizations and donor states, each Member State contributes funds to the budget of the Joint Board. Member States contribute on an equal basis to the budget and must observe a timely payment schedule.⁹⁷⁹

13. Benefit Sharing

No specific provision.

14. Compliance and Monitoring

The Member States agreed to monitor and report key information regularly. *See Data Information Sharing, Exchange, and Harmonization.*

15. Participation and the Role of Multiple Stakeholders

No specific provision.

16. Dissolution and Termination

There is no specific provision for termination of the Regulation. However, the Board of Directors may amend items in the Regulation with the approval of two-thirds of the Board of Directors.⁹⁸⁰

17. Additional Remarks

N/A

18. Websites and References

- Food and Agriculture Organization of the United Nations, *available at*: <http://faolex.fao.org/>.
- IAEA Nubian Aquifer Project, *available at* http://www.naweb.iaea.org/napc/ih/Nubian/IHS_nubian.html.
- Stefano Burchi and Melvin Spreij, FAO Legal Office, Institutions for International Freshwater Management, 2003, *available at* <http://unesdoc.unesco.org/images/0013/001324/132478e.pdf>.

⁹⁷⁹ Internal Regulation, arts. 16-23.

⁹⁸⁰ Internal Regulation, art. 26.

North-Western Sahara Aquifer System (NWSAS)

1. Legal Basis

The North-Western Sahara Aquifer System (“NWSAS”) Project is part of the United Nations Environment Programme (“UNEP”) and is funded by the Global Environment Facility (“GEF”). It is administered by the Sahara and Sahel Observatory (“OSS”)—an independent international organization based in Tunis, Tunisia that focuses on combating desertification and mitigating drought in Africa.⁹⁸¹

The NWSAS plan was suggested at a meeting on 8–10 September 1997 in Tunis, Tunisia and funding was allocated on 29–30 April 1999.⁹⁸² In May 1999, the Member States and funding partners met in Rome, Italy and named the OSS as the Executive Agency in charge of the Project.⁹⁸³

While no formal treaty has been signed, the Member States—Algeria, Tunisia, and Libya—reached an agreement in 2002 to establish a “Consultation Mechanism” for the NWSAS. This consensus was reached between the three Member States at a meeting at the United Nations Food and Agriculture Organization (“FAO”) in Rome, Italy on 19 and 20 December 2002. The *process verbal*—or minutes of the meeting—were endorsed by Algeria on 6 January 2003, Tunisia on 15 February 2003, and Libya on 23 February 2003, and these approvals constituted an agreement to establish the Consultation Mechanism. The objective of the Consultation Mechanism is to “coordinate, promote and facilitate the rational management of the NWSAS water resources.”⁹⁸⁴

2. Member States

The Member States are Algeria, Tunisia, and Libya.

3. Geographical Scope

The NWSAS covers over 1,000,000 square kilometers of which 700,000 are in Algeria, 80,000 in Tunisia, and 250,000 in Libya. It includes the two main aquifers in the region—the Intercalary Continental and the Terminal Complex.⁹⁸⁵

⁹⁸¹ See Sahara and Sahel Observatory, *available at* <http://www.oss-online.org/>.

⁹⁸² Programme Système Aquifère du Sahara Septentrional, *available at* <http://nwsas.iwlearn.org/publications/projectdocuments/Le%20Programme%20SASS.pdf/view>. [French only].

⁹⁸³ NWSAS—Project Structure, *available at* <http://nwsas.iwlearn.org/about/structure>.

⁹⁸⁴ Groundwater Agreements: Establishment of a Consultation Mechanism for Northwestern Sahara Aquifer System; FAO Corporate Document Repository (“Establishment of Consultation Mechanism”), *available at* <http://www.fao.org/docrep/008/y5739e/y5739e05.htm>.

⁹⁸⁵ GEF Project Brief—Protection of the North West Sahara Aquifer System (NWSAS) and related humid zones and ecosystems (“GEF Project Brief”), at 1–2, *available at* http://www.iwlearn.net/iw-projects/Msp_112799492025/project_doc/nw-sahara-aquifer-project-brief.pdf.

4. Legal Personality

No specific provision.

5. Functions

The functions of the NWSAS Project, according to the Consultation Mechanism, are: (a) to manage the hydrogeologic database and simulation models; (b) to develop and oversee a reference observation network; (c) to process, analyze, and validate data relating to the NWSAS; (d) to develop databases on socio-economic activities in the region in relation to water uses; (e) to develop public indicators on the resource and its uses in the three Member States; (f) to promote and facilitate the conduct of joint or coordinated studies and research by experts in the three countries; (g) to formulate and implement training programs; (h) to update the NWSAS model on a regular basis; and (i) to formulate proposals relating to the evolution of the Consultation Mechanism.⁹⁸⁶

6. Organizational Structure

The OSS, as the Executive Agency, presides over a Steering Committee that is responsible for the execution of projects. The OSS is in charge of managing funds, recruiting experts and consultants, obtaining equipment, providing logistical assistance, and auditing scientific reports.⁹⁸⁷ The OSS and the Steering Committee work together to review the validity and quality of the scientific research, modify and create action programs, and prepare proposals concerning solutions for problems encountered during the execution of programs.⁹⁸⁸

The Steering Committee, which is composed of representatives of the national agencies in charge of water resources, meets once a year in ordinary session, and in extraordinary session upon the request of one of the three Member States. The sessions are held on a rotating basis in each of the three Member States, and the Steering Committee's chairmanship is held by the representative from the hosting country.⁹⁸⁹ The Steering Committee is composed of representatives from the Algerian Agence Nationale des Ressources Hydrauliques ("ANRH"); the Libyan General Water Authority ("GWA"); the Tunisian Direction Générale des Ressources en Eau ("DGRE"); several international scientific partners (such as the United Nations Educational, Scientific and Cultural Organization ("UNESCO"); the Arab Center for the Studies of Arid Zones and Dry Lands ("ACSAD"); and Germany's Federal Institute for Geosciences and Natural Resources ("BGR")); and several cooperation partners (such as France's Fonds International de

⁹⁸⁶ Establishment of Consultation Mechanism.

⁹⁸⁷ NWSAS—Project Structure.

⁹⁸⁸ NWSAS—Project Structure.

⁹⁸⁹ Establishment of Consultation Mechanism.

Développement Agricole (“FIDA”); the FAO; and Switzerland’s Direction du Développement et de la Coopération (“DDC-Suisse”).⁹⁹⁰

In addition to the Steering Committee, the NWSAS Project’s organizational structure includes a Coordination Unit—led by a coordinator designated by the OSS in consultation with the Steering Committee—and an *ad hoc* scientific committee which provides technical advice and knowledge as needed.⁹⁹¹

7. Relationships

Project partners for the NWSAS include the GEF, the FAO, UNESCO, and the International Fund for Agricultural Development (“IFAD”).⁹⁹² As this region faces tough economic constraints, these international agencies have taken a significant role in financing and implementing the projects.

8. Decision Making

Decisions are made by the Steering Committee.⁹⁹³ The Steering Committee also oversees the execution of the projects. *See Organizational Structure.*

9. Dispute Resolution

No specific provision.

10. Data Information Sharing, Exchange, and Harmonization

The UNEP project called for the establishment of a “consultation mechanism” for the NWSAS that would ensure the continued management of the shared water resources once GEF project funding finished. This led to the creation of an Observatory for the Aquifer-Basin, which is shared by the three Member States. The Observatory for the Aquifer-Basin is tasked with responsibility for technical and scientific issues related to the management of the shared waters, information exchange and consultation, and joint elaboration of simulation models. The Observatory for the Aquifer-Basin is also responsible for data collection and the publication of relevant documents that synthesize data analysis on the exploitation of water resources and its implications.⁹⁹⁴

⁹⁹⁰ NWSAS—Project Structure.

⁹⁹¹ Establishment of Consultation Mechanism.

⁹⁹² NWSAS—Homepage, *available at* <http://nwsas.iwlearn.org/>.

⁹⁹³ NWSAS—Project Structure.

⁹⁹⁴ GEF Project Brief, at 22.

11. Notifications

There are no specific provisions on notification. However, the General Directors of the national institutions in charge of water resources in all three Member States are on the Steering Committee and therefore receive all of the relevant information.

12. Funding and Financing

In addition to funding received from the main partner organizations (*see Relationships*), the NWSAS also receives funding support from national development agencies (such as France’s Fonds Français pour l’Environnement Mondial (“FFEM”) and DDC-Suisse).⁹⁹⁵

The Steering Committee is responsible for approving the expenditure plans of the regional coordinators of the program and the OSS. The OSS, in turn, has to manage the allocated funds for a project. There will also be an external financial audit concerning the management of program funds.⁹⁹⁶

13. Benefit Sharing

No specific provision.

14. Compliance and Monitoring

The Observatory for the Aquifer-Basin carries out several monitoring functions—including collecting data on the use and management of water resources in the NWSAS. *See Data Information Sharing, Exchange, and Harmonization.*

Additionally, the OSS Steering Committee is responsible for assessing the validity and the quality of the technical results from each phase of all the projects, including the UNEP NWSAS Project. The OSS is obligated to provide a scientific audit of these results.⁹⁹⁷

15. Participation and the Role of Multiple Stakeholders

The Observatory for the Aquifer-Basin is tasked with raising public awareness on NWSAS water resource issues and with planning public outreach activities. It is also in charge of liaising between the public and private sectors (particularly in the agricultural industry) in order to increase cooperation regarding water resource management and use.⁹⁹⁸

⁹⁹⁵ NWSAS—Project Funding, *available at* <http://nwsas.iwlearn.org/about/funding>.

⁹⁹⁶ NWSAS—Project Structure.

⁹⁹⁷ NWSAS—Project Structure.

⁹⁹⁸ GEF Project Brief, at 22.

[DRAFT]

16. Dissolution and Termination

No specific provision.

17. Additional Remarks

N/A

18. Websites and References

- North-Western Sahara Aquifer System Project, *available at* <http://nwsas.iwlearn.org/>.
- Sahara and Sahel Observatory, *available at* <http://www.oss-online.org/>.

Okavango River Basin

1. Legal Basis

The Agreement Between the Governments of the Republic of Angola, the Republic of Botswana, and the Republic of Namibia on the Establishment of a Permanent Okavango River Basin Water Commission (OKACOM) (the “OKACOM Agreement”) was signed on 16 September 1994 in Windhoek, Namibia.⁹⁹⁹

2. Member States

The Member States are Angola, Botswana, and Namibia.

3. Geographical Scope

The Okavango River has its source in the Cuito and Cubango Rivers in Angola. The river flows uninterrupted through Namibia to Botswana and discharges an average of 10 billion cubic meters per year to the Okavango Delta.¹⁰⁰⁰ The area of the Delta fluctuates between 6,000 to 8,000 square kilometers during the dry season, swelling to 15,850 square kilometers during the flood season.¹⁰⁰¹

4. Legal Personality

The OKACOM Agreement established the Permanent Okavango River Basin Water Commission (“OKACOM,” also referred to as the “Commission”). OKACOM was authorized to appoint consultants to assist in gathering and processing information on any matter on which it is tasked with advising the Member States.¹⁰⁰² A Member State may request that OKACOM provide such advice in the form of a written report signed by the leaders of each Member State’s delegation. Each Member State’s delegation is then responsible for submitting such reports to its respective government.¹⁰⁰³

⁹⁹⁹ Agreement Between the Governments of the Republic of Angola, the Republic of Botswana, and the Republic of Namibia on the Establishment of a Permanent Okavango River Basin Water Commission (OKACOM) done at Windhoek, 16 September 1994 (“1994 OKACOM Agreement”), *available at* <http://www.fao.org/docrep/w7414b/w7414b0m.htm>.

¹⁰⁰⁰ Harry Oppenheimer Okavango Research Centre, University of Botswana, Waters of the Okavango Delta, *available at* http://www.orc.ub.bw/downloads/FS1_waters.pdf.

¹⁰⁰¹ OKACOM, Fact sheet about the OKAVANGO, *available at* <http://www.okacom.org/factsheet.htm>.

¹⁰⁰² OKACOM Agreement, art. 5.1.

¹⁰⁰³ OKACOM Agreement, art. 5.2.

5. Functions

The broad objective of the OKACOM Agreement was to establish OKACOM as an entity that would act as a technical advisor to the Member States “on matters relating to the conservation, development and utilization of water resources of common interest” to the Member States.¹⁰⁰⁴ Specifically, OKACOM is charged with advising the Member States on the following issues affecting the Okavango River Basin:¹⁰⁰⁵

- Measures and arrangements to determine the long term safe yield of the water available from all potential water resources in the Basin;
- The reasonable demand for water from consumers in the Basin;
- The criteria to be adopted in the conservation, equitable allocation and sustainable utilization of water resources in the Basin;
- Investigations related to the development of water resources in the Basin, including the construction, operation and maintenance of any waterworks;
- Prevention of pollution and control over aquatic weeds in the Basin;
- Measures to alleviate short term difficulties resulting from water shortages in the Basin during periods of drought, taking into consideration the availability of stored water and the water requirements of respective Member States; and
- Such other matters as to be determined by OKACOM.

6. Organizational Structure

OKACOM consists of delegations appointed by each Member State, with each delegation containing not more than three members. Each Member State shall designate one member of its delegation to serve as the delegation’s leader, with the leader having the authority to employ an unlimited number of advisors to the delegation (although no more than three may attend an OKACOM meeting unless otherwise agreed by OKACOM).¹⁰⁰⁶

OKACOM is required to meet at least once per year, but may meet more frequently as agreed by the three delegations. The venue of meetings alternates between the three Member States unless the delegations determine otherwise with respect to a particular meeting. The leader of the delegation tasked with hosting a particular meeting shall serve as chairperson during that meeting.¹⁰⁰⁷

¹⁰⁰⁴ OKACOM Agreement, art. 1.2.

¹⁰⁰⁵ OKACOM Agreement, art. 4.

¹⁰⁰⁶ OKACOM Agreement, art. 2.

¹⁰⁰⁷ OKACOM Agreement, art. 3.

In May 2007, in an effort to bring about more formal and effective organization, OKACOM's Member States entered into the Agreement on the Organizational Structure of OKACOM. This agreement provides for three entities within OKACOM—the Commission, the Okavango Basin Steering Committee (the “OBSC”), and the Secretariat. The Commission serves as OKACOM's principal organ and is responsible for guiding its policy and supervising its activities. The OBSC was established in 1995 as a technical advisory body to the Commission. The Secretariat, which commenced operations in October 2008,¹⁰⁰⁸ is an internal entity within OKACOM with the “legal capacity and mandate to assist OKACOM in implementing its decisions;” the Secretariat also assists with information sharing and communication. The Secretariat is headed by an Executive Secretary who works under the direction of the Commission.¹⁰⁰⁹ Botswana was selected to host the Secretariat for its first three years, after which time it may relocate to another Member State.

7. Relationships

OKACOM has partnered with a number of multilateral organizations and foreign governments. In May 2007, OKACOM signed an agreement with the Government of Sweden under which the latter pledged to provide US\$2 million to help establish the OKACOM Secretariat and fund its first three years of operation. Through the Swedish International Corporation Agency (“SIDA”), the Swedish Government has also promised to support the activities of the Secretariat for ten years, with Swedish funding decreasing as Member State funding increases over the 10-year time period.¹⁰¹⁰

OKACOM has also partnered with the United Nations Development Programme's Global Environment Facility (“GEF”) to implement the Environmental Protection and Sustainable Management of the Okavango River Basin Project (“GEF-EPSMO”). The initiative will prepare a transboundary diagnostic analysis of hydro-environment threats and develop a strategic plan to facilitate joint management of the Basin's water resources and protect its aquatic ecosystems and biological diversity.¹⁰¹¹

OKACOM has also partnered with the United States Agency for International Development (“USAID”), which provided US\$7 million to support OKACOM's institutional framework development.¹⁰¹²

8. Decision Making

All Commission decisions during OKACOM meetings are made on the basis of consensus. If the delegations fail to reach consensus on an issue during a meeting, such issue shall be referred to the Member States by the respective delegations for further negotiation.¹⁰¹³

¹⁰⁰⁸ OKACOM, OKACOM Events, *available at* <http://www.okacom.org/events.htm>.

¹⁰⁰⁹ OKACOM, OKACOM Structure, *available at* <http://www.okacom.org/structure.htm>.

¹⁰¹⁰ OKACOM Events, *available at* <http://www.okacom.org/events.htm>.

¹⁰¹¹ OKACOM, OKACOM Affiliated Projects and Partners, *available at* http://www.okacom.org/affiliated_projects_partners.htm.

¹⁰¹² OKACOM Affiliated Projects and Partners, *available at* http://www.okacom.org/affiliated_projects_partners.htm.

9. Dispute Resolution

Article 7.4 of the OKACOM Agreement provides simply that “Any dispute as to the interpretation or implementation of any Article of this Agreement shall be settled by the [Member States].”¹⁰¹⁴ There are no further provisions for dispute resolution in the OKACOM Agreement.

10. Data Information Sharing, Exchange, and Harmonization

OKACOM’s first specific goal was to develop a proposal for an environmental assessment of the Basin and to implement a strategy for integrated water resource management.¹⁰¹⁵ This undertaking was significant as collecting accurate data will allow the Member States to make informed decisions about the quantity of water required by each in view of its respective development objectives.¹⁰¹⁶

(See also **Organizational Structure** above, noting that it is the job of the Secretariat to handle information sharing and communication.)

11. Notifications

No specific provision. However, OKACOM publishes “Okaflow,” a newsletter providing updates on a variety of OKACOM initiatives, several times per year.¹⁰¹⁷

12. Funding and Financing

Each Member State is responsible for covering the costs incurred by its delegation and related advisors in attending OKACOM meetings.¹⁰¹⁸ In addition, each Member State hosting a particular OKACOM meeting is responsible for all costs associated with securing a venue for the meeting, distributing an agenda, and recording and distributing the meeting minutes.¹⁰¹⁹ Otherwise, all other costs incurred or liabilities accepted by OKACOM in the performance of its duties are shared equally among the Member States, unless otherwise agreed by OKACOM.¹⁰²⁰

¹⁰¹³ OKACOM Agreement, art. 3.5.

¹⁰¹⁴ OKACOM Agreement, art. 7.4.

¹⁰¹⁵ Anthony Turton et al., *Transboundary Rivers, Sovereignty and Development: Hydropolitical drivers in the Okavango River basin* 115 (2003).

¹⁰¹⁶ Anthony Turton et al., *Transboundary Rivers, Sovereignty and Development: Hydropolitical drivers in the Okavango River basin* 115 (2003).

¹⁰¹⁷ available at <http://www.okacom.org/publications.htm>.

¹⁰¹⁸ OKACOM Agreement, art. 6.1.

¹⁰¹⁹ OKACOM Agreement, art. 6.2.

¹⁰²⁰ 1994 OKACOM Agreement, art. 6.3.

Reports prepared by OKACOM are to include estimates of the costs involved in implementing their advice, and may also include proposals for the apportionment of these costs of implementation among the Member States.¹⁰²¹ (See also **Relationships** above.)

13. Benefit Sharing

No specific provision.

14. Compliance and Monitoring

No specific provision.

15. Participation and the Role of Multiple Stakeholders

The Every River Has Its People Project is a regional initiative funded by SIDA and implemented by the Kalahari Conservation Society in Botswana, the Namibian Nature Foundation, and the Association for Environment Conservation and Integrated Rural Development in Angola. The project was initiated in 2004 and will be funded by SIDA until 2012.¹⁰²² The Project created the Basin Wide Forum, a transboundary committee comprised of 10 local community representatives from each of the Member States. The forum's purpose is to "share experiences and generate a 'bird's eye view' of the socio-economic and hydro-environmental landscape of the basin in order to help formulate knowledge-based community livelihoods and environmental action plans."¹⁰²³

16. Dissolution and Termination

Each Member State is free to withdraw from the OKACOM Agreement six months after providing written notice to that effect to the other Member States.¹⁰²⁴ Even after withdrawing, a Member State remains bound by its obligations for a further twelve months from the effective date of its withdrawal.¹⁰²⁵

17. Additional Remarks

N/A.

18. Websites and References

- OKACOM, *available at* <http://www.okacom.org>.

¹⁰²¹ OKACOM Agreement, art. 5.3.

¹⁰²² OKACOM Affiliated Projects and Partners.

¹⁰²³ OKACOM Structure.

¹⁰²⁴ OKACOM Agreement, art. 7.1.

¹⁰²⁵ 1994 OKACOM Agreement, art. 7.2.

Senegal River Basin

1. Legal Basis

There are two main agreements governing the Senegal River Basin:

- The Convention Concerning the Status of the Senegal River (Convention Relative au Statut du Fleuve Sénégal) (“Senegal River Convention”), signed in Nouakchott, Mauritania on 11 March 1972.¹⁰²⁶
- The Convention Establishing the Organization for the Development of the Senegal River (Convention Portant Création de l’Organisation pour la Mise en Valeur du Fleuve Sénégal) (“OMVS Convention”), signed in Nouakchott, Mauritania on 11 March 1972.¹⁰²⁷

In addition, there have been a number of additional instruments that pertain to the Senegal River Basin. These include the following:¹⁰²⁸

- The Convention Concluded Between Mali, Mauritania and Senegal Concerning the Legal Status of Common Works, signed in Bamako, Mali on 21 December 1978 (Convention Conclue Entre Le Mali, La Mauritanie et Le Sénégal Relative au Statut Juridique des Ouvrages Communs);
- The Convention Regarding the Financing of Common Works, signed in Bamako, Mali on 12 May 1982 (Convention Relative aux Modalités de Financement des Ouvrages Communs);
- The Draft Framework Agreement for Cooperation between the Republic of Guinea and the OMVS, signed in August 1992 (Protocole d’Accord-Cadre de Coopération entre la République de Guinée et l’OMVS);

¹⁰²⁶ Convention Concerning the Status of the Senegal River, 11 Mar. 1972 (Convention Relative au Statut du Fleuve Sénégal) (“Senegal River Convention”), *available at* <http://ocid.nacse.org/qml/research/tfdd/toTFDDdocs/261FRE.htm>. [French only]. According to the United Nations Environment Programme Register of International Environmental Treaties 2005, the Senegal River Convention has yet to enter into force. *See* http://www.unep.org/law/PDF/register_Int_treaties_part1.pdf.

¹⁰²⁷ Convention Establishing the Organization for the Development of the Senegal River, 11 Mar. 1972 (Convention Portant Création de l’Organisation pour la Mise en Valeur du Fleuve Sénégal) (“OMVS Convention”), *available at* <http://ocid.nacse.org/qml/research/tfdd/toTFDDdocs/265FRE.htm>. [French only] According to the United Nations Environment Programme Register of International Environmental Treaties 2005, the Senegal River Convention has yet to enter into force. *See* http://www.unep.org/law/PDF/register_Int_treaties_part1.pdf

¹⁰²⁸ *See* IEA-Designated Lineage: Senegal River Basin, *available at* http://iea.uoregon.edu/page.php?query=treaties_lineage&lineage=Senegal%20River%20Basin; *see also* Pilot Case Studies: A Focus on Real-World Examples—Senegal River Basin, Guinea, Mali, Mauritania, Senegal, *available at* http://www.unesco.org/water/wwap/case_studies/senegal_river/senegal_river.pdf.

- The Convention Establishing the Agency for the Management and Exploitation of Diama, signed on 7 January 1997 (Convention Portant Création de l'Agence de Gestion et d'Exploitation de Diama);
- The Convention Establishing the Agency for the Management of Power of Manantali, signed on 7 January 1997 (Convention Portant Création de l'Agence de Gestion de l'Energie de Manantali); and
- Charter of Senegal River Waters, signed on 28 May 2002 (Charte des Eaux du Fleuve Sénégal).

2. Member States

The Member States are Mali, Mauritania, and Senegal. Guinea has observer status.

3. Geographical Scope

The Senegal River Basin, which extends through Mali, Mauritania and Senegal.¹⁰²⁹

4. Legal Personality

The Organization for the Development of the Senegal River (“OMVS”) has full legal capacity and the power to enter into contracts, acquire and dispose of property; receive donations, subsidies, legacies and other gifts, borrow money, apply for technical assistance, and institute legal proceedings.¹⁰³⁰

The Council of Ministers is the legal representative of the OMVS and can delegate the legal authority needed to exercise the aforementioned powers to the High Commissioner.¹⁰³¹

5. Functions

Pursuant to the Senegal River Convention, there are various bodies designated to play different roles in the management and development of the Senegal River. *See **Organizational Structure***.

The primary entity, the OMVS, is charged with: implementing the Senegal River Convention; promoting and coordinating development studies and works on the Senegal River Basin within the Member States; and carrying out all technical and economic functions conferred to it by the Member States.¹⁰³²

The Conference of Heads of State and Government is the chief decision-making body and is responsible for setting the general policies of the OMVS.¹⁰³³

¹⁰²⁹ Senegal River Convention, art. 1.

¹⁰³⁰ OMVS Convention, art. 1.

¹⁰³¹ OMVS Convention, art. 1.

¹⁰³² OMVS Convention, art. 1.

The Council of Ministers sets priorities and formulates the policies for managing the Senegal River, developing its resources, and the cooperation of States around the Senegal River. The Council of Ministers also approves the budget and determines the funding from the Member States. The decisions of the Council of Ministers are binding on Member States.¹⁰³⁴

The Office of the High Commissioner implements the decisions of the Council of Ministers. The Office of the High Commissioner is responsible for the administration and staff of the OMVS and exercises the powers delegated to it by the Council of Ministers. The High Commissioner implements studies and projects relating to hydrology and agriculture, solicits funds for projects, and coordinates the development and exploitation of common works.¹⁰³⁵

The Permanent Water Commission allocates water rights among the Member States and sectors, including industry, agriculture, and transport.¹⁰³⁶

The Advisory Committee provides advice to the OMVS. The Regional Planning Committee advises the OMVS on the regional development plans of the Member States and their impact on the basin's resources. The National Offices assist the OMVS with the implementation of its projects within the Member States.¹⁰³⁷

6. Organizational Structure

As noted above, the OMVS is governed by the Conference of the Heads of State and Government.¹⁰³⁸ The President of the Conference is elected from its members on a rotating basis for a term of two years.¹⁰³⁹ Once a year, the Conference holds an ordinary session. The President or a Member State can also call an extraordinary meeting.¹⁰⁴⁰

The Council of Ministers is the legal representative and supervisory body of the OMVS, which delegates tasks to the High Commissioner.¹⁰⁴¹ The President of the Council is elected from its members on a

¹⁰³³ OMVS Convention, art. 3.

¹⁰³⁴ OMVS Convention, art. 8.

¹⁰³⁵ OMVS Convention, arts. 11-17.

¹⁰³⁶ OMVS Convention, art. 20.

¹⁰³⁷ Stefano Burchi and Melvin Spreij, FAO Legal Office, Institutions for International Freshwater Management ("Burchi and Spreij Report"), 2003, at 16, *available at* http://webworld.unesco.org/water/wwap/pccp/cd/pdf/legal_tools/institutions_for_int_freshwater_management_2.pdf.

¹⁰³⁸ OMVS Convention, art. 3.

¹⁰³⁹ OMVS Convention, art. 6.

¹⁰⁴⁰ OMVS Convention, art. 4.

¹⁰⁴¹ OMVS Convention, art. 8.

rotating basis for a term of two years.¹⁰⁴² Twice a year, the Council holds ordinary sessions, where attendance by Member States is mandatory, and a Member State can also call an extraordinary meeting. The President represents the Council between its meetings.¹⁰⁴³

The Office of the High Commissioner is the executive body of the OMVS. The High Commissioner is appointed by the Conference of the Heads of State and Government to a renewable term of four years.¹⁰⁴⁴ The Office of the High Commissioner adopts its own Rules of Procedure and consists of four departments: administration and accounting, foreign relations, technical matters, and regional documentation center.¹⁰⁴⁵

The Permanent Water Commission, composed of representatives of the Member States, meets at the request of the High Commissioner and advises the Council of Ministers. The Advisory Committee, composed of representatives from governments, financial institutions, and the OMVS, is a consultative body. The Regional Planning Committee advises on the availability of water resources in the basin for the regional development plans of Member States.¹⁰⁴⁶

The Member States each have a National Office, which is represented on the Advisory Committee.¹⁰⁴⁷

The Council of Ministers also acts as the “General Assembly” of the SOGED (Société de Gestion et d’Exploitation du Barrage de Diama) and the SOGEM (Société de Gestion de l’Energie de Manantali), two companies which were created to oversee the Diama and Manantali Dam projects.¹⁰⁴⁸

7. Relationships

The Advisory Committee consists of representatives from governments, financial institutions, and the OMVS. *See Organization Structure.*

8. Decision Making

The decisions of the Conference of the Heads of State and Government and of the Council of Ministers are taken unanimously.¹⁰⁴⁹ The decisions are binding on the Member States.¹⁰⁵⁰

¹⁰⁴² OMVS Convention, art. 9.

¹⁰⁴³ OMVS Convention, art. 10.

¹⁰⁴⁴ OMVS Convention, art. 11.

¹⁰⁴⁵ OMVS Convention, arts. 12-17.

¹⁰⁴⁶ OMVS Convention, art. 20.

¹⁰⁴⁷ Burchi and Spreij Report, at 15.

¹⁰⁴⁸ The Organization for the Development of the Senegal River Basin (Organes de l’OMVS,) *available at* <http://www.omvs.org/fr/omvs/organes.php>.

¹⁰⁴⁹ OMVS Convention, arts. 4, 10.

9. Dispute Resolution

Any dispute between the Member States regarding the interpretation or application of the relevant Conventions is to be resolved by mediation. If the Member States cannot reach an agreement, the dispute is to be submitted to the Commission of Mediation, Conciliation, and Arbitration of the Organization of African Unity. The Commission's decisions can be appealed to the International Court of Justice.¹⁰⁵¹

10. Data Information Sharing, Exchange, and Harmonization

No specific provision.

11. Notifications

Any project likely to substantially modify the river regime, the state of its water, the biological features of its flora and fauna, its navigability, or the conditions of its agricultural and industrial use can only be executed with the approval of the Member States. Member States, therefore, must provide the OMVS with timely information about any project concerning the development of the river.¹⁰⁵²

12. Funding and Financing

The Member States each contribute to the OMVS ordinary budget. The costs and expenses for common works are shared among the Member States in proportion to the benefits received by each Member State from the work. The sharing of costs for common works is to be reassessed periodically. The Convention on the Financing of Common Works provides a framework for methods of financing such as contributions, loans, and subsidies.¹⁰⁵³

13. Benefit Sharing

No specific provision.

14. Compliance and Monitoring

No specific provision.

15. Participation and the Role of Multiple Stakeholders

No specific provision.

¹⁰⁵⁰ OMVS Convention., art. 5, 8.

¹⁰⁵¹ OMVS Convention., art. 24.

¹⁰⁵² Senegal River Convention, art. 4.

¹⁰⁵³ Burchi and Spreij Report, at 16 (explaining that member states contribute on an equal basis); The Organization for the Development of the Senegal River Basin, *available at* <http://www.omvs.org/fr/omvs/presentation.php> (stating that Mali contributes 35.3%, Mauritania 22.6%, and Senegal 42.1%); *see also* OMVS Convention, art. 21.

16. Dissolution and Termination

Any Member State may withdraw from the OMVS or the Convention on the Legal Status of Common Works by written notice. Withdrawal is given effect after acceptable agreements have been made with the other Member States and interested third parties regarding the liquidation of established rights and the discharge of obligations.¹⁰⁵⁴

Any Member State can withdraw from the Senegal River Convention upon the expiry of a period of ninety-nine years from the date in which the Convention came into force by written notice to the government of Mauritania. Withdrawal is given effect six months after notice, but does not affect any existing agreements.¹⁰⁵⁵

The OMVS can be dissolved upon the request of at least two Member States.¹⁰⁵⁶

17. Additional Remarks

Negative impacts on the environment appeared after the inauguration of the Diama and Manatali Dams. This forced the OMVS to implement environmental conservation measures, such as the Environmental Impact Mitigation and Monitoring Program (“PASIE”) (Program d’Atténuation et de Suivi des Impacts sur l’Environnement), initiated in 1997.¹⁰⁵⁷

18. Websites and References

- A.M. Sène, et al., *Watershed regulation and local action : analysis of the Senegal River watershed management by a regional organisation and public participation*, Institut de Géographie, 4 HYDROLOGY AND EARTH SYSTEM SCIENCES DISCUSSIONS 1917 (2007).
- *Integrated Water Resource Management for Food Security in Africa*, Twenty-Third Regional Conference for Africa, Johannesburg, South Africa, March 2004, ARC/04/5.
- Jonathan Lautze, et al., *Driving forces behind African transboundary water law: internal, external, and implications*, International workshop on African Water Laws: Plural Legislative Frameworks for Rural Water Management in Africa, Johannesburg, South Africa, January 2005.
- Joshua T. Newton, *Case Study of Transboundary Dispute Resolution: Organization for the Development of the Senegal River (OMVS)*.

¹⁰⁵⁴ OMVS Convention art. 25.

¹⁰⁵⁵ Senegal River Convention, art. 17.

¹⁰⁵⁶ OMVS Convention, art. 26.

¹⁰⁵⁷ Burchi and Spreij, at 17.

- Lars Vidaeus, Memorandum re: Regional: Senegal River Basin Water and Environmental Management Project (Guinea, Mali, Mauritania, Senegal) Submission for Work Program Inclusion, The World Bank/IFC/M.I.G.A., Sept. 27, 2001.
- Mamadou Lakh, *Organisation pour la Mise en Valeur du Fleuve Sénégal*, Réseau International des Organismes de Bassin, available at www.oieau.fr/ciedd/contributions/atriob/contribution/omvs.htm.
- OMVS, *Senegal River Basin, Guinea, Mali, Mauritania, Senegal*, Pilot Case Studies: A Focus on Real-World Examples 447-461, UNESCO.
- *Pour une exploitation rationnelle des ressources en eau et de l'environnement du fleuve Sénégal*, HORIZONS, May 9, 2005, at 4, No. 3972.
- *Rapport Narratif et Analytique Annuel du Projet de Plan d'Action de la CODESEN*, Coordination des Organisations de la Société Civile pour la Défense de l'Environnement et le Développement du Bassin du Fleuve Sénégal, Décembre 2006 – Décembre 2007.
- *Rapport Narratif Final du Projet de Renforcement de la Mission Nationale et Sous-Regionale de la CODESEN*, Coordination des Organisations de la Société Civile pour la Défense de l'Environnement et le Développement du Bassin du Fleuve Sénégal, March 2004 – February 2005.
- The Organization for the Development of the Senegal River Basin (l'Organisation pour la Mise en Valeur du Fleuve Sénégal), available at www.omvs.org.
- Undala Alam and Ousmane Dione, *West Africa – A Regional Approach to Reducing Poverty in the Senegal River Basin*, Scaling Up Poverty Reduction: A Global Learning Process and Conference, Shanghai, May 25-27, 2004.
- *Water Resources Development in Africa*, 4th World Water Forum, 2006.
- Youssoupha Kamara, *Les Accords Internationaux sur le fleuve Sénégal*, Congrès International de Kaslik, Liban, June 1998.

Southern African Development Community (SADC)

1. Southern African Development Community Water Bodies Legal Basis

The Southern African Development Community (“SADC”) developed from an earlier alliance of nine states in Southern Africa known as the Southern African Development Coordination Conference (“SADCC”), an entity whose general purpose included promoting self-sustaining development based on collective self-reliance and the interdependence of Member States and achieving sustainable utilization of natural resources and effective protection of the environment.¹⁰⁵⁸ On 17 August 1992 Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, Swaziland, Tanzania, Zambia, and Zimbabwe signed the Treaty of the Southern African Development Community (“SADC Treaty”).¹⁰⁵⁹ The SADC Treaty entered into force on 30 September 1993 and established the Southern African Development Community (“SADC”) as an international organization.¹⁰⁶⁰ Some of the prime SADC objectives include achieving economic growth, gaining a better understanding of the Member States’ regional strategies and programs, and attaining sustainable utilization of the Member States’ natural resources.¹⁰⁶¹ An Agreement to amend the SADC Treaty was signed on 14 August 2001, at which time the Democratic Republic of the Congo, Seychelles, and South Africa also signed on as Member States. The agreement brought on additional signatory countries, Congo, Seychelles, and South Africa.¹⁰⁶²

On 28 August 1995, the SADC Member States signed the Protocol on Shared Watercourse Systems in the Southern African Development Community Region (“Protocol”), which entered into force on 29 September 1998.¹⁰⁶³ The Protocol was later revised and signed by the SADC Heads of State or Government and entered into force on 22 September 2003 (“Revised Protocol”).¹⁰⁶⁴ The primary goal of

¹⁰⁵⁸ Southern African Development Co-ordination Conference between Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe done at Lusaka, Zambia 1 April 1980.

¹⁰⁵⁹ Treaty between the Southern African Development Community (“SADC Treaty”), 30 September 1993 TRE-00124 3.

¹⁰⁶⁰ Art. 2. The SADC Treaty also followed earlier declarations concerning Southern African development, including the Lusaka Declaration - Southern Africa: Towards Economic Liberation.

¹⁰⁶¹ *Id.* at art. 5.

¹⁰⁶² Agreement Amending the Treaty of the Southern African Development Community, done at Blantyre, 14 Aug. 2001, *available at* <http://www.ecolex.org/server2.php/libcat/docs/multilateral/en/TRE001366.txt>.

¹⁰⁶³ SADC Protocol on Shared Watercourses (“Protocol”) *available at* <http://www.ecolex.org/server2.php/libcat/doc/multilateral/en/TRE001267.txt>.

¹⁰⁶⁴ SADC Revised Protocol on Shared Watercourses (“Revised Protocol”), *available at* <http://www.ecolex.org/server2.php/libcat/docs/multilateral/en/TRE001360.txt>. The Revised Protocol, on entry into force, replaced the 1998 Protocol on shared watercourse systems. *See* art. 16(1).

the Revised Protocol is to foster closer cooperation and develop sustained and coordinated management of the SADC countries' shared watercourses.¹⁰⁶⁵

The Member States have also entered into various other agreements relevant to water bodies.¹⁰⁶⁶ One such agreement is the Dar-es-Salaam Declaration on Agriculture and Food Security in the SADC Region ("Dar es Salaam Declaration"), signed by the Member States on 15 May 2004.¹⁰⁶⁷ The Dar es Salaam Declaration seeks to improve water management and irrigation by establishing an agreement among Member States to donate a substantial portion of each country's agricultural budget for water management and irrigation development, and by developing programs to improve flood and drought mitigation and water harvesting technologies.¹⁰⁶⁸ The Dar es Salaam Declaration also sought to develop and implement policies aimed at attracting private sector investments and accelerate the implementation of transboundary water resources development and management policies and programs. Lastly, the Dar es Salaam Declaration facilitates inter-basin water transfers within the framework of the Revised Protocol.¹⁰⁶⁹

The Member States also signed the SADC Protocol on Fisheries ("Protocol on Fisheries") on 14 August 2001, which entered into force on 8 August 2003.¹⁰⁷⁰ Some objectives of the Protocol on Fisheries are to "promote responsible and sustainable use of the living aquatic resources and aquatic ecosystems on interest to State Parties in order to safeguard the livelihood of fishing communities; generate economic opportunities for nationals in the Region; [and] ensure future generations benefit from these renewable resources[.]"¹⁰⁷¹

2. Member States

The SADC Member States are Angola, Botswana, the Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, the United

¹⁰⁶⁵ Revised Protocol, art. 2.

¹⁰⁶⁶ Note that some Member States have entered into agreements with other Member or non-member States involving some of the river basins that are governed by the SADC Amended Treaty. See e.g., Tripartite Interim Agreement between the Republic of Mozambique and the Republic of South Africa and the Kingdom of Swaziland for Co-Operation on the Protection and Sustainable Utilisation of the Water Resources of the Incomati and Maputo Watercourses, *available at* multilateral/en/TRE001811.doc (English)

¹⁰⁶⁷ The Dar-es-Salaam Declaration on Agriculture and Food Security in the SADC Region, *available at* <http://www.sadc.int/index/browse/page/63>.

¹⁰⁶⁸ The Dar-es-Salaam Declaration on Agriculture and Food Security in the SADC Region, *available at* <http://www.sadc.int/index/browse/page/63>.

¹⁰⁶⁹ The Dar-es-Salaam Declaration on Agriculture and Food Security in the SADC Region, *available at* <http://www.sadc.int/index/browse/page/63>.

¹⁰⁷⁰ SADC Protocol on Fisheries, *available at* <http://www.ecolex.org/server2.php/libcat/docs/multilateral/en/T E001362.txt>.

¹⁰⁷¹ Protocol on Fisheries, art. 3(b)-(d).

Republic of Tanzania, Zambia, and Zimbabwe.¹⁰⁷² New members are admitted pursuant to the provisions of Article 8 of the SADC Treaty, as amended.

3. Geographical Scope

The SADC region has fifteen major internationally shared river basins. The water basins include: the Buzi, Congo, Cuvelai, Incomati, Kunene, Limpopo, Maputo-Usutu-Pongola, Nile, Okavango, Orange-Senqu, Pungwe, Ruvuma, Save-Sabi, Umbeluzi, and the Zambezi.¹⁰⁷³ The water basins are located within the various Member States, and some basins are located in several Member States. The water basins all vary in size: the smallest is the Maputo which covers 30,700 km² while the largest is the Congo Basin which covers 3,699,100 km².¹⁰⁷⁴

4. Legal Personality

Article 3 of the SADC Treaty establishes SADC as an international organization with the “legal personality with capacity and power to enter into contract, acquire, own or dispose of movable or immovable property and to sue and be sued.”¹⁰⁷⁵ Moreover, in each SADC Member State, SADC has “such legal capacity as is necessary for the proper exercise of its functions.”¹⁰⁷⁶

Article 9 of the SADC Treaty establishes the institutional framework of the SADC. The Summit of Heads of State or Government consists of the Heads of State or Government of all SADC Member States and is the supreme policy-making institution “responsible for the overall policy direction and control of the functions of SADC.”¹⁰⁷⁷ The following additional institutions were established by the Treaty, as amended: Organ on Politics, Defence and Security; Council of Ministers; Commissions; Integrated Committee of Ministers; Standing Committee of Officials; Secretariat; Tribunal; and SADC National Committees.¹⁰⁷⁸ A Troika was also implemented by the amended Treaty to act as a steering committee for each institution.¹⁰⁷⁹ The Troika is responsible for decision making and policy direction.¹⁰⁸⁰ *See also* **Functions and Organizational Structure.**

¹⁰⁷² SADC Profile, *available at* http://www.sadc.int/index.php?action=a1001&page_id=header_sitemap#preamble.

¹⁰⁷³ Atlas of International Freshwater Agreements, Oregon State University Program in Water Conflict Management and Transformation, *available at* http://www.transboundarywaters.orst.edu/publications/atlas/atlas_html/africa.html

¹⁰⁷⁴ Atlas of International Freshwater Agreements, Oregon State University Program in Water Conflict Management and Transformation, *available at* http://www.transboundarywaters.orst.edu/publications/atlas/atlas_html/africa.html.

¹⁰⁷⁵ SADC Treaty, art. 3.

¹⁰⁷⁶ SADC Treaty, art. 3.

¹⁰⁷⁷ SADC Treaty, art. 10.

¹⁰⁷⁸ SADC Treaty, as amended, art. 9.

¹⁰⁷⁹ SADC, Treaty, as amended, art 9A.

¹⁰⁸⁰ SADC Treaty, as amended, art. 9A.

In addition to the institutions created by the SADC Treaty, the Revised Protocol established the SADC Water Sector Organs (comprised of the Committee of Water Ministers, the Committee of Water Senior Officials, the Water Sector Coordinating Unit, and the Water Resources Technical Committee and sub-committees)¹⁰⁸¹ and several Shared Watercourse Institutions. For example, under the Revised Protocol, Member States undertook to “establish appropriate institutions such as watercourse commissions, water authorities or boards.”¹⁰⁸² The Revised Protocol also adopted the concept of Integrated Water Resources Management.¹⁰⁸³ The principles adopted under the Integrated Water Resources Management policy include that: “[f]resh water is a finite and venerable resource, essential to sustaining life, development and the environment. Water development and management should be based on a participatory approach, involving users, planners and policy-makers at all levels. Water and land resources should be managed at the lowest appropriate levels. Women should play a central role in the provision, management and safeguarding of water. Water should be considered a social and economic good, with an economic value reflecting its most valuable potential use.”

5. Functions

The objectives, referred to as the “Common Agenda,” of the SADC as reflected in Article 5 of the Treaty, as amended, are to:

- a) promote sustainable and equitable economic growth and socio-economic development that will ensure poverty alleviation with the ultimate objective of its eradication, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration;
- b) promote common political values, systems and other shared values which are transmitted through institutions which are democratic, legitimate, and effective;
- c) consolidate, defend and maintain democracy, peace security and stability;
- d) promote self-sustaining development on the basis of collective self-reliance, and the interdependence of Member States;
- e) achieve complementarity between national and regional strategies and programmes;
- f) promote and maximise productive employment and utilisation of resources of the Region;
- g) achieve sustainable utilisation of natural resources and effective protection of the environment;

¹⁰⁸¹ Revised Protocol, art. 5(1)(a).

¹⁰⁸² Revised Protocol, art. 5(1)(b) and 5(3)(a).

¹⁰⁸³ Ministry of Foreign Affairs, Danida Regional Programme Support: Environmental Assistance to the Southern Africa Region on Integrated Water Resource Management Programme Document, *available at* http://www.sadcwater.com/admin/user_files/ProgrammeDocument-Final.pdf.

- h) strengthen and consolidate the long standing historical, social and cultural affinities and links among the people of the Region;
- i) combat HIV/AIDS and other deadly or communicable diseases;
- j) ensure that poverty eradication is addressed in all SADC activities and programmes; and
- k) Mainstream gender in the process of community building

The SADC undertakes to achieve these objectives, in part, by harmonizing Member States' policies, creating institutions and mechanisms to mobilize resources to implement SADC programs and operations, eliminating obstacles to the free movement of capital and labor, promoting the development of human resources, and transferring technology.¹⁰⁸⁴ SADC Member States generally undertake also to “adopt adequate measures to promote the objectives of SADC ...”¹⁰⁸⁵

In turn, the objectives of the Revised Protocol include the fostering of “closer cooperation for judicious, sustainable and co-ordinated management, protection and utilisation of shared watercourses and advance the SADC agenda ...”¹⁰⁸⁶ To implement the stated objectives, the Revised Protocol seeks to:

- a) promote and facilitate the establishment of shared watercourse agreements and Share Watercourse Institutions for the management of shared watercourses;
- b) advance the sustainable, equitable and reasonable utilisation of the shared watercourses;
- c) promote a coordinated and integrated environmentally sound development and management of shared watercourses;
- d) promote the harmonisation and monitoring of legislation and policies for planning, development, conservation, protection of shared watercourses, and allocation of the resources thereof; and
- e) promote research and technology development, information exchange, capacity building, and the application of appropriate technologies in shared watercourses management.¹⁰⁸⁷

The Revised Protocol aims to achieve these objectives by implementing the general principles outlined in Article 3. Member States agree to “undertake to harmonise the water uses in the shared watercourses and to ensure that all necessary interventions are consistent with the sustainable development of all Watercourse States and observe the objectives of regional integration and harmonisation of their socio-economic policies and plans[,]” and to “respect the existing rules of customary or general international

¹⁰⁸⁴ See SADC Treaty, as amended, art. 5(2).

¹⁰⁸⁵ SADC Treaty, art. 6(1).

¹⁰⁸⁶ Revised Protocol, art. 2.

¹⁰⁸⁷ Revised Protocol, art. 2.

law relating to the utilisation and management of the resources of shared watercourses.”¹⁰⁸⁸ Member States also agreed to “utilise a shared watercourse in an equitable and reasonable manner[,]” which under Article 7-8 means “tak[ing] into account all relevant factors including geographical, hydrographical, hydrological, climatical, ecological and other factors of a natural character; (ii) the social, economic and environmental needs of the Watercourse States concerned; (iii) the population dependent on the shared watercourse in each Watercourse State; (iv) the effects of the use or uses of a shared watercourse in one Watercourse State on other Watercourse States; (v) existing and potential uses of the watercourse; (vi) conservation, protection, development and economy of use of the water resources of the shared watercourse and the costs of measures taken to that effect; and (vii) the availability of alternatives, of comparable value, to a particular planned or existing use.”¹⁰⁸⁹

Member States agreed to protect the aquatic environment under The Protocol on Fisheries by “conserve[ing] aquatic ecosystems,” and “apply[ing] the precautionary principle to ensure that activities within their jurisdiction and control do not cause excessive transboundary adverse impacts.”¹⁰⁹⁰ Member States also agreed to “address the causes of aquatic environmental degradation by undertaking measures in conformity with the treaty and its Protocols and other international treaties and conventions of relevance to the environment” and to closely cooperate with SADC institutions to “take concerted action to protect endangered living aquatic species and their habitats.”¹⁰⁹¹ Each Member States was required to “adopt the necessary legislative and administrative measures to prevent pollution of waters by inland, coastal or offshore activities.”¹⁰⁹²

6. Organizational Structure

The Summit of Heads of State or Government (“Summit”) functions as the Member States’ supreme policy-making institution, is responsible for the overall policy direction and control of the functions of SADC, and adopts legal instruments necessary for the implementation of provisions of the SADC Treaty.¹⁰⁹³ The decisions of the Summit are taken by consensus and are binding.¹⁰⁹⁴ The Summit elects a Chairperson and Deputy Chairperson among its members for one year, and may create committees or other institutions as it deems necessary.¹⁰⁹⁵ The Summit meets twice a year and decides on the admission of new Member States to SADC.¹⁰⁹⁶

¹⁰⁸⁸ Revised Protocol, art. 3(1), (3).

¹⁰⁸⁹ Revised Protocol, art. 7-8(a).

¹⁰⁹⁰ Protocol on Fisheries, art. 14 (1)-(2).

¹⁰⁹¹ Protocol on Fisheries, art. 14 (3)-(4).

¹⁰⁹² Protocol on Fisheries, art. 14 (8).

¹⁰⁹³ SADC Treaty, art. 10.

¹⁰⁹⁴ SADC Treaty, art. 10.

¹⁰⁹⁵ SADC Treaty, art. 10.

¹⁰⁹⁶ SADC Treaty, art. 10.

The SADC Organ on Politics, Defense and Security consists of a Chairperson and Deputy Chairperson who are chosen by the Summit. The Chairperson and Deputy Chairperson are chosen from among the members of the Summit.¹⁰⁹⁷ The Chairperson is responsible for consulting with the Troika of the Summit, while the Ministerial Committee of the Organ on Politics, Defense and Security is responsible for foreign affairs, defense, public security, and state security for each Member State.¹⁰⁹⁸

The SADC Council of Ministers (“Council”) is comprised of one Minister from each Member State and is responsible for overseeing the development and implementation of the SADC’s policies and advising the Summit on various policy matters.¹⁰⁹⁹ The Chairperson and Deputy Chairperson of the Council are appointed by the Member States holding the Chairpersonship and Deputy Chairpersonship of SADC.¹¹⁰⁰ The Council reports to the Summit and must meet at least four times a year, and decisions of the Council are taken by consensus.¹¹⁰¹ The Council also considers and recommends to the Summit any application for membership to SADC.¹¹⁰²

The SADC Integrated Committee of Ministers consists of at least two ministers from each Member State and is responsible for “oversee[ing] the activities of the core areas of integration which include: trade, industry, finance and investment; infrastructure and services; food, agriculture and natural resources; and social and human development and special programmes”. It is also responsible for monitoring and controlling the implementation of the Regional Indicative Strategic Development Plan in its area of competence; providing policy guidance to the Secretariat; making decisions on matters pertaining to the directorates; monitoring and evaluating the work of the directorates; and creating subcommittees as needed for issues facing cross-cutting sectors.¹¹⁰³ The Integrated Committee has decision-making powers “to ensure rapid implementation of programmes that would otherwise have to wait for a formal meeting of the Council.”¹¹⁰⁴ The Member States that hold the Chair and Deputy Chair positions of the Council appoint a Chairperson and Deputy Chairperson of the Integrated Committee.¹¹⁰⁵ The Integrated Committee meets at least once a year and reports to the Council.¹¹⁰⁶

¹⁰⁹⁷ SADC Treaty, as amended art. 10A.

¹⁰⁹⁸ SADC Treaty, as amended art. 10A.

¹⁰⁹⁹ SADC Treaty, art. 11.

¹¹⁰⁰ SADC Treaty, art. 11.

¹¹⁰¹ SADC Treaty, art. 11.

¹¹⁰² SADC Treaty, art. 11.

¹¹⁰³ SADC Treaty, art. 12.

¹¹⁰⁴ SADC Treaty, art. 12.

¹¹⁰⁵ SADC Treaty, art. 12.

¹¹⁰⁶ SADC Treaty, art. 12.

The SADC Standing Committee consists of one permanent secretary or official from each Member State and acts as the technical advisory committee for the Council.¹¹⁰⁷ The Member States that hold the Chair and Deputy Chair positions of the Council appoint a Chairperson and Deputy Chairperson of the Standing Committee, both of which report to the Council.¹¹⁰⁸ The Standing Committee is responsible for processing all documentation from the Integrated Committee of Ministers to the Council.¹¹⁰⁹ The Standing Committee is required to meet at least four times a year.¹¹¹⁰

The Secretariat is the principal executive institution of SADC, and is responsible for the planning and management of SADCs' programs and the implementation of decisions of the Summit and Council.¹¹¹¹ The Secretariat is headed by the Executive Secretary and Deputy Executive Secretary, which are both appointed to four-year terms by the Summit.¹¹¹² The Executive Secretary must "liaise closely with other institutions, guide, support and monitor the performance of SADC in the various sectors and ensure conformity and harmony with agreed policies, strategies programmes and projects."¹¹¹³

The Tribunal acts as SADCs' legal body and its main functions are to ensure that the SADC Treaty is interpreted properly and to adjudicate over any disputes that arise under the SADC Treaty.¹¹¹⁴ The Tribunal may also give advisory opinions on any matters referred to it by the Summit or Council.¹¹¹⁵ Members of the Tribunal are appointed for a specified period of time and the composition, powers, functions, procedures and other related matters governing the Tribunal are "prescribed in a Protocol, which...form[s] an integral part of [the SADC] Treaty"¹¹¹⁶

Each Member State must also create a SADC National Committee, each of which is responsible for providing input at the national level to help formulate SADC policies and strategies, and to coordinate the implementation of various SADC programs.¹¹¹⁷ Each National Committee consists of the chairperson of the SADC National Committee and the chairpersons of sub-committees.¹¹¹⁸ Each National Committee

¹¹⁰⁷ SADC Treaty, art. 13.

¹¹⁰⁸ SADC Treaty, art. 13.

¹¹⁰⁹ SADC Treaty, art. 13.

¹¹¹⁰ SADC Treaty, art. 13.

¹¹¹¹ SADC Treaty, art. 14.

¹¹¹² SADC Treaty, art. 15.

¹¹¹³ SADC Treaty, art. 15(2).

¹¹¹⁴ SADC Treaty, art. 16.

¹¹¹⁵ SADC Treaty, art. 16.

¹¹¹⁶ SADC Treaty, art. 16.

¹¹¹⁷ SADC Treaty, as amended, art. 16A.

¹¹¹⁸ SADC Treaty, as amended, art. 16A.

has a national secretariat, which is responsible for producing and submitting reports to the SADC Secretariat. Each National Committee must meet at least four times per year.¹¹¹⁹

Several Troikas act as steering committees for each SADC institution and are responsible for decision-making and policy direction.¹¹²⁰ The Troikas specifically work with the Summit; the Organ; the Council; the Integrated Committee of Ministers; and the Standing Committee of Officials.¹¹²¹ The Troika of each institution is established for one year and can determine its own rules of policy and procedure and has the power to create committees on an *ad hoc* basis.¹¹²²

The Revised Protocol is implemented by the SADC Water Sector Organs and Shared Watercourse Institutions.¹¹²³

i) SADC Water Sector Organs

The Committee of Water Ministers consists of the Permanent Secretaries or officials of equivalent rank responsible for water.¹¹²⁴ The Committee of Water Ministers “oversee[s] and monitor[s] the implementation of the Protocol and assist in resolving potential conflicts on shared watercourses,” “guide[s] and coordinate[s] cooperation and harmonisation of legislation, policies, strategies, programmes and projects,” “advise[s] the Council on policies to be pursued,” “recommend[s] to [the] Council the creation of such other organs as may be necessary for the implementation of [the] Protocol,” and “provide[s] regular updates to the Council on the status of the implementation of [the] Protocol.”¹¹²⁵

The Committee of Water Senior Officials consists of the Permanent Secretaries or officials of equivalent rank responsible for water.¹¹²⁶ The Committee of Water Senior Officials “examines all reports and documents put before them by the Water Resources Technical Committee and the Water Sector Coordinating Unit.” They also advise the Committee of Water Ministers on policies, strategies, programmes and projects to be presented to the Council for approval and recommend to the Committee of Water Ministers the creation of any other organs that may be necessary to better implement the Protocol. Lastly, they provide regular updates to the Ministers on the status of the implementation of the Protocol.”¹¹²⁷

¹¹¹⁹ SADC Treaty, as amended, art. 16A.

¹¹²⁰ SADC Treaty, as amended, art. 9A.

¹¹²¹ SADC Treaty, as amended, art. 9A.

¹¹²² SADC Treaty, as amended, art. 9A.

¹¹²³ Revised Protocol, art. 5.

¹¹²⁴ Revised Protocol, art. 5(1)(c).

¹¹²⁵ Revised Protocol, art. 5 (2)(a).

¹¹²⁶ Revised Protocol, art. 5(1)(d).

¹¹²⁷ Revised Protocol, art. 5 (2)(b).

The Water Sector Co-ordinating Unit is “the executing agency of the Water Sector” and is headed by a Co-ordinator appointed by the Member State responsible for co-ordinating the Water Sector.”¹¹²⁸ The Unit is responsible for “monitor[ing] the implementation of [the] Protocol,” “liais[ing] with other SADC organs and Shared Watercourse Institutions on matters pertaining to the implementation of [the] Protocol,” “provid[ing] guidance on the interpretation of [the] Protocol,” advising Member States “on matters pertaining to [the] Protocol,” “draft[ing] terms of reference for consultancies and manage[ing] the execution of those assignments,” “facilitat[ing] the mobilisation of financial and technical resources for the implementation of [the] Protocol,” and “[submitting] annual[] status report[s] on the implementation of the Protocol to the Council through the Committee of Water Ministers.”¹¹²⁹

The Water Resources Technical Committee “provides technical support and advice to the Committee of Water Senior Officials through the Water Sector Co-ordinating Unit with respect to the implementation of [the] Protocol,” “discuss[es] issues tabled by the Water Sector Co-ordinating Unit and prepare[s] for the Committee of Water Senior Officials,” “consider[s] and approve[s] terms of reference for consultancies, including the appointment of consultants,” “recommends to the Committee of Water Senior Officials any matter of interest to it on which agreement has not been reached,” “appoint[s] working groups for short-term tasks and standing sub-committees for longer term tasks,” and address[es] any other issues that may have implications on the implementation of [the] Protocol.”¹¹³⁰

ii) Shared Watercourse Institutions

The Revised Protocol undertakes to “establish appropriate institutions such as watercourse commissions, water authorities or boards as may be determined.”¹¹³¹ The responsibilities of any such institutions are left to be “determined by the nature of their objectives which must be in conformity with the principles set out in [the] Protocol.”¹¹³² Such institutions are obligated to “provide on a regular basis or as required by the Water Sector Coordinating Unit, all the information necessary to assess progress on the implementation of the provisions of th[e] Protocol, including the development of their respective agreements.”¹¹³³

The Revised Protocol was operationalised through a Regional Strategic Action Plan (“RSAP”) for Integrated Water Resources Management and Development in the SADC Region from 1999 to 2004.¹¹³⁴ The RSAP’s aim is “to promote the adoption of an integrated approach to water resources development

¹¹²⁸ Revised Protocol, art. 5(1)(e).

¹¹²⁹ Revised Protocol art. 5 (2)(c).

¹¹³⁰ Revised Protocol art. 5 (2)(d).

¹¹³¹ Revised Protocol art. 5 (3)(a).

¹¹³² Revised Protocol art. 5 (3)(b).

¹¹³³ Revised Protocol art. 5 (3)(c).

¹¹³⁴ Southern African Development Community: Regional Indicative Strategic Development Plan, *available at* <http://www.sadc.int/index/browse/page/109>.

and management[.]”¹¹³⁵ The RSAP identified seven key priorities to be addressed in order to enhance the region’s ability to move towards a more integrated approach to the management and development of water resources, which include: “improving the legal and regulatory framework; institutional strengthening; sustainable development policies; information acquisition, management and dissemination; awareness building, education and training; public participation; and infrastructure development.”¹¹³⁶ The SADC Member States also established a Committee to oversee the implementation of the Protocol on Fisheries.¹¹³⁷

7. Relationships

The SADC has relationships with several bilateral and multilateral international cooperation partners (“ICPs”). The bilateral ICPs currently include: Denmark, Finland, France, Germany, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States.¹¹³⁸ Several bilateral ICPs have focused on supporting SADCs’ water programs and have implemented programmes that involve a specific water basin. In 2008, Germany established two major projects supporting transboundary water management in the SADC, and the Congo basin specifically. Both projects focus on capacity development and providing institutional support to deal with the issues of transboundary water management and cooperation.¹¹³⁹ The United States, through the U.S. Agency for International Development (“USAID”), entered into a Grant Agreement with SADC “to improve the management of selected shared river basins and protect biodiversity in Southern Africa.” USAID is also supporting the Secretariat through the Southern Africa Global Competitiveness Hub in Gaborone by building the capacity of the SADC Secretariat to facilitate infrastructure support for regional integration.”¹¹⁴⁰ Denmark is currently involved in the SADC water sector and “supports programmes under the Regional Strategic Action Programme (RSAP), water resource management in the Zambezi Basin.”¹¹⁴¹ The Japanese Government pledged to provide funding to support infrastructure development in Africa.¹¹⁴² The Japanese embassy is seeking to collaborate with

¹¹³⁵ Southern African Development Community: Regional Indicative Strategic Development Plan, *available at* <http://www.sadc.int/index/browse/page/109>.

¹¹³⁶ Southern African Development Community: Regional Indicative Strategic Development Plan, *available at* <http://www.sadc.int/index/browse/page/109>.

¹¹³⁷ Protocol of Fisheries, art. 19.

¹¹³⁸ SADC ICP Information, *available at* <http://www.sadc.int/icp>.

¹¹³⁹ Activities of International Cooperating Partners (ICPs) in Transboundary Water Cooperation in the SADC Region, *available at* <http://www.icp-confluence-sadc.org/documents/activities-international-cooperating-partners-icps-transboundary-water-cooperation-sadc-re>

¹¹⁴⁰ Activities of International Cooperating Partners (ICPs) in Transboundary Water Cooperation in the SADC Region, *available at* <http://www.icp-confluence-sadc.org/documents/activities-international-cooperating-partners-icps-transboundary-water-cooperation-sadc-re>

¹¹⁴¹ Activities of International Cooperating Partners (ICPs) in Transboundary Water Cooperation in the SADC Region, *available at* <http://www.icp-confluence-sadc.org/documents/activities-international-cooperating-partners-icps-transboundary-water-cooperation-sadc-re>.

¹¹⁴² SADC website, International Cooperating Partners (ICPs) contribution to SADC, *available at* <http://www.sadc.int/index/browse/page/455>.

SADC on Infrastructure and Services, Water, Energy, Transport and ICT.¹¹⁴³ France is currently providing technical assistance to the SADC Secretariat in the field of water, macro economy and agriculture.¹¹⁴⁴

Multilateral ICPs include the African Development Bank, Alliance of the CGIAR Centres-Regional Plan for Collective Action in Eastern & Southern Africa, European Commission (in Botswana and South Africa), the European Investment Bank, the Food and Agricultural Organisation, the United Nations Development Programme (“UNDP”), the World Bank, and the World Organisation for Animal Health.¹¹⁴⁵ The UNDP currently has a Regional Cooperation Frameworks for Africa and is preparing the signing of a Memorandum of Understanding with SADC.¹¹⁴⁶ The UNDP’s water governance program is also active in all SADC Member States, and focuses on water supply, sanitation, transboundary waters management, and integrated water resources management.¹¹⁴⁷ The World Bank has conducted studies on the SADC’s water strategy and has supported its capacity building.¹¹⁴⁸ Currently, the World Bank’s main project financing area is the Southern Africa Power Pool Development Project.¹¹⁴⁹ The SADC also has a relationship with the Global Environmental Facility (“GEF”), whose main objective is the development of a SADC regional strategic approach to support and enhance the capacity of its Member States in defining drought management policies, specifically in relation to the role, availability, and supply potential of groundwater resources.¹¹⁵⁰

In 2003 a Joint SADC-International Cooperating Partners Task Force (“JTF”) was established with the objective of improving coordination between the ICPs and SADC, in order to contribute to the implementation of SADC’s Regional Indicative Strategic Development Plan. The JTF seeks to foster enhanced dialogue within the framework of SADC-ICP cooperation.¹¹⁵¹ Several thematic groups have

¹¹⁴³ Activities of International Cooperating Partners (ICPs) in Transboundary Water Cooperation in the SADC Region, *available at* <http://www.icp-confluence-sadc.org/documents/activities-international-cooperating-partners-icps-transboundary-water-cooperation-sadc-re>.

¹¹⁴⁴ Activities of International Cooperating Partners (ICPs) in Transboundary Water Cooperation in the SADC Region, *available at* <http://www.icp-confluence-sadc.org/documents/activities-international-cooperating-partners-icps-transboundary-water-cooperation-sadc-re>.

¹¹⁴⁵ SADC ICP Information, *available at* <http://www.sadc.int/icp>.

¹¹⁴⁶ ICP Support to SADC, *available at* <http://www.sadc.int/index/browse/page/455>.

¹¹⁴⁷ United Nations-United Nations Development Program, *available at* <http://www.icp-confluence-sadc.org/node/263>.

¹¹⁴⁸ ICP Support to SADC, *available at* <http://www.sadc.int/index/browse/page/455>.

¹¹⁴⁹ ICP Support to SADC, *available at* <http://www.sadc.int/index/browse/page/455>.

¹¹⁵⁰ Global Environmental Facility, Project Executive Summary, *available at* http://www.gefweb.org/Documents/Work_Programs/wp_Feb04/IW_-_Regional_SADC_-_Executive_Summary.pdf.

¹¹⁵¹ Joint SADC-ICP Task Force *available at* <http://www.sadc.int/icp/index/browse/page/376>. (“The JTF consists of a Wider Group of ICPs and representatives of the SADC Secretariat with the possible participation of the SADC Troika and other SADC bodies and stakeholders such as SADC National Committees...The technical day-to-day

developed out of the JTF, one of which includes the Water Sector Reference Group, which is comprised of the SADC Secretariat's Infrastructure and Services Directorate and any ICPs interested in supporting SADC's programme interventions for the Water Sector coordinated by the UNDP.¹¹⁵²

8. Decision Making

Decisions by SADC Treaty institutions (excluding the Secretariat, Tribunal and, National Committees) are all made by consensus.¹¹⁵³ The decisions of the Summit are binding.¹¹⁵⁴ The quorum for all meetings of the institutions of SADC is two-thirds of all of that particular institution's members.¹¹⁵⁵ The Troikas for SADC institutions make decisions in between meetings of the institutions and determine their own rules of procedure.¹¹⁵⁶ The Tribunal gives advisory opinions on matters referred to it and its decisions are final and binding.¹¹⁵⁷

9. Dispute Resolution

Any disputes regarding the application or interpretation of the SADC Treaty or the interpretation, application, or validity of Protocols or other subsidiary instruments made under the SADC Treaty, that cannot be resolved amicably are referred to the Tribunal.¹¹⁵⁸ Disputes among Member States regarding the implementation, interpretation, or application of the provisions of the Revised Protocol that cannot be settled amicably are also referred to the Tribunal.¹¹⁵⁹ Disputes between the SADC and a Member State are referred by request to the Tribunal for an advisory opinion.¹¹⁶⁰

10. Data Information Sharing, Exchange and Harmonization

work and follow-up on recommendations by the Wider Task Force group is managed by the Core Group composed of ICPs represented in Gaborone (EC, Sweden, France, Germany, UK, UNDP, USAID) and representatives of the SADC Secretariat. The monthly meetings are co-chaired by a representative of the EC-Delegation and the Chief Director of SADC Secretariat.”).

¹¹⁵² Joint SADC-ICP Task Force *available at* <http://www.sadc.int/icp/index/browse/page/376>.

¹¹⁵³ SADC Treaty, as amended, arts. 10-13, 19.

¹¹⁵⁴ SADC Treaty, as amended, art. 10.

¹¹⁵⁵ SADC Treaty, art. 18.

¹¹⁵⁶ SADC Treaty, as amended, art. 9A.

¹¹⁵⁷ SADC Treaty, art. 16.

¹¹⁵⁸ SADC Treaty, as amended, art. 32.

¹¹⁵⁹ Revised Protocol, art. 7; See also SADC Treaty, as amended, art. 16.

¹¹⁶⁰ Revised Protocol, art. 7; See also SADC Treaty, as amended, art. 16.

The SADC Treaty generally provides that the SADC shall “harmonise political and socio-economic policies and plans of Member States” and “promote the coordination and harmonisation of the international relations of Member States.”¹¹⁶¹ The Treaty provides that Member States are required to coordinate and harmonize their overall macro-economic policies and programs through the institutions of the SADC.¹¹⁶² All Member States further agree to cooperate in numerous areas, including with regard to “social welfare, information and culture.”¹¹⁶³

The primary objectives of the Revised Protocol include promoting “the harmonisation and monitoring of legislation and policies for planning, development, conservation, protection of shared watercourses, and allocation of...resources” and “research and technology development, information exchange, capacity building, and the application of appropriate technologies in shared watercourses management.”¹¹⁶⁴ More specifically, the Revised Protocol obligates Member States to “harmonise the water uses in the shared watercourses and to ensure that all necessary interventions are consistent with the sustainable development of all [Member]States and observe the objectives of regional integration and harmonisation of their socio-economic policies and plans.” It also obligates Member States to “exchange available information and data regarding the hydrological, hydro geological, water quality, meteorological and environmental condition of shared watercourses.”¹¹⁶⁵ In connection with planned measures and notifications on planned measures, *infra*, Member States must provide and exchange certain available technical data and information.¹¹⁶⁶ Similarly Member States must promptly supply necessary information to affected Member States in the event of emergencies.¹¹⁶⁷ In connection with the prevention, reduction and control of pollution, Member States undertake to take steps to “harmonise their policies and legislation.”¹¹⁶⁸ Finally, Member States must provide “all the information necessary to assess progress on the implementation of the provisions of th[e] Protocol, including the development of their respective agreements” to the Water Sector Coordinating Unit.¹¹⁶⁹

The Protocol on Fisheries similarly implemented measures requiring Member States to harmonise legislation regarding the management of shared resources.¹¹⁷⁰ Member States agree to make all illegal

¹¹⁶¹ SADC Treaty, art. 5(2).

¹¹⁶² SADC Treaty, as amended, art. 21.

¹¹⁶³ SADC Treaty, as amended, art. 21(3)(g).

¹¹⁶⁴ Revised Protocol art. 2.

¹¹⁶⁵ Revised Protocol, art. 3(1) and (6).

¹¹⁶⁶ Revised Protocol, art. 4(1).

¹¹⁶⁷ Revised Protocol, art. 4(5).

¹¹⁶⁸ Revised Protocol, art. 4(2).

¹¹⁶⁹ Revised Protocol, art. 5(3).

¹¹⁷⁰ Protocol on Fisheries, art. 8.

fishing and related activities by nationals and judicial persons of Member States a national offense of the national laws of the Member State and agree to establish region-wide comparable levels of penalties for illegal fishing by non-SADC flag vessels and SADC flag vessels.¹¹⁷¹

11. Notifications

The Revised Protocol established specific provisions that Member States must follow regarding exchanging information about planned measures involving a shared watercourse.¹¹⁷² Timely notification is required before any Member State can implement a planned measure that will have a significantly adverse effect on other Member States.¹¹⁷³ The notification should include any available technical data and information so notified Member States can better assess the possible effects of the planned measures. Notified Member States are given a reply period of six months to study and evaluate the possible effects of the planned measures, subject to a six month extension at the request of a notified Member State.¹¹⁷⁴

During the reply period, the notifying Member State is required to cooperate with the notified Member States by providing any additional data or information available for an accurate evaluation, and must not implement any planned measures without the consent of the notified Member States.¹¹⁷⁵ The notified Member States shall communicate their findings to the notifying Member State within the time period mentioned above, and if a notified Member State finds that the planned measure would be inconsistent with certain Revised Protocol provisions, it must attach a documented explanation.¹¹⁷⁶ If, during the applicable period, the notifying Member State receives no communication, it may generally proceed with the implementation of the planned measure.¹¹⁷⁷ However, where the notifying Member State receives a communication from a notified Member State regarding the proposed planned measures, those Member States must enter into consultations and, if necessary, negotiations to arrive at an equitable resolution.¹¹⁷⁸ During the course of consultations or negotiations, the notifying Member State must refrain from implementation for a period of six months if requested by the notified Member State.¹¹⁷⁹ The SADC Treaty imposes sanctions on Member States who fail to fulfill the obligations of the SADC Treaty. For certain sanctions, such as when a Member State is in arrears of its payment contributions, notice is

¹¹⁷¹ Protocol on Fisheries, art 8(2) and (4)(b).

¹¹⁷² Revised Protocol, art. 4(1).

¹¹⁷³ Revised Protocol, art. 4 (1)(b).

¹¹⁷⁴ Revised Protocol, art. 4(1)(c).

¹¹⁷⁵ Revised Protocol, art. 4(1)(d).

¹¹⁷⁶ SADC Revised Protocol on Shared Watercourse, art. 4(1)(e).

¹¹⁷⁷ Where a notified State that failed to reply within the applicable period states a claim for compensation, the claim may be offset by the costs incurred by the notifying States for any action taken after the expiration time for a timely reply. Revised Protocol, art. 4(1)(f).

¹¹⁷⁸ Revised Protocol, art. 4 (1)(g).

¹¹⁷⁹ Revised Protocol, art. 4 (1)(g)(iii).

required under Article 33.¹¹⁸⁰ Thus, before imposing any sanctions on the Member State in default, the Secretariat must notify such Member State and the other Member States.¹¹⁸¹

The Protocol of Fisheries also mandates that Member States “agree to exchange complete and detailed information essential for achieving the objective” of the Protocol. Member States are required to “ensure effective communication strategies with stakeholders in order to promote participation management of aquatic resources.”¹¹⁸²

12. Funding and Financing

SADC’s funds consist of contributions of Member States along with income from various other SADC enterprises and regional and non-regional sources.¹¹⁸³ Any resources acquired through loans, grants or gifts are also utilized by SADC to help achieve the objective of the Treaty.¹¹⁸⁴ The SADC Treaty established a Regional Development Fund (“RDF”) consisting of contributions of Member States and other regional and non-regional sources, including the private sector, civil society, non-governmental organizations, and workers’ and employers’ organizations.¹¹⁸⁵ The RDF must account for SADC receipts and expenditures relating to SADC’s development.¹¹⁸⁶ The Council is responsible for the organization and management of the RDF.¹¹⁸⁷ Member States contribute to the SADC budget based on a formula agreed upon by the Summit.¹¹⁸⁸ At the beginning of the financial year, estimates of the yearly revenue and expenses are prepared by the Executive Secretary and submitted to the Council for approval.¹¹⁸⁹ The Council is also responsible for appointing external auditors to review annual statements of account.¹¹⁹⁰

Several ICPs provide a substantial amount of funding to SADC. In 2007, Austria was preparing its “Regional Programme Southern Africa” to benefit SADC, and priorities for the program included governance and infrastructure supported by approximately €8,20 million over the years of 2008 through

¹¹⁸⁰ SADC Treaty, art. 33(4).

¹¹⁸¹ SADC Treaty, art. 33(4).

¹¹⁸² Protocol on Fisheries, art. 18.

¹¹⁸³ SADC Treaty, art. 26.

¹¹⁸⁴ SADC Treaty, art. 25.

¹¹⁸⁵ SADC Treaty, art. 26A.

¹¹⁸⁶ SADC Treaty, as amended, art. 26A.

¹¹⁸⁷ SADC Treaty, as amended, art. 26A.

¹¹⁸⁸ SADC Treaty, as amended, art. 28.

¹¹⁸⁹ SADC Treaty, as amended, art. 28.

¹¹⁹⁰ SADC Treaty, art. 29.

2010.¹¹⁹¹ The United Kingdom similarly launched its Regional Plan for Southern Africa in 2006 and offered approximately €150 million over five years.¹¹⁹² Germany committed from 2008 through 2009 a contribution of €26 million, of which €10 million will be in the form of financial cooperation and €16 million as technical cooperation.¹¹⁹³ In May 2008, the Japanese Government pledged approximately 400 billion Yen to support to infrastructure development in Africa.¹¹⁹⁴ Multilateral ICPs such as the UNDP and GEF also provide substantial funding towards water management. GEF is the principal source of funding for transboundary water management in the SADC region, and the UNDP works in conjunction with GEF by implementing projects funded by GEF.¹¹⁹⁵ Currently, the projects in the region are worth US\$ 50 million, with a further US\$ 30 million worth of projects under development.¹¹⁹⁶

13. Benefit Sharing

The SADC Treaty provides only general language on benefit sharing, stating that the SADC and its Member States shall act in accordance with certain principles, including “equity, balance and mutual benefit.”¹¹⁹⁷

The Revised Protocol’s purpose in establishing a framework for cooperation is the utilization, management, and protection of shared watercourses. Among the general principles of the Revised Protocol is the expectation that:

“[w]atercourse States shall in their respective territories utilise a shared watercourse in an equitable and reasonable manner. In particular, a shared watercourse shall be used and developed by Watercourse States with a view to attain optimal and sustainable utilisation thereof and benefits therefrom, taking into account the interests of the Watercourse States concerned, consistent with adequate protection of the watercourse for the benefit of current and future generations.”¹¹⁹⁸

14. Compliance and Monitoring

¹¹⁹¹ ICP Support to SADC, *available at* <http://www.sadc.int/index/browse/page/455>.

¹¹⁹² ICP Support to SADC, *available at* <http://www.sadc.int/index/browse/page/455>.

¹¹⁹³ ICP Support to SADC, *available at* <http://www.sadc.int/index/browse/page/455>.

¹¹⁹⁴ ICP Support to SADC, *available at* <http://www.sadc.int/index/browse/page/455>.

¹¹⁹⁵ United Nations Development Programme, *available at* <http://www.icp-confluence-sadc.org/node/263>.

¹¹⁹⁶ United Nations Development Programme, *available at* <http://www.icp-confluence-sadc.org/node/263>.

¹¹⁹⁷ SADC Treaty, art. 4(d); *see also* SADC Treaty, art. 21(1) (“Member States shall cooperate in all areas necessary to foster regional development and integration on the basis of balance, equity and mutual benefit”).

¹¹⁹⁸ Revised Protocol, art. 3(7)(a).

The SADC Treaty provides that the Executive Secretary “shall liaise closely with other institutions, [to] guide, support and monitor the performance of SADC in the various sectors to ensure conformity and harmony with agreed policies, strategies, programmes and projects.”¹¹⁹⁹ The SADC Treaty provides for sanctions against Member States that (i) fail, “without good reason, to fulfill obligations assumed” under the Treaty; (ii) implement “policies which undermine the principles and objectives of SADC” or (iii) are in arrears in contributions in the absence of certain exceptional circumstances.¹²⁰⁰ Sanctions for failure to fulfill obligations or for implementing policies inconsistent with SADC objectives are determined by the Summit on a case-by-case basis, whereas sanctions in the case of arrears are applied by the Secretariat without reference to the Summit or Council according to the specific provisions of the Treaty.¹²⁰¹ Another Revised Protocol objective is to “promote the harmonisation and monitoring of legislation and policies for planning, development, conservation, protection of shared watercourses, and allocation of the resources thereof.”¹²⁰² The Revised Protocol specifically provides for the Committee of Water Ministers to “[o]versee and monitor the implementation of the Protocol and assist in resolving potential conflicts on shared watercourses.”¹²⁰³ Similarly, the Water Sector Coordinating Unit functions to monitor the implementation of the Revised Protocol.¹²⁰⁴

15. Participation and the Role of Multiple Stakeholders

The SADC Treaty encourages outside involvement in helping the Member States achieve the objectives outlined in the SADC Treaty. The SADC Treaty specifically states that SADC shall “encourage the people of the Region and their institutions to take initiatives to develop economic, social and cultural ties across the Region, and participate fully in the implementation of the program[s] and projects of SADC.”¹²⁰⁵ As discussed, the SADC Treaty requires Member States to establish National Committees, which consist of “key stakeholders.”¹²⁰⁶ Moreover, National Committees must establish sub-committees or technical committees that in turn “shall involve key stakeholders in their operations.”¹²⁰⁷ Additionally, Article 23 of the amended SADC Treaty (“Stakeholders”) provides:

¹¹⁹⁹ SADC Treaty, as amended, art. 15(2).

¹²⁰⁰ SADC Treaty, as amended, art. 33(1).

¹²⁰¹ SADC Treaty, as amended, art. 33(2)-(4).

¹²⁰² Revised Protocol, art. 2(d).

¹²⁰³ Revised Protocol, art. 5 (2)(a).

¹²⁰⁴ Revised Protocol, art. 5 (2)(b).

¹²⁰⁵ SADC Treaty, art. 5 (2)(b).

¹²⁰⁶ SADC Treaty, as amended, art. 16(A).

¹²⁰⁷ SADC Treaty, as amended, art. 16(A).

1. In pursuance of the objectives of this Treaty, SADC shall seek to involve fully, the people of the Region and key stakeholders in the process of regional integration.
2. SADC shall co-operate with, and support the initiatives of the peoples of the Region and key stakeholders, contributing to the objectives of this Treaty in the areas of co-operation in order to foster closer relations among the communities, associations and people of the Region.

“Key stakeholders” in the above context includes government, the private sector, civil society, non-governmental organizations, and workers’ and employers’ organizations.¹²⁰⁸

16. Dissolution and Termination

The SADC Treaty has no provision on termination. Individual Member States wishing to withdraw must serve notice to the SADC Chairperson in writing a year in advance of withdrawal.¹²⁰⁹ Upon expiration of the notice period, the Member State shall cease to be a member, however, in the interim, that Member State must comply with the provisions of the SADC Treaty.¹²¹⁰ The Summit may decide to dissolve the SADC or any of its Institutions by a resolution supported by three-quarters of all Member States.¹²¹¹ A proposal for SADC dissolution may be made to the Council by any Member State for preliminary consideration.¹²¹² The Summit may decide on the proposal only after all Member States are notified of the proposal and one year has elapsed since the submission of the proposal to the Council.¹²¹³

Member States to the Revised Protocol may withdraw from it on the expiration of twelve months following written notice to the Executive Secretary and must comply with its Revised Protocol obligations until withdrawal becomes effective.¹²¹⁴ The Revised Protocol “may be terminated by a decision of three-quarters of Members of the [SADC] Summit.”¹²¹⁵

17. Additional Remarks

N/A.

¹²⁰⁸ SADC Treaty, as amended, art. 16(A) and art. 23.

¹²⁰⁹ SADC Treaty, as amended, art. 34(1).

¹²¹⁰ SADC Treaty, as amended, art. 34(1)-(3).

¹²¹¹ SADC Treaty, art. 35.

¹²¹² SADC Treaty, art. 35.

¹²¹³ SADC Treaty, art. 35.

¹²¹⁴ Revised Protocol, art. 13.

¹²¹⁵ Revised Protocol, art. 14.

18. Website and References

- SADC Treaty, *available at* <http://www.sadc.int/index/browse/page/120>.
- SADC Revised Protocol on Shared Watercourses, *available at* <http://knowledge.uneca.org/member-states/observatory-on-regional-integration/regional-economic-commissions-in-africa/sadc-southern-africa-development-community/sadc-treaty-and-protocols/sadc-protocol-on-shared-watercourse-systems/SADC%20Revised%20Protocol%20on%20Shared%20Watercourses.pdf>.
- SADC website, Joint SADC-ICP Task Force *available at* <http://www.sadc.int/icp/index/browse/page/376>.
- SADC Protocol on Fisheries, *available at* <http://www.ecolex.org/server2.php/libcat/docs/multilateral/en/TRE001362.txt>.
- Southern African Development Community: Regional Indicative Strategic Development Plan, *available at* <http://www.sadc.int/index/browse/page/109>.
- Agreement Amending the Treaty of the Southern African Development Community, done at Blantyre, 14 Aug. 2001, *available at* <http://www.ecolex.org/server2.php/libcat/docs/multilateral/en/TRE001366.txt>.
- Ministry of Foreign Affairs, Danida Regional Programme Support: Environmental Assistance to the Southern Africa Region on Integrated Water Resource Management Programme Document, *available at* http://www.sadcwater.com/admin/user_files/ProgrammeDocument-Final.pdf.
- ICP Support to SADC, *available at* <http://www.sadc.int/index/browse/page/455>.
- United Nations Development Programme, *available at* <http://www.icp-confluence-sadc.org/node/263>.
- Global Environmental Facility, Project Executive Summary, *available at* http://www.gefweb.org/Documents/Work_Programs/wp_Feb04/IW_-_Regional_SADC_-_Executive_Summary.pdf.
- Transboundary Waters, Africa's Shared Water Bodies Treaties, *available at* http://www.transboundarywaters.orst.edu/publications/atlas/atlas_pdf/4_Treaties_africa.pdf.

D. Asia

Bay of Bengal

1. Legal Basis

Currently, there are no Bay of Bengal-related international agreements or frameworks in force amongst the countries bordering the Bay.¹²¹⁶ However, the Bay of Bengal Large Marine Ecosystem (“BOBLME”) program currently seeks to integrate and coordinate management of the Bay amongst its bordering states. The BOBLME program, which is executed by the Food and Agriculture Organization (“FAO”), was developed from the FAO’s previous Bay of Bengal Programme, which sought to address common socio-economic problems relating to the Bay.¹²¹⁷ In 1998, the Global Environment Facility (“GEF”) approved funding for the BOBLME program - with the FAO as executing agency, the World Bank as the implementing agency, and the GEF, the Swedish International Development Agency (“SIDA”), and the US National Oceanic and Atmospheric Administration (“NOAA”) as development partners.¹²¹⁸

2. Member States

The Member States participating in the BOBLME program are: Bangladesh, India, Indonesia, Malaysia, the Maldives, Myanmar, Sri Lanka, and Thailand.

3. Geographical Scope

For purposes of the BOBLME program, the Bay of Bengal comprises the coastal watersheds, islands, reefs, continental shelves and coastal and marine waters of the Maldives, Sri Lanka, the east coast of India, Bangladesh, Myanmar, the west coast of Thailand, the west coast of Peninsular Malaysia, and the Indonesian provinces of Aceh, Riau, and North and West Sumatra.¹²¹⁹

4. Legal Personality

The BOBLME program has no legal personality. Rather, it is an international program.

5. Functions

¹²¹⁶ William Edeson, Review of Legal and Enforcement Mechanisms in the BOBLME Region, at 6, *available at*: <http://www.apfic.org/modules/xfsection/article.php?articleid=52>

¹²¹⁷ Asia-Pacific Fishery Commission, Work Programme-Bay of Bengal Large Marine Ecosystem, *available at*: <http://www.apfic.org/modules/xfsection/article.php?articleid=52>

¹²¹⁸ NOAA Technical Memorandum NMFS-NE-208, Global Applications of the Large Marine Ecosystem Concept, 2007-2010, at 64 (U.S. Dept. of Commerce, National Marine Fisheries Service, June 2007), *available at*: <http://www.lme.noaa.gov/LMEWeb/Publications/tm208.pdf>

¹²¹⁹ FAO/Global Environment Facility Project Document: BOBLME, at 9, *available at*: <http://www.apfic.org/modules/xfsection/article.php?articleid=52>

The BOBLME program seeks to provide Member States with a comprehensive framework to identify:

- Specific actions required to address priority transboundary problems in the Bay of Bengal;
- Potential national and inter-country investments; and
- Technical and capacity-building interventions aimed at improving the management of the living marine resources and the health of the BOBLME.¹²²⁰

Transboundary problems identified as priorities include: the unsustainable harvesting of marine species; the degradation of coastal marine habitats, including coral reefs and mangroves; land-based pollution of the Bay of Bengal; developing a means of understanding and addressing natural disasters (such as the tsunami that struck the region in 2004); and the lack of regional institutional arrangements to facilitate and enforce coordinated approaches amongst BOBLME countries on these issues.¹²²¹

The long-term desired outcomes of the program include:

- an environmentally healthy BOBLME;
- a BOBLME Regional Convention;
- the improved well-being of rural fishing communities;
- the sustainable management of regional fish stocks; and
- a regional network of institutions that will work collaboratively to address issues related to these goals.¹²²²

6. Organizational Structure

The FAO Fisheries Department, through the Regional Office for Asia and the Pacific (“RAP”), coordinates the implementation of the project. The Regional Operations Branch in RAP is the Budget Holder (“BH”). The FAO is accountable for the timeliness and quality of technical services rendered for project execution, while the BH is responsible for administrative functions, including the disbursement of funds. Additionally, the World Bank offers policy support, technical advice, and aid in developing investment opportunities for Member States.

The FAO, together with BOBLME Member States, designates a Project Steering Committee (“PSC”), which sets annual policies for the program. Each Member State nominates two members of the PSC, and

¹²²⁰ Asia-Pacific Fishery Commission, Work Programme-Bay of Bengal Large Marine Ecosystem, *available at*: <http://www.apfic.org/modules/xfsection/article.php?articleid=52>

¹²²¹ FAO/Global Environment Facility Project Document: BOBLME, at 14, *available at*: <http://www.apfic.org/modules/xfsection/article.php?articleid=52>

¹²²² FAO/Global Environment Facility Project Document: BOBLME, at 27-28, *available at*: <http://www.apfic.org/modules/xfsection/article.php?articleid=52>

representatives of the FAO, the World Bank, and co-financing agencies are *ex officio* members. The chair of the PSC rotates annually.

A Regional Coordination Unit (“RCU”) acts as secretariat to the PSC, and coordinates work at the regional level. The RCU is tasked with developing and implementing a monitoring program.

A National Task Force (“NTF”) operates analogously to the RCU by guiding the implementation of projects at the national level. NTF members are nominated by Member States, and also include representatives from non-governmental organizations (“NGOs”), civil society, and private sector organizations.¹²²³

7. Relationships

The BOBLME program is supported by multiple donors, including the GEF, FAO, SIDA and the NOAA. In addition, the program is planning several partnerships with some of the NGOs and international and regional institutions in the Bay. Potential partners include: the Southeast Asian Fishery Development Centre (“SEAFDEC”), which has fishery assessment capabilities and capacity building and training resources; the Bay of Bengal Programme Inter-Governmental Organization (“BOBP-IGO”), which can facilitate regional meetings; the Network of Aquaculture Centers for Asia-Pacific (“NACA”), which has experience dealing with coastal-land interaction and managing coastal aquaculture; and the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (“BIMSTEC”), which has a working committee on fisheries.¹²²⁴

8. Decision Making

The central mechanisms guiding the work of the BOBLME project are the Annual Regional Work Plans (“ARWPs”). Every year, the RCU prepares and delivers an ARWP to the Project Steering Committee. These ARWPs are derived from national work plans proposed by the National Task Force, as well as projected regional activities. The PSC has 45 days to endorse, amend, or reject the ARWP.¹²²⁵

9. Dispute Resolution

No specific provision. However the BOBLME program seeks to establish a Strategic Action Plan with Member States that will include joint planning and dispute settlement mechanisms.¹²²⁶

¹²²³ FAO/Global Environment Facility Project Document: BOBLME, at 39-42, available at: <http://www.apfic.org/modules/xfsection/article.php?articleid=52>

¹²²⁴ FAO/Global Environment Facility Project Document: BOBLME, at 33, available at: <http://www.apfic.org/modules/xfsection/article.php?articleid=52>

¹²²⁵ FAO/Global Environment Facility Project Document: BOBLME, at 51, available at: <http://www.apfic.org/modules/xfsection/article.php?articleid=52>

¹²²⁶ FAO/Global Environment Facility Project Document: BOBLME, at 102, available at: <http://www.apfic.org/modules/xfsection/article.php?articleid=52>

10. Data Information Sharing, Exchange, and Harmonization

The BOBLME program calls for national data sharing with respect to environmental health indicators in the Bay of Bengal, but does not specify a particular mechanism.¹²²⁷

11. Notifications

There is no formal notification process for communicating changes in the BOBLME program. However, the ARWPs do provide for reviews of the previous year's activities and proposed plans for the coming year.

12. Funding and Financing

The BOBLME program is funded principally by a US \$12 million grant from the GEF. Co-financing is provided by the Government of Norway, SIDA, the NOAA, the FAO, and by contributions from the eight Member States. Total project funding is nearly US \$31 million.¹²²⁸

13. Benefit Sharing

No specific provision.

14. Compliance and Monitoring

The PSC is responsible for providing general oversight of the BOBLME project. The PSC provides guidance to the RCU regarding the project's execution, reviews project outputs for conformity with the guiding documents, and amends and approves ARWPs.

The RCU monitors the project's outcomes and progress using the adopted results framework. Specific monitoring tasks are also defined in ARWPs, which may assign these tasks to RCU staff, National Coordinators, or outside consultants.

The FAO monitors financial inputs and disbursements, comparing financial disbursements to technical activities planned in ARWPs.¹²²⁹

15. Participation and the Role of Multiple Stakeholders

The BOBLME program has identified three groups of stakeholders: (a) regional stakeholders, such as regional development banks and agencies and international NGOs; (b) national stakeholders, such as

¹²²⁷ FAO/Global Environment Facility Project Document: BOBLME, at 106, *available at*: <http://www.apfic.org/modules/xfsection/article.php?articleid=52>

¹²²⁸ FAO/Global Environment Facility Project Document: BOBLME, at 1, 48-49, *available at*: <http://www.apfic.org/modules/xfsection/article.php?articleid=52>

¹²²⁹ FAO/Global Environment Facility Project Document: BOBLME, at 50-52, *available at*: <http://www.apfic.org/modules/xfsection/article.php?articleid=52>

national and state government agencies and academic institutions; and (c) local stakeholders, such as local government agencies, fishermen, rural youth, local environmental NGOs, and other local citizens.

The BOBLME program has involved all three groups in project development, including through participation in consultations and workshops, meetings of national task forces, and the development of national reports. The program also encourages ongoing dialogue and relationships with stakeholders, including information exchange in both directions (i.e., both from the program to stakeholders regarding new programs or new legislation, and from stakeholders to the program regarding local effectiveness and policy preferences.)¹²³⁰

16. Dissolution and Termination

No specific provision. At present, the BOBLME is viewed as a long-term program with specific goals and outcomes, and has no precise end date.

17. Additional Remarks

One of the desired long-term outcomes of the BOBLME program is for the conclusion of a BOBLME Regional Convention, which would create a legal framework for regional management of the Bay of Bengal and a self-sustaining body to oversee and enforce that framework.

18. Websites and References

- Asia-Pacific Fishery Commission, Work Programme- Bay of Bengal Large Marine Ecosystem, available at <http://www.apfic.org/modules/xfsection/article.php?articleid=52>
- FAO/Global Environment Facility Project Document: BOBLME, 29 August 2008, available at <http://www.apfic.org/modules/xfsection/article.php?articleid=52>.
- NOAA Technical Memorandum NMFS-NE-208, Global Applications of the Large Marine Ecosystem Concept, 2007-2010. (U.S. Dept. of Commerce, National Marine Fisheries Service, Woods Hole, MA. June 2007), available at <http://www.lme.noaa.gov/LMEWeb/Publications/tm208.pdf>.
- William Edeson, Review of Legal and Enforcement Mechanisms in the BOBLME Region, 28 August 2008, available at <http://www.apfic.org/modules/xfsection/article.php?articleid=52>.

¹²³⁰ FAO/Global Environment Facility Project Document: BOBLME, at 55-56, available at: <http://www.apfic.org/modules/xfsection/article.php?articleid=52>

Mekong

1. Legal Basis

The Mekong River Commission (“MRC”) governs the allocation and utilization of the Mekong River waters by four countries—Thailand, Cambodia, Vietnam, and Laos. The MRC was founded in 1995 pursuant to the Agreement on the Cooperation for Sustainable Development of the Mekong River Basin (the “1995 Agreement”), which was signed and entered into force at Chiang Rai, Thailand on 5 April 1995.¹²³¹

The 1995 Agreement was the result of more than 40 years of regional and supra-regional efforts to manage the resources of the Mekong River Delta. In the mid-1950s, the United Nations Economic Commission for Asia and the Far East (“ECAFE”) and the U.S. Bureau of Reclamation sent teams to the Mekong to examine water management issues. According to one expert, Western governments “hoped that a far-reaching regional development program in the Mekong Basin would help cement together South Vietnam, Cambodia, Thailand, and Laos, and impede communist encroachment into Southeast Asia.”¹²³² Both ECAFE and the U.S. Government published detailed reports of their findings.

The ECAFE report “provided for a conceptual framework to develop the Mekong River Basin as an integrated system through close collaboration of the riparian countries” and called for a permanent apparatus to oversee the development of the Mekong Basin.¹²³³ Representatives of the lower Mekong states—Thailand, Cambodia, Vietnam, and Laos—met in Bangkok in May 1957 to discuss the ECAFE report. On 17 September 1957, the parties adopted the Statute of the Committee for the Coordination of Investigations of the Lower Mekong Basin (the “1957 Statute”). The 1957 Statute “represents the first constitutional document for the Mekong Regime,”¹²³⁴ and “the first attempt of the United Nations to be directly involved in continuing support for the planning and development of an international river basin.”¹²³⁵ Article 4 of the 1957 Statute provided the new Mekong Committee with powers to coordinate the development of the Mekong River Basin.

¹²³¹ Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin (“1995 Agreement”), 5 Apr. 1995, 34 I.L.M. 864.

¹²³² Greg Browder and Leonard Ortolano, *The Evolution of an International Water Resources Management Regime in the Mekong River Basin*, 40 NAT. RESOURCES J. 499, 505 (2000).

¹²³³ Mikiyasu Nakayama, *Aspects Behind Differences in Two Agreements Adopted by Riparian Countries of the Lower Mekong River Basin*, 1 J. COMP. POL’Y ANALYSIS 1 293, 294 (Dec. 1999).

¹²³⁴ Browder and Ortolano, *The Evolution of an International Water Resources Management Regime*, at 505. Statute for the Committee for Co-ordination of Investigations of the Lower Mekong Basin (“1957 Statute”), 17 Sep. 1957, amended 31 Oct. 1957, 2 Aug. 1962, Mar. 1972, *reprinted in* LEGISLATIVE TEXTS AND TREATY PROVISIONS CONCERNING THE UTILIZATION OF INTERNATIONAL RIVERS FOR OTHER PURPOSES THAN NAVIGATION 267.

¹²³⁵ Nakayama, *Aspects Behind Differences in Two Agreements*, at 295.

The 1957 Statute was followed by the Joint Declaration of Principles for Utilization of the Waters of the Lower Mekong Basin (the “Joint Declaration”), signed at Vientiane, Laos on 31 January 1975. The Joint Declaration was noteworthy because it described the Mekong “as a resource of common interest” and granted each party effective veto power over the prospective use of the waters by another party.¹²³⁶

The rise to power of the Khmer Rouge in Cambodia in the mid-1970s unsettled the Mekong Committee. On 5 January 1978, Thailand, Laos, and Vietnam signed the Declaration Concerning the Interim Committee for Coordination of Investigations of the Lower Mekong Basin (the “Interim Mekong Committee Declaration”) in Vientiane, Laos. Cambodia did not participate. In part because of Cambodia’s absence, the new Interim Committee’s functions were reduced by the Member States. The Interim Committee’s “main role was to obtain assistance from donor countries.”¹²³⁷

In 1991, the Khmer Rouge was defeated and the new regime in Cambodia requested readmission into the consortium and the reactivation of the former Mekong Committee.¹²³⁸ The 1995 Agreement allowed for Cambodia’s readmission and created a new body in place of the former Mekong Committee and the Interim Mekong Committee—the Mekong River Commission, or MRC.

The 1995 Agreement superseded all three prior agreements and all rules of procedure adopted under past agreements.¹²³⁹ The 1995 Agreement is a treaty. According to the senior legal advisor to the drafters, during the negotiations,

[a]ll four countries . . . stated that a legal agreement with the status of a treaty should be entered into by the parties. Some concern was expressed about the difference between a ‘Treaty’ or just an agreement, particularly concerning the need for ratification by the parliaments or national assemblies of the member states and the time that might take. However, none of the parties wanted to leave in question the legal status of the agreement. An unambiguous legal commitment would also reassure the donor community of the dependability of the parties to implement the terms of the agreement.¹²⁴⁰

Because the 1995 Agreement is a treaty, “the signatories are obligated to follow the international law principle of *pacta sunt servanda*, meaning that treaties are binding upon the parties to it, the terms must

¹²³⁶ Joint Declaration for Principles for Utilization of the Waters of the Lower Mekong Basin (“Joint Declaration”), 31 Jan. 1975, art. 10.

¹²³⁷ Browder and Ortolano, *The Evolution of an International Water Resources Management Regime*, at 510.

¹²³⁸ Browder and Ortolano, *The Evolution of an International Water Resources Management Regime*, at 515.

¹²³⁹ 1995 Agreement, art. 36.

¹²⁴⁰ George E. Radosevich, Draft Commentary and History of the Making of the Mekong Agreement (“Radosevich Commentary”), 22 Oct. 1993, at 11. [Unpublished manuscript].

be performed by them in good faith, and they are required to abstain from acts calculated to frustrate the objective and purpose of the treaty.”¹²⁴¹

2. Member States

The Member States are Thailand, Laos, Cambodia, and Vietnam.

All four countries in the Lower Mekong Basin, listed above, are Member States to the 1995 Agreement. However, China and Myanmar, whose territories comprise the Upper Mekong Basin, have not signed the 1995 Agreement. In 1996 China and Myanmar became official “dialogue partners.” As such, they may dispatch representatives to Joint Committee and Council meetings where they may participate in discussions.¹²⁴² Should China and Myanmar wish to become party to the 1995 Agreement—which many critics believe is essential if the 1995 Agreement is to realize its goals¹²⁴³—they potentially may do so. The 1995 Agreement “gives recognition that there are six riparian countries in the Mekong River Basin, and that the current parties wish to explicitly provide an appropriate means for adding new parties under the 1995 Agreement.”¹²⁴⁴ The 1995 Agreement provides for the addition of new parties as such: “[a]ny other riparian State, accepting the rights and obligations under this Agreement, may become a party with the consent of the parties.”¹²⁴⁵

In addition to the member states and dialogue partners, certain international organizations have rights to attend and participate in Joint Committee and Council meetings. The Asian Development Bank, the Association of Southeast Asian Nations (“ASEAN”), the International Union for Conservation of Nature, the United Nations Development Programme, the United Nations Economic and Social Commission for Asia and the Pacific, the World Bank, and the World Wildlife Fund all have observer status.¹²⁴⁶

3. Geographical Scope

The Mekong River Basin is the land area surrounding all of the streams and rivers that flow into the Mekong River (which is one of the longest rivers in the world). The MRC governs the Lower Mekong

¹²⁴¹ Greg Browder, *An Analysis of the Negotiations for the 1995 Agreement*, 5 INT’L NEGOTIATION 237, 256 (2000).

¹²⁴² Browder and Ortolano, *The Evolution of an International Water Resources Management Regime*, at 526.

¹²⁴³ See, e.g., Aaron T. Wolf and Joshua T. Newton, Case Study Transboundary Dispute Resolution: the Mekong Committee, 2007, at 7, available at www.transboundarywaters.orst.edu/research/case_studies/Documents/mekong.pdf; Ellen Bruzelius Backer, *The Mekong River Commission: Does It Work, and How Does The Mekong Basin’s Geography Influence Its Effectiveness?*, 4 SÜDOSTASIEN AKTUELL 31, 46 (2007).

¹²⁴⁴ Radosevich Commentary, at 29.

¹²⁴⁵ 1995 Agreement, art. 39.

¹²⁴⁶ Ellen Bruzelius Backer, *Paper Tiger Meets White Elephant?: An Analysis of the Effectiveness of the Mekong River Regime*, (“Backer, *Paper Tiger Paper*”) Aug. 2006, at 37, available at <http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ots591=0C54E3B3-1E9C-BE1E-2C24-A6A8C7060233&lng=en&id=47649>.

River Basin—which includes parts of Vietnam, nearly one-third of Thailand, and most of Laos and Cambodia.¹²⁴⁷

4. Legal Personality

In contrast to the Mekong Committee which functioned under the auspices of the United Nations,¹²⁴⁸ the MRC is an independent international body. The 1995 Agreement provides:

The institutional framework for cooperation in the Mekong River Basin under this Agreement shall be called the Mekong River Commission and shall, for the purpose of the exercise of its functions, enjoy the status of an international body, including entering into agreements and obligations with the donor or international community.¹²⁴⁹

According to the senior legal advisor to the drafters:

The identity of this new organizational framework as an international body does not create a “super-national” organization with powers above the Sovereign interests of the member nations. It follows the precedence and pattern of the majority of international water organizations created under similar treaties or agreements, i.e. Indus Basin Commission, Rhine Commission, International Joint Commission, International Boundary and Water Commission, etc.¹²⁵⁰

In addition, the MRC assumes all rights and obligations of the prior “Mekong Committee.” The 1995 Agreement states:

The Mekong River Commission shall assume all the assets, rights and obligations of the Committee for Coordination of Investigations of the Lower Mekong Basin (Mekong Committee/Interim Mekong Committee) and Mekong Secretariat.¹²⁵¹

5. Functions

¹²⁴⁷ Mekong River Commission—About the Mekong, *available at* http://www.mrcmekong.org/about_mekong/about_mekong.htm.

¹²⁴⁸ George E. Radosovich and Douglas C. Olson, Existing and Emerging Basin Arrangements in Asia: Mekong River Commission Case Study, 1999, at 17, *available at* <http://siteresources.worldbank.org/INTWRD/918599-1112615943168/20431963/MekongRiverComCaseStudy.pdf>.

¹²⁴⁹ 1995 Agreement, art. 11.

¹²⁵⁰ Radosovich Commentary, at 21.

¹²⁵¹ 1995 Agreement, art. 13.

Each of the three bodies that comprises the MRC—the Council, the Joint Committee, and the Secretariat—has “separate and distinct functions to perform in the implementation of this Agreement.”¹²⁵²

The Council makes policy decisions “on behalf of member governments”¹²⁵³ necessary to the successful implementation of the Agreement. Accordingly, the Council approves the Joint Committee’s Rules of Procedure, rules of water utilization and inter-basin diversions to be proposed by the Joint Committee, the basin development plan, and major component projects and programs. The Council also settles disputes referred to it by any Council member, the Joint Committee, or the any Member State on matters arising under the 1995 Agreement.¹²⁵⁴

The Joint Committee is “considered the main operational body of the MRC.”¹²⁵⁵ The Joint Committee implements the policies and decisions of the Council and performs other tasks as may be assigned by the Council. In particular, the Joint Committee formulates a basin development plan and joint development projects and programs; updates and exchanges information and data necessary to implement the Agreement; conducts environmental studies and assessments to maintain the ecological balance of the Mekong River Basin; supervises the Secretariat; and seeks to resolve disputes that may arise between regular sessions of the Council, referred to it by any Joint Committee member or Member State on matters arising under the Agreement, and when necessary refers matters to the Council.¹²⁵⁶

The Secretariat is the “central coordinating and logistical body to the [MRC] under the direct supervision of the [Joint] Committee.”¹²⁵⁷ The Secretariat renders technical and administrative support to the Council and the Joint Committee.¹²⁵⁸

6. Organizational Structure

As discussed above, the MRC consists of three permanent bodies: the Council, the Joint Committee, and the Secretariat.¹²⁵⁹

¹²⁵² Radosevich Commentary, at 21.

¹²⁵³ Browder and Ortolano, *The Evolution of an International Water Resources Management Regime*, at 524.

¹²⁵⁴ 1995 Agreement, art. 18.

¹²⁵⁵ Radosevich Commentary, at 25.

¹²⁵⁶ 1995 Agreement, art. 24.

¹²⁵⁷ Radosevich Commentary, at 26.

¹²⁵⁸ 1995 Agreement, arts. 28, 30.

¹²⁵⁹ 1995 Agreement, art. 12. The naming of the three bodies “Council,” “Joint Committee,” and “Secretariat” was based on the practice of three contemporaneous water-body agreements—governing the Murray-Darling Basin, Senegal River, and Niger River, respectively—because each of those water agreements, like the 1995 Mekong Agreement, concerned at least four riparian states cooperating on the multi-purpose allocation of water resources. *See* Radosevich Commentary, at 21.

[DRAFT]

The Council is composed of one member from each Member State at the ministerial or cabinet level.¹²⁶⁰ It shall convene at least one regular session a year and may convene special sessions whenever the Council considers it necessary or at the request of a Member State.¹²⁶¹ The Council may invite observers to its meetings.¹²⁶² The chairmanship of the Council is for a one-year term and rotates alphabetically amongst the Member States.¹²⁶³ The Council adopts its own Rules of Procedure.¹²⁶⁴

The Joint Committee is composed of one member from each Member State at no less than the department-head level.¹²⁶⁵ It shall convene at least two regular sessions a year and may convene special sessions whenever the Joint Committee considers it necessary or at the request of a Member State.¹²⁶⁶ The Joint Committee may invite observers to its meetings.¹²⁶⁷ The chairmanship of the Joint Committee is for a one-year term and rotates reverse-alphabetically amongst the Member States.¹²⁶⁸ The Joint Committee adopts its own Rules of Procedure, subject to Council approval.¹²⁶⁹

The Secretariat is led by a Chief Executive Officer (“CEO”) who is appointed by the Council from a short-list of “qualified candidates” chosen by the Joint Committee.¹²⁷⁰ The deputy to the CEO, the Assistant Chief Executive Officer, is nominated by the CEO and approved by the Chairman of the Joint Committee.¹²⁷¹ The CEO is also assisted by a riparian technical staff. The number of riparian staff posts is assigned on an equal basis among the Member States.¹²⁷²

¹²⁶⁰ 1995 Agreement, art. 15.

¹²⁶¹ 1995 Agreement, art. 17.

¹²⁶² 1995 Agreement, art. 17.

¹²⁶³ 1995 Agreement, art. 16.

¹²⁶⁴ 1995 Agreement, art. 20.

¹²⁶⁵ 1995 Agreement, art. 21.

¹²⁶⁶ 1995 Agreement, art. 23.

¹²⁶⁷ 1995 Agreement, art. 23.

¹²⁶⁸ 1995 Agreement, art. 22.

¹²⁶⁹ 1995 Agreement, art. 25.

¹²⁷⁰ 1995 Agreement, art. 31.

¹²⁷¹ 1995 Agreement, art. 32.

¹²⁷² 1995 Agreement, art. 33.

In addition, each Member State has established a National Mekong Committee (“NMC”) to coordinate MRC programs at the national level. The organizational structure of NMCs varies across Member States.¹²⁷³

7. Relationships

The MRC has relationships with several international organizations that have rights to attend and participate in Joint Committee and Council meetings. *See* **Member States**.

8. Decision Making

The Council and the Joint Committee must reach a unanimous result in order to implement a decision.

9. Dispute Resolution

The MRC must make the first effort to resolve disputes between two or more Member States regarding matters covered by the 1995 Agreement.¹²⁷⁴ As discussed in Section 5, **Functions**, above, both the Council and the Joint Committee are empowered to address and to resolve disputes.¹²⁷⁵ According to one expert, the MRC is “in a position to provide the best technical experts who have the best insights into Mekong problems and the nature of cooperation necessary to help resolve the dispute.”¹²⁷⁶

The MRC can only put an end to the dispute if “the concerned parties are satisfied.”¹²⁷⁷ If the MRC is unable to resolve a dispute in a timely manner, the dispute shall be referred to the Member States’ governments to resolve through diplomatic channels.¹²⁷⁸ By mutual agreement, the Member State governments may resort to a “third step”—third-party mediation.¹²⁷⁹

10. Data Information Sharing, Exchange, and Harmonization

Both the Joint Committee and the Secretariat have responsibilities related to data information sharing, exchange, and harmonization. The Joint Committee is directed to “regularly obtain, update and exchange information and data necessary to implement this Agreement” and to “conduct appropriate studies and

¹²⁷³ Backer Paper Tiger Paper, at 37. But while the structures of the NMCS are not uniform, they generally have common features, including an inter-ministerial policy-making body, a management group consisting of key government departments, and a secretariat to support the NMC. *See* RADOSEVICH AND OLSON, at 18.

¹²⁷⁴ 1995 Agreement, art. 34.

¹²⁷⁵ 1995 Agreement, arts. 18, 24.

¹²⁷⁶ LE Thanh Long, Sustainable Development of the Mekong: A Reality or Just Another Hortatory Cliché?, 2002, at 22, *available at* <http://ir.nul.nagoya-u.ac.jp/dspace/bitstream/2237/6003/1/HH019411001.pdf>

¹²⁷⁷ LE Thanh Long, at 22.

¹²⁷⁸ 1995 Agreement, art. 35.

¹²⁷⁹ Radosevich Commentary, at 27.

assessments for the protection of the environment and maintenance of the ecological balance of the Mekong River Basin.”¹²⁸⁰ The Secretariat is directed to “[m]aintain databases of information as directed.”¹²⁸¹

Thus, the Agreement only calls for data collection in the most general terms. One expert explains:

There is no clause in the Mekong River Basin Agreement that specifically empowers the MRC to monitor water quality and river flows throughout the river basin. This, however, is implied by the clauses in the Agreement which specify the functions of the Joint Committee and Secretariat. According to the Mekong River Basin Agreement, it seems that member states have an obligation to permit data and information exchanges between themselves. While the roles and responsibilities of the Council, Joint Committee and Secretariat outline the basis of such monitoring, collection and exchange processes, detailed mechanisms are left to the MRC as a functioning organization to decide.¹²⁸²

In practice, the MRC maintains a hydrologic monitoring network. In each Member State, one or more government agency is responsible for collecting data and providing it to the MRC. In turn, “[t]he MRC Secretariat assists the participating agencies with network maintenance, improving field data collection and arranging in-service training for staff. Each year the MRC publishes the *Lower Mekong Hydrologic Yearbook* which is circulated widely.”¹²⁸³

In April 2002, the MRC signed the “Agreement on the Provision of Hydrological Information” with China, which allows for the provision of data from two Chinese monitoring stations to assist the MRC’s flood-forecasting operation.¹²⁸⁴

11. Notifications

According to one expert:

“[T]he water quality has not been a major problem, rather, the main negotiating issue has been the quantity of the water in the river . . . The

¹²⁸⁰ 1995 Agreement, art. 24.

¹²⁸¹ 1995 Agreement, art. 30.

¹²⁸² Jonathan Chenoweth, *International River Basin Management: Data and Information Exchange under International Law and the Case of the Mekong River Basin*, 18 J. ENERGY NAT. RESOURCES L. 142, 155 (2000).

¹²⁸³ Chenoweth, *International River Basin Management*, at 155.

¹²⁸⁴ See Pech Sokhem, Cooperation in the Mekong Basin in Implementing Integrated River Basin Management (IRBM): From Negotiation Stage to a More Concrete Joint Planning and Implementation, 24-25 Feb. 2004, at 16, available at http://www.adb.org/Documents/Events/2004/NARBO/1_5_Pech_paper.pdf; Jorn Dosch and Oliver Hensengerth, *Sub-Regional Cooperation in Southeast Asia: The Mekong Basin*, 4 EUR. J. OF E. ASIAN STUD. 263, 280 (2005).

controversies and issues of tensions between the riparians has been withdrawal of water from the basis through inter- or intra-basin transfer schemes, and withholding of the water in large dams constructed for hydropower or irrigation purposes.”¹²⁸⁵

As such, a Member State must meet certain information-reporting requirements before utilizing the Mekong River waters. The 1995 Agreement distinguishes two forms of information-reporting: notification and prior consultation.¹²⁸⁶ Where notification is required, the Member State must make a statement of its proposed use to the Joint Committee. No discussion is necessary.¹²⁸⁷ Further, uses subject to notification do not require annual notification; one notification is generally sufficient.¹²⁸⁸ Prior consultation consists of notification plus the provision of additional documents and information.¹²⁸⁹ It is intended to allow other Member States to evaluate the impact of the proposed water use and make reasonable and prompt objections, “but with the specific understanding that this consultation would not give any riparian a right to veto the use of water.”¹²⁹⁰

Article 5 of the 1995 Agreement states that notification or prior consultation will be required as follows:

A. On tributaries of the Mekong River, including Tonle Sap, intra-basin uses and inter-basin diversions shall be subject to notification to the Joint Committee.

B. On the mainstream of the Mekong River:

1. During the wet season:

a) Intra-basin use shall be subject to notification to the Joint Committee.

b) Inter-basin diversion shall be subject to prior consultation which aims at arriving at an agreement by the Joint Committee.

2. During the dry season:

¹²⁸⁵ Backer, *Mekong River Commission*, at 37.

¹²⁸⁶ See generally, LE Thanh Long, at 10-11.

¹²⁸⁷ Radosevich Commentary, at 9.

¹²⁸⁸ Radosevich Commentary, at 9.

¹²⁸⁹ Radosevich Commentary, at 9.

¹²⁹⁰ Radosevich Commentary, at 9. Agreement between the parties as to a proposed use is only required in one situation: “in the most extreme of cases, that of inter-basin diversion from mainstream during the dry season.” Philip Hirsch, *Beyond the Nation State: Natural Resource Conflict and “National Interest” in Mekong Hydropower Development*, 29 GOLDEN GATE U. L. REV. 399, 406 (1999).

a) Intra-basin use shall be subject to prior consultation which aims at arriving at an agreement by the Joint Committee.

b) Any inter-basin diversion project shall be agreed upon by the Joint Committee through a specific agreement for each project prior to any proposed diversion. However, should there be a surplus quantity of water available in excess of the proposed uses of all parties in any dry season, verified and unanimously confirmed as such by the Joint Committee, an inter-basin diversion of the surplus could be made subject to prior consultation.¹²⁹¹

In 2003, the MRC adopted “Procedures for Notification, Prior Consultation and Agreement,” which elaborates on the scope, content, form, process, and timing of the information-reporting requirements in Article 5. Some commentators, however, question the precise legal status and effect of the adopted “Procedures” which are not specifically called for in the 1995 Agreement.¹²⁹²

In addition to creating a pre-use notification and consultation mechanism, the 1995 Agreement empowers Member States to challenge current harmful uses of the Mekong waters. Article 7 provides:

Where one or more States is notified with proper and valid evidence that it is causing substantial damage to one or more riparians from the use of and/or discharge to water of the Mekong River, that State or States shall cease immediately the alleged cause of harm until such cause of harm is determined in accordance with Article 8.¹²⁹³

12. Funding and Financing

The budget of the MRC is drawn up by the Joint Committee and approved by the Council. The budget “shall consist of contributions from member countries on an equal basis unless otherwise decided by the Council, from the international community (donor countries) and from other sources.” The senior legal advisor to the drafters explained:

The “operating or administrative budget” may be distinguished from the “program budget” in that the former pertains to the cost of the [MRC] . . . and the latter pertains to the development projects, program and activities of the [MRC] supported by donor and parties.

¹²⁹¹ 1995 Agreement, art. 5.

¹²⁹² Philip Hirsch, Attachment 3 at 7, *available at* http://www.mekong.es.usyd.edu.au/projects/final_draft_report.pdf.

¹²⁹³ 1995 Agreement, art. 7.

The “equal basis” contribution of the parties pertains only to the administrative or operating budget of the [MRC] that is not covered by other sources, i.e. overhead, interest and donor contributions, unless the Council decides otherwise. For example, if there were “extraordinary” expenditures that exceed the planned and budgeted activities, i.e. special meetings of the Council or Committee, etc., the Council may vary the member contribution requirements.¹²⁹⁴

The MRC carries out formal consultation with the donor community through an annual Donor Consultative Group meeting.¹²⁹⁵ The donor community’s support is essential to the operation of the MRC. For example, in 2004, the member states contributed approximately US \$1 million combined, while donors’ grants totaled approximately US \$13 million.¹²⁹⁶ Accordingly, “policies of donors have important impacts on Mekong programs and on the outcomes of Mekong cooperation generally.”¹²⁹⁷

13. Benefit Sharing

Benefit sharing through the “equitable and reasonable utilization” of water resources is the cornerstone of the 1995 Agreement.¹²⁹⁸ The principle of benefit sharing is inscribed in the Preamble:

REAFFIRMING the determination to continue to cooperate and promote in a constructive and mutually beneficial manner in the sustainable development, utilization, conservation, and management of the Mekong River Basin water and related resources . . .

AFFIRMING to promote or assist in the promotion of interdependent sub-regional growth and cooperation among the communities of Mekong nations, taking into account the regional benefits that could be derived and/or detriments that could be avoided or mitigated from activities within the Mekong River Basin undertaken by this framework of cooperation . . .”¹²⁹⁹

In practice, benefit sharing is accomplished through data collection and exchange, notification and prior consultation, and development initiatives discussed above.

14. Compliance and Monitoring

¹²⁹⁴ Radosevich Commentary, at 22.

¹²⁹⁵ See The Mekong River Commission, *available at* <http://www.mrcmekong.org/>.

¹²⁹⁶ Backer, *Paper Tiger*, at 37.

¹²⁹⁷ LE Thanh Long, at 23.

¹²⁹⁸ Hirsch, Attachment 3 at 6.

¹²⁹⁹ 1995 Agreement, Preamble paras. 5-6.

The MRC maintains a hydrologic monitoring network, and each Member State collects and provides data for this network. *See Data Information Sharing, Exchange, and Harmonization.*

15. Participation and the Role of Multiple Stakeholders

The MRC has been criticized for not adequately promoting public participation.¹³⁰⁰ One expert points out the long list of obstacles to public participation in the development of the Mekong region:

The development agenda has overlooked public participation and in all four countries there is a wide gap between the modern and the traditional sectors. . . . There is no tradition of grassroots participation in national policymaking. There are no established systems for the local administration to communicate with the local people and vice-versa. The workplan of the MRC is not a result of a participatory process. International or transnational cooperation tends to distance decision-making from the grassroots.¹³⁰¹

The MRC has since recognized the importance of public participation.¹³⁰² Since 2002, civil society representatives have been invited to attend the Joint Committee and Council meetings.¹³⁰³

16. Dissolution and Termination

The 1995 Agreement may be terminated by mutual agreement of all the Member States. Any Member State to the 1995 Agreement may withdraw or suspend its participation by written notice to the Council. Such notice of withdrawal or suspension takes effect one year after the date of acknowledgement of receipt. Such notice shall not relieve the notifying Member State of any prior commitments made concerning programs, projects, studies, or other recognized rights and interests of any Member States.¹³⁰⁴

17. Additional Remarks

One expert attributes the successful drafting of the 1995 Agreement to the mediation by an objective third party, Mr. Radosevich:

¹³⁰⁰ *See, e.g.,* Philip Hirsch, Attachment 3 at 11-12; Philip Hirsch, Economic Integration and the Political Economy of Environment in the Mekong River Basin, *available at* <http://igcc.ucsd.edu/pdf/Hirsch.pdf>.

¹³⁰¹ Joakim Öjendal and Elin Torell, *Some Implications of the Mekong River Commission Agreement*, in COMMON PROPERTY IN THE MEKONG: ISSUES OF SUSTAINABILITY AND SUBSISTENCE (Mahfuzuddin Ahmed and Philip Hirsch eds., 2000).

¹³⁰² Öjendal and Torell, *Some Implications of the Mekong River Commission Agreement*, at 15-16.

¹³⁰³ PECH SOKHEM, at 14-15.

¹³⁰⁴ 1995 Agreement, art. 37.

By employing Radosevich, the UNDP provided a buffer between the parties by allowing them to consult individually with Radosevich before confronting each other on specific matters. Radosevich's legal expertise and acceptance by all parties as an acceptable mediator proved crucial to the success of the negotiations.¹³⁰⁵

The Agreement reflects the "framework agreement approach":

The Mekong Agreement is 'a framework agreement' which lays out the basic principles, procedures and organizational structure for the regime but does not address specific water management issues. . . . The framework agreement approach may be applicable to many international water management efforts because it signifies an early commitment to cooperation, but allows the parties time to develop more specific plans or rules as more information becomes available. Alternatively, the framework agreement may reflect an attempt to skirt the 'real' issues and end up a dead letter from lack of political will to implement the agreement principles.¹³⁰⁶

18. Websites and References

- Australian Mekong Resource Center, The University of Sydney, *available at* <http://www.mekong.es.usyd.edu.au/>.
- The Mekong River Commission, *available at* <http://www.mrcmekong.org/>.

¹³⁰⁵ Browder, *An Analysis of the Negotiations for the 1995 Agreement*, at 249.

¹³⁰⁶ Browder, *An Analysis of the Negotiations for the 1995 Agreement*, at 259.

Partnerships in Environmental Management for the Seas of East Asia (PEMSEA)

1. Legal Basis

The Partnerships in Environmental Management for the Seas of East Asia (PEMSEA) is a partnership arrangement involving all the stakeholders of the Seas of East Asia, including state and non-state partners to address the “identified threats to the environment and sustainable development of the Seas of East Asia.”¹³⁰⁷

There are three fundamental PEMSEA documents: the Sustainable Development Strategy for the Seas of East Asia (SDS-SEA), adopted in 2003 by the member states through the Putrajaya Declaration of Regional Cooperation; the 2006 Haikou Partnership Agreement; and the Partnership Operating Arrangements.

The SDS-SEA, a non-binding informational and aspirational document, provides a detailed shared vision for the implementation of the goals of sustainable development in the region. It contains information on the Seas of East Asia, including current problems and the potential impact they could have on the region and the world, and offers “A New Paradigm” for the Seas of East Asia, focusing on an integrated strategy involving governmental partners at all levels, as well as non-governmental stakeholders.¹³⁰⁸ It details a framework¹³⁰⁹ for this strategy and methods for monitoring its implementation.¹³¹⁰

The Haikou Partnership Agreement establishes PEMSEA “as the regional coordinating mechanism for the implementation of the SDS-SEA” and “resolve[s] to transform PEMSEA from the existing project-based arrangement to a self-sustained and effective regional collaborative mechanism.”¹³¹¹ The Haikou Agreement also broadly details the operational structure of PEMSEA for implementing the SDS-SEA.¹³¹²

The Partnership Operating Arrangements detail the inclusion, rights, and roles of partners as well as the four major PEMSEA operating mechanisms.

¹³⁰⁷ See Partnership Operating Arrangements for the Implementation of the Sustainable Development Strategy for the Seas of East Asia ¶¶ 1-5, available at <http://pemsea.org/pdf-documents/pemsea-documents/partnrship-operatng-arrrngments.pdf>.

¹³⁰⁸ Sustainable Development Strategy for the Seas of East Asia (“SDS-SEA”), Dec. 12, 2003, at 34, available at <http://pemsea.org/knowledge-center/the-sds-sea/resolveuid/7ea4910d2b3798a664a198958cc25977>.

¹³⁰⁹ *Id.* at 37.

¹³¹⁰ *Id.* at 93-100.

¹³¹¹ Haikou Partnership Agreement on the Implementation of Sustainable Development Strategy for the Seas of East Asia (“Haikou Agreement”), art. 10, Dec. 15, 2006, available at http://pemsea.org/pdf-documents/pemsea-documents/Haikou_Partnership_Agreement_Signed.pdf.

¹³¹² *Id.* at arts. 10(a) - 10(d).

2. Member States

The PEMSEA member states signing the Putrajaya Declaration include Brunei Darussalam, Cambodia, China, the DPRK, Indonesia, Japan, Malaysia, the Philippines, the ROK, Singapore, Thailand, and Vietnam. State signatories of the Haikou Partnership Agreement committing to SDS-SEA implementation include Cambodia, China, Indonesia, Japan, Laos, the Philippines, the DPRK, the ROK, Singapore, Timor-Leste, and Vietnam.

In addition to member states, PEMSEA includes nineteen current non-state partners. These are the ASEAN Centre for Biodiversity, the Coastal Management Center, Conservation International Philippines, the International Environmental Management of Enclosed Coastal Seas Center, the International Ocean Institute, the IOC Subcommission for the Western Pacific, the International Union for the Conservation of Nature, the Korea Environment Institute, the Korea Maritime Institute, the Korea Ocean Research and Development Institute, the Northwest Pacific Action Plan, the Ocean Policy and Research Foundation, Oil Spill Response, Plymouth Marine Laboratory, the PEMSEA Network of Local Governments for Sustainable Coastal Development, the Swedish Environmental Secretariat for Asia, the UNDP/GEF Small Grants Programme, the UNEP Global Programme of Action, and the UNDP/GEF Yellow Sea LME Project.¹³¹³

3. Geographical Scope

The SDS-SEA defines the Seas of East Asia as those bordered by China, the DPRK, the ROK, Japan, the Philippines, Indonesia, Brunei Darussalam, Malaysia, Singapore, Thailand, Cambodia, and Vietnam.¹³¹⁴ Of these, the East China Sea, the Yellow Sea, the South China Sea, the Sulu-Celebes Sea, and the Indonesian Seas are of particular economic and ecological importance.¹³¹⁵

4. Legal Personality

Pursuant to the Agreement Recognizing the International Legal Personality of PEMSEA of November 2009, PEMSEA is a separate legal personality with the capacity to contract, hold and dispose of property, sue and be sued, etc.¹³¹⁶ The EAS Congress, the EAS Partnership Council, the PEMSEA Resource Facility, and the Regional Partnership Fund are all part of PEMSEA and have no distinct legal personality of their own.¹³¹⁷

¹³¹³ Partners, <http://pemsea.org/partnerships/partners> (last visited Dec. 15, 2009).

¹³¹⁴ SDS-SEA at 16.

¹³¹⁵ *Id.*

¹³¹⁶ E-mail from Maria Teresita G. Lacerna, Legal Specialist, GEF/UNDP/UNOPS Regional Programme on the Sustainable Development Strategy for the Seas of East Asia to Michael J. O'Connor, Esq., Associate, White & Case LLP (Jan. 7, 2010, 02:41 EST).

¹³¹⁷ *Id.*

5. Functions

PEMSEA's role "as the regional coordinating mechanism for the implementation of the [SDS-SEA]" is to "facilitate the realization of the shared vision, mission, action programmes and desired changes of the SDS-SEA."¹³¹⁸ The SDS-SEA's purpose is to set forth a "package of applicable principles, relevant existing regional and international action programmes, agreements, and instruments, as well as implementation approaches, for achieving sustainable development of the Seas of East Asia."¹³¹⁹

6. Organizational Structure

PEMSEA has four major operating mechanisms: the East Asian Seas (EAS) Congress, the East Asian Seas (EAS) Partnership Council, the PEMSEA Resource Facility, and the Regional Partnership Fund.

The East Asian Seas Congress is held every three years. It serves as a forum for monitoring progress, sharing information, and promoting sustainable development.¹³²⁰ It ultimately "presents its conclusions and recommendations to the EAS Partnership Council for implementation."¹³²¹ In 2006, it had 45 collaborators and 800 participants.¹³²²

The EAS Partnership Council is a regular body composed of all PEMSEA partners that "formulates both program and operational policy" in support of SDS-SEA implementation based on policy direction, recommendations and commitments of the Ministerial Forum, the EAS Congress and other partners.¹³²³ The Council has an Executive Committee and two types of sessions – Intergovernmental and Technical. The Council elects a Chair for a three year term who also acts as Chair of the Executive Committee and sits in the sessions *ex officio*. The Intergovernmental and Technical sessions elect three-year term Chairs also, who serve as members of the Executive Committee.¹³²⁴

The Executive Committee operates between Council meetings and addresses business requiring immediate attention.¹³²⁵ It is composed of the three Council Chairs (Intergovernmental, Technical, and overall Council Chair), the Executive Director of the PEMSEA Resource Facility, and the immediate

¹³¹⁸ Partnership Arrangements ¶¶ 2-3.

¹³¹⁹ SDS-SEA at 10.

¹³²⁰ Partnership Arrangements, art. 22.

¹³²¹ *Id.* at art. 24.

¹³²² PEMSEA BOOKLET 19.

¹³²³ See Partnership Arrangements ¶¶ 25-26.

¹³²⁴ See *id.* ¶¶ 27-29.

¹³²⁵ PARTNERSHIPS IN ENVIRONMENTAL MANAGEMENT FOR THE SEAS OF EAST ASIA, A REGIONAL MECHANISM FACILITATING SUSTAINABLE ENVIRONMENTAL BENEFITS IN RIVER BASINS, COASTS, ISLANDS, AND SEAS 18-19 (2007) [hereinafter PEMSEA BOOKLET].

former Executive Director.¹³²⁶ It “ensures and oversees the implementation of the decisions of Council, and reports to the Council.”¹³²⁷

The Intergovernmental Session considers the recommendations of the Technical Session and “provides policy guidance, coordination, and evaluation of the progress of the SDS-SEA implementation.”¹³²⁸ The Technical Session “discusses issues, submissions and topics related to the scientific, technical and financial aspects of SDS-SEA implementation, partnership opportunities, collaborative research, capacity building and knowledge sharing, and makes recommendations to the Intergovernmental Session[.]”¹³²⁹

The PEMSEA Resource Facility (PRF) is located in the Philippines and provides Secretariat and Technical Services related to SDS-SEA implementation.¹³³⁰ The PRF is headed by an Executive Director who ensures coordination between the Secretariat and Technical Services in terms of programme development and implementation.¹³³¹

The PEMSEA Regional Partnership Fund manages contributions from multiple sources, with a focus on the self-sustainability of PEMSEA as a regional coordinating mechanism.¹³³²

7. Relationships

PEMSEA has many state and non-state partners, as detailed in this report, and the number of participants at events like the EAS Congress suggests relationships beyond those, but no specific information is available.

8. Decision Making

Decision-making in PEMSEA is done by the EAS Partnership Council. The Council is composed of all partners, including state and non-state stakeholders.¹³³³ It convenes every eighteen months, and makes decisions on a consensus basis.¹³³⁴ Between Council meetings, the Executive Committee implements

¹³²⁶ *Id.*

¹³²⁷ Partnership Arrangements ¶ 33.

¹³²⁸ *Id.* at ¶ 37.

¹³²⁹ *Id.*

¹³³⁰ PEMSEA BOOKLET 18-19.

¹³³¹ Partnership Arrangements ¶ 46.

¹³³² PEMSEA BOOKLET 19.

¹³³³ Partnership Arrangements, art. 25.

¹³³⁴ *Id.*

Council decisions, and addresses issues requiring the Council's continuous attention. It reports to the Council.¹³³⁵

9. Dispute Resolution

There are no express dispute resolution provisions in the three fundamental PEMSEA documents.

10. Data Information Sharing, Exchange, and Harmonization

Data sharing is integral to the Integrated Coastal Management (ICM) approach on which the SDS-SEA is based and its strategy contains methods of facilitating data sharing.¹³³⁶ The Partnership Operating Arrangements encourage partners to “[s]trengthen communication and dialogue with each other regarding activities affecting the implementation of the SDS-SEA”¹³³⁷ and indicate that partners have the right “[t]o participate in PEMSEA’s knowledge sharing network.”¹³³⁸ Additionally, the International Conference of the triennial EAS Congress serves as the forum for “[f]acilitating knowledge exchange, advocacy and multi-stakeholder participation, through sessions, workshops, side events and exhibitions, etc.”¹³³⁹

11. Notifications

The only provision regarding notifications in the three PEMSEA documents relates to the request for inclusion as a PEMSEA partner. Notifications of stakeholders desiring to become partners are sent to the Executive Director of the PEMSEA Resource Facility.¹³⁴⁰

12. Funding and Financing

The Regional Partnership Fund is a separate entity set up by the EAS Partnership Council. It receives contributions from a variety of donors for SDS-SEA implementation. According to the Partnership Arrangements, the Partnership Fund depositary is to be a sponsoring UN agency,¹³⁴¹ but that depositary

¹³³⁵ *Id.*; PEMSEA BOOKLET at 18.

¹³³⁶ *See* SDS-SEA at 91 (detailing methods of information sharing). While ICM is still in the process of being defined, *see* SDS-SEA at 51 (detailing the development of an ICM Code), it is intended to be a “holistic and integrated approach to protecting, restoring and managing natural habitats for biodiversity conservation”, SDS-SEA at 54. Implementation requires “harmoniz[ing] overlapping responsibilities and stakeholder interests”, SDS-SEA at 21, but can “expand[] from coastal marine management to encompass watersheds, river basins and other associated ecosystems.” SDS-SEA at 26.

¹³³⁷ Partnership Arrangements, art. 9(c).

¹³³⁸ *Id.* at art. 10(e).

¹³³⁹ *Id.* ¶ 22(b)

¹³⁴⁰ *Id.* at art. 16.

¹³⁴¹ Partnership Arrangements, art. 49.

has not yet been designated by the Partnership Council.¹³⁴² The Executive Committee manages the Fund and its distribution, ensuring the best use of the Fund toward achieving the goals of the SDS-SEA, including by developing policies and operations guidelines for funding, disbursement, management and audit, ensuring earmarked funds are properly managed, and appointing a Fund manager.¹³⁴³ The Council may also organize fund-raising activities.¹³⁴⁴

The PEMSEA Resource Facility is financially supported by China, Japan, the ROK, the Philippines, and the UNDP-GEF. The Philippine Government hosts the PEMSEA Regional Programme Office and has recently constructed a new building for the PEMSEA Resource Facility.¹³⁴⁵

13. Benefit Sharing

Some of the objectives and action programmes described in the SDS-SEA discuss benefit-sharing, albeit in a general way.¹³⁴⁶

14. Compliance and Monitoring

There are several informal PEMSEA monitoring mechanisms. The EAS Congress International Conference serves to monitor and evaluate the implementation of the SDS-SEA,¹³⁴⁷ the PRF Secretariat monitors and reports on the implementation of the SDS-SEA,¹³⁴⁸ and the EAS Partnership Council receives reports and monitors the progress of SDS-SEA implementation and projects.¹³⁴⁹

15. Participation and the Role of Multiple Stakeholders

The participation of multiple stakeholders is integral to the SDS-SEA vision. Specific provisions for joining and participating in PEMSEA are detailed in the other subsections of this report.

16. Dissolution and Termination

No specific provision.

¹³⁴² E-mail from Maria Teresita G. Lacerna, Legal Specialist, GEF/UNDP/UNOPS Regional Programme on the Sustainable Development Strategy for the Seas of East Asia to Michael J. O'Connor, Esq., Associate, White & Case LLP (Jan. 7, 2010, 02:41 EST).

¹³⁴³ Partnership Arrangements, art. 50.

¹³⁴⁴ *Id.* at arts. 48-51.

¹³⁴⁵ PEMSEA BOOKLET, at 19.

¹³⁴⁶ *See* SDS-SEA at 59, 81, 91.

¹³⁴⁷ Partnership Arrangements ¶ 22(a).

¹³⁴⁸ *Id.* at ¶ 44(e).

¹³⁴⁹ PEMSEA BOOKLET, at 18-19.

17. Additional Remarks

N/A

18. Websites and References

- PEMSEA, <http://www.pemsea.org>
- Putrajaya Declaration of Regional Cooperation for the Sustainable Development of the Seas of East Asia (“Putrajaya Declaration”), <http://pemsea.org/pdf-documents/sds-sea/SDSSEA-Putrajaya-Declaration.pdf>
- Sustainable Development Strategy for the Seas of East Asia (“SDS-SEA”), <http://pemsea.org/knowledge-center/the-sds-sea/resolveuid/7ea4910d2b3798a664a198958cc25977>
- Haikou Partnership Agreement on the Implementation of Sustainable Development Strategy for the Seas of East Asia (“Haikou Agreement”), http://pemsea.org/pdf-documents/pemsea-documents/Haikou_Partnership_Agreement_Signed.pdf
- Partnership Arrangements for the Implementation of the Sustainable Development Strategy for the Seas of East Asia (“Partnership Arrangements”), <http://pemsea.org/pdf-documents/pemsea-documents/partnrship-operatng-arrngments.pdf>

South China Sea

1. Legal Basis

There is not a unified framework governing the South China Sea. Given the number of bordering states and the numerous ongoing sovereignty disputes, there are few binding agreements among all the riparian states.

The most relevant, legally-binding agreement governing the South China Sea is the 1982 United Nations Convention on the Law of the Sea (“UNCLOS”).¹³⁵⁰

There are also several multilateral declarations that are relevant to the South China Sea. These declarations include the following:

- Declaration on the Conduct of the Parties in the South China Sea:¹³⁵¹ This declaration, issued during the eighth Association of Southeast Asian Nations (“ASEAN”) Summit in 2002, is the first to include all littoral countries of the South China Sea. The purpose of the declaration is to reaffirm the determination of the governments of the ASEAN Member States and China “to consolidate and develop the friendship and cooperation existing between their people and governments with the view to promoting a 21st century-oriented partnership of good neighbourliness and mutual trust.”
- ASEAN Declaration on the South China Sea:¹³⁵² This declaration was signed in 1992, with the stated purpose of fostering cooperation in the South China Sea on issues of safety in maritime navigation, protection against pollution, coordination of search and rescue operations, combating piracy, and collaborating against illegal drug trafficking. It further references the Treaty of Amity and Cooperation in Southeast Asia as the basis for establishing a code of international conduct over the South China Sea.
- Treaty of Amity and Cooperation in Southeast Asia:¹³⁵³ This Treaty was signed in Indonesia in 1976. Its purpose is “to promote perpetual peace, everlasting amity and cooperation among [the people of the High Contracting Parties] which would contribute to their strength, solidarity and closer relationship.” In addition, the Treaty is based on the following principles: (1) mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations; (2) the right of every state to lead its national existence

¹³⁵⁰ United Nations Convention on the Law of the Sea (“UNCLOS”), 10 Dec. 1982, 1833 U.N.T.S. 396.

¹³⁵¹ Declaration on the Conduct of the Parties in the South China Sea, 5 Nov. 2002 (“2002 ASEAN Declaration”), *available at* <http://www.aseansec.org/13163.htm>.

¹³⁵² ASEAN Declaration on the South China Sea, 22 July 1992 (“1992 ASEAN Declaration”), *available at* <http://www.aseansec.org/13163.htm>.

¹³⁵³ Treaty of Amity and Cooperation in Southeast Asia, 24 Feb. 1976, *available at* <http://www.aseansec.org/1217.htm>.

free from external interference, subversion or coercion; (3) non-interference in the internal affairs of one another; (4) settlement of differences or disputes by peaceful means; (5) renunciation of the threat or use of force; and (6) effective cooperation among themselves. Member States further agreed to cooperate on in the on issues on common interest (e.g., economic, social, scientific issues).

In addition to the above-mentioned agreements, there are a number of resolutions and declarations involving the countries surrounding the South China Sea. However, due to myriad disputes over territorial and jurisdictional rights to the South China Sea and the fact that none of the agreements contains an enforcement mechanism, each of the agreements lacks meaningful practical applicability. These agreements will not be discussed further herein, but are provided as possible reference points:

- Regional Guidelines for Responsible Fisheries in Southeast Asia (“Guidelines”):¹³⁵⁴ These Guidelines are an outgrowth of the Code of Conduct for Responsible Fisheries (“CCFR”), which was developed by the Food and Agricultural Organization of the United Nations (“FAO”). The Guidelines were finalized in April 2003 and are non-binding. The signatories include: Brunei, Cambodia, Indonesia, Philippines, Thailand, Malaysia, Myanmar, and Vietnam. In addition to the Guidelines, the FAO also facilitated the creation of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. This Agreement, referenced in the Guidelines is binding, but the nations bordering the South China Sea are not Member States.
- Jakarta Declaration on Environment and Development:¹³⁵⁵ This Declaration was signed in order to, among other things, reaffirm the ASEAN Ministers’ commitment to sustainable development. There is no enforcement mechanism. The signatories are Brunei, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, and Vietnam.
- Bandar Seri Begawan Resolution on Environment and Development:¹³⁵⁶ This Resolution was signed with the purpose of adopting the ASEAN Strategic Plan of Action on the Environment. There is no enforcement mechanism. The signatories are Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand, and Vietnam.
- Singapore Resolution on Environment and Development:¹³⁵⁷ This Resolution was signed with the purpose of “intensify[ing] cooperation in environmental management and protection” for

¹³⁵⁴ Regional Guidelines for Responsible Fisheries in Southeast Asia, Apr. 2003, *available at* http://www.seafdec.org.ph/pdf/Responsible_Fisheries_Management_MFRDMD.pdf.

¹³⁵⁵ Jakarta Declaration on Environment and Development, 18 Sep. 1997, *available at* <http://www.aseansec.org/6085.htm>.

¹³⁵⁶ Bandar Seri Begawan Resolution on Environment and Development, 26 Apr. 1994, *available at* <http://www.aseansec.org/6084.htm>.

¹³⁵⁷ Singapore Resolution on Environment and Development, 18 Feb. 1992, *available at* <http://www.aseansec.org/6083.htm>.

sustainable development purposes. There is no enforcement mechanism. The signatories are Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand, and Vietnam.

- Kuala Lumpur Accord on Environment and Development:¹³⁵⁸ This Resolution was signed with the purpose of streamlining environmental management, including among other goals, harmonization of environmental quality standards and development of joint natural resource management programs.

2. Member States

The UNCLOS Member States that border the South China Sea are Brunei, Indonesia, Malaysia, China, Philippines, Thailand, Vietnam, and Singapore. Cambodia and Thailand have signed UNCLOS, but have not yet ratified the Treaty.

The Signatories to the Declaration on the Conduct of the parties in the South China Sea are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam, and China.

The Signatories of the ASEAN Declaration on the South China Sea are Brunei, Indonesia, Malaysia, Philippines, Singapore, and Thailand.

The Member States of the Treaty of Amity and Cooperation in Southeast Asia are Brunei, Cambodia, Indonesia, Lao, Malaysia, Myanmar, Singapore, Thailand, Vietnam, and China.

3. Geographical Scope

None of the agreements reference specific coordinates or have provisions dedicated to geographical scope. Nevertheless, it can be said that the South China Sea itself is the geographical scope defined in the Declaration on the Conduct of the parties in the South China Sea.¹³⁵⁹ The same is true of the ASEAN Declaration on the South China Sea.¹³⁶⁰

4. Legal Personality

UNCLOS established the International Seabed Authority (“the Authority”).¹³⁶¹ UNCLOS also provides that the Authority, created to organize and control activity in areas of the seabed, the ocean floor, and the subsoil thereof that are beyond the limits of national jurisdiction, has international legal personality and the legal capacity necessary to fulfill its functions and purposes.¹³⁶²

¹³⁵⁸ Kuala Lumpur Accord on Environment and Development, 19 June 1990, *available at* <http://www.aseansec.org/6082.htm>.

¹³⁵⁹ 2002 ASEAN Declaration, Preamble, Declarations 3, 10.

¹³⁶⁰ 1992 ASEAN Declaration, Title, Preamble, Declarations 1, 3, 4.

¹³⁶¹ UNCLOS, art. 156.

¹³⁶² UNCLOS, art. 176.

The other agreements do not contain provisions pertaining to a legal personality.

5. Functions

As there is no centralized framework over the South China Sea, the functions should be described in relation to the different agreements that pertain to the region:

33. UNCLOS: The stated purpose of UNCLOS is to “settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea.” Part IX of the Convention appears to be the most relevant to issues involving the South China Sea. Part IX, entitled “Enclosed or Semi Enclosed Seas,” provides in Article 123 that States bordering an enclosed or semi-enclosed sea should (1) coordinate the management, conservation, exploration, and exploitation of the living sea resources; (2) coordinate rights and duties regarding protection and preservation of the marine environment; (3) coordinate scientific research; and (4) involve other States and international organizations in this process.
34. Declaration on the Conduct of the Parties in the South China Sea: This declaration highlights that Parties desire to peacefully resolve all territorial and jurisdiction disputes between them. It goes on to state that “[p]ending the peaceful resolution of these disputes, the parties resolve to intensify efforts ... to build trust and confidence” in the following ways: (1) hold dialogues an exchange views between their defense and military officials; (2) ensure the humane treatment of all persons in danger or distress; (3) voluntarily notify other Member States of impending military action; (4) voluntarily exchange relevant information. The declaration further provides that pending the peaceful resolution of disputes, the Member States may endeavor to cooperate on the following activities: (1) marine environmental protection, (2) marine scientific research, (3) safety of navigation and communication at sea, (4) search and rescue operations; and (5) combating transnational crime.
35. ASEAN Declaration on the South China Sea: In light of the sensitive territorial and jurisdictional issues surrounding the South China Sea, the stated purpose of this Declaration is to “promot[e] conditions essential to greater economic cooperation and growth.” The Declaration also urges a positive environment for the resolution of all disputes over the water body. The Signatories resolve: to explore the possibility of cooperation in the region in the areas of maritime navigation and communication, to protect against pollution of the marine environment, to coordinate search and rescue operations, to coordinate efforts against piracy and armed robbery, and to collaborate in the campaign against illegal drug trafficking.
36. The Treaty of Amity and Cooperation in Southeast Asia: The purpose of this Treaty is to promote perpetual peace, everlasting amity and cooperation among parties in order to contribute to the parties’ strength, solidarity and ever closer relationship.

6. Organizational Structure

UNCLOS is composed of four bodies: the Authority, the Commission on the Limits of the Continental Shelf, the Tribunal for the Law of the Sea (“ITLOS”), and the ITLOS Trust Fund. In addition, several sub-bodies—the Assembly, the Secretariat, the Council, and the Enterprise—fall under the Authority.

Neither the ASEAN Declaration on the South China Sea nor the Declaration on the Conduct of the Parties in the South China Sea contain provisions pertaining to an organizational structure.

7. Relationships

The Declaration on the Conduct of the Parties in the South China Sea references UNCLOS. The Declaration states that all parties “reaffirm their commitment to the purposes and principles of... the 1982 UN Convention on the Law of Seas.” In addition, the Declaration references the Charter of the United Nations, the Treaty of Amity and Cooperation in South East Asia, and the Five Principles of Peaceful Coexistence by having the Signatories’ reaffirm their commitments to those agreements.¹³⁶³

The ASEAN Declaration on the South China Sea references the Treaty of Amity and Cooperation in Southeast Asia as the basis for establishing a code of international conduct over the South China Sea.¹³⁶⁴

8. Decision Making

Decision-making under UNCLOS is as follows: the Authority, which is made up of all of the State parties to UNCLOS, organizes and controls the areas of the seabed, the ocean floor, and the subsoil thereof. The Assembly consists of all the members of the Authority. In addition to handling procedural issues, the Assembly has the power to establish policy consistent with the provisions of UNCLOS on any matter within the competence of the Authority. Procedural issues are decided by a majority vote of members present and voting. Substantive issues are decided by a two-thirds vote of the members present and voting.

The other agreements do not contain provisions relating to decision-making.

9. Dispute Resolution

The Signatories to the Declaration on the Conduct of the Parties in the South China Sea agreed that pending the “peaceful settlement of territorial and jurisdictional disputes,” parties would resolve conflict through “friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea.”¹³⁶⁵

The ASEAN Declaration on the South China Sea emphasizes the necessity to resolve disputes peacefully and encourages the Signatories to use the Treaty of Amity and Cooperation as the basis for an international code of conduct over the South China Sea.¹³⁶⁶

¹³⁶³ 2002 ASEAN Declaration, Declaration 4.

¹³⁶⁴ 1992 ASEAN Declaration, Declaration 4.

¹³⁶⁵ 2002 ASEAN Declaration, Declaration 5.

¹³⁶⁶ 1992 ASEAN Declaration, Declaration 1.

The Treaty of Amity, in turn, identifies the pacific settlement of disputes. The parties strive to resolve disputes peacefully through friendly negotiations.¹³⁶⁷ To facilitate these negotiations, the Member States create a High Council, comprised of representatives at the ministerial level from each of the Member States, as a continuing body that will take cognizance of disputes or situations that can possibly disturb the region.¹³⁶⁸ In the event the Member States fail to reach a solution through direct negotiations, the High Council shall recommend the appropriate means for settlement. Examples of appropriate means are mediation, inquiry, or conciliation.¹³⁶⁹ If the parties so choose, the High Council can constitute a committee of mediation, inquiry, or conciliation.¹³⁷⁰ The settlement of disputes remains completely voluntary and the High Council cannot bind any party to its decision.¹³⁷¹ Finally, “[n]othing in this Treaty shall preclude recourse to the modes of peaceful settlement contained in Article 33(1) of the Charter of the United Nations.”¹³⁷²

An alternative method for dispute resolution involving the South China Sea is that provided for under UNCLOS. Under Part XV of UNCLOS, Member States must resolve their disputes through peaceful means. Member States are free to choose their means of resolution, and are only required to invoke the compulsory and binding mechanism of Section 2 of Part XV if they are unable to resolve the conflict through their chosen means. A Member State that is a party to a dispute involving the interpretation of UNCLOS also has the option of inviting the other Member State party to submit the dispute to conciliation pursuant to Annex V, section 1, or another conciliation procedure.¹³⁷³ The other Member State party, however, is not required to accept the conciliation invitation. Conversely, if no settlement has been reached under Section 1, conciliation is required upon demand by any Member State where the dispute concerns proper conservation and management of the Exclusive Economic Zone (“EEZ”) resources, or determination or allocation of living resources in an EEZ.¹³⁷⁴

Where Member States have agreed through a separate agreement to resolve the UNCLOS dispute by alternative means to those provided for Section 2 (pursuant to Article 282), the agreed upon dispute resolution mechanism prevails. Otherwise, as stated above, Section 2 lays out the provisions of compulsory and binding dispute resolution under UNCLOS. Upon signing, ratifying, or acceding to

¹³⁶⁷ UNCLOS, Ch. IV, art. 13.

¹³⁶⁸ UNCLOS, art. 14.

¹³⁶⁹ UNCLOS, art. 15.

¹³⁷⁰ UNCLOS, art. 15.

¹³⁷¹ UNCLOS, art. 16.

¹³⁷² UNCLOS, art. 17; *see also* UN Charter, art. 33(1) which commands parties to “seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.” Charter of the United Nations, *available at* <http://www.un.org/aboutun/charter/chapter6.shtml>.

¹³⁷³ UNCLOS, art. 284.

¹³⁷⁴ UNCLOS, art. 297 (3)(b).

UNCLOS, Member States may choose between the following means of dispute resolution: (1) ITLOS; (2) the International Court of Justice, (3) an arbitral tribunal constituted in accordance with Annex VII of UNCLOS; or (4) a special arbitral tribunal constituted in accordance with Annex VIII of UNCLOS.¹³⁷⁵ If Member States to a dispute have selected the same procedure for settlement, the dispute must be submitted to that procedure. However, where Member States have selected different procedures, or if a selection has not been made at all, the dispute must be submitted to an arbitral tribunal pursuant to Annex VII.¹³⁷⁶

Annex VIII arbitrations are of particular relevance to water use issues, as the only disputes that may be referred to “special arbitrations” involve: (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, and (4) navigation, including pollution from vessels. The special arbitral tribunal is comprised of recognized experts in the relevant fields.

A decision rendered by a competent court or tribunal is final and binding, though only between the Member States to the dispute.¹³⁷⁷

10. Data Information Sharing, Exchange, and Harmonization

UNCLOS obligates Member States to cooperate directly and through competent international organizations to exchange information and data acquired about pollution of the marine environment.¹³⁷⁸

Under the Declaration on the Conduct of the Parties in the South China Sea, the Signatories agree to share data on a voluntary basis. However, such data sharing is to begin “pending the peaceful settlement of territorial and jurisdictional disputes.”¹³⁷⁹

The ASEAN Declaration on the South China Sea simply states that the Signatories shall resolve to explore the possibilities of cooperation in the South China Sea. It does, however, urge all parties to apply the principles contained in the Treaty of Amity and Cooperation in Southeast Asia as the basis for establishing a code of international conduct over the South China Sea.¹³⁸⁰

The Treaty of Amity and Cooperation in Southeast Asia states that Member States shall “strive to achieve the closest cooperation on the widest scale and shall seek to provide assistance to one another in the form of training and research facilities in the social, cultural, technical, scientific and administrative fields.”¹³⁸¹

¹³⁷⁵ UNCLOS art. 287 (1).

¹³⁷⁶ UNCLOS, art. 287 (4).

¹³⁷⁷ UNCLOS, art. 296.

¹³⁷⁸ UNCLOS, art. 200.

¹³⁷⁹ 2002 ASEAN Declaration, Declaration 5.

¹³⁸⁰ 1992 ASEAN Declaration, Declaration 4.

¹³⁸¹ Treaty of Amity, art. 8.

The Treaty further states that the Member States shall “maintain regular contacts and consultations with one another on international and regional matters with a view to coordinating their views actions and policies.”¹³⁸²

11. Notifications

Signatories to the Declaration on the Conduct of the Parties in the South China Sea agree that after jurisdictional and territorial conflicts are settled, they will notify each other, on a voluntary basis, of any impending joint or combined military exercise.¹³⁸³

12. Funding and Financing

Under UNCLOS, the Assembly has the power to assess the contributions of Member States to the administrative budget of the Authority base on an agreed scale of assessment until the Authority has sufficient income from other sources to meet its administrative expenses.¹³⁸⁴

The other agreements do not contain a specific provision pertaining to funding and financing.

13. Benefit Sharing

UNCLOS has a general provision entitled “Benefit of mankind” which states that the areas of the seabed and ocean floor and subsoil thereof should benefit mankind as a whole, regardless of the geographical location of a State.¹³⁸⁵

The other agreements do not contain any specific provisions pertaining to benefit sharing. They all emphasize the necessity of close cooperation and the peaceful sharing of resources, but also explicitly state that this shall be done on a voluntary basis.

14. Compliance and Monitoring

No specific provision.

15. Participation and the Role of Multiple Stakeholders

No specific provision.

16. Dissolution and Termination

No specific provision.

¹³⁸² Treaty of Amity, art. 9.

¹³⁸³ 2002 ASEAN Declaration, Declaration 5.

¹³⁸⁴ UNCLOS, art. 160.

¹³⁸⁵ UNCLOS, art. 140.

17. Additional Remarks

There are a number of Joint Statements regarding issues involving the South China Sea. Each is non-binding.

The Joint Statements include:

- Joint Statement, RP-PRC Consultation on the South China Sea and Other Areas of Cooperation, coordinated on 9-10 August 1995;¹³⁸⁶
- Joint Statement on the Fourth Annual Bilateral Consultation between the Socialist Republic of Vietnam and the Republic of the Philippines, signed on 7 November 1995;¹³⁸⁷
- Joint Statement of the Meeting of Heads of State/Government of the Member States of ASEAN and the President of the People's Republic of China, signed on 16 December 1997;¹³⁸⁸
- Joint Statement between China and the Philippines on the Framework of Bilateral Cooperation in the Twenty-First Century, signed on 15 November 2000;¹³⁸⁹ and
- Joint Declaration of the Heads of State/Government of The People's Republic of China and The Member States of ASEAN on Strategic Partnership for Peace and Prosperity, signed on 8 October 2003.¹³⁹⁰

18. Websites and References

- Global International Waters Assessment, South China Sea, *available at* http://www.unep.org/dewa/giwa/areas/reports/r54/giwa_regional_assessment_54.pdf.
- Joshua P. Rowan, *The U.S.-Japan Security Alliance, ASEAN, and the South China Sea Dispute*, 45-3 ASIA SURVEY 414 (2005).

¹³⁸⁶ Scott Snyder, Brad Glosserman, and Ralph Cossa, *Confidence Building Measures in the South China Sea*, in PACIFIC FORUM CSIS ISSUES & INSIGHTS, Vol.1 No. 2, at Appendix D (2001).

¹³⁸⁷ Nguyen Hong Thao, *Vietnam and the Code of Conduct for the South China Sea*, 32 OCEAN DEV. & INT'L. L. 105, 126 (2001) (this publication contains only an excerpt of the Joint Statement.).

¹³⁸⁸ Joint Statement of the Meeting of Heads of State/Government of the Member States of ASEAN and the President of the People's Republic of China, *available at* <http://www.aseansec.org/5476.htm>.

¹³⁸⁹ Joint Statement between China and the Philippines on the Framework of Bilateral Cooperation in the Twenty-First Century, *available at* <http://www.fmprc.gov.cn/eng/wjb/zzjg/yzs/gjlb/2762/2763/t16139.htm>.

¹³⁹⁰ Joint Declaration of the Heads of State/Government of The People's Republic of China and The Member States of ASEAN On Strategic Partnership for Peace and Prosperity, *available at* <http://www.aseansec.org/15265.htm>.

- Nguyen Hong Thao, *The 2002 Declaration on the Conduct of Parties in the South China Sea: A Note*, 34 OCEAN DEV. & INT'L L. 279 (2003).
- Reversing Environmental Degradation Trends in the South China Sea and Gulf of Thailand, Review of the Legal Aspects of Environmental Management in the South China Sea and Gulf of Thailand, *available at* http://www.unepscs.org/SCS_Documents/startdown/1959.html.
- The Philippines-Vietnam Joint Research in the South China Sea (1996-2007).
- Tom Næss, *Epistemic Communities and Environmental Co-operation in the South China Sea*, *available at* <http://www.southchinasea.org/docs/Naess.pdf>.

Western and Central Pacific Fisheries Commission (WCPFC)

1. Legal Basis

The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean was opened for signature at Honolulu, Hawaii on 5 September 2000.¹³⁹¹ The Convention entered into force on 19 June 2004—six months after the deposit of the thirteenth instrument of ratification, acceptance, approval, or accession. The Convention implemented the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982¹³⁹² and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.¹³⁹³

The Convention applies to all stocks of highly migratory fish (as listed in Annex I of the Convention on the Law of the Sea) within the Convention Area, except sauries.¹³⁹⁴

2. Member States

The Member States are Australia, China, Canada, the Cook Islands, the European Community, the Federated States of Micronesia, Fiji, France, Japan, Kiribati, Korea, the Republic of Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Samoa, the Solomon Islands, Chinese Taipei, Tonga, Tuvalu, the United States, and Vanuatu.

In addition, American Samoa, Commonwealth of the Northern Mariana Islands, French Polynesia, Guam, New Caledonia, Tokelau, and Wallis and Fatuna are participating territories. Belize and Indonesia are cooperating non-members.

3. Geographical Scope

All the waters of the Pacific Ocean bounded to the south and east by the following line from the south coast of Australia due south along the 141° meridian of east longitude to its intersection with the 55° parallel of south latitude; then due south along the 150° meridian of east longitude to its intersection with the 60° parallel of south latitude; then due east along the 60° parallel of south latitude to its intersection with the 130° meridian of west longitude; then due north along the 130° meridian of west longitude to its intersection with the 4° parallel of south latitude; then due west along the 4° parallel of south latitude to its

¹³⁹¹ The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (“WCPFC Convention”), 5 Sept. 2000, 40 I.L.M. 278.

¹³⁹² United Nations Convention on the Law of the Sea (“UNCLOS”), 10 Dec. 1982, 1833 U.N.T.S. 396.

¹³⁹³ The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 Dec. 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 4 Aug. 1995, 2167 U.N.T.S. 88.

¹³⁹⁴ WCPFC Convention, art. 3.3.

intersection with the 150° meridian of west longitude; then due north along the 150° meridian of west longitude.¹³⁹⁵

4. Legal Personality

Under Article 9.6, the Western and Central Pacific Fisheries Commission (“WCPFC”) has international legal personality and the legal capacity necessary for it to perform its functions and achieve its objectives. The privileges and immunities of the WCPFC and its officers in the territory of a Member State are determined by an agreement between the Commission and that Member State.

5. Functions

Under Article 10, the objective of this Convention is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean. The functions of the WCPFC are to:

- Determine the total allowable catch or total level of fishing effort within the Convention Area for certain highly migratory fish stocks;
- Adopt Conservation and Management Measures to ensure the long-term sustainability of these stocks;
- Promote cooperation and coordination between members of the Commission to ensure that Conservation and Management Measures for highly migratory fish stocks in areas under national jurisdiction are compatible with those measures on the high seas;
- Where necessary, adopt Conservation and Management Measures and recommendations for non-target species and species associated with the target stocks in order to maintain or restore populations above levels at which their reproduction may become seriously threatened;
- Compile and disseminate accurate and complete statistical data on highly migratory fish stocks in the Convention Area and promote the conduct of relevant scientific research;
- Where necessary, develop criteria for the allocation of the total allowable catch or the total level of fishing effort for highly migratory fish stocks in the Convention Area;
- In developing criteria for the allocation of the total allowable catch or the total level of fishing effort, the WCPFC shall take into account: the status of the stocks and the existing level of fishing effort; past and present fishing patterns and the extent the catch is being used for domestic consumption; the historic catch in the area; the needs of small island developing Member States whose economies are overwhelmingly dependent on the exploitation of marine resources; the respective contributions of Member States to the conservation and management of the stocks; the fishing interests of coastal Member States in whose areas of national jurisdiction the stocks also occur;

¹³⁹⁵ WCPFC Convention, art. 3.1.

- Adopt generally recommended international minimum standards for the responsible conduct of fishing operations; and
- Establish appropriate cooperative mechanisms for the effective monitoring, control, surveillance, and enforcement of this regime—including a vessel monitoring system.

Under Article 12, the Scientific Committee is responsible for obtaining the best scientific information available, identifying data needs, and recommending to the WCPFC a research plan. In addition, the duties of the Scientific Committee include:

- Review and comment on the reports prepared for the WCPFC by scientific experts;
- Encourage and promote cooperation in scientific research on highly migratory stocks, non-target species, and species associated with such stocks in the Convention Area;
- Working with the Technical and Compliance Committee, recommend to the WCPFC the priorities and objectives of the regional observer program and assess the results of the program.
- Report to the WCPFC on the status of and recommendations for target stocks, non-target stocks, and associated species in the Convention Area.

The Technical and Compliance Committee shall: provide the WCPFC with information, technical advice and recommendations relating to the implementation and compliance with the Conservation and Management Measures; monitor and evaluate the compliance of Member States with the Conservation and Management Measures; and review the implementation of cooperative measures for monitoring, control, surveillance and enforcement adopted by the WCPFC and make the necessary recommendations.¹³⁹⁶

Member States shall adopt Conservation and Management Measures for their waters under national jurisdiction which are designed to ensure the long-term sustainability of highly migratory fish stocks in the Convention Area. These measures should be based on the best scientific evidence available and be designed to maintain or restore stocks at levels capable of producing maximum sustainable yield. These measures should follow the precautionary approach and take into account fishing patterns, relevant environmental and economic factors as well as the special requirements of small island developing countries.¹³⁹⁷ There should be stock-specific reference points and a series of actions to be taken if those limits are exceeded.¹³⁹⁸ Conservation and Management Measures established for the high seas and for areas under national jurisdiction must be compatible — and the measures for national jurisdiction must not undermine the effectiveness of the measures adopted by the WCPFC.¹³⁹⁹

¹³⁹⁶ WCPFC Convention, art. 14.

¹³⁹⁷ WCPFC Convention, art. 5.

¹³⁹⁸ WCPFC Convention, art. 6.

¹³⁹⁹ WCPFC Convention, art. 8.

Each Member State shall, to the greatest extent possible, take measures to ensure that fishing vessels flying its flag and fishing vessels owned or controlled by its nationals who are fishing in the Convention Area comply with the provisions of Convention and the measures adopted by the WCPFC. These vessels must not engage in any activity that would undermine the effectiveness of the Conservation and Management Measures nor conduct any unauthorized fishing within areas under the national jurisdiction of any Member State. Furthermore, no member of the WCPFC shall allow any fishing vessel flying its flag to be used for the fishing of highly migratory fish stocks in the Convention Area beyond the areas of its national jurisdiction unless the vessel has been authorized to do so by the appropriate authorities in that Member State.¹⁴⁰⁰

In order to support the accurate reporting of catches, Member States should encourage their fishing vessels to conduct transshipment in port. Transshipment is the unloading of fish on board a fishing vessel to another fishing vessel (either at sea or in port). Transshipment in an area under national jurisdiction will occur subject to that Member States' applicable law—whereas transshipment on the high seas in the Convention Area is subject to the terms and conditions of the Convention. The WCPFC will circulate to its members a list of ports that are available for transshipment. The WCPFC will also establish procedures to obtain and verify data on the quantity and species transshipped (both in port and at sea) in the Convention Area and when transshipment has been completed. While every effort will be made to minimize disruptions to fishing operations, operators of vessels must assist persons authorized by the WCPFC for inspections and allow them to have the full access necessary to carry out their duties to regulate transshipment. Subject only to specific exceptions granted by the WCPFC, transshipment at sea by purse-seine vessels (i.e., vessels using a large drawstring-type fishing net) operating within the Convention Area is prohibited.¹⁴⁰¹

Several elements of the WCPFC's regulatory framework were established during the Preparatory Conference from 2001 to 2004 and became operational during the WCPFC's Inaugural Session in December 2004. This regulatory system includes mechanisms for monitoring (the continuous measurement of fishing effort characteristics and resource yields), control (the regulatory conditions under which the exploitation of the resource may be conducted), and surveillance (the degree and type of observations required to maintain compliance with the regulatory controls imposed on fishing activities). Some of the schemes already adopted by the WCPFC are: the Record of Fishing Vessels and Authorizations to Fish; programs for the boarding and inspection of vessels on the high seas; a vessel monitoring system; and the framework of the regional observer program (based on the use of existing regional, sub-regional, and national programs already operational in the region). The procedures for regulating illegal, unreported and unregulated ("IUU") fishing vessels has already led to vessels being identified and placed on the WCPFC's IUU list.¹⁴⁰²

¹⁴⁰⁰ WCPFC Convention, arts. 23, 24.

¹⁴⁰¹ WCPFC Convention, art. 29 and Annex III (Terms and Conditions of Fishing) art. 4.

¹⁴⁰² See Summary Report of the Fifth Regular Session of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean ("WCPFC 5th Session Report"), Dec. 2008, at 21-24, available at <http://www.wcpfc.int/wcpfc5/pdf/WCPFC5%20%5BSummary%20Report%20-%20Final%5D.pdf>.

In formulating its regulations, the WCPFC will give full recognition to the special requirements of developing country Member States, particularly small island developing countries. Factors to be considered by the WCPFC are: the vulnerability of developing countries that are dependent on the exploitation of marine life (including for the satisfaction of the nutritional requirements of the population); the need to avoid adverse impacts and to ensure access to fisheries by subsistence, small-scale and artisanal fishers and indigenous people; and the need to ensure that such measures do not result in the transfer of a disproportionate amount of the burden of conservation action onto developing country Member States. The WCPFC has a fund to facilitate the effective participation of developing country Member States, particularly small island developing countries, in the work of the WCPFC. The financial assistance available through this fund will also be directed towards: improving the conservation and management of highly migratory fish stocks through collection, reporting, verification, exchange, and analysis of fisheries data; stock assessment and scientific research; and monitoring, control, surveillance, compliance and enforcement measures.¹⁴⁰³

With respect to non-members of the Convention, the WCPFC Member States are obligated to take measures consistent with the Convention to deter the activities of vessels flying the flags of non-parties which undermine the effectiveness of the Conservation and Management Measures adopted by the WCPFC. Furthermore, Member States will request that these non-member states with vessels fishing in the Convention Area cooperate in the implementation of the Conservation and Management Measures. The WCPFC will also inform the non-member state of any activity by its fishing vessels which affects the implementation of the objectives of the Convention.¹⁴⁰⁴

6. Organizational Structure

The WCPFC, which is comprised of representatives of the Member States, is the highest authority. The WCPFC elects a chairman and vice-chairman (of different nationalities) from among the Member States for a two-year term with eligibility for re-election. There is a permanent Secretariat with an Executive Director (who is appointed by the Commission for a four-year term subject to one renewal) as the chief administrative officer and other staff as may be required. The WCPFC's headquarters is in Pohnpei in the Federated States of Micronesia. The WCPFC must hold an annual meeting and can call any other meetings as it deems necessary to carry out its functions. At these meetings, the WCPFC: makes determinations on applications for membership (including cooperating non-member status); considers annual reports from the Member States, the Scientific Committee, the Northern Committee, the Technical and Compliance Committee, the Finance and Administration Committee, and other summaries of relevant activities; evaluates Conservation and Management Measures and the Monitoring, Control and Surveillance Scheme; and adopts and implements certain measures and recommendations for WCPFC action.¹⁴⁰⁵ Resolutions are non-binding statements addressed to the Member States of the WCPFC and cooperating non-members. Conservation and Management Measures are binding ways to regulate stocks of fish.

¹⁴⁰³ WCPFC Convention, art. 30.

¹⁴⁰⁴ WCPFC Convention, art. 32.

¹⁴⁰⁵ WCPFC Convention, arts. 9, 15, 16; *see also, e.g.*, WCPFC 5th Session Report.

A fishing entity, such as a Chinese Taipei, that has agreed to be bound by the regime established by the WCPFC may also participate in the work of the WCPFC. In addition, non-member countries to the Convention can, upon the request and concurrence of the Member States, be invited to attend the meetings of the WCPFC as observers. Cooperating non-party countries will receive benefits from their participation with the WCPFC commensurate with their compliance level with the relevant Conservation and Management Measures. The Member States may, by consensus, invite other states and regional economic interest organization whose nationals and fishing vessels want to fish for highly migratory fish stocks in the Convention Area to accede to the Convention.¹⁴⁰⁶

The Scientific Committee and the Technical and Compliance Committee were established as subsidiary bodies to the WCPFC in order to provide advice and expert recommendations in their respective areas of competence. Each Member State can appoint one representative (accompanied by experts and advisers) to each committee. These committees prepare a report, adopted by consensus to present to the WCPFC at its annual meeting. If the Committee fails to reach consensus, it presents the majority and minority views in its report to the WCPFC. Within these committees, working groups can be established to handle specific issues such as technical issues relating to particular fish species. The Convention has also established a committee to make recommendations on the implementation of Conservation and Management Measures for fish stocks which occur mostly north of the 20° parallel of north latitude (the Northern Committee). There is also a Finance and Administration Committee focused on the operational issues of running the WCPFC.¹⁴⁰⁷

7. Relationships

The WCPFC has a mandate to cooperate and collaborate with other relevant intergovernmental organizations (such as the UN Food and Agriculture Organization (“FAO”), the Inter-American Tropical Tuna Commission, the Indian Ocean Tuna Commission, the Commission for the Conservation of Antarctic Marine Living Resources, etc.)¹⁴⁰⁸ The WCPFC has already entered into Memorandums of Understanding with numerous international organizations—such as the Pacific Community, the Pacific Islands Forum Fisheries Agency, and the Agreement for the Conservation of Albatross and Petrelswell.¹⁴⁰⁹ Especially when there is an overlap in the covered area with another fisheries management organization, the WCPFC and the other organization shall work together to avoid duplication of measures in the regulations of species. In addition, the Convention emphasizes that the WCPFC should be run in a cost-effective manner. Therefore, the WCPFC and its subsidiary committees should utilize the services of existing regional organizations and consult, where appropriate, with other

¹⁴⁰⁶ WCPFC Convention, arts. 21, 23, 35.

¹⁴⁰⁷ WCPFC Convention, art. 11.

¹⁴⁰⁸ WCPFC Convention, art. 22.

¹⁴⁰⁹ See Technical and Compliance Committee: Cooperation with Other Organizations, Oct. 2008, *available at* <http://www.wcpfc.int/tcc4/pdf/WCPFC-TCC4-2008-16%20%5BCooperation%20with%20other%20organisations%5D.pdf>.

fisheries management, technical or scientific organizations. But, where necessary, the WCPFC is authorized to contract with relevant institutions for necessary expert services.¹⁴¹⁰

On the domestic level, Member States are responsible for enforcing the Conservation and Managements Measures in waters under their national jurisdiction. In addition, Member States are obligated to investigate and prosecute violations of the Convention and of measures adopted by the WCPFC.¹⁴¹¹

8. Decision Making

Decision-making by the WCPFC is made by consensus — it is considered a decision of the WCPFC if no formal objection is made when the decision is proposed. The WCPFC is allowed to grant exceptions to the obligations and requirements it imposes on Member States. If all efforts to reach consensus have failed, decisions on questions of substance can be passed by a vote of three-fourths of those Member States voting and present. This supermajority must include a three-fourths majority of the Member States from the South Pacific Forum Fisheries Agency present and voting and a three-fourths majority of the non-members of the South Pacific Forum Fisheries Agency present and voting. Amendments to the Convention and decisions on the allocation of the total allowable catch or the total level of fishing effort can only be passed by consensus (*i.e.*, without formal objections). Votes on questions of procedure only require a majority approval of those Member States present and voting. A decision by the WCPFC will become binding 60 days after the date of its adoption or 30 days from the date the review panel approves a challenged decision and reports its approval to the Executive Director.¹⁴¹²

9. Dispute Resolution

To encourage decision making by consensus, the Chairman can appoint a conciliator to reconcile the differences between Member States. If this process fails and a decision gets approved by a less-than-unanimous vote (or a Member State was not present when the decision was adopted), that Member State can challenge the decision of the WCPFC by submitting a written application—noting the grounds on which review is sought—for review within 30 days of the adoption of the decision by the WCPFC to the Executive Director. The review panel will consist of three members appointed from an approved list of experts in the field of fisheries maintained by the FAO. The Member State submitting the application for review will appoint one member of the review panel. When there is more than one Member State seeking review of the same decision, these members shall jointly appoint one member of the review panel. The Chairman shall appoint one member, and the last member shall be appointed by agreement between the Chairman and the member or members seeking review. The applicant and the Chairman must also agree on which member of the Panel will serve as President. If there is no agreement, the President of the International Tribunal for the Law of the Sea will make the necessary appointments.¹⁴¹³

¹⁴¹⁰ WCPFC Convention, arts. 9, 13, 15.

¹⁴¹¹ See WCPFC Convention, art. 25.

¹⁴¹² WCPFC Convention, art. 20.

¹⁴¹³ WCPFC Convention, Annex II (Review Panel).

The review panel will conduct a hearing within 30 days from the date of its appointment. The hearing will be conducted expeditiously and the applicant Member State must receive a full opportunity to be heard. The Executive Director, on behalf of the WCPFC, shall provide the review panel with the necessary information for the panel to understand the reasoning behind the WCPFC's challenged decision. Any other Member State may submit to the review panel a memorandum relating to the challenged decision. Absence of the challenging Member State is not a bar to the review proceedings. The review panel will reach its decision by majority vote. A dissenting opinion can be attached to the majority's ruling. The panel shall communicate its findings and recommendations, including the reasons behind its decision, to the Member State applicant and the Executive Director within 30 days from the date the hearing concludes. The Executive Director will then circulate copies of the review panel's findings to all Member States.¹⁴¹⁴

The findings and recommendations of the review panel will be limited to the subject matter of the application. The challenged WCPFC decision will be struck down if the decision is inconsistent with the provisions of the Convention, or if the decision unjustifiably discriminates in form or in fact against the Member State. If the review panel recommends to the WCPFC that the decision be modified or revoked, at its next annual meeting, the WCPFC will revoke its decision or modify its decision to conform with the findings and recommendations of the review panel.

If a dispute over the interpretation or the application of the Convention involves a fishing entity (i.e., Chinese Taipei) and it cannot be resolved by agreement, at the request of either party to the dispute, the dispute shall be submitted to final and binding arbitration in accordance with the relevant rules of the Permanent Court of Arbitration.¹⁴¹⁵

10. Data Information Sharing, Exchange, and Harmonization

Each Member State must provide annually to the WCPFC statistical, biological and other data as may be required. This data is in addition to the information that the WCPFC receives through the regional observer program. In addition, each Member State shall provide information to the WCPFC concerning its fishing activities in the Convention Area—including its fishing areas and fishing vessels. Each Member State must also submit to the WCPFC an annual statement of compliance measures and information on the steps it has taken to implement the Conservation and Management Measures adopted by the WCPFC—including any imposition of sanction for violations. The Commission shall maintain its own record with this information and circulate this information periodically. The Member States shall keep the WCPFC informed of the measures they have adopted for their national jurisdiction for the conservation and management of highly migratory fish stocks within the Convention Area. Member States will also inform the WCPFC of measures it has adopted for the regulation of fishing vessels flying its flag that fish in the Convention Area. Each Member State must also maintain a record of fishing vessels entitled to fly its flag and authorized for fishing in the Convention Area beyond the area of its national jurisdiction. Member States will provide this record to the WCPFC annually and keep the information updated. The WCPFC will periodically circulate this information to its members. In

¹⁴¹⁴ WCPFC Convention, Annex II (Review Panel).

¹⁴¹⁵ WCPFC Convention, Annex I (Fishing Entities), Annex II (Review Panel), art. 20.

addition, the WCPFC shall duly notify its members and publicize all of the Conservation and Management Measures and recommendations that it has adopted.¹⁴¹⁶

Each vessel that fishes in the high seas or in areas under the national jurisdiction of another WCPFC Member State must be outfitted with near real-time satellite position-fixing transmitters. The operator of the fishing vessel shall record and report vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with the established standards for the collection of this data. The vessel must be marked and identified in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels.¹⁴¹⁷

11. Notifications

Each Member State has to submit volumes of data and information to the WCPFC—including in such areas as compliance measures, steps taken to implement the Commission’s Compliance and Management Measures, imposition of sanctions, and the record of fishing vessels authorized to fish in the Convention Area. The WCPFC will periodically circulate this information to the other Commission members. In addition, the WCPFC will duly notify its members and publicize its adoption of Conservation and Management Measures and recommendations. Much of this information is also available on the WCPFC’s website.

12. Funding and Financing

Funding for operational costs is from a combination of assessed contributions from member states, voluntary contributions (i.e., the Japan Trust Fund), a fund to provide assistance to developing Member States, and any other monies the WCPFC may receive. The assessed contributions for Member States are comprised of: (a) a basic fee divided equally among the members (10%); (b) a fee based upon national wealth and the country’s level of development (20%); and (c) a variable fee based on the total catch taken within the exclusive economic zones, discounted for developing Member States (by a factor of 0.4), and in areas beyond national jurisdiction in the Convention Area (70%).¹⁴¹⁸ There is no distinction between short-term and long-term costs. If a Member State is in arrears in paying its contribution for two years, that Member State shall not participate in WCPFC decisions. The WCPFC shall draft the budget by consensus and adopt financial regulations for its administration. Unless otherwise decided, the expenses of the review panel (formed to challenge a WCPFC decision) are apportioned between: (a) 70% by the applicant Member State (and if there is more than one challenging Member State, divided equally among them); and (b) 30% from the annual budget of the WCPFC.¹⁴¹⁹

¹⁴¹⁶ WCPFC Convention, arts. 10.6, 23, 24, 25.

¹⁴¹⁷ WCPFC Convention, arts. 5, 24.8; *see also* WCPFC Convention Annex III (Terms and Conditions for Fishing) art. 6.3.

¹⁴¹⁸ WCPFC Convention, art. 18; Provisional Budget and Scheme of Contributions for the Commission in its First Year of Operation, 1 Mar. 2004, at 10-12, *available at* [http://www.wcpfc.int/pdf/WCPFC_PrepCon_WP20\(Budget_and_contributions\).pdf](http://www.wcpfc.int/pdf/WCPFC_PrepCon_WP20(Budget_and_contributions).pdf).

¹⁴¹⁹ WCPFC Convention, Annex II (Review Panel) art. 7.

13. Benefit Sharing

The Convention aims to maintain the viability of highly migratory fish stocks in the Convention Area. The Conservation and Management Measures, which are developed by reference to the information submitted to the WCPFC, are designed to protect those species that are in danger of falling below sustainability levels. If the WCPFC is successful in protecting the fish stocks in the Convention Area, all Member States to the Convention will share in the benefits since fishing will be revived. Otherwise, if an allocation of total allowable catch or total allowable fishing levels is necessary, these decisions can only be passed by the consensus of all of the Member States.

14. Compliance and Monitoring

Each Member State shall enforce the provisions of the Convention and any Conservation and Management Measures adopted by the WCPFC. When non-compliance is suspected, all investigations and judicial proceedings must be carried out expeditiously. Sanctions for violations must be sufficiently severe to effectively secure compliance with the measures and discourage violations. If a fishing vessel flying the flag of a Member State has been involved in a serious violation, that Member State must ensure that the vessel ceases fishing activities and does not engage in such activities in the Convention Area again until all outstanding sanctions in respect to that violation have been satisfied. At the request of any Member State and when provided with sufficient information, each Member State shall fully investigate alleged violations by fishing vessels flying its flag or vessels owned or controlled by its nationals. The Member State must then issue a report to the requesting Member State and the WCPFC on the progress of the investigation as soon as practicable (or within two months at the latest). That Member State will also issue a follow-up report once the investigation has been completed.¹⁴²⁰

When a fishing vessel flying the flag of a non-member state engages in activity that undermines the effectiveness of the Conservation and Management Measures in the Convention Area, Member States must bring this activity to the attention of that state, the Flag State, and, where appropriate, the WCPFC. Furthermore, Member States will exchange information on the activities of fishing vessels flying the flags of non-parties who are operating in the Convention Area. Consistent with the Convention and international law, Member States may take actions to deter fishing vessels that have undermined the effectiveness of the Conservation and Management Measures until appropriate action is taken by the Flag State.¹⁴²¹ The WCPFC will establish procedures to allow, when necessary, Member States to take non-discriminatory trade measures, which are consistent with international obligations, concerning any species regulated by the WCPFC against any state or entity whose fishing vessels undermine the effectiveness of the Conservation and Management Measures.¹⁴²²

Each fishing vessel must carry on board the authorization papers issued to it by its Flag State and, if applicable, any license issued by a coastal Member State. The vessel must produce these papers at the request of an authorized enforcement official from any of the WCPFC Member States, and the vessel must comply with the instructions and directions. These authorized boardings and inspections will be

¹⁴²⁰ WCPFC Convention, art. 25.

¹⁴²¹ WCPFC Convention, art. 32.

¹⁴²² WCPFC Convention, art. 25.12.

conducted, to the extent possible, so as to not unduly interfere with the lawful operation of the fishing vessel. The operator of the vessel shall ensure the continuous monitoring of the international distress and calling frequencies in order to facilitate communication with the fisheries management, surveillance, and enforcement authorities of the WCPFC Member States. When a fishing vessel is in an area in which it is not authorized to fish, all fishing equipment on board the vessel must be secured in a manner where it is not readily available for use.¹⁴²³

The WCPFC shall also develop a regional observer program to collect verified catch data, other scientific data, and additional information related to the fishery from the Convention Area and to monitor the implementation of the Conservation and Management Measures adopted by the WCPFC. Independent and impartial observers authorized by the Secretariat shall serve in the regional observer program. To ensure compliance with the Conservation and Management Measures, the WCPFC has started establishing procedures for the boarding and inspection of fishing vessels on the high seas in the Convention Area. Each Member State must ensure that fishing vessels flying its flag (except for those vessels operating exclusively within the national jurisdiction) will accept an observer from the regional observer program. Vessels will be given a reasonable period of notice regarding the placement of an observer, and the observers shall not unduly interfere with the lawful operations of the vessel. The regional observer program shall be designed to provide a sufficient level of coverage for the WCPFC to receive appropriate data and information on catch levels and other related matters within the Convention Area. The WCPFC has already developed the framework for this program—even though many of the details remain open.¹⁴²⁴

15. Participation and the Role of Multiple Stakeholders

Inter-governmental and non-governmental organizations may be invited to attend the annual meetings of the WCPFC and its subsidiary bodies as observers. These organizations may submit relevant statements and reports to the WCPFC for consideration by the Member States in their decision-making. Some of the organizations that have attended are Greenpeace, WWF Traffic, the International Union for Nature Conservation and Natural Resources, and the International Game Fish Association.¹⁴²⁵ However, only Member States to the Convention have the ability to vote on decisions.

16. Dissolution and Termination

A Member State may, by written notification addressed to the depository (New Zealand), withdraw from the Convention. Unless the notification specifies a later date, this withdrawal shall take effect one year after the date of the receipt of the notification. Withdrawal from the Convention does not affect the financial obligations already incurred by the Member State.¹⁴²⁶

¹⁴²³ WCPFC Convention, Annex III (Terms and Conditions of Fishing) art. 6.

¹⁴²⁴ WCPFC Convention, art. 28; Conservation and Management Measures for the Regional Observer Programme, (CMM-2007-01 – 7 Dec. 2007) and (CMM-2006-07 – 15 Dec. 2006), *available at* <http://www.wcpfc.int/>.

¹⁴²⁵ *See, e.g.*, 5th Regular Session Greenpeace Briefing, 2 Dec. 2008, *available at* <http://www.wcpfc.int/wcpfc5/pdf/WCPFC5-2008-OP01%20Rev.1%20%5BGreenpeace%5D.pdf>.

¹⁴²⁶ WCPFC Convention, art. 42.

17. Additional Remarks

Unauthorized fishing has increased in the Western and Central Pacific Ocean, with a majority of these vessels being large purse-seiners from Latin America. As fish stocks have decreased in other parts of the world, more boats and fishing activity has moved to the Western and Central Pacific. These illegal fishing activities undermine the Conservation and Management Measures of the WCPFC and have an adverse impact on the fragile island economies that depend on fishing.¹⁴²⁷ The WCPFC is facing an uphill battle in effectively regulating its part of the Pacific Ocean in order to preserve the stocks of highly migratory fish. The WCPFC commenced operations in July 2005, but has not yet implemented all of the programs and regulations called for by the Convention. For example, although there has been progress in developing the framework for the regional observer program and high seas boardings and inspections, the functional details of these programs remain undetermined. Much work also remains to be done in developing reference points for various fish stocks, such as for the striped marlin. Gaps in data continue to persist.

One of the most important priorities for the WCPFC is to protect the Pacific Tuna Stock by developing and refining Conservation and Management Measures for bigeye and yellowfin tuna.¹⁴²⁸ These stocks are in danger and there are already catch limits in place for bigeye tuna. The WCPFC has also worked on the issues of sea turtles, driftnets, swordfish, sharks and limiting purse-seine efforts on the high seas. The WCPFC has adopted Conservation and Management Measures concerning: (a) Record of Fishing Vessels and Authorization to Fish; (b) Cooperating Non-Members; (c) Specifications for the Marking and Identification of Fishing Vessels; (d) Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean; (e) South Pacific Albacore; (f) North Pacific Albacore; (g) Swordfish in the South West Pacific; (h) Striped Marlin in the South West Pacific; (i) Sharks in the Western and Central Pacific Ocean; (j) Regional Observer Program; (k) Western and Central Pacific Fisheries Commission Boarding and Inspection Procedures; (l) Commission Vessel Monitoring System; (m) List of Vessels Presumed to Have Carried Out Illegal, Unreported and Unregulated Fishing Activities in the WCPO; and (n) Mitigating the Impact of Fishing for Highly Migratory Fish Stocks on Seabirds.¹⁴²⁹

18. Websites and References

- A. Willcock and I. Cartwright, *Conservation implications of allocation under the Western and Central Pacific Fisheries Commission*, WWF Australia and TRAFFIC Oceania (2006), available at <http://www.wwf.org.au/publications/traffic-implications-of-allocation-under-wcpfc/>.
- Barbara Hanchard, *Participation in a Fisheries Commission and the Adoption of Conservation and Management Measures for Sustainable Use of Transboundary Oceanic Fish Stocks*, GEF/UNDP: Pacific Islands Oceanic Fisheries Management Project (2007), available at http://www.iwlearn.net/publications/experience-note/expnote_pacific_fisheries.pdf.

¹⁴²⁷ See Alarming increase in illegal fishing in Central Pacific, 5 June 2007, available at <http://www.wcpfc.int/press/illegalfishing.pdf>.

¹⁴²⁸ See Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean (CMM 2008-01 – 12 Dec. 2008), available at www.wcpfc.int.

¹⁴²⁹ Conservation & Management Measures & Resolutions, available at www.wcpfc.int.

[DRAFT]

- Barbara Hanchard, *Presentation on Managing and Conserving Highly Migratory Fish Stocks in the Western and Central Pacific Ocean*, Pacific Islands Oceanic Fisheries Management Project (2007), available at http://www.iwlearn.net/publications/11/hanchard_iwc4_fishstock.ppt/view.
- Food and Agriculture Organization of the United Nations, Fisheries and Aquaculture Department, Western and Central Pacific Fisheries Commission, available at http://www.fao.org/fishery/org/wcpfc_inst/1/en.
- *The Sunken Billions: The Economic Justification for Fisheries Reform*, World Bank and the Food and Agriculture Organization (2008), available at <http://siteresources.worldbank.org/EXTARD/Resources/336681-1215724937571/SunkenBillionsAdvanceWebEd.pdf>.
- Western and Central Pacific Fisheries Commission, available at www.wcpfc.int.

Several Member States and relevant regional fisheries management organizations have their own websites detailing their participation in the Western and Central Pacific Fisheries Commission. These sites include, among others:

- Australia - Department of Agriculture, Fisheries and Forestry, available at <http://www.daff.gov.au/fisheries/international/wcfpc>.
- Papua New Guinea - National Fisheries Authority, available at http://www.fisheries.gov.pg/media_releases/2006.08.29.htm.
- Pacific Islands Forum Fisheries Agency, available at <http://www.ffa.int/wcpfc>.
- United States - NOAA National Marine Fisheries Service Pacific Islands Regional Office, available at http://www.fpir.noaa.gov/IFD/ifd_wcpfc.html.