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Feasibility Assessment of an ICZM Protocol to the Nairobi Convention

To the Parties of the Nairobi Convention

prepared by

IDDRI SciencesPo.

on behalf of

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Disclaimer

The views expressed in this report are those of the authors and do not necessarily reflect the views of organizations involved (COI, ReCoMaP, IDDRI, Nairobi Convention Secretariat, UNEP, etc.).

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LIST OF ABREVIATIONS

BP/RAC	Blue Plan Regional Activity Centre
CAMP	Coastal Area Management Programme
CBD	Convention on Biological Diversity
CIDD	Comité Insulaire de Développement Durable (Moheli, Anjouan, Grande Comore)
CNDD	Commission Nationale de Développement Durable (Comores)
COI	Indian Ocean Commission (Commission de l'Océan Indien)
COMESA	Common Market for Eastern and Southern Africa
COP	Conference of the Parties
CR/RAC	Cleaner Production Regional Activity Centre
CRM	Coastal Resources Management
EBM	Ecosystem based Management
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
EMPS	Environmental Management Plan of the Seychelles
EC	European Commission
ECJ	European Court of Justice
EU	European Union
GEF	Global Environment Facility
GHG	Green House Gases
ICM	Integrated Coastal Management
ICAM	Integrated Coastal Area Management
ICZM	Integrated Coastal Zone Management
ICZMC	Integrated Coastal Zone Management Committee
IMO	International Maritime Organisation
INFO/RAC	Communication and Information Regional Activity Centre
LBSA	Land Based Sources and Activities
LME	Large Marine Ecosystem
MAP	Mediterranean Action Plan
MCSD	Mediterranean Commission on Sustainable Development
MEA	Multilateral Environmental Agreement
METAP	Mediterranean Environmental Technical Assistance Program
NC	Nairobi Convention
NEPAD	New Partnership for Africa's Development
NFP	National Focal Point
NGO	Non-governmental organisation

NICEMS	National Integrated Coastal Environmental Management Strategy (Tanzania)
NICZMC	National ICZM Committee
NPA	National Plan of Action (including ICZM aspects in most countries)
NSA	Non-State Actor
NSC-ICM	National Steering Committee for Integrated Coastal Management (Tanzania)
PAP/RAC	Priority Actions Programme Regional Activity Centre
RAC	Regional activity centre
ReCoMaP	Regional Programme for the Sustainable Management of the Coastal Zone of the Countries of the Indian Ocean
REMPEC	Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea
SADC	Southern African Development Community
SAP	Strategic Action Planning
SIDS	Small Island Developing State
SMAP	Short and Medium-term Priority Environmental Action Programme
SPAMI	Specially Protected Areas of Mediterranean Interest
SPA/RAC	Specially Protected Areas Regional Activity
IUCN	International Union for the Conservation of Nature
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
WIO	Western Indian Ocean
WIOMSA	Western Indian Ocean Marine Science Association

EXECUTIVE SUMMARY

This Feasibility Assessment of an ICZM Protocol to the Nairobi Convention is a joint activity between the Indian Ocean Commission through its ReCoMaP Programme and the Nairobi Convention Secretariat.

Over the past twenty years, numerous integrated coastal zone management (ICZM) initiatives have been carried out in the WIO Region, at all scales, often with support from international organisations. Today, most countries of the region have established national ICZM structures in the form of National ICZM Committees and ICZM Frameworks of Government Sector Ministries and non-government stakeholder organisations. Moreover, most countries are developing National ICZM Action Plans based on either specific National ICZM Policies or on a combination of sector-specific policies and laws. By many ICZM stakeholders in the region, it is thus considered timely to take these developments to a next step and to create a regional ICZM Policy Platform, which could be conceptualised and managed under mandate from an ICZM Protocol to the Nairobi Convention. Thus, based on the Mediterranean experience where the first regional ICZM Protocol was adopted in 2008, and taking into account regional specificities, this report provides a Feasibility Assessment of an ICZM Protocol to The Nairobi Convention. Findings include that an ICZM Protocol is feasible, but cannot be considered a good idea *per se*: therefore, the report (i) explains what exactly such a protocol would bring to the regional sustainable development equation, (ii) provides conditions under which it could be a success and (iii) translates these into practical recommendations.

Why add an ICZM Protocol to the Nairobi Convention?

First of all, the study shows that there are several good reasons for a regional ICZM instrument in the WIO region:

- The coastal and marine environment is under increasing pressure from human activities. While ICZM is recognized as the best way to implement sustainable coastal areas development, it is far for having become a routine management process in the WIO region. Much effort remains to be done and part of it can be best delivered by joining forces at the regional level.
- With the proliferation of *ad hoc*, somehow isolated initiatives at all scales, and the current challenge of institutionalising national ICZM bodies, the need for regional exchanges of experiences is greater than ever.
- All countries of the region are interlinked by ecological, socio-economic and political issues. In the medium to long term, sustainable environmental management is key to regional stability. With the climate change perspective in particular, a lack of efficient adaptation / coastal management efforts could lead to major economic disruptions, population movements, sanitary crises, etc. Anticipatory, coordinated approaches are hence needed at the regional level.

Moreover, there are numerous factors that plead specifically for a regional *and* legally-binding ICZM instrument:

- Despite progress made, several gaps do exist in regional and national normative frameworks, when an ICZM protocol could provide a shared coastal management basis for all NC Parties. This is all the more important as transboundary effects

limit the usefulness for one country to engage in ICZM if neighbouring countries do not.

- Most countries in the WIO Region have already embarked on the development of National ICZM bodies, policies, strategies and plans. An ICZM Protocol to the NC could provide decisive support to national ICZM structures.
- There is a need for a shared theoretical and methodological framework. ICZM promoters are still relatively isolated at the national level and are asking for support through the regional approach. A legally-binding instrument could therefore support and strengthen existing national frameworks, while providing more political weight and legitimacy to ICZM leaders in their daily intersectoral work.
- Under certain conditions, an ICZM Protocol could (i) boost the Nairobi Convention framework, (ii) reemphasize the need to implement existing protocols, and (iii) contribute to further encourage countries that tend to be more passive in the regional environmental scene. Quite noticeably, it is not only the would-be protocol itself but also the negotiating process involving national stakeholders which would deliver such results – and obviously there is no negotiating process to a non-binding instrument.
- An ICZM Protocol could motivate international donors to get more involved in IZCM issues while mobilizing resources for implementation. A protocol would be a strategic indicator as well as a powerful methodological instrument to orient future initiatives to be funded, therefore avoiding dispersion of international funding.

Under which conditions could it be a success?

Developing an ICZM protocol, and ultimately implementing it, would require fulfilling at least the following key conditions:

- ***A friendly political atmosphere***: a minimum level of political support from each country should be sought and secured on the principle of an ICZM protocol.
- ***Political "champions"***: they are needed to support and boost the negotiating process, to convince reluctant States and to push, when necessary, the negotiation pace.
- ***Financial support***: it is required both at regional and national levels to allow for a smooth, fair and efficient protocol development process.
- ***Technical support***: the drafting and the negotiating process requires technical assistance in order to organise the negotiation, write meetings reports, inform the negotiating process, centralise informal exchanges between meetings…
- ***Elaboration of a "zero-draft***": a "zero draft" will have to be presented at the first meeting of the regional negotiating task force. This draft will be the basis on which the technical experts will negotiate.
- ***National consultations***: it would be very useful, relevant and motivating that the national experts participating in the regional task force organise internal consultations and inform political authorities and stakeholders on the progress of the negotiation.

- ***Anticipated implementation***: future implementation perspectives of a potential ICZM Protocol must be addressed at the earliest possible stage: a lack of anticipation would increase the risk of developing a useless "paper protocol". Two main options are to be considered: implementation supported through projects, or by a permanent structure, inspired by the PAP-RAC Mediterranean "model".

Key Recommendations

Recommendation 1: Prepare a propitious political context

At the technical level, national stakeholders should be informed of the feasibility study and convinced of the relevance of an ICZM Protocol. At the political level, official support to the protocol development process should be sought without further delay. Furthermore, international or regional organisations could help mobilizing by being "ICZM Protocol ambassadors" at the highest political level. Finally, political "champions" (ideally, one continental and one island State) should emerge who would be particularly proactive in the development of the ICZM Protocol.

Recommendation 2: Build an efficient negotiation process

First, a facilitator will have to be assigned the mission of coordinating the process. The negotiation process needs to be designed to allow sufficient time for negotiation while not risking to get stuck. This means that it should not start from a white page: it should be grounded on a "zero draft". General expectations should be expressed by Parties defining a shared vision of the would-be protocol before any drafting process is launched. Such a vision would "place the cursor" quite accurately between general guidelines on one extreme and a very detailed and binding text on another. Once the zero-draft circulates, a series of negotiating meetings has to be planned at the regional level and a Task Force has to be created for this purpose. Between Task Force meetings, national experts should engage consultations at national and sub-national level.

Recommendation 3: Anticipate future implementation

The need to anticipate future implementation perspectives of a potential ICZM Protocol has to be addressed seriously. Whether the Parties consider it more relevant to promote protocol implementation *via* projects or permanent structures (both having their pros and cons), or *via* any other, more innovative way, implementation outlook needs to be debated and kept in mind throughout the protocol development process.

Finally, the following table suggests a roadmap to guide Parties on how to put these recommendations into practice.

Phase	Key steps	Who?	When?	Comments
Prepare a propitious political context	Raising support through information and mobilization	Technical level: National ICZM Committees, ReCoMaP	February-March 2010	
		Political level: NICZMCs Chairs and NC NFPs, UNEP, COI, other international and regional organisations	February-March 2010	
	Expressing support	ICZM Committees members	Regional Conference of National ICZM Committees	
		High level plenipotentiaries	COP6	
	Championing the process	One continental and one island States	After COP6	If a positive formal decision is made
Build an efficient negotiating process	Appointing a facilitator	States, through a decision to be taken in COP6 *Or* NC Secretariat, through a mandate	During or after COP 6	Need to specify, among others: (i) mandate and general duties of the facilitator, (ii) nature of the protocol to be drafted, (iii) composition of the regional negotiation task force, (iv) funding, (v) tentative time-frame of the negotiation
	Defining and developing a "zero-draft"	*Definition:* Technical arena (Mombasa meeting) or Political arena (COP6) or Administrative context (NC Sec.)	During or after COP6 and before the negotiation process	Need for an early signal from the Parties regarding the nature of the protocol to be drafted
		Drafting: Expert(s) to be nominated		
	Creating a regional Task Force	COP6 / NC Secretariat / Facilitator	During or after COP6	Experts composing the regional Task Force should have explicit mandate / duties to organise national consultations at technical (stakeholders) and political (interministerial) levels
Anticipate future implementation		NC Sec, States, International and regional organisations, donors	After COP6, if a positive formal decision is made	Options to be considered: (i) implementation supported through projects, funded in part by international donors, (ii) implementation supported by a permanent structure

1. INTRODUCTION AND REPORT BACKGROUND

1.1. Context

Over the past twenty years, numerous Integrated Coastal Zone Management (ICZM) initiatives have been carried out in the Western Indian Ocean Region (WIO), at all scales, often with support from international organisations. These projects and programmes have developed from Coastal Resources Management (CRM) projects, many of which comparatively small in spatial and sectoral coverage, to Integrated Coastal Zone Management (ICZM).

Today, most countries in the WIO Region have formalised national ICZM structures in the form of National ICZM Committees and ICZM Frameworks of Government Sector Ministries and non-government stakeholder organisations. Moreover, most countries are developing National ICZM Action Plans based on either specific National ICZM Policies or on a combination of sector-specific policies and laws. By many ICZM stakeholders in the region, it is thus considered timely to take these developments to a next step which would be a Regional ICZM Policy Platform in the Western Indian Ocean.

The Convention on the Protection and Development of the Marine and Coastal Environment of the Eastern African Region (the Nairobi Convention, NC, see Annex 1) entered into force in 1996 and is now ratified by all Eastern African countries. Two protocols on protected areas and marine pollution have been added to the Convention and one on Land-Based Sources and Activities (LBSA) should be adopted in 2010.

At present, there is still no specific protocol for ICZM under the Nairobi Convention. Nevertheless, National ICZM Committees (NICZMCs) have expressed their interest in the development of a regional ICZM Policy Platform, which could be conceptualised and managed under mandate from an ICZM Protocol to the Nairobi Convention. In response to the expressed demand, the Secretariat of the Nairobi Convention has committed its support to studying the relevance of such an ICZM protocol to the Convention. In this context, the Indian Ocean Commission (COI) has decided to extend its support to the countries through its Regional Programme for the Sustainable Management of the Coastal Zone of the Countries of the Indian Ocean (ReCoMaP). The ReCoMaP Programme is already instrumental in the current establishing of ICZM structures and legal frameworks at national levels and has now been tasked to support eligible countries[1] in their progress towards a Regional ICZM platform.

All WIO countries and relevant regional organisations have already indicated an interest of principle in exploring the need for an ICZM protocol to the Nairobi Convention, either through their NC National Focal Points (NC-NFP), ReCoMaP National Focal Points (R-NFP) or COI Permanent Liaison Officers (PLO).

In a different context, the Contracting Parties of the Barcelona Convention[2] adopted in January 2008 the first ICZM Protocol (see Annex 3) in a Regional Sea framework[3]. Hence, the idea of looking at it as a template process and template document has emerged within the countries of the WIO Region. Obviously, since the Mediterranean ICZM protocol has not entered into

[1] Eligible countries under ReCoMaP are Comoros, Kenya, Madagascar, Mauritius, Seychelles, Somalia and Tanzania. The three other NC Parties (France, Mozambique and South Africa) are associated but not eligible for support.

[2] "Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean", see Annex 2.

[3] Launched in 1974 in the wake of the 1972 United Nations Conference on the Human Environment held in Stockholm, the Regional Seas Programme is one of UNEP's most significant achievements in the past 30 years. Today, more than 140 countries participate in 13 Regional Seas programmes established under the auspices of UNEP: Black Sea, Wider Caribbean, East Asian Seas, Eastern Africa, South Asian Seas, ROPME Sea Area, Mediterranean, North-East Pacific, North-West Pacific, Red Sea and Gulf of Aden, South-East Pacific, Pacific, and Western Africa. Six of these programmes are directly administered by UNEP.

force yet, no lessons can be learnt from its implementation. However, the process of developing and adopting the Barcelona Convention ICZM Protocol is still very recent and does provide valuable opportunities to draw lessons from it. Moreover, crucial lessons on the drafting and the negotiating process can also be learnt from the Nairobi Convention framework itself, through the recent developments on the LBSA Protocol. In combination with a regional review of the ICZM framework in the WIO, this situation presents a significant advantage for the feasibility assessment of a potential ICZM protocol to the Nairobi Convention, which is the focus of this report. It is of course understood by the countries and by the assessors themselves that the rationale is not to replicate "one-size-fits-all" solutions from other regions of the world. The aim is to assess replicability of what works elsewhere and to identify what does not. Utilisation, combination and up-scaling of acknowledged progress made in the region or elsewhere are indeed major issues for sustainable development of ICZM in the Western Indian Ocean.

1.2. Objectives

Based on its Programme Result Areas 4[1], 5[2] and 7[3], and in consultation with its regional partners, ReCoMaP decided in 2009 to support the preparation of a feasibility study towards an ICZM Protocol to the Nairobi Convention, part of which would be based on a synthesis of lessons learned in the process of developing the ICZM protocol in the Mediterranean. More precisely, the objectives of this feasibility study are:

1. National Focal Points of the Nairobi Convention (NFP Forum) are provided with sufficient information to decide upon the endorsement of the ICZM protocol idea to the 6th Conference of the Parties (COP6) to be held from 29 March to 1 April 2010 in Nairobi. This was achieved through the discussion of a first draft of this report at the Mombasa NFP meeting held on 8-9 December 2009.
2. Parties to the Nairobi Convention are able to deliberate on the feasibility and relevance of a potential ICZM Protocol based on:
   - An assessment of the development process and of the content of the Mediterranean ICZM Protocol;
   - A feasibility assessment building on findings from 1., on an inter-regional comparison of ICZM issues, stakeholders and frameworks between the Western Indian Ocean and the Mediterranean Regions, as well as on the analysis of the recent LBSA Protocol development.
3. Parties to the Nairobi Convention, during the COP6 are able to decide on:
   - Justification for an ICZM protocol;
   - And possibly on a legal mandate for the development process of an ICZM Protocol to the NC.

[1] Strengthening of National ICZM Structures and Frameworks and the production of national ICZM Plans and ICZM Action Plans in all countries covered by the Programme.

[2] Improvement of capabilities of focus countries to adopt proactive positions on marine and coastal resources in multilateral negotiations and reporting on MEAs.

[3] Improvement of a regional policy consensus on sustainable coastal and marine management and enhanced exchange of information and experiences on marine and coastal resources at regional level.

1.3. Process and methodology

In this perspective, ReCoMaP contracted a team of consultants with ICZM experience both in the Mediterranean and in the Western Indian Ocean Region.

Based on existing literature and more importantly their personal experiences participating in the Barcelona Convention ICZM Protocol development process, the consultants have been requested to provide a first draft of the feasibility study and comparative analysis, which was discussed during the Forum of Nairobi Convention National Focal Points (NC-NFP) held in Mombasa on 8-9 December 2009.

In a second step, the consultants incorporated feedback from the NC-NFP forum and later conducted a series of interviews with some key regional and national stakeholders in Kenya, Madagascar, Mauritius as well as over the phone.

2. INTEGRATED COASTAL ZONE MANAGEMENT IN THE WIO REGION

2.1. Recent ICZM developments in the region

2.1.1. General overview

Recent ICZM developments in the WIO region can be summarized as follows:

- With continued support from ReCoMaP, both in the form of financial support and technical assistance, all countries covered by the Programme have now formally and legally established National ICZM Committees (NICZMC): Comoros, Kenya, Madagascar, Mauritius, Seychelles, Tanzania. Comparable structures exist in South Africa and La Réunion (France).
- Additional sub-national ICZM Committees are in place in Zanzibar, Rodrigues, Anjouan, Moheli and Grande Comore.
- All countries covered by ReCoMaP have produced first draft versions of their National ICZM Plans by November 2009. These documents will be further refined towards final drafts, in time for a region-wide cross examination of documents and exchange of lessons learned during the ReCoMaP-sponsored First Conference of National ICZM Committees in the Western Indian Ocean (24th - 25th March 2010) preceding and contributing to the Nairobi Convention COP6 (29th March - 1st April 2010).
- The project entitled Addressing land-based activities in the Western Indian Ocean (referred to as "WIO-LaB" in short), executed by the Nairobi Convention, addresses some of the major environmental problems and issues related to the degradation of the marine and coastal environment resulting from land-based activities (LBA) in the Western Indian Ocean region. The project has assisted countries in undertaking various thematic assessments related to the impacts of land-based activities and sources of pollution that are degrading the coastal and marine environment through pollution and habitat degradation, as well as a comprehensive assessment of existing policy, legal and institutional frameworks for managing land-based activities and sources of pollution. The findings of these assessments have, among others, been integrated into a Transboundary Diagnostic Analysis (TDA) and a related regional Strategic Action Programme (SAP), which could be adopted by COP6 in March 2010.
- The Nairobi Convention, through the WIO-LaB Project, has been working in close cooperation with ReCoMaP to assist countries in developing their national ICZM frameworks, through supporting the development of National (ICZM) Action Plans. These plans take into consideration priority activities as identified in the SAP.
- In all countries covered by ReCoMaP, non-state ICZM actors (NSAs) have been brought closer to ICZM Frameworks through a special Call for Proposals Programme (EUR 6.5 million) supporting local or national coastal projects, designed to also enhance participation of NSAs in ICZM.
- All NICZMCs have developed Committee Activity Plans[1] for the period 2009-2010.
- More than 40 issue-specific working groups have been created under the ICZMCs, for example contributing to the drafting of National ICZM Plans.
- In addition to country specific technical ICZM issues, five structural ICZM priority issues are covered by special working groups in all countries: 1. Structural consolidation of ICZM Frameworks, 2. Sustainable budgeting to NICZMCs and ICZM Frameworks, 3. Improved Communication within ICZM Frameworks, 4. Monitoring and Reporting

[1] Not to be confused with National ICZM Plans.

Schemes to National ICZM Plans, and most importantly 5. Drafting of the full National ICZM Plans.

- Intensive National ICZM Short Courses were conducted in all countries.
- Special Workshops of ICZM Committees were conducted in all countries yielding ICZMC Activity Plans in all countries.
- All NICZMC have finalised their operational budgets for 2009-2010. ReCoMaP has granted regressive operational financial support (100%, 75%) to all ICZMCs.
- The ICZM Committees of Comoros, Anjouan, Moheli, Grande Comore and Madagascar have established administrative secretariats.
- More than 75 meetings of National ICZM Committees happened in 2009 alone.
- The DVD 'Resources for Short Courses in Integrated Coastal Zone Management in the South-western Indian Ocean Countries' has been published during the 6th WIOMSA Marine Science Symposium in La Réunion. The DVD is fully bilingual in English and French and contains 24 ICZM Training Modules including Session Guides, Handouts, Worksheets, Presentations, administrative documents and approx. 50,000 pages of background materials. It has already been distributed to all principal ICZM stakeholders in the region.
- With ReCoMaP support**,** Seychelles has published a website specially dedicated to its Environmental Management Plan.
- All NICZMCs have commenced reviewing national Environmental Impact Assessment (EIA) practices. ReCoMaP EIA support has changed to reviews of actual-EIA-cases by NICZMC Working Groups.
- Training in the monitoring of selected environmental, economic and ecological indicators – most of which relevant to various Multilateral Environment Agreements (MEAs) – was delivered in all WIO countries covered by ReCoMaP.
- The production of State of the Coast Assessment Reports (SoCAR) to the Nairobi Convention as well as CBD reporting schemes have slightly improved in all countries.
- ICZM Committees have expressed a general need for capacity building regarding MEAs integration into National ICZM Plans.
- Seychelles and Comoros have established special ICZMC working groups on MEAs integration into their National ICZM Plans.

2.1.2. National coastal management institutions and instruments

ICZM Committees (NICZMC) are now formally established in all Western Indian Ocean Countries, some of them with the support of ReCoMaP and other international and national programmes. While some Committees, i.e. in Comoros, Grande Comore, Moheli, Anjouan, Zanzibar and Rodrigues, have only recently been established, others, i.e. in Kenya, Mauritius, Seychelles and Tanzania, did already exist merely requiring consolidating and operational support.

2.1.3. Ongoing ICZM activities, projects and programmes

All National ICZM Committees are currently engaged in either reviewing or drafting National ICZM Plans. Final draft National ICZM Plans are expected to be ready by March 2010, when ReCoMaP will facilitate the First Conference of National ICZM Committees in the Western Indian Ocean in Mombasa, Kenya where the Plans will be presented, cross-referenced and

discussed. In addition to direct technical and financial support to the NICZMCs in the Region, ReCoMaP is also supporting the strengthening of the National ICZM frameworks and of ICZM stakeholders represented in the NICZMCs. National Plans of Action for Coastal Management are currently developed in most Eastern African Countries with support from the GEF funded Programmes WIO-LaB (UNEP), ASCLME (UNDP) and SWIOFP (World Bank) and are part of National and Regional Strategic Action Planning (SAP).

At the regional level, the Indian Ocean Commission, through ReCoMaP and with funding from the European Union (EU) supports the "improvement of a regional policy consensus on sustainable coastal and marine management and enhanced exchange of information and experiences on marine and coastal resources at regional level". ReCoMaP also supports under its Result Area 7.3 the "Development of a regional policy strategy for sustainable coastal management" and under its Result Area 7.4 the "Creation of a regional policy platform for ICZM".

2.2. Regional institutions and instruments

2.2.1. Overview of the Nairobi Convention system

Recognizing the environmental uniqueness of the coastal and marine environment of the region, the threats and the necessity for action, the countries of the Western Indian Ocean region requested the United Nations Environment Programme (UNEP) to create a regional seas programme for the region. UNEP's Governing Council decision 8/13C of 29 April 1980 created the Eastern African Regional Seas Programme and further requested UNEP to assist the Governments of the region to formulate and implement a plan for the proper management and conservation of marine and coastal resources. Subsequent to the 8th session of the Governing Council of 1980, UNEP supported the development of the Eastern African Action Plan. Then a meeting of experts selected by their Governments (Seychelles, September 1982) prepared the first draft of the East African Action Plan (Later: "Action Plan for the Protection and Development of the Marine and Coastal Environment of the Eastern African Region"), identified problems to be tackled as priorities.

The countries of the region met in 1985, in order to:

a. Adopt the Action Plan for the Protection and Development of the Marine and Coastal Environment of the Eastern African Region;

b. Adopt the Nairobi Convention;

c. Adopt two additional protocols on (i) collaboration in combating marine pollution in cases of emergency, and (ii) protected areas and wild fauna and flora.

The Convention and its two protocols entered into force on 30 May 1996. By 2002, all the Contracting Parties had ratified them. On 2 April 2010, a Special Session Conference of Plenipotentiaries, back-to-back with COP6, will consider a third protocol to the Nairobi Convention, which would be the Protocol Concerning Land Based Sources and Activities (LBSA Protocol).

The Nairobi Convention and its related protocols have the following objectives:

- To promote environmentally sound sustainable development and management of marine and coastal systems in the region;

- To establish objectives, policies and legislation for the protection of the marine and coastal environment on a national and regional level;

- To prevent pollution of the coastal environment from activities within the States of the region or from operations primarily subject to jurisdiction of non-coastal States, to monitor pollutants, their sources, levels and effects;
- To provide for protection and rational development of coastal and marine resources;
- To strengthen and encourage regional collaboration among institutions involved in the study of marine and coastal resources;
- To improve training and technical assistance in the development and management of marine and coastal system, to stimulate growth of public awareness of the value and fragility of the coastal systems; and
- To assist countries respond to maritime emergencies or marine pollution incidents which threaten the environment or local people.

2.2.2. The Nairobi Convention

The Nairobi Convention is the only regional Multilateral Environmental Agreement (MEA) covering coastal and marine protection and development in the Western Indian Ocean Region.

The regional system provides a mechanism for cooperation, coordination and collaborative actions, and enables the Contracting Parties to harness resources and expertise from a wide range of stakeholders and interest groups towards solving interlinked problems of the coastal and marine environment. It plays a coordinating role in the implementation of a series of intervention projects developed under the New Partnership for Africa's Development (NEPAD) environment initiative. The aim is to stem any further degradation of the marine environment and to reverse the degradation and destruction of critical habitats. The regional System is an important platform for dialogue between Governments and the civil society at the regional and national level. Partnerships between the regional system and regional non-governmental organizations such as the International Union for the Conservation of Nature (IUCN) and the Western Indian Ocean Marine Science Association (WIOMSA) have encouraged government focal points to work together with NGOs in order to share expertise and experience with an aim of stemming the multitude of problems associated among others with unplanned urbanization and poor regulatory regimes. This framework also provides a forum for inter-governmental discussions that lead to better understanding of regional coastal environmental problems and the strategies needed to address them; develops and implements regional programmes and projects that address critical national and transboundary issues; and promotes sharing of information and experiences in the WIO region and with the rest of the world.

The Convention offers a legal framework and coordinates the efforts of the countries of the region to plan and develop programmes that strengthen their capacity to protect, manage and develop their coastal and marine environment sustainably. The Nairobi Convention promotes an ecosystem-based, multi-sector approach in policy and management, taking into consideration whole systems rather than individual components and focusing on systems integrity. It recognizes that success and sustainability in the protection, management and development of the coastal and marine environment of the WIO region will depend on effective partnerships built on strategic linkages between governments, NGOs and the private sector.

2.2.3. The Nairobi Convention protocols

Like most Regional Seas Conventions, the Nairobi Convention is implemented through a number of protocols, namely:

1. The Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region

   Date of adoption: Nairobi, 21 June 1985

   Date of entry into force: 30 May 1996

   Parties: Comoros, France (La Réunion), Kenya, Madagascar, Mauritius, Mozambique, Seychelles, Somalia, the United Republic of Tanzania and Republic of South Africa

2. The Protocol Concerning Co-operation in Combating Marine Pollution in Cases of Emergency in the Eastern African Region

   Date of adoption: 1985

   Date of entry into force: 30 May 1996

   Parties: Comoros, France (La Réunion), Kenya, Madagascar, Mauritius, Mozambique, Seychelles, Somalia, the United Republic of Tanzania and Republic of South Africa

2.2.4. The Nairobi Convention Conferences of the contracting Parties

The function of the ordinary meetings of the Contracting Parties is to keep under review the implementation of this Convention and its protocols and, in particular:

1. To consider information submitted by the Contracting Parties under article 23;
2. To adopt, review and amend annexes to this Convention and to its related protocols, in accordance with the provisions of article 20;
3. To make recommendations regarding the adoption of any additional protocols or amendments to this Convention or its protocols in accordance with the provisions of articles 18 and 19;
4. To establish working groups as required to consider any matters concerning this Convention and its protocols;
5. To assess periodically the state of the environment in the Convention area;
6. To consider cooperative activities to be undertaken within the framework of this Convention and its protocols, including their financial and institutional implications, and to adopt decisions relating thereto;
7. To consider and undertake any additional action that may be required for the achievement of the purposes of this Convention and its protocols.

The last COP was held from 5th to 8th November 2007 in Johannesburg, South Africa (COP5). The next Conference of the Parties (COP6) will be held in Nairobi, Kenya between the 29th of March and the 1st of April 2010.

2.2.5. Specific regional programmes implemented in connection with the Nairobi Convention

An ecosystems approach to manage marine and coastal resources addresses the interconnectedness between land-based activities, fresh water systems and coastal and marine environments. The two major ecosystems in the WIO region, i.e. the Agulhas and Somalia Current Large Marine Ecosystems (LMEs), contain important critical habitats such as sea

grass beds, coral reefs and mangrove forests. These habitats are areas of high diversity and are critical fish spawning and nursery areas that provide other vital ecological services, such as shoreline shelter from ocean swells. With the support of the Contracting Parties to the Nairobi Convention and their development partners, the Global Environment Facility (GEF) has embraced the ecosystems approach and is investing over $78 million, between 2004 and 2012, to support LME projects in the Western Indian Ocean.

The three main projects include:

1. The South West Indian Ocean Fisheries Project (SWIOFP; $35.67 million), implemented by The World Bank;
2. The Agulhas and Somalia Current Large Marine Ecosystem Project (ASCLME, $31.186 million), implemented by the United Nations Development Programme (UNDP);
3. Project addressing land-based activities in the Western Indian Ocean (WIO-LaB; $11.413 million), implemented by UNEP.

Besides, recognising the need for the development of National Integrated Coastal Zone Management structures and legal frameworks as well as for a regionalisation of such management systems in the WIO Region, the Indian Ocean Commission (COI), with financial support from the European Commission (EUR 18 million), launched a five-year regional ICZM Programme in August 2006. This Regional Programme for the Sustainable Management of the Coastal Zone of the Countries of the Indian Ocean (ReCoMaP), covering the countries under the Nairobi Convention in various degrees, supports the establishing and/or consolidation of fully legalised national ICZM structures and the development and implementation of National ICZM Policies and Plans in all countries. At country level, the programme supports and cooperates with National ICZM Committees as well as with national and local ICZM Frameworks of Government Sectors.

3. LESSONS LEARNT FROM THE MEDITERRANEAN ICZM PROTOCOL EXPERIENCE

In the early 1970s, the newly created United Nations Environment Programme (UNEP) made the oceans a priority action area and advocated the adoption of a regional approach, specifically mentioning the Mediterranean Sea[1]. It was in this context that the 1975 Mediterranean Action Plan (MAP) was drawn up, with the adoption of the Convention for the Protection of the Mediterranean Sea against Pollution taking place a few months later and the negotiation of sectoral protocols in the next decades. From the mid-1990s, ICZM became a key reference of the Barcelona system. Pilot experiments, scientific publications and regional workshops progressively ingrained ICZM concepts into regional priorities, also moving States to negotiate a specific protocol for the sustainable development of their coastal areas.

[1] UNEP, Governing Council Decision 8 (II), 11-22 March 1974.

3.1. Overview of the Barcelona system

3.1.1. Legal framework

The legal framework of the Barcelona system is currently binding upon the twenty-one Mediterranean States[1] and the European Union. It is composed of a framework Convention and sectoral protocols.

The **Convention for the Protection of the Mediterranean Sea against Pollution** was adopted on 16 February 1976, in Barcelona, Spain and entered info force on 12 February 1978. The text reflects the signatory States' acknowledgement that the Mediterranean is a common heritage and that, to protect it, specific rules must be adopted. Despite the diversity inherent in the basin, the unity of the physical environment and the perception of a common ecosystem to be protected tend to favour internal cohesion and, thus, the development of specific instruments and common initiatives. The Convention applies to all Mediterranean waters, from Gibraltar to the Dardanelles, except Contracting Parties' internal waters (article 1-1). The Parties commit to, "individually or jointly take all appropriate measures (…) to prevent, abate and combat pollution of the Mediterranean Sea area and to protect and enhance the marine environment in that area" (article 4-1). Specific provisions have furthermore been set out as concerns pollution caused by dumping (article 5), pollution from ships (article 6), pollution resulting from the exploration and exploitation of the continental shelf and the seabed and its subsoil (article 7), pollution from land-based sources (Article 8) and concerning cooperation in the event of a critical situation (article 9).

In 1995, the Convention was revised. The revision's focus was, first and foremost, terminological and reflects the expansive scope of the amended text. The Barcelona Convention was renamed the **Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean**. The text's geographic scope of application now extends to the coastal zones, "as defined by each Contracting Party within its own territory" (article 1-2). The amended Convention furthermore incorporates recent developments in international environmental law, such as the precautionary principle (article 4-3a), the polluter-pays principle (article 4-3b), conservation of biological diversity (article 10), public information and participation (article 15).

The Barcelona Convention, the regional keystone to action, thus forms the legal component of the Mediterranean Action Plan (MAP). Like any framework convention, it contains provisions that act as incentive more than they restrict. It sets a general line of conduct by which the States are to abide. However, as it is not enough to list principles, as important as they may be, the Parties undertake to subsequently negotiate specific agreements (article 4-2). Several protocols have been adopted since 1976 in this respect, implementing the Convention's general principles in different areas:

1. **Prevention and Emergency Protocol**

Protocol for the prevention of pollution in the Mediterranean Sea by dumping from ships and aircraft, adopted on 16 February 1976 in Barcelona, entered info force on 12 February 1978

Amended and recorded as: Protocol for the prevention and elimination of pollution in the Mediterranean Sea by dumping from ships and aircraft or incineration at sea, adopted on 10 June 1995 in Barcelona, not yet in force

2. **Land-Based Sources Protocol**

Protocol for the protection of the Mediterranean Sea against pollution from land-based sources, adopted on 17 May 1980 in Athens, entered into force on 17 June 1983

[1] This includes Albania, Algeria, Bosnia and Herzegovina, Croatia, Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Morocco, Serbia and Montenegro, Slovenia, Spain, Syria, Tunisia, Turkey.

Replaced by: Protocol for the protection of the Mediterranean Sea against pollution from land-based sources and activities, adopted on 7 March 1996 in Syracuse, entered into force on 11 May 2008

3. Specially Protected Areas and Biodiversity Protocol

Protocol concerning Mediterranean specially protected areas, adopted on 3 April 1982 in Geneva, entered into force on 23 March 1986

Replaced by: Protocol concerning specially protected areas and biological diversity in the Mediterranean, adopted on 10 June 1995 in Barcelona, entered into force on 12 December 1999

4. Offshore Protocol

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, adopted on 14 October 1994 in Madrid, not yet in force

5. Hazardous Wastes Protocol

Protocol on the prevention of pollution of the Mediterranean sea by transboundary movements of hazardous wastes and their disposal, adopted on 1st October 1996 in Izmir, entered into force on 19 January 2008

6. ICZM Protocol

Protocol on integrated coastal zone management in the Mediterranean, adopted on 21 January 2008 in Madrid, not yet in force

3.1.2. Institutional architecture

The **MAP Coordinating Unit** is the central nervous system of MAP activities. Based in Athens, Greece, it coordinates and implements the MAP and its legal instruments. Also playing a diplomatic and financial part, the Unit services as Programme Secretariat and strives to establish and strengthen links with the other regional seas programmes. Lastly, the Unit supervises and coordinates the activities of the Regional Activity Centres (RAC).

Located in Sophia-Antipolis, France, the **Blue Plan Regional Activity Centre** (BP/RAC) supports the ongoing cooperation process between Mediterranean States to ensure the Region's sustainable coastal development, establishing a common knowledge management system contributing to this objective. In this sense, the Blue Plan is an observatory to the Mediterranean basin, offering all stakeholders with information, statistics and reports, forming crucial decision-making tools in designing sustainable coastal development policies. Founded in 1978 and located in Split (Croatia), the **Priority Actions Programme Regional Activity Centre** (PAP/RAC) is a highly-specialised centre in ICZM. As such, it has been running since 1987 the Coastal Area Management Programmes (CAMPs), a set of pilot projects to implement integrated coastal management in the Mediterranean, and was involved in the process that ultimately led to the adoption of the ICZM Protocol. The **Specially Protected Areas Regional Activity Centre** (SPA/RAC) conducts activities to protect Mediterranean species and their habitats. The Centre assists the Mediterranean States in fulfilling their requirements as further to the 1995 Protocol of Specially Protected Areas and Biological Diversity. Located in Tunis, Tunisia, the Centre also works to develop biodiversity preservation strategies and implements action plans to protect species such as marine turtles and the monk seal. Administered by the International Maritime Organisation (IMO) and UNDP, the **Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea** (REMPEC) was created to assist Mediterranean States in fulfilling their obligations further to the 1976 "Emergency Protocol". To this end, it assists States in building

their national action capacity in order to deal with major pollution accidents. The Centre's functions were extended to the implementation of the "Prevention and Emergency Protocol" adopted in Malta, in January 2002. The Centre circulates information regarding national regulations on prevention of pollution by oil and other harmful substances. The main objective of the **Cleaner Production Regional Activity Centre** (CP/RAC) is to promote the prevention and reduction of pollution from the industrial sector. Located in Barcelona, Spain, the Centre offers technical support to the Contracting Parties, their national institutional bodies and, through them, the industrial and private sectors wishing to promote clean technology in their activities. Based in Rome (Italy), the **Communication and Information Regional Activity Centre** (INFO/RAC) provides communication services and technical support to the MAP Secretariat and the other MAP Regional Activity Centres. INFO/RAC also focuses on enhancing public awareness and the establishing of regional multi-sector partnerships between institutions enabling sustainable coastal development across the Mediterranean region.

Following the 1992 Rio Summit, the Mediterranean States decided to implement the principles arising from the Action 21 Programme. For this purpose, the Med Agenda 21 – stating the Mediterranean States' commitments in the field of sustainable development – was adopted and the **Mediterranean Commission on Sustainable Development** (MCSD) set up. Established in July 1996, the MCSD is a place of dialogue developing strategic recommendations to Contracting Parties on major sustainable development issues. A consulting body of the MAP, it includes both the representatives of Contracting Parties and civil society. The MCSD physically meets on a biannual basis. Between two meetings, dedicated working groups explore and debate on specific sustainable development issues of relevance to the region, thereby implementing the biannual MCSD programme of work.

Last, the **MEDPOL Programme** is responsible for follow up work related to the implementation of the Land-Based Sources Protocol and the Hazardous Waste Protocol. MEDPOL assists Mediterranean countries in the formulation and implementation of pollution monitoring programmes, including pollution control measures and the drafting of action plans aiming to eliminate pollution from land-based sources.

3.2. Emergence of coastal issues in the Barcelona system

3.2.1. Multiplication of coastal area management programmes (CAMPs)

In 2001, the White Paper on Coastal Zone Management in the Mediterranean underlined: "by comparison to other world regions, the Mediterranean is probably the most advanced in terms of developing ICAM cooperation" (UNEP/MAP/PAP, 2001). Indeed, from the mid-1980s, a variety of initiatives were launched, drawing upon pilot experiments in ICZM implementation, whether of strictly Mediterranean origin or driven by the European Union (EU).

Pursuant to the MAP, PAP/RAC was, from as early as 1978, entrusted with the integrated planning and management programme, aimed at developing a Priority Action Programme (PAP). The PAP is a programme of concrete actions in fields lending themselves to the development of technical cooperation between Mediterranean States, based on the sharing of experiences. It is focused on actions likely to yield immediate outcomes and contribute to national and local capacity-building to plan and manage coastal zones (MAP/UNEP, 2001). In 1985, the MAP entered its second decade. The Genoa Declaration set a number of priority objectives, including coastal management, while the fifth ordinary session of the Contracting Parties, in 1987, placed emphasis on integrated planning and management of coastal zones. It was in this sense that, from 1988, the PAP/RAC launched its first "national pilot projects", re-named Coastal Area Management Programmes (CAMPs) in 1989, and intended to enable the implementation of the ICZM in the Mediterranean basin.

Founded in 1990, under the impetus of the World Bank (WB), the European Investment Bank, the EU and the United Nations Development Programme (UNDP), the Mediterranean Environmental Technical Assistance Program (METAP) is a partnership uniting certain Mediterranean States with institutions granting financial resources to sustainable management in the region. The aim of METAP is to mobilise resources in order to help States to prepare and implement sustainable development strategies. 12 Mediterranean countries benefit from the programme, with activities largely focusing on ICZM.

The EU has also commenced support toward implementing ICZM in the Mediterranean through the project-based approach. To that purpose, 12 pilot projects have been carried out in the Mediterranean region under the demonstration programme on ICZM launched in 1996 (European Commission, 1999), while the third generation of Short- and Medium-Term Priority Action Programmes for the Environment (SMAP) also contributed to funding a large number of ICZM projects[1].

Pilot projects in ICZM have been carried out in the Mediterranean for several years now. While most initiatives come historically from the regional system itself, they have also been supplemented by initiatives supported by the EU. The combined effect of these actions has, without a doubt, helped to establish the concept of ICZM in the Mediterranean basin. The experiments carried out have, moreover, raised national awareness of the need for sustainable management of coastal zones, leading in some cases already to the development of public policies at national and/or local level.

However, it is also important to emphasise that the usefulness of ICZM has proven to be considerably limited when its implementation lacks national and regional legal frameworks. The approach gives rise – in the best-case scenario – to an "oasis in the desert", by only temporarily instituting sustainable management modes on coastal areas that are otherwise poorly managed in general. The successful, yet temporarily limited adoption of ICZM approaches goes against the very principles of sustainable development, which requires not that "exceptions" be created, but that the "rule" (legal framework) and the routine (the way the coast is actually managed), be changed. Secondly, singular ICZM projects cannot substitute the persisting lack of tools for implementing ICZM. As it happens in the Mediterranean, many critical sectors remain inadequately regulated (Benoît and Comeau, 2006). If there is to be preservation through management of coastal ecosystems, integrative planning of coastal activities and sustainable use of coastal resources, national and local authorities must have access to tools – in particular legal – to govern every aspect of coastal zone management. If an ICZM project is successful to raise awareness among sustainable development players or to institute environmental best practices, it is not enough to provide relevant authorities with tools to sustain outputs beyond the project's duration.

It is therefore both thanks to the pilot experiences carried out and in response to the limits of the approach underlying them that the idea of an ICZM protocol gradually established itself from the late 1990s.

3.2.2. Extension of the Convention to coastal zones

From the mid-1990s, changes in the international legal framework further to the Rio Summit (Kiss, 1993) and to the entry into force of the United Nations Convention on the Law of the Sea (Beurier and Cadénat, 1994), led the Mediterranean States to consider adjusting the cooperation system (Just Ruiz, 1995; Scovazzi, 1996). The revision of the Barcelona Convention was mainly terminological, reflecting the expansive scope of the amended text.

[1] SMAP Final Regional Seminar, Achievements and Perspectives for the Future, Alexandria, 18-19 February 2009. Final report available at:
www.smaponline.net/DOC/eve_rec/Final_workshop_Alex_2009/Workshop%20Report%200209.pdf

The Convention was renamed the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean. The geographical application of the text was henceforth extended to "coastal areas as defined by each Contracting Party within its own territory". Thus, the extension of the application of the Convention to coastal zones revealed the new importance granted to these areas.

This trend is also supported by MAP Phase II, which contains specific references to ICZM: "Management strategies for the Mediterranean coastal regions should ensure that limited and fragile resources are used in a sustainable manner by means of planning and regulations to conserve their ecological value and to promote activities to improve the quality of life of the coastal populations. Integrated coastal area management requires understanding of the links existing between coastal resources, their use and the mutual impact of development and environment (…). Integrated coastal area management should gradually become the standard approach for tackling the problems affecting Mediterranean coastal areas".

The protection of coastal zones thus became a major issue in Mediterranean regional policy from 1995. At the same time, the continuation of CAMPs helped bring forward the idea of a regional instrument. In 1995, the Santorini Workshop on Policies for Sustainable Development of Mediterranean Coastal Areas had set out a number of options for implementing ICZM at the Mediterranean level[1]. The MCSD proceeded from the same rationale, setting out from as early as 1997 recommendations for integrated and sustainable management of coastal zones, calling for guidelines to be adopted at the regional level[2]. Last, the November 2001 Meeting of Contracting Parties to the Barcelona Convention marked a decisive stage by calling for the elaboration of a feasibility study concerning a "regional protocol on the sustainable development of coastal zones[3]". The road toward regional regulation of the ICZM was thus opened up.

3.3. Towards the Mediterranean ICZM protocol

3.3.1. Justification for a regional instrument

Three major reasons have been suggested to justify a regional instrument dedicated to the ICZM: the non-sustainable development of coastal zones, the existence of a large number of legal shortcomings, as well as the environmental, political and socio-economic interdependence.

An unsustainable development path

First, there is general agreement that over the last few decades the Mediterranean coastal zones have set out on an unsustainable development path (Benoît and Comeau, 2006). The intensive shift of societies and economic activities towards the coast – a global phenomenon that is particularly acute in the Mediterranean – has a major impact on the integrity of natural ecosystems and on all associated ecosystem services. The Mediterranean basin was home to a population of nearly 427 million in 2000. By 2025, it is thought that this figure could reach 524 million, 328 million of these being found on the southern bank alone (Attané and

[1] The workshop conclusions can be found in the UNEP/MAP/PAP White Paper in Coastal Zone Management in the Mediterranean, Split, Priority Action Programme, 2001, p.71.

[2] UNEP/MAP, Report of the 10th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution and its Protocols, Tunis, 18-21 November 1997, UNEP(OCA)/MED IG.11/10, Athens, 1997, Annex V, Recommendations of the CMSD concerning the integrated and sustainable management of coastal zones.

[3] Report of the 12th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution and its Protocols, Monaco, 14-17 November 2001, UNEP(DEC)/MED IG.13/8, Annex IV, Recommendation III.C

Courbage, 2004). This demographic boom is intensified by considerable seasonal patterns. The mild climate and the region's natural and cultural heritage have made the Mediterranean the world's leading tourist region. In 1970s, the bordering States were already opening their doors to 58 million tourists from across the world; today, they welcome 364 million people each year, or 30% of the global international tourism stream.

The littoralisation and urbanisation of coastal areas has obviously not been without impact on coastal ecosystems. It has led, first of all, to the artificialisation of the coastal zone, causing severe degradation of ecosystems such as sand dunes or coastal wetlands. The size of the coastal population, both permanent and seasonal, requires that local accommodation capacities be redeployed and managed differently, whereas responsible coastal authorities sometimes have trouble achieving this. 50% of coastal municipalities in the Mediterranean Region have no wastewater treatment system. This is a major cause of land-based pollution, severely worsened by weak marine tides and the very special semi-enclosed nature of the Mediterranean Sea having a negative water balance constantly taking in water from the Eastern Atlantic but not exporting any significant water masses (thus not discharging wastewater) in the other direction. Lastly, demographic pressure causes significant growth in coastal infrastructures and facilities: in addition to the 286 commercial ports, the Mediterranean coastlines also accommodated, in 2006, more than 750 marinas, 112 airports, 238 desalination plants, 13 gas extraction facilities, 55 refineries, and 180 thermal plants (Benoit and Comeau, 2006).

Thus, generally speaking and to summarise, the Mediterranean coastlines are currently the backdrop to a two-fold conflict. First of all, the population's concentration in the coastal zones raises issues as regards the consumption of physical space. Secondly, the resulting massive presence of man in an environment both rich in biodiversity and fragile in its ecological structures, raises the problem of how to reconcile the expansion of economic activity, the conservation of coastal ecosystems and the sustainable management of essential ecosystem services.

Likewise, the marine section of the coastal zone is not safe from human disruption. Today, nearly one-third of the world's oil traffic transits through the Mediterranean. 200 ferry lines serve passenger transport. Maritime transport has a variety of impacts on the coastal environment. Each year, ships discharge nearly 635,000 tonnes of crude oil, a large part of which ends up in coastal zones. Maritime transport is, moreover, behind the introduction of nearly 500 invasive species into the Mediterranean, including the famed alga *Caulerpa taxofolia*.

As is the case in many other regions of the world, the state of halieutic resources is cause for significant concern in the Mediterranean, the status of bluefin tuna providing a prime illustration of this. Lastly, it should be noted that the Mediterranean is subject to the impact of extracting activities, primarily aimed at oil and gas drilling. There is also extensive quarrying for sand and gravel in some regions.

The ecological disturbances undergone by the Mediterranean coastal zone, many of which have transboundary implications, are by no means limited to the above list. The listed issues do however illustrate why the Mediterranean States wanted to strengthen the regional system.

Legal shortcomings

It is only recently and still only to a marginal extent, that certain Mediterranean States have sought to implement ICZM by creating appropriate legal instruments. To finally constitute the coastal zone as a full-fledged object of law, such changes in standards often constitute a major step toward elaborating a coastal public policy and incorporating ICZM principles into the national legal and institutional order. To wit, Algeria's 2002 Law establishes "specific

provisions regarding the protection and promotion of the coast[1]" governing human activity along the coastline and aiming at developing coastal development plans. In Israel, the 2004 Law concerning the protection of the coastal environment also regulates planning processes in coastal areas, prohibiting for example in particular any construction in a three-hundred-metre zone of land. In Croatia, a regulation issued in September 2004 establishes a protected coastal zone and set out the terms for its development in order to ensure "its protection, rational, sustainable and economically efficient use". In total, eight Mediterranean States currently have a law dedicated specifically to the coastal space: Algeria, Israel and Croatia, in recent times, as well as Spain[2], France[3], Turkey[4], Greece[5] and Lebanon[6], though the latter two laws show considerable gaps.

The management of coastal zones through legislation specifically-dedicated to such areas remains a marginal phenomenon in the Mediterranean area. Moreover, it needs to be recognised that the implementation of legal provisions, whether general or sector-specific, is far from automatic (Billé and Rochette, 2009). Lastly, though the ICZM has progressively become the fundamental paradigm for all reflection on Mediterranean coastal policy, there is no escaping the fact that, today, it is far from being universally and efficiently implemented. Very often, there is a lack of consistency between sector-specific policies with regard to environmental objectives. Standards continue to show gaps and countries have difficulties in ensuring that the legal measures adopted are duly enforced. There is also a lack of coordination between decision-making levels.

In summary, as in so many regions globally, the Mediterranean Region is still very much struggling with an inability to reconcile the development of coastal zones with the conservation of biodiversity and coastal ecosystem services – not to mention adapting to climate change. The need to make up for legal shortcomings and gaps related to an envisioned sustainable management of coastal areas contributed broadly to guiding the Mediterranean States toward the elaboration of a protocol specially dedicated to ICZM (Prieur and Ghezali, 2000).

3.3.2 Driving forces and enabling conditions in the elaboration of the protocol[7]

A prosperous scientific context and a relevant organisation of the negotiations widely enabled the adoption of the ICZM protocol.

A prosperous scientific context

Above and beyond the decisive points in time, capped by the adoption of legal instruments or political statements, it is important, first and foremost, to emphasise that the vitality of the regional system can be seen almost daily in the production of scientific research by its standing bodies. For instance, from the mid-1990s, the issues relating to sustainable development in Mediterranean coastal areas are central to the studies and reports published under the regional system. This means that the results of the CAMPs are always the focus of reports and the

[1] Law 2 of 5 February 2002 Concerning the Protection and Promotion of the Coast, Official Gazette of the People's Democratic Republic of Algeria, No. 10 of 12 February 2002, Article 1.

[2] Ley 22/1988 de 28 de julio de costas.

[3] Law 86-2 of 3 January 1986 Concerning the Development, Protection and Promotion of the Coast, OG, 4 January 1986, p. 200.

[4] Law of 4 April 1990 on the Coast, OG 17 April 1990, supplemented by Regulation 20594 of 3 August 1990.

[5] Law 2344 of 1940 on Coasts and Banks.

[6] Law of 24 June 1966 on Coastal Planning.

[7] See Table 1 for an overview of the protocol development process.

overall process itself is subject to assessment (UNEP/MAP/PAP/METAP, 2002; PAP/RAC, 2001). Studies are also carried out on the national legislations (Prieur and Ghezali, 2000; Gabbay, 2000; Randic and Trumbic, 1999) and general reports published about the implementation of ICZM. In 1995 for example, the "Guidelines for integrated management of coastal and marine areas with particular reference to Mediterranean basin" discusses common problems and conflicts in coastal areas, explains the concept and stages of the ICAM process, underlines the necessary institutional, legal and financial arrangements… In 2001, "Coastal Area Management in the Mediterranean" provides planners and decision makers with knowledge from examples of implementing ICAM (UNEP/MAP/PAP, 2001a). The same year a White Paper was published (UNEP/MAP/PAP, 2001b), product of a thorough screening and analysis of a number of studies, statements, workshop reports and manuals, most of them elaborated in the framework of the MAP.

In addition to the aforementioned studies come a number of conferences, seminars and workshops, facilitating information exchange between representatives of the Contracting Parties and allowing for discussions of ways forward. At the same time, still existing scientific ties were developed across the Mediterranean community, fostering debates about issues at stake in coastal zone management giving birth to the idea of an ICZM protocol.

Relevant organisation of the negotiations

A "scientific" process was adopted to launch the text's elaboration. At their November 2001 meeting, the Contracting Parties stated that a feasibility study should be developed, concerning "a regional protocol on the sustainable management of coastal zones[1]". From this also proceeded a large number of seminars and workshops around the project. In September 2002, the 1st Expert Meeting on Feasibility Study for the MAP Protocol was held in Athens. The participants concluded that it be best not to set before the States a protocol with detailed content. This led to the review of a range of options, from "no protocol" to "rigid protocol", which itself gave rise to three possible protocol types: a protocol with general content (soft protocol), a protocol with detailed content (hard protocol) and a so-called "intermediate protocol". In February 2003, a second Expert Meeting adopted the final version of the feasibility study and argued in favour of an intermediate protocol. In the same vein, the September 2003 Meeting of National Focal Points (NFP) concluded that it would be opportune to issue a protocol with content detailed enough to be concretely enforced and thereby stimulate the States in their national legislations. The idea having gained the support of the Contracting Parties at their thirteenth meeting in November 2003[2], a drafting committee was formed and the protocol's development initiated.

Three stages can be distinguished in the drafting process of the ICZM protocol for the Mediterranean: (1) the initiative for the text, (2) the initial drafting of the text and (3) the negotiation on the text:

(1) The idea of the protocol was first promoted by one State, France, which sought to convince its partners that such an initiative would be timely.

(2) A non-governmental expert group was then entrusted with drawing up the text, under the leadership of Professor Michel Prieur, and handed in its draft in 2005. The text then served as a foundation for negotiations between State representatives, until it was adopted in January 2008.

[1] UNEP/MAP, Report of the 13th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Against Pollution, Monaco, 14-17 November 2001, UNEP(DEC)/MED IG.13/8, Athens, 2001, Annex IV Recommendations, II.C.5.

[2] Catania Declaration, Point 1.5.

(3) There is no ideal method by which international texts should be devised. Most frequently though, representatives of interested States directly take part in devising the document, working from a base text put forth by one or more national delegations. The draft Mediterranean protocol, in contrast, was first and foremost the result of the work of a group of non-governmental experts. The States, despite being the sources for and focus of international law, were left out of the initial drafting process. For some, this method came into contradiction with the constants of international political activity within which the States are, if not exclusive, then at least sufficiently-important players not to be left by the wayside, even temporarily. For this reason, that the drafting process be left to a group of academics, came stir criticism from certain national authorities. Nonetheless, it can be deemed that this method has met with a degree of success as regards the text's development. First of all, it should be kept in mind that the experts in charge of drafting the protocol were not self-appointed; the PAP/RAC was responsible for instituting the working group, thereby lending institutional legitimacy to its members. Likewise, the project is built on widely-recognised legal and scientific foundations. The relevance of such an initiative can thus not be seriously challenged. Furthermore, the working group has always established its undertakings within a broadly-transparent setting and regularly kept the public informed about the project's status. For instance, the protocol feasibility study published in 2003 made it possible to institute debate within the regional system[1]. The Cagliari Forum of May 2004 later provided the opportunity to set the protocol's general architecture before the national-level decision-makers[2], in an arena where the high expectations on the part of the Mediterranean States had become clear. Last, the drafting parties regularly provided information about their progress by publishing proceedings of each of their meetings.

In conclusion, the drafting of the project by the group of appointed experts offered two obvious advantages: speed and quality. Speed, first, in that it prevents, at least upstream, unending discussions between the 22 Parties to the regional system – for the Mediterranean zone is so broad that it makes direct negotiations between all of the States difficult. While the participation of the national delegations is necessary, it is undoubtedly easier downstream, when there is a founding text on which to debate. Building a legal instrument from twenty-two individual intentions would surely have given rise to unending debate, and it was thus best that the national representatives be able to negotiate on a previously-established text. The participation of these experts – most of whom were legal specialists with experience in international negotiations – also guaranteed the quality and timeliness of the resulting text.

3.3.3. Adoption, ratifications and entry into force

While the draft protocol made public in March 2005 did bring out relative consensus at the Mediterranean community level, the text was not set before the Contracting Parties for approval until November 2005. As this implies, the States had ultimately expressed their desire to take back control over the text-drafting phase, from which they had been relatively left out until then. The MAP National Focal Points, who met in September 2005, pointed out that the text suggested formed an interesting foundation for the negotiations[3] but

[1] UNEP/MAP, Feasibility Study for a Legal Instrument in Integrated Coastal Area Management in the Mediterranean, Executive Summary, Meeting of MAP National Focal Points, Athens, 15-18 September 2003, UNEP(DEC)/MED WG228/8, Athens, 2003, 64p.

[2] Forum ICZM in the Mediterranean: Towards a Regional Protocol, Cagliari, Italy, 28-29 May 2004.

[3] UNEP/MAP, Report of the Meeting of Map Focal Points, Athens (Greece), 21-24 September 2005, UNEP(DEC)/MED WG.270/19, Athens, 2005, Point 40.

recommended, at the same time, that an expert group be appointed by the Contracting Parties in order to modify the document[1]. At the Meeting of the Contracting Parties in 2005, this recommendation was withdrawn[2]. This was followed by a lengthy negotiation process: each provision suggested by the experts in the text was thus subject to review by the national delegations so that a consensus could emerge and lead to the Protocol's adoption on 21 January 2008[3]. Signed by 14 States and by the European Commission, the Protocol will come into effect once ratified by 6 Contracting Parties (see Annex 4 for details on signature/ratification by Party).

Table 1. Main steps towards the Mediterranean ICZM Protocol

Emergence of ICZM issues in the Mediterranean	From 1978: implementation of ICZM trough Coastal area management programmes (CAMPs)
	From 1990: ICZM projects funded by the Mediterranean Environmental Technical Assistance Program (METAP)
	From 1996: 12 ICZM pilot projects implemented in the framework of the European demonstration programme on ICZM
	Publications on ICZM issues (Guidelines, 1995; Good Practices, 2001; White Paper, 2001…)
	1995: Revision of the Barcelona Convention and extension to coastal zones
Political consensus on a regional instrument	2001: COP 12 asks to prepare a feasibility study for a regional protocol on sustainable coastal management
	2003: Publication of the feasibility study
	2003: COP 13 asks for the preparation of a regional ICZM legal framework
Drafting process	2003: First meeting of the drafting committee
	2005: Presentation of the "zero-draft" protocol
Negotiating process	5 meetings of the working group of experts designated by the Contracting Parties
Adoption of the Protocol	21 January 2008: Conference of the Plenipotentiaries on the ICZM Protocol

[1] Ibidem, Annex III, Recommendations I.A.1.2.

[2] UNEP/MAP, Report of the 14th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution and its Protocols, Portoroz (Slovenia), 8-11 November 2005, UNEP(DEPI)/MED IG.16/13, Athens, 2005, Annex III, I.A.1.2.3.

[3] Final Act of the Conference of Plenipotentiaries on the Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean, Madrid, 21 January 2008.

3.4. The Mediterranean ICZM protocol

3.4.1. Overview of the protocol's provisions

Aimed at establishing a "common framework for ICZM" in the Mediterranean Sea (Article 1), the ICZM Protocol contains several provisions, specifically regarding basic definitions, the strengthening of the sectoral legislations, the strategic planning of the coastal zones, governance rules and inter-States cooperation.

Definitions

Whether in internal or international law, **defining the coastal zone** remains a major difficulty. When the Barcelona Convention was revised in 1995, the States had chosen to extend the scope of application of action "to the coastline as defined by the relevant Contracting Party". This definition, imprecise and in reference to national law, could not serve as a foundation for a text the aim of which was to impose a common approach to coastal zone management and, thus, in approaching this territory. It was hence necessary that the document put forward a definition that would both match the shifting and complex nature of the coast and make it possible to establish the exact geographic scope of the legal provisions adopted. Article 2 thus states: "*Coastal Zone: the geomorphologic area either side of the seashore in which the interaction between the marine and land parts occurs in the form of complex ecological and resource systems made up of biotic and abiotic components coexisting and interacting with human communities and relevant socio-economic activities"*. Article 3 continues: "*The area to which the Protocol applies shall be the Mediterranean Sea area as defined in Article 1 of the Convention. The area is also defined by: (a) the seaward limit of the coastal zone, which shall be the external limit of the territorial sea of Parties; and (b) the landward limit of the coastal zone, which shall be the limit of the competent coastal units as defined by the Parties*". The Protocol first officialises a flexible definition of the coastal zone, based on a cross-disciplinary approach, incorporating geographic, scientific, social and economic components. This desire not to describe the coast within specific and numbered boundaries is the traditional approach, often adopted by international institutions and internal law. To devise consistent and enforceability of standard, provisions required, however, that a number of points be clarified as to the spatial limitations of the test's scope of enforcement. Where the sea is concerned, the Protocol applies, for instance, "*to the external limit of the territorial sea of Parties*", or 12 nautical miles, in most cases. In order to ensure that local specifics are taken into account the States are allowed to apply the protocol within different spatial limits. While the coastal zone's marine fringe can be only reduced, each State is allowed to set a more or less extensive landward limit, substantiating them with appropriate information, such as the ecosystemic approach, attention to economic and social criteria, the needs specific to islands and the negative effects of climate change. To wit, the draft Mediterranean Protocol on the ICZM officialises a definition of the coastal zone that is both precise and flexible. Whereas a spatial approach to the scope of the resulting legal provisions is best-suited to ensuring effective enforcement of the text, the heterogeneity of the Mediterranean coastline calls for a degree of flexibility, leaving each State the flexibility to choose an appropriate limit.

According to Article 2, **ICZM means** "*a dynamic process for the sustainable management and use of coastal zones, taking into account at the same time the fragility of coastal ecosystems and landscapes, the diversity of activities and uses, their interactions, the maritime orientation of certain activities and uses and their impact on both the marine and land parts*". This definition comes in line with the research already carried out on the ICZM concept: traditionally, the definition suggested underlines the general sustainable development objective, the dynamic nature of the process and the diversity of economic activities and uses in the area. In contrast, the reference to landscape is more original and is found only, to our knowledge, in the template law on sustainable development of coastal zones suggested by the Council of Europe in 1999. Likewise, the "maritime vocation" of certain activities and uses is

an entirely innovative component to which no reference is made in the traditional definitions of ICZM; the priority must thus be given to installing, along the coastlines, activities strictly-tied to the maritime environment, traditional sea-side activities or new recreational uses.

Strengthening of sectoral legislations

Taking a comprehensive approach, the Protocol aims to preserve the coastline by regulating the activities that govern this space and the ecosystems that form it.

Article 9 of the Protocol is specially-dedicated to regulating sea-side economic activity. Generally speaking, the Parties "shall accord specific attention to economic activities that require immediate proximity to the sea" (Article 9-1a). Special provisions have furthermore defined for:

- Agriculture and industry (Article 9-2a): *"the location and operation of agricultural and industrial activities so as to preserve coastal ecosystems and landscapes and prevent pollution of the sea, water, air and soil"*.
- Fishing (Article 9-2b): *"to take into account the need to protect fishing areas in development projects"* and *"to ensure that fishing practices are compatible with sustainable use of natural marine resources"*.
- Aquaculture (Article 9-2c): aquaculture must, in particular, *"be regulated as to the use of inputs and waste treatment"*
- Tourism, sporting and recreational activities which must, necessarily, be *"respectful of ecosystems, natural resources, cultural heritage and landscapes"*
- Digs and mining, which must *"subject to prior authorisation"*
- Sand extraction, which must be *"regulated or prohibited if it is likely to adversely affect the equilibrium of coastal ecosystems"*.
- Infrastructures, energy facilities, ports and maritime works and structures, which must be, *"subject to authorization so that their negative impact on coastal ecosystems, landscapes and geomorphology is minimized or, where appropriate, compensated by non-financial measures"*
- Maritime activities, lastly, must *"be conducted in such a manner as to ensure the preservation of coastal ecosystems in conformity with the rules, standards and procedures of the relevant international conventions*".

Many of the text's provisions are also aimed at *"ensuring the sustainable use of natural resources"* (Article 5-c) and preserving "*the integrity of the coastal ecosystems"* (Article 5-d). Special provisions have also been set out for certain sensitive environments:

- Wetlands and estuaries (Article 10-1) *"the environmental, economic and social function"* of which needs to be taken into account *"in national coastal strategies and coastal plans and programmes and when issuing authorisations"*. The States must, moreover, take *"all measures necessary to regulate or, if necessary, prohibit activities that may have adverse effects on wetlands and estuaries"* in these spaces.
- Marine habitats (Article 10-2), which must be protected and conserved, *"through legislation, planning and management"*.
- Coastal forests and woods (Article 10-3) that must be addressed by measures intended to preserve, in particular *"outside specially-protected areas"*.
- Dunes (Article 10-4) which must be "*preserved and, where possible, rehabilitated in a sustainable manner"*.

- Islands, the specific characteristics of which must be taken into account (Article 12).

In order to guarantee the sustainable management of coastal ecosystems, the protocol provides that the States shall *"prepare and regularly update national inventories of coastal zones"* (Article 16). Likewise, the text encourages protection through the adoption of *"appropriate land policy instruments and measures"* by providing, *"in particular (…) for mechanisms for the acquisition, cession, donation or transfer of land to the public domain and institute easements on properties"* (Article 20).

Regulation of coastal urban development is, furthermore, a major thrust of any ICZM policy. In this respect, the institution of a zone on which no construction is allowed along the coast is an increasingly-used tool in Mediterranean coastal policy. France, Algeria, Spain, Israel and Croatia, for instance, have adopted standards governing coastal urban development by providing for the maintenance of a non-urbanised zone, the width of which varies from one legislation to another. While the benefit of such a zone needs no further demonstration, where ecosystem preservation is concerned, it has proven of particular use in protecting populations from submersion and erosion risks (Billé, Magnan and Rochette, 2008). Such a tool is thus specific to ICZM, the use of which is also suited to policies aimed at adapting to climate change. The ICZM Protocol thus calls for the institution of such a zone in its Article 8: while the 100-metre width provided for by the text remains highly arbitrary, it is nonetheless a sufficiently large distance to produce effects where ecosystem protection and populations are concerned.

The protocol, in this respect, takes care to preserve the coastal space by regulating the human activities that develop there and the ecosystems that form it.

Strategic planning of the coastal zones

In order to ensure that the requirements concerning the strengthening of sector-specific measures are consistently fulfilled, the text requires that all of the aforementioned measures be made part of a broader land planning system. As such, though placed in Part III of the text, the terms on which it elaborates concerning ICZM instruments certainly form the heart of the protocol. They structure a pyramid-shaped land planning system, composed of national strategies and coastal plans and programmes.

Article 18-1 provides, first of all, that each State, *"strengthen or formulate a national strategy for integrated coastal zone management"*. This strategy shall *"set objectives, determine priorities with an indication of the reasons, identify coastal ecosystems needing management, as well as all relevant actors and processes, enumerate the measures to be taken and their cost as well as the institutional instruments and legal and financial means available, and set an implementation schedule"* (Article 18-2). This is an essential component of the project, which will require all Mediterranean States to embark on reflection about the future of coastal areas and the conditions required for sustainable development. Moreover, the terms specified in Article 18-2 are particularly helpful in that they prevent the drafting of "empty" documents, with no planning dimension. In addition, *"coastal plans and programmes"* must be adopted, in order to specify *"the orientations of the national strategy"* and *"implement it at an appropriate territorial level"* (Article 18-3). Thus, had there been fears upon completing the Protocol that the Parties might choose a "smattering" of their internal laws to implement the text, without any consistency in their approach to coastal issues, the deployment of strategic coastal planning in the implementation of the protocol is expected to help overcome this obstacle.

It should be added that national documents of this kind – strategy, plans and programmes – must be in line with the Mediterranean ICZM Strategy, called for in Article 17 of the Protocol: *"The Parties undertake to cooperate for the promotion of sustainable development and*

integrated management of coastal zones, taking into account the Mediterranean Strategy for Sustainable Development and complementing it where necessary. To this end, the Parties shall define, with the assistance of the Centre, a common regional framework for integrated coastal zone management in the Mediterranean to be implemented by means of appropriate regional action plans and other operational instruments, as well as through their national strategies". A number of doubts can be voiced as to the actual benefit of such a strategy, non-binding by nature and issued as an addition to the Protocol. In any case, a number of conditions must be fulfilled for such a text to actually serve as a buttress in formulating national strategies. First of all, the Mediterranean ICZM strategy will need to be sufficiently detailed to state, in a relevant manner, certain provisions in the Protocol and suggest avenues for implementing the legal measures adopted. Likewise, it is important that the text not be legally-binding to any extent. The strategy is intended as a foundation for implementing the ICZM, rather than a set of additional legal requirements placed upon the Parties and not previously established by the Protocol. Lastly, and above all, the Mediterranean strategy will have to be adopted before the protocol comes into force. Were the opposite to occur, it is very likely that the Parties would suspend the formulation of their national strategy until the document became available.

Governance rules

Above and beyond the definition provided by Article 2, the Protocol lists, throughout its various articles and in particular in Articles 5 and 6, the objectives and general principles traditionally connected with ICZM and which will need to be implemented by the States in carrying out their coastal policy: sustainable development (5a, 5b), spatial integration (6a), integration over time (5b), institutional integration (5f, 6e), participation of local populations (6d), etc. Out of all of these governance rules, institutional coordination is given special attention, through a specific Article (Article 7):

"*1. For the purposes of integrated coastal zone management, the Parties shall: (a) ensure institutional coordination, where necessary through appropriate bodies or mechanisms, in order to avoid sectoral approaches and facilitate comprehensive approaches; (b) organize appropriate coordination between the various authorities competent for both the marine and the land parts of coastal zones in the different administrative services, at the national, regional and local levels; (c) organize close coordination between national authorities and regional and local bodies in the field of coastal strategies, plans and programmes and in relation to the various authorizations for activities that may be achieved through joint consultative bodies or joint decision-making procedures. 2. Competent national, regional and local coastal zone authorities shall, insofar as practicable, work together to strengthen the coherence and effectiveness of the coastal strategies, plans and programmes established*".

Participation is also given special attention:

"*1. With a view to ensuring efficient governance throughout the process of the integrated management of coastal zones, the Parties shall take the necessary measures to ensure the appropriate involvement in the phases of the formulation and implementation of coastal and marine strategies, plans and programmes or projects, as well as the issuing of the various authorizations, of the various stakeholders, including: - the territorial communities and public entities concerned; - economic operators; - non-governmental organizations; - social actors; - the public concerned. Such participation shall involve inter alia consultative bodies, inquiries or public hearings, and may extend to partnerships. 2. With a view to ensuring such participation, the Parties shall provide information in an adequate, timely and effective manner. 3. Mediation 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*". While Article 14 provides, as shown,

for stakeholder participation as a necessity, it does not recognise the citizens' right to go to court, a right refused by certain southern Mediterranean States, but merely suggests it. In 1995, during the negotiations for the revision of the framework Convention, there was not yet unanimous agreement as to the timeliness of officially instituting such a right.

Inter-States cooperation

Article 1 of the Protocol sets a general cooperation obligation on the States. This cooperation must, in particular, be implemented with regard to the protection of transboundary coastal landscapes (Article 11-2), the coordination of their coastal strategies, plans and programmes (Article 28), the assessment of the impact of transboundary projects on the environment (Article 29-1). The Parties also undertake to cooperate in exchanging helpful information (Articles 23-4, 27-1) and coordinate in the event of natural disaster (Article 24). Lastly, education about the environment (Article 15), training and research (Article 25) must also be the focus of cooperation between Mediterranean States.

3.4.2. Legal nature of the protocol's provisions

Regional Mediterranean law is one component of international environmental law and, as such, largely corresponds to its general characteristics. This is especially true of the nature of the text (Rochette, 2007). Thus, international environmental law and regional Mediterranean law are made up of "joint conventions that contain both firm commitments, in the traditional sense of legal obligations, and soft law, made up of a set of intentions that the contracting States undertake to translate into binding standards" (Kamto, 1998). Certain provisions of regional Mediterranean law therefore fall within the broader framework of international environmental law, "a possibilist rather than prescriptive law, with very limited normative scope" (Chabason, 1999). Consequently, a protocol, which is binding by definition, may nevertheless contain provisions that seem more like suggested guidelines for contracting parties than imposed constraints. That is precisely the case of the ICZM Protocol. In this context, a distinction could thus be made between the binding provisions, the binding provisions with extensive dispensations and the soft law provisions.

Binding provisions

Some provisions of the ICZM protocols are legally binding, i.e. they bind States to adopt a specific comportment. These obligations are revealed by the utilisation of special terminology like "States shall" or the use of the present simple. Among these legally binding provisions, it is important to underline the adoption of measures to ensure the protection and conservation of marine habitats (Article 10-2) and coastal forests and woods (Article 10-3), the regulation of "aquaculture by controlling the use of inputs and waste treatment" (Article 9-2cii) and "the extraction of sand, including on the seabed and river sediments (Article 9-2eii). Mediterranean States shall also "further strengthen or formulate a national strategy for integrated coastal zone management and coastal implementation plans and programmes" (Article 18).

Binding provisions with extensive dispensations

Article 8-2 is an exemplar illustration of how Mediterranean States tried, during the negotiations, to lower the level of their involvement, adding extensive dispensations to a general obligation. The first part of the Article 8-2 binds States to establish a 100 metres zone where construction is not allowed ("set back zone"). However, the text also provides for the option of *"adapting"* the principle, by extending or reducing the zone where no construction is

allowed, for *"projects of public interest"*, first of all, *"in areas having particular geographical constraints (…)"*. By allowing that the principle be adapted to local circumstances, the second exemption is ultimately of great relevance. Indeed, in certain cases, the 100 metres provided for by the Protocol will turn out far too much. Small islands, for instance, do not necessarily match the physical, geographic, social and economic terms justifying the institution of such a zone. In other situations, to the contrary, it might be helpful to extend the zone beyond 100 metres, in particular with regard to potentially greater exposure to the effects of climate change. In this sense, the use of the "100-year zone" concept could turn out appropriate, calling for a strategic approach to the foreseeable effects of climate change on a specific portion of the coast and within a broader timeframe. In contrast, it is important to emphasise that the exemption from this principle for "projects of public interest" is particularly broad in practice, leaving each State considerable room to assess whether such a zone is to be established.

Soft law provisions

Last, the protocol contains numerous provisions that are not legally-binding but only recommendations. For example, the Article 14-3 encourages acknowledgement of the right of administrative or legal recourse for all stakeholders: this is not an obligations *stricto sensu* but only an incentive. The provisions relating to national security and defence activities (Article 4-4) or the adoption of mechanism for the acquisition, cession, donation or transfer of land to the public domain for example (Article 20-2), have the same aim.

3.5. Implementation perspectives – SWOT analysis

3.5.1. Strengths

An innovative instrument

Aimed at establishing a common framework for ICZM in the Mediterranean Sea, the ICZM Protocol constitutes the first supra-State legal instrument specifically aimed at coastal zone management. As a major constraint, the rare instruments aimed at moving beyond sectoral policies and guiding the national systems towards integrated coastal management were confined to the realm of soft law. Up to now, coastal areas were indeed governed by international law in a fragmented manner: sometimes a coastal zone was covered by protective measures set out in a text with a broader context or a wide geographical scope; sometimes an activity, a habitat or a species specific to this area was covered by sectoral regulations.

The ICZM Protocol is therefore an innovative instrument in several respects. First, it is an important shift in terms of regulation of coastal zone development by international law, going beyond a framework of recommendations in favour of binding legal obligations. Second, it dramatically alters the traditional field of inter-State cooperation, addressing disciplines (administrative law, urban planning law, laws covering coastal economic activities, etc.) that were previously governed only by national laws.

An important tool for Mediterranean States to improve coastal management

Some Mediterranean States have already adopted specific legislations on coastal zone management, such as France (1986), Algeria (2002), Croatia (2004), etc. In these cases, the entry into force of the protocol will bind them to strengthen respective national legislations, be they cross-sectoral (coastal laws) or sectoral (regulation of economic activities…).

However, there are numerous Mediterranean States which have not adopted such special legislations. The entry into force of the Protocol will oblige them to formulate a coastal management strategy and adopt legal tools to implement them at national level. One of the

main interests of the ICZM Protocol is therefore to create obligations for all Mediterranean States, whatever the level of their current national coastal policy.

Political legitimacy

The Mediterranean ICZM Protocol is the result of a long negotiation process that has progressively led to the writing of each of its provisions. It is important to underline that this process enabled national stakeholders to participate in the discussions, thus making them true and knowledgeable stakeholders in the process. In between regional negotiation meetings, States had time to organise interministerial debates in order to develop and reflect on national points of views. Each ministry – Environment, Urban Planning, Agriculture, Fisheries, Tourism… – could present its claims, doubts and preoccupations, which were taken into account by national negotiators. The ICZM Protocol is therefore the result of a compromise, reconciling diverging positions both at regional and national level. Its adoption was not "forced" but rooted on a true regional cooperation which gives the text an important political legitimacy.

3.5.2. Weaknesses

Weaknesses of the Protocol itself

The 2005 first draft Protocol text elaborated by non-governmental experts was very ambitious, binding States on several points and avoiding the use of soft law. Not surprisingly, national government delegates tried to reduce the level of their obligations during the negotiation meetings. Today, the ICZM Protocol thus contains different kinds of provisions, combining soft law, possibilist standards, obligations of means, indirectly applicable standards, etc. Consequently, for each signatory Contracting Party, an important endeavour is (still) necessary to carefully analyse the normative scope of each of the provisions of the protocol and determine the nature of the commitments made by the States. For instance, the successful implementation of the Protocol implies to first make a clear distinction between the binding provisions – which implementation is, in principle, compulsory – and those that belong to soft law. This process requires special studies. Besides, it can be argued that a number of provisions are vague enough to leave States with important leeway in deciding how to implement the text.

Weaknesses of the Mediterranean system

The Mediterranean regional system recently made significant progress regarding "reporting and compliance". Indeed, Mediterranean States approved in 2008 a system establishing a set of procedures and mechanisms on compliance with the obligations under the Barcelona Convention and its Protocols. A Compliance Committee is now in charge of considering specific situations of actual or potential noncompliance by individual Parties with the provisions of the Convention and its Protocols and to examine general compliance issues, such as recurrent non-compliance problems. The Committee consists of seven members elected at the meeting of Contracting Parties.

The adoption of a systematic approach to the management of compliance and enforcement is therefore an important step towards safeguarding the environment in the Mediterranean region. Nevertheless, there are no punishment mechanisms within the Barcelona system. As in other regional seas, the implementation of legal texts largely depends on States' good faith. This is a general weakness of the regional system which differentiates it from the European Union.

3.5.3. Opportunities

The PAP/RAC technical assistance

The implementation of the Protocol will benefit from PAP/RAC's experiences and competences. First, the next CAMPs will be specifically focused on the implementation of the text. CAMP is indeed turning into a tool and a mechanism for putting the ICZM Protocol provisions into practice. It is in that perspective that CAMP Italy, the first one to be developed after the Protocol signature, has been set up. At the request of the Contracting Parties, PAP/RAC will provide direct assistance to their efforts to adopt, ratify and, subsequently, implement the Protocol. Technical assistance in drafting a comparative analysis and Plan of action for ICZM Protocol implementation at national level has already been provided to the Ministry of Environment and Tourism of Montenegro (Mrak-Taritaš, 2009).

The European Court of Justice (ECJ) and the implementation of the Protocol in European member States

When the Protocol will be in force, the accession of the European Union (EU) to the text will have two major consequences, identified since the Étang de Berre case[1]. First, under certain conditions, any European citizen concerned may rely upon the provisions of the Protocol. Second, the Commission and the ECJ may consider themselves competent to monitor compliance with the provisions of the Protocol. Although this could result in a certain divide between the Mediterranean States that are members of the EU and the others (Rochette, 2007), this legal nuance potentially provides two opportunities for the future implementation of the Protocol. The first is in the hands of European citizens, who could, as the case law currently stands, rely upon a provision of regional law approved by the Community, provided it meets certain criteria; the second is in the hands of the Commission and the ECJ, whose interest in monitoring compliance with obligations under the regional system is now acknowledged.

NGOs support

NGOs did not participate actively in the discussions on the content of the ICZM Protocol. Some were not convinced of its potential and therefore did not press States during the negotiations, and others were not well informed about the major consequences of the text on coastal management in the Mediterranean. Nevertheless, since its adoption, numerous NGOs have understood the importance of this regional instrument and have informed stakeholders about its implementation's perspectives. In the coming months, the civil society's support will certainly play a crucial role, pressing States to ratify the text on the one hand and supporting its implementation on the other hand.

3.5.4. Threats

Entry into force

16 Contracting Parties have signed the text, some of them have started the ratification process but only two States have ratified it as of today, namely Slovenia and France. The entry into force of the text thus needs 4 additional ratifications. Although it is known that several countries have started the ratification procedure, major efforts will be needed to stimulate the remaining countries to start the process, as well as to complete it, so that the Protocol can enter into force in the foreseeable future. Nevertheless, it can not be excluded that the Protocol will

[1] ECJ, 15 July 2004, C-213-03; ECJ, 7 October 2004, C-239/03.

never enter into force. There are examples of Mediterranean protocols adopted but never implemented, in the absence of enough ratifications.

Opposition of some powerful stakeholders

The ICZM Protocol contains numerous provisions regarding the regulation of coastal economic activities, e.g. aquaculture, tourism, extractive industries, etc. A strong opposition from segments of the private sector should be anticipated. This could slow down the national ratification processes and the Protocol's implementation.

Control of implementation at the national level

Even if the ICZM Protocol leads to the strengthening of national coastal legislations, there may in fact be a considerable discrepancy between the existence of a legal rule and its implementation. For example, although Italy has a particularly large network of marine protected areas, a recent study showed that rules were only followed in 3 out of 15 marine reserves (Guidetti P. et al, 2008). In Morocco, 68 offshore sand extraction sites were identified, when the authorities had only given permission for 2 (Menioui, 2006). In France, although a 1976 law established the coastal path, it is clear that this provision is not respected along the whole coastline. The sole adoption of the Protocol will therefore not solve the wider problem of law enforcement in Mediterranean States.

Shortcomings of Technical Assistance

While having a dedicated Regional Activity Centre like CAR/PAP is a great opportunity in itself, there is no guarantee that it will continue to be sufficiently resourced and staffed, in quality and quantity. This concern has been raised already by some Parties during ICZM Protocol development meetings.

3.6. Summary of crucial lessons learnt from the Mediterranean ICZM protocol experience

Table 2. Crucial lessons learnt from the Mediterranean ICZM protocol experience

	Lessons learnt
General context	▪ The difference of development level between Mediterranean States does not constitute a major obstacle for regional cooperation. ▪ Well-grounded experience of ICZM implementation at the regional level (pilot projects and programmes) was key. ▪ A prosperous scientific context (reports, studies, workshops on coastal management) continuing to support the idea of a regional regulation of ICZM. ▪ A specialised centre (PAP/RAC) coordinating regional initiatives for coastal regulation. ▪ Political support was provided by UNEP Regional Seas Programme, whose work programme mentions ICZM implementation since the 1990s.
Negotiation process	▪ The clear *ex-ante* definition of a shared vision of the would-be

	Protocol (study of feasibility) was a major factor of success. ▪ The process was led by a major Party of the regional system (France). ▪ The negotiation was facilitated by a precise and ambitious initial draft text elaborated by regional experts. ▪ No haste in the negotiations: time was provided to discuss at regional level and to organise national interministerial consultations.
Content of the Protocol	▪ The approach is holistic and intersectoral. ▪ Some provisions bind States to elaborate strategic planning of the coastal zones (national coastal strategies, plans and programmes). ▪ Emerging issues (risks and natural hazards, notably linked to climate change) are given much consideration. ▪ Technical assistance is provided.

4. COMPARATIVE ANALYSIS BETWEEN THE WIO REGION AND THE MEDITERRANEAN

4.1. Coastal management issues

While Table 3 summarises and compares the main coastal issues in both regions from an environmental and resources management perspective, it should be noted that all of them actually translate into institutional, legislative and political gaps or failures such as:

- Lack of capacity;
- Lack of cross-sector integration and cooperation;
- Poor law enforcement;
- Poverty and inequalities;
- Corruption;
- …

These are shared by virtually all countries of both regions, with of course great variations from one case to another.

Table 3. Main coastal issues at a glance

Issues	Main sources	Regional specificity	
		WIO	**Mediterranean**
Land-based sources of pollution	▪ Coastal urbanisation and industrialisation ▪ Pollution from agriculture activities ▪ Soil erosion ▪ Land-based extraction of oil, gas, minerals ▪ Quarry for construction materials ▪ Seasonal tourism	▪ Lack of urban sanitation networks ▪ Lack of control on industrial sewage ▪ Lack of enforcement of EIA legislations ▪ Pesticides and fertilizers use in agriculture ▪ Solid waste ▪ Erosion and sedimentation ▪ Deforestation ▪ Lack of public information on pollution issues	▪ Same but exacerbated by the semi-enclosed nature of the Mediterranean basin
Marine pollution	▪ Oil and gas exploration ▪ Oil spills ▪ Illegal oil discharges ▪ Noise pollution ▪ Solid and hazardous waste dumping	▪ Major oil and gas explorations ongoing ▪ Maritime route of global significance and migration corridor for cetaceans ▪ Lack of technical means and institutional coordination to fight oil spills, discharges and other chemical disasters	▪ Maritime route of global significance (30% of the world oil transportation) ▪ Special area under MARPOL Convention
Habitat degradation	▪ Coastal urbanisation and industrialisation ▪ Conversion to agriculture and aquaculture ▪ Mangrove and coastal forests destruction ▪ Transport infrastructure development	▪ Aquaculture activities: destruction of mangroves and degradation of water quality ▪ Solid waste dumping (Comoros, Zanzíbar etc.) ▪ Development of touristic complex in sensitive habitats	▪ Strong artificialisation of the coastal zones, especially on the North coast
Natural resources overexploitation	▪ Fishing - fish stocks overexploitation and use of destructive practices	▪ Very strong link between fisheries activities and poverty alleviation	▪ Importance of IUU fishing in fish stocks overexploitation

	▪ Mangrove destruction	issues ▪ Extraction of firewood and construction material ▪ Weight of artisanal and industrial fishing activities ▪ Intrusion of illegal foreign vessels in national waters / problem of surveillance	
Invasive species	▪ Introduction of alien species via ballast water ▪ Introduction through uncontrolled/ illegal aquaculture	▪ Risks on endemic fauna (e.g. Madagascar, Seychelles, Kenya, Tanzania, etc…)	▪ Crucial problems for marine and coastal ecosystems in the Mediterranean (e.g. from the Suez Canal)
Climate change	▪ GHG emissions ▪ Lack of mitigation measures ▪ Lack of protective measures	▪ Important vulnerability of low lying islands ▪ Coral bleaching increase ▪ Micro-climate changes: Droughts, crop pests ▪ Migration/ disappearance of fish stocks	▪ Climate change hotspot ▪ Vastly degraded ecosystems more vulnerable to climate change

4.2. National governance and legal frameworks

It could be argued that national governance and legal frameworks are generally more advanced in the Mediterranean than in the WIO region. Indeed, as shown in section 3, specific national coastal laws and policies have been developed or strengthened over the last few years in most Mediterranean countries, and the implementation of EU Directives by member States favoured considerable progress. However, other kinds of advances have been made at national levels in the WIO Region over the past years with most countries having passed ICZM relevant or full ICZM policies and even advancing in the development of National ICZM Plans.

One aspect in which the WIO Region is at least as advanced as the Mediterranean is the development of National ICZM structures. While section 3 has illustrated how the creation of administrative/institutional entities dedicated to coastal management has become frequent in the Mediterranean (cf. e.g. Morocco and its "Cellule du littoral", or Tunisia and the "Agence de protection et de l'aménagement du littoral"), section 2 insisted that specific ICZM entities were established in most WIO countries. Although these structures are still within a consolidation phase and most of them will require external support for some time to come, these are fully legalised National ICZM Committees (NICZMC). These NICZMCs, representing government and non-government stakeholders of their respective countries could constitute the primary national counterparts in the development process of a potential Regional ICZM Protocol. Moreover, infra-national ICZM committees have been set up in some places, although most of them are relatively new and hence still have to demonstrate their usefulness and influence in practice. These committees should function as the coordinative entities and information hubs for ICZM. In addition, following awareness raising and capacity building efforts on transboundary issues, large marine ecosystem (LME) management approaches and Strategic Action Planning, the currently ongoing development of National ICZM Plans already incorporates regional aspects.

In terms of political and administrative systems, the most striking pattern in both regions is probably the extremely wide range of situations. Indeed, both regions include developed, emerging and Least Developed countries, countries with national coastal laws and countries without such instruments. Both regions encompass countries with rather centralized or decentralized political and administrative systems, characterised by very different approaches to governing public affairs (level and nature of democracy, public participation, transparency, policy evaluation, accountability, etc.). Access to justice on environment-related issues varies significantly between countries with virtually no access in some countries and well established standard access situations in others. Most countries of both regions are slowly moving towards more public involvement, from basic public information to public participation, the latter progressively emerging as a new standard of public policies.

4.3. Regional legal and institutional framework

Clearly, the regional legal and institutional framework is more comprehensive in the Mediterranean than in the WIO.

First of all, 6 protocols (4 of which have already entered into force, cf. section 3) have been added to the Barcelona Convention, whereas only 2 (both entered into force in 1996) have been added to the Nairobi Convention (the LBSA Protocol should be added during the COP6 in 2010). Moreover, the Mediterranean has seen a regular pace of protocol addition, whereas the 2 NC protocols date back to 1985 and entered into force 11 years later, which would question the dynamics of the framework if not for the up-coming LBSA protocol.

The implementation of the Mediterranean Protocol is supported by 6 Regional Activity Centres and a Coordinating Unit, most of them well staffed. In contrast, for the potential NC

Protocol, the Seychelles-based Regional Coordinating Unit is the only specific technical strategic body of the NC available in the Western Indian Ocean, and has never become fully functional. The Nairobi Convention Secretariat itself only has 3 staff, with the Secretary sharing his time until recently between the Nairobi and the Abidjan Conventions.

Finally, the Mediterranean process benefits from an availability of environmental management instruments from the EU being one of the parties to the Protocol. In comparison, and at this time, COI would be able to offer only limited immediate support of such kind through its ongoing programmes. This situation will have to be augmented through the coordinated joint provision of support between COI and other Regional and International Organisations.

Overall, the Nairobi Convention framework has met – and is meeting – important performance challenges. Besides national difficulties that are largely out of its reach, its efficiency has been hindered mostly by:

- Limited financial and human resources;
- (Geo)political issues that restrain the participation of a number of States;
- The existence of three culturally distinct regional clusters of Countries, namely Eastern Africa, Southern Africa and the Western Indian Ocean Islands.

This is partly why the entry into force of the two first protocols did not meet the expectations of many stakeholders. However, there seems to be an inflexion of this gloomy situation at the moment, with the WIO-LaB project supporting a wide range of NC-related activities, concretely helping to address land-based pollution issues, and being instrumental in facilitating the development and negotiating process of the LBSA protocol (see **Table 4**). While discussions are on-going as to whether a "WIO-Lab 2" project should be launched, it is crucial to keep in mind that in the current contexts only internationally-funded projects may balance the structural weakness of the NC framework.

Table 4. Main steps towards the LBSA Protocol to the Nairobi Convention

Political decisions	COP3, 2001: Decision 3/6 related to the development of a new protocol on land-based activities
	2005: Launching of the WIO-Lab project, with a special component to support the protocol development and negotiation process
Drafting process	2005: Publication of the "zero-draft" protocol, produced by a regional expert
	2005: Creation of a Technical Task Force, composed of 1 official and 1 expert for each State
	2005: National experts publish reports on the state of implementation of MEAs and on land-based source pollution issues at national level
	2005: National experts launch national consultations on land-based pollution issues (limited / contrasted success).
	4 negotiating meetings from 2005 to 2008, on four successive drafts
	2008: Final draft approved by the Technical Task Force
Negotiating process	2009: Transmission of the final draft (technically) to States' governments and nomination of official negotiators to refine / negotiate the text
	June 2009: 2.5 day meeting of negotiation – minor modifications only
Adoption of the Protocol	2010: COP (?)

4.4. Crossed assessment of critical enabling conditions

As appears from this brief comparative analysis, the two regions have a lot in common in spite of one being much richer than the other. Many patterns which made the ICZM protocol possible and necessary in the Mediterranean are shared by the WIO region: coastal management issues, regional framework in place, long regional cooperation experience on environmental and coastal management issues, significant history of ICZM projects and scientific studies, national coastal management entities and instruments in place or in progress…

In light of the lessons learnt from the Mediterranean, it is also important to underline that the diversity of the WIO Region in terms of e.g. coastal issues, States structures or levels of development, is not a major obstacle *per se* for the elaboration of an ICZM Protocol.

Nevertheless, two key patterns of the Mediterranean context are lacking in the WIO Region, which should be taken into account (cf. section 6 on recommendations):

- The main difference probably lies with the abundance and strength of regional supporting structures in the Mediterranean (including CAR-PAP for the ICZM protocol), compared to limited human resources in the WIO region.
- The historical, political, cultural and ecological (semi-enclosed sea) unity of the Mediterranean region, although not absolute, does not have an equivalent in the WIO Region. The latter is more clustered in three sub-regions (cf.4.3) as well as between continental and island States. It will thus be the responsibility of the National Governments to promote a truly regional approach.

5. FEASIBILITY ASSESSMENT OF AN ICZM PROTOCOL TO THE NAIROBI CONVENTION

5.1. Why may a regional, legally binding ICZM instrument be needed?

In general terms, there are several good reasons for an ICZM protocol in the WIO region.

5.1.2. Why a regional ICZM instrument?

- The coastal and marine environment in the region, like in most regions of the world, is under increasing pressure from rapid urbanisation, industrialisation and population growth. While ICZM is recognized worldwide as the best way to implement the sustainable development concept in coastal areas, it is far from having become a routine management process in the WIO region. Much effort remains to be done and part of it can be best delivered by joining forces at the regional level.
- Global and regional environmental factors such as for example Climate Change and Biodiversity Loss are adding to the abovementioned anthropogenic pressures
- With the proliferation of *ad hoc*, somehow isolated initiatives at all scales, and the current challenge of institutionalising national ICZM bodies, the need for regional exchanges of experiences is greater than ever.
- All countries of the region are interlinked by ecological, socio-economic and political connections. In the medium to long term, sustainable environmental management is key to regional stability. With the climate change perspective in particular, a lack of efficient adaptation / coastal management efforts could lead to major economic disruptions, population movements, sanitary crises, etc. Anticipatory, coordinated approaches are hence needed at the regional level.

5.1.3. Why a regional and *legally-binding ICZM instrument?*

Here we examine more precisely why a *protocol* may be needed, rather than soft, general guidelines:

- Despite progress made, several gaps do exist in regional and national normative frameworks, when an ICZM protocol could provide a shared coastal management basis for all NC Parties. This is all the more important as the WIO countries share two large ecosystems which they have to manage in common. Transboundary effects are such that environmental degradations in one country often hamper sustainable development opportunities in others. This limits the usefulness for one country to engage in ICZM if neighbouring countries do not.
- Most countries in the WIO Region have recognised the value of ICZM and have already embarked on the development of National ICZM bodies, policies, strategies

and plans. An ICZM Protocol to the Nairobi Convention could provide decisive support to national ICZM structures which would be strengthened and firmly guided in their functions.

- There is a need for a shared theoretical and methodological framework. Indeed, if ICZM initiatives – be they projects or political / legal actions – are growing in number in the WIO Region, ICZM promoters are still relatively isolated at the national level and are asking for support through the regional approach. A legally-binding instrument could therefore:
    - Support and strengthen existing national frameworks ;
    - Provide more political weight and legitimacy to ICZM leaders in their daily intersectoral work, especially when conflicting interests are at stake. In this sense a protocol is a powerful advocacy tool.
- If the content of the would-be protocol is appropriate and its implementation perspectives well anticipated, it could:
    - Boost the Nairobi Convention framework;
    - Reemphasize the need to implement existing protocols;
    - And contribute to bring back into the equation those countries that tend to be more passive in the regional environmental scene.

In this respect, it is important to underline that it is not only the would-be protocol itself but also very much the negotiating process involving national stakeholders which would deliver such results – and obviously there would be no negotiating process to a non-binding instrument.

- Last, if the protocol idea is officially supported by international and regional organisations, national and sub-national authorities and NGOs, it could motivate international donors to get more involved in IZCM issues while mobilizing resources for Protocol implementation. A protocol would be a strategic indicator as well as a powerful methodological instrument to orient future initiatives to be funded, therefore avoiding dispersion of international funding. A softer instrument would not achieve this even if donors support ICZM, not the least because most international organisations and donor agencies already have established ICZM guidelines[1].

Quite obviously, many of the reasons why a protocol – i.e. a legally binding instrument – may be needed are not valid if the protocol content itself would be generally soft ("soft protocol", see 6.2.2.). Indeed, although a legally binding instrument by nature, a protocol may well have only soft, non-binding provisions. In this case the advantage of having an ICZM protocol rather than just regional guidelines is probably close to zero.

5.2. Potential implications/impacts, by country

At this stage, it is very difficult to forecast what the major impacts of an ICZM protocol in the WIO States would be. Indeed, the nature and extent of such impacts very much depends on the content of the text and therefore, on the States' willingness or reluctance to elaborate an ambitious instrument, which would firmly and precisely address individual coastal issues, rather than a minimalist one.

[1] See e.g. the World Bank (World Bank, 1993; Post and Lundin, 1996); FAO (Clark, 1992; Scialabba, 1998) ; UNESCO (Hénocque *et al*., 1997 ; Denis and Hénocque, 2001) ; UNEP (Brachya, Juhasz, Pavasovic et Trumbic, 1994); IUCN (Pernetta et Elder, 1993).

The impact of an ICZM Protocol will also depend on the normative scope of its provisions. A protocol, which is binding by definition, may nevertheless contain certain provisions formulated as suggested guidelines rather than as imposed constraints for Contracting Parties. In this respect, the negotiation process will be a crucial step because it could lead to the transformation of most binding provisions into soft law.

Last, it is important to recall that neither the adoption nor the entry into force of a legal instrument does guarantee its implementation in all Contracting States.

Nevertheless, without prejudging the results of the negotiation process, it is possible to assume that an ICZM Protocol could have 3 main consequences in WIO countries:

1. There would be a strengthening and harmonisation of the WIO States legal systems related to the coastal zones. This strengthening would depend on the level of ambition of the text and on the number of coastal issues that would be regulated. In any case, it would lead to the harmonisation of national legal systems, providing obligations to be implemented in all the WIO countries.
2. Beyond purely legal consequences, a protocol could have impacts on the institutional framework of the WIO States. Focused on ICZM issues, the protocol would necessarily iterate the basic principles of the concept, like sectoral policies coherence, land-sea integration, institutional coordination and public participation. This kind of provisions could bind States to adjust their institutional framework in light of ICZM principles.
3. As already underlined, the adoption of an ICZM protocol would strengthen the role of the National ICZM Committees instituted in the WIO States. Their legitimacy would be reinforced and they could constitute a major actor in the implementation of the text.

5.3. Key conditions

Developing an ICZM protocol, and ultimately implementing it, would require fulfilling at least the following key conditions:

Condition 1. A "friendly political atmosphere"

Without anticipating on necessary negotiations at the political and administrative levels, a minimum level of political support from each country should be sought and secured on the principle of an ICZM protocol, with a deep enough shared understanding of what such a protocol could be like. This "friendly political atmosphere" should come with similar *a priori* support from the donor community, which typically has a key role to play in delivering technical assistance. Needless to say, UNEP Regional Seas Programme would have to be one of the first supporters.

Condition 2. Political "champions"

Beyond the sole "friendly political atmosphere", there is a need to have political "champions" to support and boost the negotiating process, to convince potentially reluctant States and to push, when necessary, the negotiation pace. Ideally, one continental and one island State could partner in this endeavour so as to also prevent the risk of regional fragmentation.

Condition 3. Financial support

Financial support will be needed both at regional and national levels to allow for a smooth, fair and efficient protocol development process. Indeed, a series of meetings will have to be organized in the region which ought to be well attended by all parties. This means that all key stakeholders need to start trying to secure funding as soon as possible, and possibly even before the willingness to give it a try is formally endorsed – otherwise a gap of at least several months may separate agreement on the idea from the actual beginning of a protocol

development process. This should e.g. be taken into account during the next NC COP when considering budgetary issues, but also in the countries during the next round of national budgeting. Financial support from international agencies should also be sought in this perspective.

Condition 4. Technical support

These meetings will doubtlessly require technical support (background documents, juridical inputs…), as will future implementation. This clearly raises questions in terms of staffing at the regional level: regional as well as Mediterranean experience on other protocols shows that it is very time consuming for Convention Secretariat staff, and requires competences that may not yet be entirely available. The NC Secretariat and/or the Regional Coordinating Unit could be appropriate places to consolidate the workforce available. The example of Regional Activity Centres (cf. supra) in the Mediterranean, although not necessarily a model, could be a point of reference in that regard. Another option would be to give mandate to an existing institution to provide the necessary technical assistance in the negotiating process, especially to:

- Organise the negotiation, creating and gathering a regional task force specially dedicated to the negotiation;
- Write and circulate the official reports of the negotiation meetings;
- Inform, at political and technical level, the negotiating progress;
- Centralize informal exchanges (e-mails…) between the different meetings.

Condition 5. Elaboration of a "zero-draft"

A "zero draft" will have to be presented at the first meeting of the regional negotiating task force. This draft will be the basis on which the technical experts will negotiate. This "zero draft" could be produced by a single expert (LBSA Protocol model) or by a small group of experts (Mediterranean ICZM Protocol model).

Condition 6. National consultations

Last, in view of the LBSA Protocol negotiation experience, it would be very useful, relevant and motivating that the national experts participating in the regional task force organise internal consultations and inform political authorities and stakeholders on the progress of the negotiation. Beyond the sole negotiation at regional scale, national experts should have the mandate to lead national consultative processes.

5.4. Future implementation issues

In light of the comments made in 4.3 on the serious concerns regarding actual implementation of the two existing NC protocols, future implementation perspectives of a potential ICZM Protocol must be addressed at the earliest stage possible – which is now. This is definitely not premature: on the contrary, a lack of anticipation would increase the risk of developing a useless "paper protocol".

Two main options – not exclusive from one another – are to be considered given the regional context and constraints:

- Implementation supported through projects, funded in part by international donors. This seems to be the option chosen for the LBSA Protocol with the current idea of a potential follow-up project to WIO-LaB. It is also a path taken within the Barcelona framework e.g. with the recent kick-off of the GEF Strategic Partnership for the Mediterranean Large Marine Ecosystem, or with IDDRI's Protogizc project on

challenges and opportunities for implementing the Protocol on ICZM in the Mediterranean, co-funded by PAP-RAC and the French ministry of Environment.

- Implementation supported by a permanent structure, inspired by the PAP-RAC Mediterranean "model" – although in practice it could largely differ from the model. Such an entity would monitor and facilitate ratification and implementation processes, provide/mobilize technical assistance, etc. The funding of such a structure is of course an open key question. Although it seems out of the question for some WIO States to increase their financial contribution because of thorny budgetary problems, others could consider supporting the creation of such a structure – be it actually a national entity providing regional assistance like PAP-RAC, or a truly regional entity. The possibility to strengthen existing structures such as the RCU, the two existing – but not fully functioning – regional hubs for marine pollution and tsunami alert, or university-based centres of excellence, should be fully explored.

It should be noted, however, that "too much" technical assistance provided in anticipation of a new protocol, may lead to an erosion of the motivation to ratify it. Experience from the Caribbean (Cartagena Convention) seems to show that it has already happened and may happen again.

5.5. SWOT analysis at the regional level

Table 5 summarizes strengths, weaknesses, opportunities and threats to the development and future implementation of an ICZM protocol so as to help capturing what is really at stake.

Table 5. Strengths, weaknesses, opportunities and threats to the development and future implementation of an ICZM protocol

Strengths	**Weaknesses**
▪ Matching a real need at the regional level. ▪ Innovative and flagship instrument, with high visibility and mobilisation potential. ▪ Legally binding nature. ▪ Political legitimacy related to its development and negotiation process.	▪ Potential illisibility: the negotiation process will inevitably lead to provisions of contrasted nature[1] and maybe even some discrepancies. ▪ Risk of the negotiation process getting stuck. ▪ Necessary compromise between necessarily high ambitions and sensitivity of issues relating to national development, security, sovereignty… ▪ The less clear and straightforward the text, the more leeway for implementation with bad faith[2].
Opportunities	**Threats**
▪ Grounded in over a decade of regional scientific work, pilot projects, communication towards decision makers… ▪ Building on the experience from the Mediterranean as well as from the LBSA protocol negotiation – with their pros and cons. ▪ Necessary national ICZM structures are in place and well supported ▪ National ICZM plans are either ready or in progress. ▪ Existence of 2/3 other protocols to the NC, including the up-coming one on land-based pollution, which would be key to ICZM. ▪ Expected support from ongoing regional projects (e.g. ReCoMaP) and associated regional institutions (e.g. COI). ▪ Expected support from constituencies and political leaders. ▪ Expected support from local, national and international environmental NGOs. ▪ Expected support from the donor	▪ If the text is ambitious, strong opposition from the private sector may be expected. ▪ Even after a protocol has been adopted, its ratification and entry into force[3] can take years. ▪ Risk of non compliance by parties who will have ratified it. General lack of enforcement in the WIO Region. The Nairobi Convention framework does not provide for punishment mechanisms. ▪ As an instrument building on existing regulating instruments at all levels, the success of an ICZM protocol greatly depends on their efficient implementation. ▪ No Regional activity centres to support NC protocols drafting and implementation. ▪ As a legally binding international instrument, implementation of the protocol may need to resort to national judicial systems, which do not always function efficiently. ▪ Lack of financial support from national

[1] E.g. some legally binding, some with exceptions, some of soft law.

[2] E.g. there may be too many ways to interpret what a "national ICZM strategy" should be.

[3] According to article 29 of the Nairobi Convention, "any protocol to this Convention, except as otherwise provided in such protocol, shall enter into force on the ninetieth day following the date of deposit of the sixth instrument of ratification, acceptance, or approval of, or accession to, such protocol by the States referred to in article 26".

community.	governments and the donor community. ▪ Foreseeable difficulties to push both the LBSA and the ICZM protocols without additional human, financial and technical resources. ▪ "Too much" technical assistance provided in anticipation of a new protocol may lead to an erosion of the motivation to ratify it
Conclusion: Critical success factors The SWOT analysis shows that timing seems workable for developing an ICZM protocol, provided some critical factors are met: - Dynamic but not hasty elaboration/negotiation process - Support from influential segments of the civil society - Favourable consideration from key political leaders - Support from the donor community - Support from a well identified coordinating and monitoring unit - Progressive improvement in the implementation of existing regional and national legal instruments	

6. RECOMMENDATIONS

An ICZM Protocol to the Nairobi Convention will be a useful, strategic instrument for sustainable Regional ICZM in the Western Indian Ocean if a number of conditions are met. This report does provide recommendations to be followed if the idea of entering into the development process of an ICZM protocol to the Nairobi Convention should be pursued. This decision, which would require a respective formal mandate to be issued in a next step, does of course remain with the Parties of the Nairobi Convention during the COP6. This report intends to specify conditions to be met at political and technical levels to make such a Protocol development, and more importantly its later implementation feasible considering lessons learnt, SWOTs, etc.

6.1. Recommendation 1: Prepare a propitious political context

While NFPs of the Nairobi Convention, gathered in Mombasa on 8th and 9th December 2009, supported the idea of submitting a feasibility study on an ICZM Protocol to the COP6 in March 2010, important steps remain to be taken on the way to COP – and beyond – in order to set a truly propitious political context. Mobilisation at the technical level prior to the COP would then prepare political involvement during the COP (see also Table 6):

- At the technical level: national stakeholders should be informed of the feasibility study and convinced of the relevance to draft, negotiate and ultimately implement an ICZM Protocol. To that purpose, National ICZM Committees could be a relevant forum, while ReCoMaP could play an important role in circulating the feasibility study and facilitating the discussion over the next two months – and beyond. This process would then result in strong, informed statements during the Regional Conference of National ICZM Committees to be held in Mombasa before COP 6.

- At the political level: official support to the protocol development process should be sought without further delay. In this respect, NIZCM Committees Chairs and NC NFPs may circulate information, answer questions, address legitimate concerns and mobilize key decision-makers. Furthermore, international or regional organisations could also help mobilizing, playing a role of "ICZM Protocol ambassadors" at the highest political level (UNEP, COI, SADC, IUCN…). This would translate into a formal decision during COP6 to start a protocol development and negotiation process, as well as into a respective formal mandate to be given to an organisation or group of organisations to enter into a participatory regional drafting process.

From this preliminary information and mobilization phase and building on the *sine qua non* COP decision to initiate an ICZM protocol development process, political "champions" should emerge who need to be particularly proactive in the development of the ICZM Protocol. As mentioned in section 5, given the invisible boundary between continental and island States, an alliance between two governments from each "sub-region" would probably be the best, most robust option.

Table 6. Crucial steps to build a favourable political context

Phase	Key steps	Who?	When?	Comments
Prepare a propitious political context	Raising support through information and mobilization	Technical level: National ICZM Committees, ReCoMaP	February-March 2010	
		Political level: NICZMC Chairs and NC NFPs, international and regional organisations	February-March 2010	
	Expressing support	ICZM Committee members	Regional Conference of National ICZM Committees	
		High level plenipotentiaries	COP 6	
	Championing the process	One continental and one island State	After COP 6	If a positive formal decision is made

6.2. Recommendation 2: Build an efficient negotiation process

The process leading to a protocol would have much importance in itself (see summary in **Table 7**).

6.2.1. Appointing a facilitator

One facilitator will have to be assigned the mission of coordinating the process, organising negotiation meetings, incorporating modifications in the draft protocol, keeping an up-to-date version, and ensuring continuity between meetings. The legitimacy and competence of such an entity are critical to the success of a negotiation.

The NC Secretariat could be an appropriate place to consolidate the workforce available. Another option would be that the Secretariat uses its mandate from the COP to make an agreement with one or two partner organisations, e.g. UNEP and/or COI. Without prejudging the decision of the WIO States, it is clear that through their global and regional experiences in ICZM issues, UNEP Regional Seas Programme and ReCoMaP would be in a favourable position to provide technical assistance and facilitate the process. It should however be kept in mind that:

- ReCoMaP will terminate in August 2011, with one ICZM expert available until December 2011. Since a potential ICZM protocol would not be adopted beforehand, continuity issues need to be anticipated.
- Institutional and financial procedures should be clarified in order to enable the participation of the WIO countries non-eligible to support from ReCoMaP (La Réunion [France], Mozambique, South Africa).

The facilitator could be appointed in two ways: (i) a decision of the COP, nominating the entity and giving it a clear mandate; (ii) or a decision of the NC Secretariat, following the COP decision to launch the drafting and negotiating process. In any case, the decision of the COP / NC Secretariat should clearly designate at least:

- The facilitator in charge of providing technical assistance: mandate, relations with the NC Secretariat and general duties and responsibilities.
- The organisation of the negotiation to be facilitated: nature of the protocol to be drafted (cf. *infra*), composition of the regional task force in charge of the negotiation, funding, tentative timeframe.

6.2.2. Defining and developing the "zero-draft"

The negotiation process needs to be designed to allow sufficient time for negotiation while not risking to get stuck. This means first of all that the negotiation process should not start from a white page: it should be grounded on a "zero draft". However, no zero-draft can realistically be developed if general expectations have not been stated: this implies that Parties need to define a shared vision of the would-be protocol before any drafting and negotiating process is launched. This specifically involves "placing the cursor" quite accurately between general guidelines on one extreme and a very detailed and binding text on another. Four options could to be considered:

Softer ↓ *Harder*

- A "**soft Protocol**", closer to regional ICZM guidelines, listing ICZM general principles and stating methodologies for their implementation.
- An "**Overarching Protocol**", focusing on political, institutional and legal structures to be developed and consolidated at the national level to support ICZM processes in the Indian Ocean Region.
- An "**Overarching+ Protocol**", including the general architecture of ICZM (like in the "overarching protocol") but also addressing and regulating a number of crucial coastal issues.
- A "**hard Protocol**", very precise, detailed and regulating a large number of coastal issues – closer to a "regional coastal law".

The decision or at least the "signal" regarding the general nature of the Protocol could be issued in various ways:

- In a technical arena, such as during the 1st Conference of National ICZM Committees in the WIO to be held in Mombasa prior to COP6;

- In a political arena, e.g. during COP6 to be held in Nairobi in March-April 2010;
- In an administrative context, through the possible mandate given by the NC Secretariat to the facilitator.

This decision should also clarify the zero-drafting procedure and nominate expert(s) for this task.

Through consultations held during this feasibility assessment, it seems that a strong majority of stakeholders supporting the early idea of an ICZM Protocol share elements of a vision of what the text could look like. Trying to synthesize such a common denominator, the protocol should:

1. Be suited to all the much contrasted ecological, geographical, socio-economic and political contexts encountered in the region (e.g. Least Developed Countries and emerging ones).
2. Give, specifically, a high level of priority to reconciling continental and island States' needs. ICZM in general or the definition of a setback zone in particular obviously have specific implications for a small island where basically the entire territory is coastal.
3. Reemphasize the importance of implementing other existing protocols to the Nairobi Convention as well as all existing sectoral regulations. Indeed, although transversal in nature, an ICZM protocol clearly does not replace existing instruments, but builds on them while aiming at bringing more coherence in the system.
4. Promote a holistic approach, in line with the integration concept, so as to avoid risks of dusting *ad hoc* and inconsistent initiatives.
5. Build on what already exists in terms of ICZM committees, plans, strategies, policies and laws, and provide for incentives/obligations to strengthen them as well as give indications on how to do it.
6. Define key concepts such as coastal zones, ICZM, etc.
7. Be sufficiently binding to bring more to the regional sustainable development equation than already available, while at the same time accommodating some key national interests, cultural and historical backgrounds, and leaving sufficient leeway for implementation in contrasted cases as mentioned above;
8. Place very strong emphasis on urban and regional planning, which appears to be key both for ICZM and for adaptation to climate change. The message was conveyed repeatedly that with coastal development booming and habitat degradation/conversion spreading over most of the coasts of the region, now is the right time to make spatial planning a priority.
9. Provide for the development and maintenance of a Regional ICZM Policy Platform
10. Address critical issues such as:
    - institutional development of cross-sector ICZM structures as well as ICZM structures within individual sectors;
    - adaptation to climate change;
    - natural disaster management;
    - sustainable development of small islands (whether they belong to a continental or island State);
    - environmental impacts assessments;

- public participation, access to environmental information and justice[1];
- Sectoral regulations (e.g. sand extraction, oil and gas exploitation, tourism development, etc.).
- Regional cooperation for scientific research in fields related to coastal areas, notably climate modelling, vulnerability and adaptation to climate change, coastal erosion, etc.

In conclusion, although the panel of stakeholders and experts interviewed is by no mean exhaustive nor representative, at this stage early consultations seem to orient the process towards the drafting of an "Overarching+" Protocol.

6.2.3. Creating a regional Task Force

Upon circulation of the zero-draft, a series of negotiating meetings has to be planned at regional level and a Task Force has to be created for this purpose. It is crucial that all NC Parties take part in this regional negotiation and nominate appropriate national experts. In light of the Mediterranean IZCM Protocol and the LBSA Protocol negotiating experiences, it seems important for the regional Task Force to be a rather "light" structure. Therefore, this Task Force could ideally consist of 2 experts for each State.

The composition and organisation of the regional Task Force could again be decided upon either (i) by a decision of COP6; or (ii) by a decision of the NC Secretariat giving mandate to the facilitator; or (iii) by the facilitator itself.

Between Task Force meetings, national experts should engage consultations at national and sub-national level. This would allow for more stakeholder consultation and engagement, which will ultimately be key in an implementation perspective. Sufficient time should be allocated to negotiations, each provision being carefully discussed and with several weeks between each round for national interministerial consultations. Experience shows that, to a certain extent, time spent on negotiating, be it internally or at the international level, is time saved on implementation. It is also a time of appropriation.

[1] Everybody seems to agree that these may be sensitive and culturally biased but are nevertheless crucial in an ICZM perspective.

Table 7. Crucial steps for an efficient negotiating process

Phase	Key steps	Who?	When?	Comments
Build an efficient negotiating process	Appointing a facilitator	States, through a decision to be taken in COP 6 *Or* NC Secretariat, through a mandate	During or after COP 6	Need to specify, among others: ▪ Mandate and general duties of the facilitator ▪ Nature of the protocol to be drafted ▪ Composition of the regional negotiation task force ▪ Funding ▪ Tentative time-frame of the negotiation
	Defining and developing a "zero-draft"	*Definition:* Technical arena (Mombasa meeting) or Political arena (COP6) or Administrative context (NC Sec.) *Drafting:* Expert(s) to be nominated	During or after COP 6 and before the negotiation process	Need for an early signal from the Parties regarding the nature of the protocol to be drafted
	Creating a regional Task Force	COP6 / NC Secretariat / Facilitator	During or after COP 6	Experts composing the regional Task Force should have explicit mandate / duties to organise national consultations at technical (stakeholders) and political (interministerial) levels

6.2.4. Starting a dynamic process and keeping involvement over time

At all steps of the preparation and the negotiating process, it is crucial to create dynamism and to ensure the sustained involvement of:

- All NC Parties. Beyond the leadership to be exercised by two "champions", this means that all States have to (i) agree on the relevance to start the negotiating process, (ii) be aware of the implications, (iii) mobilize internal structures and staff to participate.
- Key national stakeholders, both at the technical and decision-making levels. In this respect, the major role of the national experts participating in the regional Task Force has to be underlined. They will be the focal points of the negotiating process and will

have to circulate the outcomes after each meeting, so that all key stakeholders are informed on the process.

- All relevant international and regional organisations, from UNEP to COI, SADC or COMESA, should support the process at different steps and through different means (technical, political, financial…).

It also requires the creation of a regional Protocol Drafting Task Force involving all States as well as full participation in all negotiating meetings. Besides, the involvement and the participation of all principal stakeholders in the Region is a key condition for a successful process. Obviously, this does not mean that a consensus should be sought in such a wide and open setting: some stakeholders may oppose e.g. stricter coastal development regulations – they ought to be informed and listened to, not necessarily convinced.

6.3. Recommendation 3: Anticipate future implementation

In light of implementation issues addressed in 5.4 and the serious concerns raised in 4.3 regarding actual implementation of the two existing NC protocols, the need to anticipate future implementation perspectives of a potential ICZM Protocol has to be addressed. Whether the Parties consider it more relevant and/or efficient to promote protocol implementation *via* projects, *via* permanent structures (both having their pros and cons), or *via* any other, more innovative way, implementation outlook needs to be debated and kept in mind throughout the protocol development process. Given the typical project cycle or the time required to set up new structures and make them functional, decisions on implementation support should be made as soon as possible.

Remarkably, a number of "non-ICZM" national or regional projects already in the pipeline could have significant synergies with the future implementation of an ICZM Protocol, as e.g.:

- The potential follow-up project to WIO-LaB which would have an ICZM component;
- The Kenyan Coastal Development Project, to be launched in 2010 with support from the World Bank and the Japanese cooperation, which should focus on compliance issues (MPAs, fisheries…);
- The Regional Sustainable Coastal Tourism Project, supported by the World Bank and UNIDO.

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ANNEX 1

THE CONVENTION ON THE PROTECTION AND DEVELOPMENT OF THE MARINE AND COASTAL ENVIRONMENT OF THE EASTERN AFRICAN REGION

("THE NAIROBI CONVENTION")

Preamble

The Contracting Parties,

Fully aware of the economic and social value of the marine and coastal environment of the Eastern Africa region,

Conscious of their responsibility to preserve their natural heritage for the benefit and enjoyment of present and future generations

Recognizing the special hydrographic and ecological characteristics of the region which require special care and responsible management

Recognizing further the threat to the marine and coastal environment, its ecological equilibrium, resources and legitimate uses posed by pollution and by the insufficient integration of an environmental dimension into the development process

Seeking to ensure that resource development shall be in harmony with the maintenance of the environmental quality of the region and the evolving principles of rational and environmental management,

Realizing fully the need for co-operation amongst themselves and with competent international and regional organizations in order to ensure a co-ordinated and comprehensive development of the natural resources of the region,

Recognizing the desirability of promoting the wider acceptance and national implementation of existing international environmental agreements,

Noting, however, that existing international conventions concerning the marine and coastal environment do not cover, in spite of the progress achieved, all aspects and sources of marine pollution and environmental degradation and do not entirely meet the special requirements of the Eastern Africa region

Desirous to adopt a regional convention elaborated within the framework of the Action Plan for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern Africa Region adopted at Nairobi on 21st June 1985,

Have agreed as follows:

Article 1: Geographical Coverage

a. This Convention shall apply to the Eastern African region, hereinafter referred to as "the Convention area" as defined in paragraph (a) of article 2.

b. Except as may be otherwise provided in any protocol to this Convention, the Convention area shall not include internal waters of the Contracting Parties.

Article 2: Definitions

For the purposes of this Convention:

a. Convention area" shall be comprised of the marine and coastal environment of that part of the Indian Ocean situated within the Eastern African region and falling within the jurisdiction of the Contracting Parties to this Convention. The extent of the coastal environment to be included within the Convention area shall be indicated in each protocol to this Convention taking into account the objectives of the protocol concerned;

b. "Pollution" means the introduction by man directly or indirectly, of substances or energy into the marine environment, including estuaries, resulting in such deleterious effects as harm to living resources hazards to human health, hindrance to marine activities, including fishing, impairment of quality for use of sea water and reduction of amenities;

c. Organization" means the body designated as responsible for carrying out secretariat functions pursuant to article 16 of this Convention.

Article 3: General Provisions

1. The Contracting Parties may enter into bilateral or multilateral agreements, including regional or subregional agreements, for the protection and management of the marine and coastal environment of the Convention area. Such agreements shall be consistent with this Convention and in accordance with international law. Copies of such agreements shall be communicated to the Organization and. through the Organization, to all Contracting Parties to this Convention.
2. Nothing in this Convention or its protocols shall be deemed to affect obligations assumed by a Contracting Party under agreements previously concluded.
3. This Convention and its protocols shall be construed in accordance with international law relating to their subject matter. Nothing in this Convention and its protocols shall prejudice the present or future claims and legal views of any Contracting Party concerning the nature and extent of its maritime jurisdiction.

Article 4: General Obligations

1. The Contracting Parties shall, individually or jointly, take all appropriate measures in conformity with international law and in accordance with this Convention and those of its protocols in force to which they are party, to prevent, reduce and combat pollution of the Convention area and to ensure Sound environmental management of natural resources, using for this purpose the best practicable means at their disposal, and in accordance with their capabilities.
2. The Contracting Parties shall cooperate in the formulation and adoption of protocols to facilitate the effective implementation of this Convention.
3. The Contracting Parties shall take all appropriate measures in conformity with international law for the effective discharge of the obligations prescribed in this Convention and its protocols and shall endeavour to harmonize their policies in this regard.
4. The Contracting Parties shall cooperate with the competent international, regional and subregional organizations to ensure the effective implementation of this Convention

and its protocols. They shall assist each other in fulfilling their obligations under this Convention and its protocols.

5. In taking the measures referred to in paragraph 1, the Contracting Parties shall ensure that the application of such measures does not cause pollution of the marine environment outside the Convention area.

Article 5: Pollution from ships

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat pollution of the Convention area caused by discharges from ships and, for this purpose, to ensure the effective implementation of the applicable international rules and standards established by, or within the framework of, the competent international organization.

Article 6: Pollution caused by dumping

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat pollution of the Convention area caused by dumping of wastes and other matter at sea from ships, aircraft, or man-made structures at sea, taking into account applicable international rules and standards and recommended practices and procedures.

Article 7: Pollution from Land-Based Sources

The Contracting Parties shall endeavour to take all appropriate measures to prevent, reduce and combat pollution of the Convention area caused by coastal disposal or by discharges emanating from rivers, estuaries, coastal establishments, outfall structures or any other sources within their territories.

Article 8: Pollution from Sea-Bed activities

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat pollution of the Convention area resulting directly or indirectly from exploration and exploitation of the sea-bed and its subsoil.

Article 9: Airborne Pollution

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat pollution of the Convention area resulting from discharges into the atmosphere from activities under their jurisdiction.

Article 10: Specially Protected Areas

The Contracting Parties shall, individually or jointly, take all appropriate measures to protect and preserve rare or fragile ecosystems as well as rare, depleted, threatened or endangered species of wild fauna and flora and their habitats in the Convention area. To this end the Contracting Parties shall, in areas under their jurisdiction, establish protected areas, such as parks and reserves, and shall regulate and, where required and subject to the rules of international law, prohibit an activity likely to have adverse effects on the species, ecosystems or biological processes that such areas are established to protect. The establishment of such areas shall not affect the rights of other Contracting Parties and third States and in particular other legitimate uses of the sea.

Article 11: Co-operation in combating pollution in cases of emergency

1. The Contracting Parties shall cooperate in taking all necessary measures to respond to pollution emergencies in the Convention area and to reduce or eliminate pollution or the threat of pollution resulting there from. To this end, the Contracting Parties shall, individually and jointly, develop and promote contingency plans for responding to incidents involving pollution or the threat thereof in the Convention area.
2. When a Contracting Party becomes aware of a case in which the Convention area is in imminent danger of being polluted or has been polluted, it shall immediately notify other States likely to be affected by such pollution, as well as competent international organizations. Furthermore, it shall inform, as soon as feasible, such other States and the Organization of any measures it has taken to minimize or reduce pollution or the threat thereof.

Article 12: Environmental damage from engineering activities

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat environmental damage in the Convention area, in particular the destruction of marine and coastal ecosystems, caused by engineering activities such as land reclamation and dredging.

Article 13: Environmental Impact Assessment

1. As part of their environmental management policies, the Contracting Parties shall, in cooperation with competent regional and international organizations if necessary, develop technical and other guidelines to assist the planning of their major development projects in such a way as to prevent or minimize harmful impacts on the Convention area.
2. Each Contracting Party shall assess, within its capabilities, the potential environmental effects of major projects which it has reasonable grounds to expect may cause substantial pollution of, or significant and harmful changes to, the Convention area.
3. With respect to the assessments referred to in paragraph 2, the Contracting Parties shall, if appropriate in consultation with the Organization, develop procedures for the dissemination of information and, if necessary, for consultations among the Contracting Parties concerned.

Article 14: Scientific and technical co-operation

1. The Contracting Parties shall cooperate, directly or with the assistance of competent regional and international organizations, in scientific research, monitoring, and the exchange of data and other scientific information relating to the purposes of this Convention and its protocols.
2. To this end, the Contracting Parties shall develop and coordinate their research and monitoring programmes concerning pollution and natural resources in the Convention area and shall establish, in cooperation with competent regional and international organizations, a regional network of national research centres and institutes to ensure compatible results. With the aim of further protecting the Convention area, the Contracting Parties shall endeavour to participate in international arrangements for research and monitoring outside the Convention area.

3. The Contracting Parties shall cooperate, within their available capabilities, directly or through competent regional and international organizations, in the provision to other Contracting Parties of technical and other assistance in fields relating to pollution and sound environmental management of the Convention area.

Article 15: Liability and Compensation

The Contracting Parties shall cooperate, directly or with the assistance of competent regional and international organizations, with a view of formulating and adopting appropriate rules and procedures which are in conformity with international law in the field of liability and compensation for damage resulting from pollution of the Convention area.

Article 16: Institutional Arrangements

1. The Contracting Parties designate the United Nations Environment Programme as the secretariat of the Convention to carry out the following functions:
    a. to prepare and convene the meetings of Contracting Parties and conferences provided for in articles 17,18 and 19;
    b. to transmit to the Contracting Parties information received in accordance with articles 11, 13 and 23;
    c. to perform the functions assigned to its protocols to this Convention;
    d. to consider enquiries by, and information from the Contracting Parties and to consult with them on questions relating to this Convention and protocols;
    e. to coordinate the implementation of operative activities agreed upon by the meetings Contracting Parties;
    f. to ensure the necessary coordination with other regional and international bodies that Contracting Parties consider competent;
    g. to enter into such administrative arrangements as may be required for the effective discharge of secretariat functions.
2. Each Contracting Party shall designate appropriate authority to serve as the channel of communication with the Organization for purposes of this Convention and its protocols.

Article 17: Meetings of the Contracting Parties

1. The Contracting Parties shall hold ordinary meetings once every two years. It shall be the function of the ordinary meetings of the Contracting Parties to keep under review the implementation of this Convention and its protocols and, in particular:
    a. to consider information submitted by the Contracting Parties under article 23;
    b. to adopt, review and amend annexes to this Convention and to its related protocols, in accordance with the provisions of article 20;
    c. to make recommendations regarding the adoption of any additional protocols or amendments to this Convention or its protocols in accordance with the provisions of articles 18 and 19;

d. to establish working groups as required to consider any matters concerning this Convention and its protocols;
(e) to assess periodically the state of the environment in the Convention area;

e. to consider cooperative activities to be undertaken within the framework of this Convention and its protocols, including their financial and institutional implications, and to adopt decisions relating thereto;

f. to consider and undertake any additional action that may be required for the achievement of the purposes of this Convention and its protocols.

2. The Organization shall convene the first ordinary meeting of the Contracting Parties within nine months of the date on which the Convention enters into force in accordance with article 29.

3. Extraordinary meetings shall be convened at the request of any Contracting Party or upon the request of the Organization, provided that such requests are supported by a two-thirds majority of the Contracting Parties. It shall be the function of the extraordinary meeting of the Contracting Parties to consider only those items proposed in the request for the holding of the extraordinary meeting.

Article 18: Adoption of Protocols

1. The Contracting Parties, at a conference of plenipotentiaries, may adopt additional protocols to this Convention pursuant to paragraph 2 of article 4.

2. If so requested by a two-thirds majority of the Contracting Parties, the Organization shall convene a conference of plenipotentiaries for the purpose of adopting additional protocols to this Convention.

Article 19: Amendment of the Convention and its Protocols

1. Any Contracting Party may propose amendments to this Convention. Amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the Organization at the request of a two-thirds majority of the Contracting Parties.

2. Any Contracting Party to this Convention may propose amendments to any protocol. Such amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the Organization at the request of a two-thirds majority of the Contracting Parties to the protocol concerned.

3. The text of any proposed amendment shall be communicated by the Organization to all Contracting Parties at least ninety days before the opening of the conference of plenipotentiaries.

4. Any amendment to this Convention shall be adopted by a two-thirds majority vote of the Contracting Parties to the Convention which are present and voting at the conference of plenipotentiaries and shall be submitted by the Depositary for acceptance by all Contracting Parties to the Convention. Amendments to any protocol shall be adopted by a two-thirds majority vote of the Contracting Parties to the protocol which are present and voting at the conference of plenipotentiaries and shall be submitted by the Depositary for acceptance by all Contracting Parties to the protocol.

5. Instruments of ratification, acceptance or approval of amendments shall be deposited with the Depositary. Amendments adopted in accordance with paragraph 4 shall enter into force between Contracting Parties having accepted such amendments on the thirtieth day following the date of receipt by the Depositary of the instruments of at

least six of the Contracting Parties to this Convention or to the protocol concerned, as the case may be. Thereafter the amendments shall enter into force for any other Contracting Party on the thirtieth day after the date on which that Party deposits its instrument.

6. After the entry into force of an amendment to this Convention or to a protocol, any new Contracting Party to this Convention or such protocol shall become a Contracting Party to the Convention or protocol as amended.

Article 20: Annexes and amendment of annexes

1. Annexes to this Convention or to a protocol shall form an integral part of the Convention or, as the case may be, such protocol.

2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the adoption and entry into force of amendments to annexes to this Convention or to annexes to a protocol:
(a) any Contracting Party may propose amendments to annexes to this Convention or annexes to any protocol at the meetings convened pursuant to article 17;
(b) such amendments shall be adopted by a two-thirds majority vote of the Contracting Parties to the instrument in question;
(c) the Depositary shall without delay communicate the amendments so adopted to all Contracting Parties to this Convention;
(d) any Contracting Party that is unable to accept an amendment to annexes to this Convention or to annexes to any protocol shall so notify the Depositary in writing within a period determined by the Contracting Parties concerned when adopting the amendment;
(e) the Depositary shall without delay notify all Contracting Parties of notifications received pursuant to the preceding subparagraph;
(f) on expiry of the period determined in accordance with subparagraph (d) above, the amendment to the annex shall become effective for all Contracting Parties to this Convention or to the protocol concerned which have not submitted a notification in accordance with the provisions of that subparagraph;
(g) a Contracting Party may at any time substitute an acceptance for a previous declaration of objection, and the amendment shall thereupon enter into force for that Party.

3. The adoption and entry into force of a new annex to this Convention or to any protocol shall be subject to the same procedure as that for the adoption and entry into force of an amendment to an annex, provided that, if it entails an amendment to the Convention or a protocol, the new annex shall not enter into force until such time as that amendment enters into force.

4. Any amendment to the Annex on Arbitration shall be proposed and adopted, and shall enter into force, in accordance with the procedures set out in article 19.

Article 21: Rules of procedure and financial rules

1. The Contracting Parties shall adopt rules of procedure for their meetings.

2. The Contracting Parties shall adopt financial rules, prepared in consultation with the Organization, to determine, in particular, their financial participation in the cooperative activities undertaken for the purposes of this Convention and of protocols to which they are parties.

Article 22: Special exercise of the right to vote

In their fields of competence, the regional intergovernmental integration organizations referred to in article 26 shall exercise their right to vote with a number of votes equal to the number of their member States which are Contracting Parties to this Convention and to one or more protocols. Such organizations shall not exercise their rights to vote if the member States concerned exercise theirs and vice versa.

Article 23: Transmission of information

The Contracting Parties shall transmit regularly to the Organization information on the measures adopted by them in the implementation of this Convention and of protocols to which they are parties, in such form as the meetings of Contracting Parties may determine.

Article 24: Settlement of disputes

1. In case of a dispute between Contracting Parties as to the interpretation or application of this Convention or its protocols, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.
2. If the Parties concerned cannot settle the dispute through the means mentioned in the preceding paragraph, the dispute shall, upon common agreement of the Parties concerned, be submitted to arbitration under the conditions set out in the Annex on Arbitration.

Article 25: Relationship between the Convention and its Protocols

1. No State or regional intergovernmental integration organization may become a Contracting Party to this Convention unless it becomes at the same time a Contracting Party to at least one protocol to the Convention. No State or regional intergovernmental integration organization may become a Contracting Party to a protocol unless it is, or becomes at the same time, a Contracting Party to this Convention.
2. Decisions concerning any protocol shall be taken only by the Contracting Parties to the protocol concerned.

Article 26: Signature

This Convention, the Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region and the Protocol concerning cooperation in Combating Marine Pollution in Cases of Emergency in the Eastern African Region shall be open for signature at Nairobi from 21 June 1985 to 20 June 1986 by any State invited as participant to the Conference of Plenipotentiaries on the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region, held at Nairobi from 17 June 1985 to 21 June 1985. They shall also be open for signature between the same dates by any regional intergovernmental integration organization exercising competence in fields covered by the Convention and such protocols and having at least one member State which belongs to the Eastern African region provided that such regional organization has been invited to participate in the Conference of Plenipotentiaries.

Article 27: Ratification, acceptance and approval

This Convention and its protocols shall be subject to ratification, acceptance or approval by the States and organizations referred to in article 26. Instruments of ratification, acceptance or approval shall be deposited with the Government of the Republic of Kenya which will assume the functions of Depositary.

Article 28: Accession

1. This Convention and its protocols shall be open for accession by the States and organizations referred to in article 26 as from the day following the date on which the Convention or the protocol concerned is closed for signature.
2. After the entry into force of this Convention and of any protocol, any State or regional intergovernmental integration organization not referred to in article 26 may accede to the Convention and to any protocol, subject to prior approval by three-fourths of the Contracting Parties to the Convention or the protocol concerned.
3. Instruments of accession shall be deposited with the Depositary.

Article 29: Entry into force

1. This Convention shall enter into force on the same date as the first protocol entering into force.
2. Any protocol to this Convention, except as otherwise provided in such protocol, shall enter into force on the ninetieth day following the date of deposit of the sixth instrument of ratification, acceptance, or approval of, or accession to, such protocol by the States referred to in article 26.
3. Thereafter, this Convention and any protocol shall enter into force with respect to any State or organization referred to in article 26 or article 28 on the ninetieth day following the date of deposit of its instruments of ratification, acceptance, approval or accession.

Article 30: Withdrawal

1. At any time after three years from the date of entry into force of this Convention with respect to a Contracting Party, that Contracting Party may withdraw from this Convention by giving written notification to the Depositary.
2. Except as may be otherwise provided in any protocol to this Convention, any Contracting Party may, at any time after three years from the date of entry into force of such protocol with respect to that Contracting Party, withdraw from such protocol by giving written notification to the Depositary.
3. Withdrawal shall take effect one year after the date on which notification of withdrawal is received by the Depositary.
4. Any Contracting Party which withdraws from this Convention shall be considered as also having withdrawn from any protocol to which it was a Contracting Party.
5. Any Contracting Party which, upon its withdrawal from a protocol, is no longer a Contracting Party to any protocol to this Convention, shall be considered as also having withdrawn from the Convention itself.

Article 31: Responsibilities of the depositary

1. The Depositary shall inform the signatories and the Contracting Parties, as well as the Organization, of:
   (a) the signature of this Convention and of its protocols and the deposit of instruments of ratification, acceptance, approval or accession;
   (b) the date on which the Convention or any protocol will come into force for each Contracting Party;
   (c) notification of withdrawal and the date on which it will take effect;
   (d) the amendments adopted with respect to the Convention or to any protocol, their acceptance by the Contracting Parties and the date of their entry into force;
   (e) all matters relating to new annexes and to the amendment of any annex.
2. The original of this Convention and of any protocol shall be deposited with the Depositary, the Government of the Republic of Kenya, which shall send certified copies thereof to the Signatories, the Contracting Parties and the Organization.
3. As soon as the Convention or any protocol enters into force, the Depositary shall transmit a certified copy of the instrument concerned to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

In witness whereof the undersigned, being duly authorized by their respective Governments, have signed this Convention.

Done at Nairobi this twenty-first day of June one thousand nine hundred and eighty-five in single copy in the English and French languages, the two texts being equally authentic.

ANNEX 2

THE CONVENTION FOR THE PROTECTION OF THE MARINE ENVIRONMENT AND THE COASTAL REGION OF THE MEDITERRANEAN

("THE BARCELONA CONVENTION")

The Contracting Parties,

Conscious of the economic, social, health and cultural value of the marine environment of the Mediterranean Sea area,

Fully aware of their responsibility to preserve this common heritage for the benefit and enjoyment of present and future generations,

Recognizing the threat posed by pollution to the marine environment, its ecological equilibrium, resources and legitimate uses,

Mindful of the special hydrographic and ecological characteristics of the Mediterranean Sea area and its particular vulnerability to pollution,

Noting that existing international conventions on the subject do not cover, in spite of the progress achieved, all aspects and sources of marine pollution and do not entirely meet the special requirements of the Mediterranean Sea area,

Realizing fully the need for close co-operation among the States and international organizations concerned in a co-ordinated and comprehensive regional approach for the protection and enhancement of the marine environment in the Mediterranean Sea area,

Have agreed as follows:

Article 1

GEOGRAPHICAL COVERAGE

1. For the purposes of this Convention, the Mediterranean Sea area shall mean the maritime waters of the Mediterranean Sea proper, including its gulfs and seas, bounded to the west by the meridian passing through Cape Spartel lighthouse, at the entrance of the Straits of Gibraltar, and to the east by the southern limits of the Straits of the Dardanelles between the Mehmetcik and Kumkale lighthouses.

2. Except as may be otherwise provided in any Protocol to this Convention, the Mediterranean Sea area shall not include internal waters of the Contracting Parties.

Article 2

DEFINITIONS

For the purposes of this Convention:

(a) 'Pollution' means the introduction by man, directly or indirectly, of substances or energy into the marine environment resulting in such deleterious effects as harm to living resources,

hazards to human health, hindrance to marine activities including fishing, impairment of quality for use of sea water and reduction of amenities.

(b) 'Organization' means the body designated as responsible for carrying out secretariat functions pursuant to Article 13 of this Convention.

Article 3

GENERAL PROVISIONS

1. The Contracting Parties may enter into bilateral or multilateral agreements, including regional or sub-regional agreements, for the protection of the marine environment of the Mediterranean Sea against pollution, provided that such agreements are consistent with this Convention and conform to international law. Copies of such agreements between Contracting Parties to this Convention shall be communicated to the Organization.

2. Nothing in this Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea convened pursuant to resolution 2750 C (XXV) of the General Assembly of the United Nations, nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction.

Article 4

GENERAL UNDERTAKINGS

1. The Contracting Parties shall individually or jointly take all appropriate measures in accordance with the provisions of this Convention and those Protocols in force to which they are party, to prevent, abate and combat pollution of the Mediterranean Sea area and to protect and enhance the marine environment in that area.

2. The Contracting Parties shall cooperate in the formulation and adoption of Protocols, in addition to the protocols opened for signature at the same time as this Convention, prescribing agreed measures, procedures and standards for the implementations of this Convention.

3. The Contracting Parties further pledge themselves to promote, within the international bodies considered to be competent by the Contracting Parties, measures concerning the protection of the marine environment in the Mediterranean Sea area from all types and sources of pollution.

Article 5

POLLUTION CAUSED BY DUMPING FROM SHIPS AND AIRCRAFT

The Contracting Parties shall take all appropriate measures to prevent and abate pollution of the Mediterranean Sea area caused by dumping from ships and aircraft.

Article 6

POLLUTION FROM SHIPS

The Contracting Parties shall take all measures in conformity with international law to prevent abate and combat pollution of the Mediterranean Sea area caused by discharges from ships and to ensure the effective implementation in that area of the rules which are generally recognized at the international level relating to the control of this type of pollution.

Article 7

POLLUTION RESULTING FROM EXPLORATION AND EXPLOITATION OF THE CONTINENTAL SHELF AND THE SEABED AND ITS SUBSOIL

The Contracting Parties shall take all appropriate measures to prevent, abate and combat pollution of the Mediterranean Sea area resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil.

Article 8

POLLUTION FROM LAND-BASED SOURCES

The Contracting Parties shall take all appropriate measures to prevent, abate and combat pollution of the Mediterranean Sea area caused by discharges from rivers, coastal establishments or outfalls, or emanating from any other land-based sources within their territories.

Article 9

COOPERATION IN DEALING WITH POLLUTION EMERGENCIES

1. The Contracting Parties shall co-operate in taking the necessary measures for dealing with pollution emergencies in the Mediterranean Sea area, whatever the causes of such emergencies and reducing or eliminating damage resulting there from.

2. Any Contracting Party which becomes aware of any pollution emergency in the Mediterranean Sea area shall without delay notify the Organization and, either through the Organization or directly, any Contracting Party likely to be affected by such emergency.

Article 10

MONITORING

1. The Contracting Parties shall endeavour to establish, in close co-operation with the international bodies which they consider competent, complementary or joint programmes, Including, as appropriate, programmes at the bilateral or multilateral levels, for pollution monitoring in the Mediterranean Sea area and shall endeavour to establish a pollution monitoring system for that area.

2. For this purpose, the Contracting Parties shall designate the competent authorities responsible for pollution monitoring within areas under their national jurisdiction and shall participate as far as practicable in international arrangements for pollution monitoring in areas beyond national jurisdiction.

3. The Contracting Parties undertake to cooperate in the formulation, adoption and implementation of such Annexes to this Convention as may be required to prescribe common procedures and standards for pollution monitoring.

Article 11

SCIENTIFIC AND TECHNOLOGICAL CO-OPERATION

1. The Contracting Parties undertake as far as possible to co-operate directly, or when appropriate through competent regional or other international organizations, in the fields of

science and technology and to exchange data as well as other scientific information for the purpose of this Convention.

2. The Contracting Parties undertake as far as possible to develop and co-ordinate their national research programmes relating to all types of marine pollution in the Mediterranean Sea area and to co-operate in the establishment and implementation of regional and other international research programmes for the purposes of this Convention.

3. The Contracting Parties undertake to co-operate 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.

Article 12

LIABILITY AND COMPENSATION

The Contracting Parties undertake to cooperate as soon as possible in the formulation and adoption of appropriate procedures for the determination of liability and compensation for damage resulting from the pollution of the marine environment deriving from violations of the provisions of this Convention and applicable Protocols.

Article 13

INSTITUTIONAL ARRANGEMENTS

The Contracting Parties designate the United Nations Environment Programme as responsible for carrying out the following secretariat functions:

(i) to convene and prepare the meetings of Contracting Parties and conferences provided for in Articles 14, 15 and 16;

(ii) to transmit to the Contracting Parties notifications, reports and other information received in accordance with Articles 3, 9 and 20;

(iii) to consider inquiries by, and information from, the Contracting Parties, and to consult with them on questions relating to this Convention and the Protocols and Annexes thereto;

(iv) to perform the functions assigned to it by the Protocols to this Convention;

(v) to perform such other functions as may be assigned to it by the Contracting Parties;

(vi) to ensure the necessary co-ordination with other international bodies which the Contracting Parties consider competent, and in particular, to enter into such administrative arrangements as may be required for the effective discharge of the secretariat functions.

Article 14

MEETINGS OF THE CONTRACTING PARTIES

1. The Contracting Parties shall hold ordinary meetings once every two years and extraordinary meetings at any other time deemed necessary, upon the request of the Organization or at the request of any Contracting Party, provided that such requests are supported by at least two Contracting Parties;

2. It shall be the function of the meetings of the Contracting Parties to keep under review the implementation of this Convention and the Protocols and, in particular: (i) to review gradually the inventories carried out by Contracting Parties and competent international organizations on the state of marine pollution and its effects in the Mediterranean Sea area;

(ii) to consider reports submitted by the Contracting Parties under Article 20;

(iii) to adopt, review and amend as required the Annexes to this Convention and to the Protocols in accordance with the procedure established in Article 17;

(iv) to make recommendations regarding the adoption of any Additional Protocols or any amendments to this Convention or the Protocols in accordance with the provisions of Articles 15 and 16;

(v) to establish working groups as required to consider any matters related to this Convention and the Protocols and Annexes;

(vi) to consider and undertake any additional action that may be required for the achievement of the purposes of this Convention and the Protocols.

Article 15

ADOPTION OF ADDITIONAL PROTOCOLS

1. The Contracting Parties, at a diplomatic conference, may adopt Additional Protocols to his Convention pursuant to paragraph 2 of Article 4.

2. A diplomatic conference for the purpose of adopting Additional Protocols shall be convened by the Organization at the request of two thirds of the Contracting Parties.

3. Pending the entry into force of this Convention the Organization may, after consulting with the signatories to this Convention, convene a diplomatic conference for the purpose of adopting Additional Protocols.

Article 16

AMENDMENT OF THE CONVENTION OR PROTOCOLS

1. Any Contracting Party to this Convention may propose amendments to the Convention. Amendments shall be adopted by a diplomatic conference which shall be convened by the Organization at the request of two thirds of the Contracting Parties.

2. Any Contracting Party to this Convention may propose amendments to any Protocol. Such amendments shall be adopted by a diplomatic conference which shall be convened by the Organization at the request of two thirds of the Contracting Parties to the Protocol concerned.

3. Amendments to this Convention shall be adopted by a three-fourths majority vote of the Contracting Parties to the Convention which are represented at the diplomatic conference and shall be submitted by the Depositary for acceptance by all Contracting Parties to the Convention. Amendments to any Protocol shall be adopted by a three-fourths majority vote of the Contracting Parties to such Protocol which are represented at the diplomatic conference and shall be submitted by the Depositary for acceptance by all Contracting Parties to such Protocol.

4. Acceptance of amendments shall be notified to the Depositary in writing. Amendments adopted in accordance with paragraph 3 of this Article shall enter into force between Contracting Parties having accepted such amendments on the 30th day following the receipt by the Depositary of notification of their acceptance by at least three-fourths of the Contracting Parties to this Convention or to the Protocol concerned, as the case may be.

5. After the entry into force of an amendment to this Convention or to a Protocol, any new Contracting Party to this Convention or such Protocol shall become a Contracting Party to the instrument as amended.

Article 17

ANNEXES AND AMENDMENTS TO ANNEXES

1. Annexes to this Convention or to any Protocol shall form an integral part of the Convention or such Protocol, as the case may be.

2. Except as may be otherwise provided in any Protocol, the following procedure shall apply to the adoption and entry into force of any amendments to Annexes to this Convention or to any Protocol, with the exception of amendments to the Annex on Arbitration:

(i) any Contracting Party may propose amendments to the Annexes to this Convention or to any Protocols and the meetings referred to in Article 14;

(ii) such amendments shall be adopted by a three-fourths majority vote of the Contracting Parties to the instrument in question;

(iii) the Depositary shall without delay communicate the amendments so adopted to all Contracting Parties;

(iv) any Contracting Party that is unable to approve an amendment to the Annexes to this Convention or to any Protocol shall so notify in writing the Depositary within a period determined by the Contracting Parties concerned when adopting the amendment;

(v) the Depositary shall without delay notify all Contracting Parties of any notification received pursuant to the proceeding subparagraph;

(vi) on expiry of the period referred to in subparagraph (iv) above, the amendment to the Annex shall become effective for all Contracting Parties to this Convention or to the Protocol concerned which have not submitted a notification in accordance with the provisions of that subparagraph.

3. The adoption and entry into force of a new Annex to this Convention or to any Protocol shall be subject to the same procedure as for the adoption and entry into force of an amendment to an Annex in accordance with the provisions of paragraph 2 of this Article, provided that, if any amendment to the Convention or the Protocol concerned is involved, the new Annex shall not enter into force until such time as the amendment to the Convention or the Protocol concerned enters into force.

4. Amendments to the Annex on Arbitration shall be considered to be amendments to this Convention and shall be proposed and adopted in accordance with the procedures set out in Article 16 above.

Article 18

RULES OF PROCEDURE AND FINANCIAL RULES

1. The Contracting Parties shall adopt rules of procedure for their meetings and conferences envisaged in Articles 14, 15 and 16 above.

2. The Contracting Parties shall adopt financial rules, prepared in consultation with the Organization, to determine, in particular, their financial participation.

Article 19

SPECIAL EXERCISE OF VOTING RIGHT

Within the areas of their competence, the European Economic Community and any regional economic grouping referred to in Article 24 of this Convention shall exercise their right to vote with a number of votes equal to the number of their Member States which are Contracting Parties to this Convention and to one or more Protocols; the European Economic Community and any grouping as referred to above shall not exercise their right to vote in cases where the Member States concerned exercise theirs, and conversely.

Article 20

REPORTS

The Contracting Parties shall transmit to the Organization reports on the measures adopted in the implementation of this Convention and of Protocols to which they are Parties, in such form and at such intervals as the meetings of Contracting Parties may determine.

Article 21

COMPLIANCE CONTROL

The Contracting Parties undertake to cooperate in the developing of procedures enabling them to control the application of this Convention and the Protocols.

Article 22

SETTLEMENT OF DISPUTES

1. In case of a dispute between Contracting Parties as to the interpretation or application of this Convention or the Protocols, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.

2. If the Parties concerned cannot settle their dispute through the means mentioned in the preceding paragraph, the dispute shall upon common agreement be submitted to arbitration under the conditions laid down in Annex A to this Convention.

3. Nevertheless, the Contracting Parties may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other Party accepting the same obligation, the application of the arbitration procedure in conformity with the provisions of Annex A. Such declaration shall be notified in writing to the Depositary, who shall communicate it to the other Parties.

Article 23

RELATIONSHIP BETWEEN THE CONVENTION AND PROTOCOLS

1. No one may become a Contracting Party to this Convention unless it becomes at the same time a Contracting Party to at least one of the Protocols. No one may become a Contracting Party to a Protocol unless it is, or becomes at the same time, a Contracting Party to this Convention.

2. Any Protocol to this Convention shall be binding only on the Contracting Parties to the Protocol in question.

3. Decisions concerning any Protocol pursuant to Articles 14, 16 and 17 of this Convention shall be taken only by the Parties to the Protocol concerned.

Article 24

SIGNATURE

This Convention, the Protocol for the prevention of pollution of the Mediterranean Sea by dumping from ships and aircraft and the Protocol concerning co-operation in combating pollution of the Mediterranean Sea by oil and other harmful substances in cases of emergency shall be open for signature in Barcelona on 16 February 1976 and in Madrid from 17 February 1976 to 16 February 1977 by any State invited as a participant in the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region on the Protection of the Mediterranean Sea, held in Barcelona from 2 to 16 February 1976, and by any State entitled to sign any Protocol. They shall also be open until the same date for signature by the European Economic Community and by any similar regional economic grouping at least one member of which is a coastal State of the Mediterranean Sea area and which exercise competences in fields covered by this Convention, as well as by any Protocol affecting them.

Article 25

RATIFICATION, ACCEPTANCE OR APPROVAL

This Convention and any Protocol thereto shall be subject to ratification, acceptance, or approval. Instruments of ratification, acceptance or approval shall be deposited with the Government of Spain, which will assume the functions of Depositary.

Article 26

ACCESSION

1. As from 17 February 1977, the present Convention, the Protocol for the prevention of pollution of the Mediterranean Sea by dumping from ships and aircraft, and the Protocol concerning co-operation in combating pollution of the Mediterranean Sea by oil and other harmful substances in cases of emergency shall be open for accession by the States, by the European Economic Community and by any grouping as referred to in Article 24.

2. After the entry into force of the Convention and of any Protocol, any State not referred to in Article 24 may accede to this Convention and to any Protocol, subject to prior approval by three-fourths of the Contracting Parties to the Protocol concerned.

3. Instruments of accession shall be deposited with the Depositary.

Article 27

ENTRY INTO FORCE

1. The Convention shall enter into force on the same date as the Protocol first entering into force.

2. The Convention shall also enter into force with regard to the States, the European Economic Community and any regional economic grouping referred to in Article 24 if they have complied with the formal requirements for becoming Contracting Parties to any other Protocol not yet entered into force.

3. Any Protocol to this Convention, except as otherwise provided in such Protocol, shall enter into force on the 30th day following the date of deposit of at least six instruments of ratification, acceptance, or approval of, or accession to such Protocol by the Parties referred to in Article 24.

4. Thereafter, this Convention and any Protocol shall enter into force with respect to any State, the European Economic Community and any regional economic grouping referred to in Article 24 on the 30th day following the date of deposit of the instruments of ratification, acceptance, approval or accession.

Article 28

WITHDRAWAL

1. At any time after three years from the date of entry into force of this Convention, any Contracting Party may withdraw from this Convention by giving written notification of withdrawal.

2. Except as may be otherwise provided in any Protocol to this Convention, any Contracting Party may, at any time after three years from the date of entry into force of such Protocol, withdraw from such Protocol by giving written notification of withdrawal.

3. Withdrawal shall take effect 90 days after the date on which notification of withdrawal is received by the Depositary.

4. Any Contracting Party which withdraws from this Convention shall be considered as also having withdrawn from any Protocol to which it was a Party.

5. Any Contracting Party which, upon its withdrawal from a Protocol, is no longer a Party to any Protocol to this Convention, shall be considered as also having withdrawn from this Convention.

Article 29

RESPONSIBILITIES OF THE DEPOSITARY

1. The Depositary shall inform the Contracting Parties, any other Party referred to in Article 24, and the Organization:

(i) of the signature of this Convention and of any Protocol thereto, and of the deposit of instruments of ratification, acceptance, approval or accession in accordance with Articles 24, 25 and 26;

(ii) of the date on which the Convention and any Protocol will come into force in accordance with the provisions of Article 27;

(iii) of notifications of withdrawal made in accordance with Article 28;

(iv) of the amendments adopted with respect to the Convention and to any Protocol, their acceptance by the Contracting Parties and the date of entry into force of those amendments in accordance with the provisions of Article 16;

(v) of the adoption of new Annexes and of the amendment of any Annex in accordance with Article 17;

(vi) of declarations recognizing as compulsory the application of the arbitration procedure mentioned in paragraph 3 of Article 22.

2. The original of this Convention and of any Protocol thereto shall be deposited with the Depositary, the Government of Spain, which shall send certified copies thereof to the Contracting Parties, to the Organization, and to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the United Nations Charter.

In witness whereof the undersigned, being duly authorized by their respective Governments, have signed this Convention.

Done at Barcelona on 16 February 1976 in a single copy in the Arabic, English, French and Spanish languages, the four texts being equally authoritative.

ANNEX A

ARBITRATION

Article 1

Unless the Parties to the dispute otherwise agree, the arbitration procedures shall be conducted in accordance with the provisions of this Annex.

Article 2

1. At the request addressed by one Contracting Party to another Contracting Party in accordance with the provisions of paragraph 2 or paragraph 3 of Article 22 of the Convention, an arbitral tribunal shall be constituted. The request for arbitration shall state the subject matter of the application including, in particular, the articles of the Convention or the Protocols, the interpretation or application of which is in dispute.

2. The claimant party shall inform the Organization that it has requested the setting up of an arbitral tribunal, stating the name of the other Party to the dispute and articles of the Convention or the Protocols the interpretation or application of which is in its opinion in dispute. The Organization shall forward the information thus received to all Contracting Parties to the Convention.

Article 3

The arbitral tribunal shall consist of three members: each of the Parties to the dispute shall appoint an arbitrator, the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the chairman of the tribunal. The latter shall not be a national of one of the Parties to the dispute, nor have his usual place of residence in the territory of one of these Parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

Article 4

1. If the chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of the most diligent Party, designate him within a further two months' period.

2. If one of the Parties to the disputes does not appoint an arbitrator within two months of receipt of the request, the other Party may inform the Secretary-General of the United Nations who shall designate the chairman of the arbitral tribunal within a further two months' period. Upon designation, the chairman of the arbitral tribunal shall request the Party which has not appointed an arbitrator to do so within two months. After such period, he shall inform the Secretary-General of the United Nations, who shall make this appointment within a further two-month period.

Article 5

1. The arbitral tribunal shall decide according to the rules of international law and, in particular, those of this Convention and the Protocols concerned.

2. Any arbitral tribunal constituted under the provisions of this Annex shall draw up its own rules of procedure.

Article 6

1. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.

2. The tribunal may take all appropriate measures in order to establish the facts. It may, at the request of one of the Parties, recommend essential interim measures of protection.

3. If two or more arbitral tribunal constituted under the provisions of this Annex are seized of requests with identical or similar subjects, they may inform themselves of the procedures for establishing the facts and take them into account as far as possible.

4. The Parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings.

5. The absence or default of a Party to the dispute shall not constitute an impediment of the proceedings.

Article 7

1. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon the Parties to the dispute.

2. Any dispute which may arise between the Parties concerning the interpretation or execution of the award may be submitted by the most diligent Party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another arbitral tribunal constituted for this purpose in the same manner as the first.

Article 8

The European Economic Community and any regional economic grouping referred to in Article 24 of the Convention, like any Contracting Party to the Convention, are empowered to appear as complainants or as respondents before the arbitral tribunal.

ANNEX 3

THE PROTOCOL ON INTEGRATED COASTAL ZONE MANAGEMENT IN THE MEDITERRANEAN

("ICZM PROTOCOL")

The Contracting Parties to the present Protocol,

Being Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, adopted at Barcelona on 16 February 1976, and amended on 10 June 1995,

Desirous of implementing the obligations set out in Article 4, paragraphs 3(e) and 5, of the said Convention,

Considering that the coastal zones of the Mediterranean Sea are the common natural and cultural heritage of the peoples of the Mediterranean and that they should be preserved and used judiciously for the benefit of present and future generations,

Concerned at the increase in anthropic pressure on the coastal zones of the Mediterranean Sea which is threatening their fragile nature and desirous of halting and reversing the process of coastal zone degradation and of significantly reducing the loss of biodiversity of coastal ecosystems,

Worried by the risks threatening coastal zones due to climate change, which is likely to result, inter alia, in a rise in sea level, and aware of the need to adopt sustainable measures to reduce the negative impact of natural phenomena,

Convinced that, as an irreplaceable ecological, economic and social resource, the planning and management of coastal zones with a view to their preservation and sustainable development requires a specific integrated approach at the level of the Mediterranean basin as a whole and of its coastal States, taking into account their diversity and in particular the specific needs of islands related to geomorphological characteristics.

Taking into account the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, the Convention on Wetlands of International Importance especially as Waterfowl Habitat, done at Ramsar on 2 February 1971, and the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992, to which many Mediterranean coastal States and the European Community are Parties,

Concerned in particular to act in cooperation for the development of appropriate and integrated plans for coastal zone management pursuant to Article 4, paragraph 1(e), of the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992,

Drawing on existing experience with integrated coastal zone management and the work of various organizations, including the European institutions,

Based upon the recommendations and work of the Mediterranean Commission on Sustainable Development and the recommendations of the Meetings of the Contracting Parties held in Tunis in 1997, Monaco in 2001, Catania in 2003, and Portoroz in 2005, and the Mediterranean Strategy for Sustainable Development adopted in Portoroz in 2005,

Resolved to strengthen at the Mediterranean level the efforts made by coastal States to ensure integrated coastal zone management,

Determined to stimulate national, regional and local initiatives through coordinated promotional action, cooperation and partnership with the various actors concerned with a view to promoting efficient governance for the purpose of integrated coastal zone management,

Desirous of ensuring that coherence is achieved with regard to integrated coastal zone management in the application of the Convention and its Protocols,

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

GENERAL OBLIGATIONS

In conformity with the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols, the Parties shall establish a common framework for the integrated management of the Mediterranean coastal zone and shall take the necessary measures to strengthen regional co-operation for this purpose.

Article 2

DEFINITIONS

For the purposes of this Protocol:

(a) “Parties” means the Contracting Parties to this Protocol.

(b) “Convention” means the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, done at Barcelona on 16 February 1976, as amended on 10 June 1995.

(c) “Organization” means the body referred to in Article 17 of the Convention.

(d) “Centre” means the Priority Actions Programme Regional Activity Centre.

(e) “Coastal zone” means the geomorphologic area either side of the seashore in which the interaction between the marine and land parts occurs in the form of complex ecological and resource systems made up of biotic and abiotic components coexisting and interacting with human communities and relevant socio-economic activities.

(f) “Integrated coastal zone management” means a dynamic process for the sustainable management and use of coastal zones, taking into account at the same time the fragility of coastal ecosystems and landscapes, the diversity of activities and uses, their interactions, the maritime orientation of certain activities and uses and their impact on both the marine and land parts.

Article 3

GEOGRAPHICAL COVERAGE

1. The area to which the Protocol applies shall be the Mediterranean Sea area as defined in Article 1 of the Convention. The area is also defined by:

(a) the seaward limit of the coastal zone, which shall be the external limit of the territorial sea of Parties; and

(b) the landward limit of the coastal zone, which shall be the limit of the competent coastal units as defined by the Parties.

2. If, within the limits of its sovereignty, a Party establishes limits different from those envisaged in paragraph 1 of this Article, it shall communicate a declaration to the Depositary at the time of the deposit of its instrument of ratification, acceptance, approval of, or accession to this Protocol, or at any other subsequent time, in so far as:

(a) the seaward limit is less than the external limit of the territorial sea;

(b) the landward limit is different, either more or less, from the limits of the territory of coastal units as defined above , in order to apply, inter alia, the ecosystem approach and economic and social criteria and to consider the specific needs of islands related to geomorphological characteristics and to take into account the negative effects of climate change.

3. Each Party shall adopt or promote at the appropriate institutional level adequate actions to inform populations and any relevant actor of the geographical coverage of the present Protocol.

Article 4

PRESERVATION OF RIGHTS

1. Nothing in this Protocol nor any act adopted on the basis of this Protocol shall prejudice the rights, the present and future claims or legal views of any Party relating to the Law of the Sea, in particular the nature and the extent of marine areas, the delimitation of marine areas between States with opposite or adjacent coasts, the right and modalities of passage through straits used for international navigation and the right of innocent passage in territorial seas, as well as the nature and extent of the jurisdiction of the coastal State, the flag State or the port State.

2. No act or activity undertaken on the basis of this Protocol shall constitute grounds for claiming, contending or disputing any claim to national sovereignty or jurisdiction.

3. The provisions of this Protocol shall be without prejudice to stricter provisions respecting the protection and management of the coastal zone contained in other existing or future national or international instruments or programmes.

4. Nothing in this Protocol shall prejudice national security and defence activities and facilities; however, each Party agrees that such activities and facilities should be operated or established, so far as is reasonable and practicable, in a manner consistent with this Protocol.

Article 5

OBJECTIVES OF INTEGRATED COASTAL ZONE MANAGEMENT

The objectives of integrated coastal zone management are to:

(a) facilitate, through the rational planning of activities, the sustainable development of coastal zones by ensuring that the environment and landscapes are taken into account in harmony with economic, social and cultural development;

(b) preserve coastal zones for the benefit of current and future generations;

(c) ensure the sustainable use of natural resources, particularly with regard to water use;

(d) ensure preservation of the integrity of coastal ecosystems, landscapes and geomorphology;

(e) prevent and/or reduce the effects of natural hazards and in particular of climate change, which can be induced by natural or human activities;

(f) achieve coherence between public and private initiatives and between all decisions by the public authorities, at the national, regional and local levels, which affect the use of the coastal zone.

Article 6

GENERAL PRINCIPLES OF INTEGRATED COASTAL ZONE MANAGEMENT

In implementing this Protocol, the Parties shall be guided by the following principles of integrated coastal zone management:

(a) The biological wealth and the natural dynamics and functioning of the intertidal area and the complementary and interdependent nature of the marine part and the land part forming a single entity shall be taken particularly into account.

(b) All elements relating to hydrological, geomorphological, climatic, ecological, socio-economic and cultural systems shall be taken into account in an integrated manner, so as not to exceed the carrying capacity of the coastal zone and to prevent the negative effects of natural disasters and of development.

(c) The ecosystems approach to coastal planning and management shall be applied so as to ensure the sustainable development of coastal zones.

(d) Appropriate governance allowing adequate and timely participation in a transparent decision-making process by local populations and stakeholders in civil society concerned with coastal zones shall be ensured.

(e) Cross-sectorally organized institutional coordination of the various administrative services and regional and local authorities competent in coastal zones shall be required.

(f) The formulation of land use strategies, plans and programmes covering urban development and socio-economic activities, as well as other relevant sectoral policies, shall be required.

(g) The multiplicity and diversity of activities in coastal zones shall be taken into account, and priority shall be given, where necessary, to public services and activities requiring, in terms of use and location, the immediate proximity of the sea.

(h) The allocation of uses throughout the entire coastal zone should be balanced, and unnecessary concentration and urban sprawl should be avoided.

(i) Preliminary assessments shall be made of the risks associated with the various human activities and infrastructure so as to prevent and reduce their negative impact on coastal zones.

(j) Damage to the coastal environment shall be prevented and, where it occurs, appropriate restoration shall be effected.

Article 7

COORDINATION

1. For the purposes of integrated coastal zone management, the Parties shall:

(a) ensure institutional coordination, where necessary through appropriate bodies or mechanisms, in order to avoid sectoral approaches and facilitate comprehensive approaches;

(b) organize appropriate coordination between the various authorities competent for both the marine and the land parts of coastal zones in the different administrative services, at the national, regional and local levels;

(c) organize close coordination between national authorities and regional and local bodies in the field of coastal strategies, plans and programmes and in relation to the various authorizations for activities that may be achieved through joint consultative bodies or joint decision-making procedures.

2. Competent national, regional and local coastal zone authorities shall, insofar as practicable, work together to strengthen the coherence and effectiveness of the coastal strategies, plans and programmes established.

PART II

ELEMENTS OF INTEGRATED COASTAL ZONE MANAGEMENT

Article 8

PROTECTION AND SUSTAINABLE USE OF THE COASTAL ZONE

1. In conformity with the objectives and principles set out in Articles 5 and 6 of this Protocol, the Parties shall endeavour to ensure the sustainable use and management of coastal zones in order to preserve the coastal natural habitats, landscapes, natural resources and ecosystems, in compliance with international and regional legal instruments.

2. For this purpose, the Parties:

(a) Shall establish in coastal zones, as from the highest winter waterline, a zone where construction is not allowed. Taking into account, inter alia, the areas directly and negatively affected by climate change and natural risks, this zone may not be less than 100 meters in width, subject to the provisions of subparagraph (b) below. Stricter national measures determining this width shall continue to apply.

(b) May adapt, in a manner consistent with the objectives and principles of this Protocol, the provisions mentioned above:

1) for projects of public interest;

2) in areas having particular geographical or other local constraints, especially related to population density or social needs, where individual housing, urbanisation or development are provided for by national legal instruments.

(c) Shall notify to the Organization their national legal instruments providing for the above adaptations.

3. The Parties shall also endeavour to ensure that their national legal instruments include criteria for sustainable use of the coastal zone. Such criteria, taking into account specific local conditions, shall include, inter alia, the following:

(a) identifying and delimiting, outside protected areas, open areas in which urban development and other activities are restricted or, where necessary, prohibited;

(b) limiting the linear extension of urban development and the creation of new transport infrastructure along the coast;

(c) ensuring that environmental concerns are integrated into the rules for the management and use of the public maritime domain;

(d) providing for freedom of access by the public to the sea and along the shore;

(e) restricting or, where necessary, prohibiting the movement and parking of land vehicles, as well as the movement and anchoring of marine vessels, in fragile natural areas on land or at sea, including beaches and dunes.

Article 9

ECONOMIC ACTIVITIES

1. In conformity with the objectives and principles set forth in Articles 5 and 6 of this Protocol, and taking into account the relevant provisions of the Barcelona Convention and its Protocols, the Parties shall:

(a) accord specific attention to economic activities that require immediate proximity to the sea;

(b) ensure that the various economic activities minimize the use of natural resources and take into account the needs of future generations;

(c) ensure respect for integrated water resources management and environmentally sound waste management;

(d) ensure that the coastal and maritime economy is adapted to the fragile nature of coastal zones and that resources of the sea are protected from pollution;

(e) define indicators of the development of economic activities to ensure sustainable use of coastal zones and reduce pressures that exceed their carrying capacity;

(f) promote codes of good practice among public authorities, economic actors and non-governmental organizations.

2. In addition, with regard to the following economic activities, the Parties agree:

(a) Agriculture and industry, to guarantee a high level of protection of the environment in the

location and operation of agricultural and industrial activities so as to preserve coastal ecosystems and landscapes and prevent pollution of the sea, water, air and soil;

(b) Fishing,

(i) to take into account the need to protect fishing areas in development projects;

(ii) to ensure that fishing practices are compatible with sustainable use of natural marine resources;

(c) Aquaculture,

(i) to take into account the need to protect aquaculture and shellfish areas in development projects;

(ii) to regulate aquaculture by controlling the use of inputs and waste treatment;

(d) Tourism, sporting and recreational activities,

(i) to encourage sustainable coastal tourism that preserves coastal ecosystems, natural resources, cultural heritage and landscapes;

(ii) to promote specific forms of coastal tourism, including cultural, rural and ecotourism, while respecting the traditions of local populations;

(iii) to regulate or, where necessary, prohibit the practice of various sporting and recreational activities, including recreational fishing and shellfish extraction;

(e) Utilization of specific natural resources,

(i) to subject to prior authorization the excavation and extraction of minerals, including the use of seawater in desalination plants and stone exploitation;

(ii) to regulate the extraction of sand, including on the seabed and river sediments or prohibit it where it is likely to adversely affect the equilibrium of coastal ecosystems;

(iii) to monitor coastal aquifers and dynamic areas of contact or interface between fresh and salt water, which may be adversely affected by the extraction of underground water or by discharges into the natural environment;

(f) Infrastructure, energy facilities, ports and maritime works and structures, to subject such infrastructure, facilities, works and structures to authorization so that their negative impact on coastal ecosystems, landscapes and geomorphology is minimized or, where appropriate, compensated by non-financial measures;

(g) Maritime activities, to conduct maritime activities in such a manner as to ensure the preservation of coastal ecosystems in conformity with the rules, standards and procedures of the relevant international conventions.

Article 10

SPECIFIC COASTAL ECOSYSTEMS

The Parties shall take measures to protect the characteristics of certain specific coastal ecosystems, as follows:

1. Wetlands and estuaries

In addition to the creation of protected areas and with a view to preventing the disappearance of wetlands and estuaries, the Parties shall:

(a) take into account in national coastal strategies and coastal plans and programmes and when issuing authorizations, the environmental, economic and social function of wetlands and estuaries;

(b) take the necessary measures to regulate or, if necessary, prohibit activities that may have adverse effects on wetlands and estuaries;

(c) undertake, to the extent possible, the restoration of degraded coastal wetlands with a view to reactivating their positive role in coastal environmental processes.

2. Marine habitats

The Parties, recognizing the need to protect marine areas hosting habitats and species of high conservation value, irrespective of their classification as protected areas, shall:

(a) adopt measures to ensure the protection and conservation, through legislation, planning and management of marine and coastal areas, in particular of those hosting habitats and species of high conservation value;

(b) undertake to promote regional and international cooperation for the implementation of common programmes on the protection of marine habitats.

3. Coastal forests and woods

The Parties shall adopt measures intended to preserve or develop coastal forests and woods located, in particular, outside specially protected areas.

4. Dunes

The Parties undertake to preserve and, where possible, rehabilitate in a sustainable manner dunes and bars.

Article 11

COASTAL LANDSCAPES

1. The Parties, recognizing the specific aesthetic, natural and cultural value of coastal landscapes, irrespective of their classification as protected areas, shall adopt measures to ensure the protection of coastal landscapes through legislation, planning and management.

2. The Parties undertake to promote regional and international cooperation in the field of landscape protection, and in particular, the implementation, where appropriate, of joint actions for transboundary coastal landscapes.

Article 12

ISLANDS

The Parties undertake to accord special protection to islands, including small islands, and for this purpose to:

(a) promote environmentally friendly activities in such areas and take special measures to ensure the participation of the inhabitants in the protection of coastal ecosystems based on their local customs and knowledge;

(b) take into account the specific characteristics of the island environment and the necessity to ensure interaction among islands in national coastal strategies, plans and programmes and management instruments, particularly in the fields of transport, tourism, fishing, waste and water.

Article 13

CULTURAL HERITAGE

1. The Parties shall adopt, individually or collectively, all appropriate measures to preserve and protect the cultural, in particular archaeological and historical, heritage of coastal zones, including the underwater cultural heritage, in conformity with the applicable national and international instruments.

2. The Parties shall ensure that the preservation in situ of the cultural heritage of coastal zones is considered as the first option before any intervention directed at this heritage.

3. The Parties shall ensure in particular that elements of the underwater cultural heritage of coastal zones removed from the marine environment are conserved and managed in a manner safeguarding their long-term preservation and are not traded, sold, bought or bartered as commercial goods.

Article 14

PARTICIPATION

1. With a view to ensuring efficient governance throughout the process of the integrated management of coastal zones, the Parties shall take the necessary measures to ensure the appropriate involvement in the phases of the formulation and implementation of coastal and marine strategies, plans and programmes or projects, as well as the issuing of the various authorizations, of the various stakeholders, including:

- the territorial communities and public entities concerned;

- economic operators;

- non-governmental organizations;

- social actors;

- the public concerned.

Such participation shall involve inter alia consultative bodies, inquiries or public hearings, and may extend to partnerships.

2. With a view to ensuring such participation, the Parties shall provide information in an adequate, timely and effective manner.

3. Mediation 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.

Article 15

AWARENESS-RAISING, TRAINING, EDUCATION AND RESEARCH

1. The Parties undertake to carry out, at the national, regional or local level, awareness-raising activities on integrated coastal zone management and to develop educational programmes, training and public education on this subject.

2. The Parties shall organize, directly, multilaterally or bilaterally, or with the assistance of the Organization, the Centre or the international organizations concerned, educational programmes, training and public education on integrated management of coastal zones with a view to ensuring their sustainable development.

3. The Parties shall provide for interdisciplinary scientific research on integrated coastal zone management and on the interaction between activities and their impacts on coastal zones. To this end, they should establish or support specialized research centres. The purpose of this research is, in particular, to further knowledge of integrated coastal zone management, to contribute to public information and to facilitate public and private decision-making.

PART III

INSTRUMENTS FOR INTEGRATED COASTAL ZONE MANAGEMENT

Article 16

MONITORING AND OBSERVATION MECHANISMS AND NETWORKS

1. The Parties shall use and strengthen existing appropriate mechanisms for monitoring and observation, or create new ones if necessary. They shall also prepare and regularly update national inventories of coastal zones which should cover, to the extent possible, information on resources and activities, as well as on institutions, legislation and planning that may influence coastal zones. 2. In order to promote exchange of scientific experience, data and good practices, the Parties shall participate, at the appropriate administrative and scientific level, in a Mediterranean coastal zone network, in cooperation with the Organization.

2. In order to promote exchange of scientific experience, data and good practices, the Parties shall participate, at the appropriate administrative and scientific level, in a Mediterranean coastal zone network, in cooperation with the Organization.

3. With a view to facilitating the regular observation of the state and evolution of coastal zones, the Parties shall set out an agreed reference format and process to collect appropriate data in national inventories.

4. The Parties shall take all necessary means to ensure public access to the information derived from monitoring and observation mechanisms and networks.

Article 17

MEDITERRANEAN STRATEGY FOR INTEGRATED COASTAL ZONE MANAGEMENT

The Parties undertake to cooperate for the promotion of sustainable development and integrated management of coastal zones, taking into account the Mediterranean Strategy for Sustainable Development and complementing it where necessary. To this end, the Parties shall define, with the assistance of the Centre, a common regional framework for integrated coastal zone management in the Mediterranean to be implemented by means of appropriate regional action plans and other operational instruments, as well as through their national strategies.

Article 18

NATIONAL COASTAL STRATEGIES, PLANS AND PROGRAMMES

1. Each Party shall further strengthen or formulate a national strategy for integrated coastal zone management and coastal implementation plans and programmes consistent with the common regional framework and in conformity with the integrated management objectives and principles of this Protocol and shall inform the Organization about the coordination mechanism in place for this strategy.

2. The national strategy, based on an analysis of the existing situation, shall set objectives, determine priorities with an indication of the reasons, identify coastal ecosystems needing management, as well as all relevant actors and processes, enumerate the measures to be taken and their cost as well as the institutional instruments and legal and financial means available, and set an implementation schedule.

3. Coastal plans and programmes, which may be self-standing or integrated in other plans and programmes, shall specify the orientations of the national strategy and implement it at an appropriate territorial level, determining, inter alia and where appropriate, the carrying capacities and conditions for the allocation and use of the respective marine and land parts of coastal zones.

4. The Parties shall define appropriate indicators in order to evaluate the effectiveness of integrated coastal zone management strategies, plans and programmes, as well as the progress of implementation of the Protocol.

Article 19

ENVIRONMENTAL ASSESSMENT

1. Taking into account the fragility of coastal zones, the Parties shall ensure that the process and related studies of environmental impact assessment for public and private projects likely to have significant environmental effects on the coastal zones, and in particular on their ecosystems, take into consideration the specific sensitivity of the environment and the inter-relationships between the marine and terrestrial parts of the coastal zone.

2. In accordance with the same criteria, the Parties shall formulate, as appropriate, a strategic environmental assessment of plans and programmes affecting the coastal zone.

3. The environmental assessments should take into consideration the cumulative impacts on the coastal zones, paying due attention, inter alia, to their carrying capacities.

Article 20

LAND POLICY

1. For the purpose of promoting integrated coastal zone management, reducing economic pressures, maintaining open areas and allowing public access to the sea and along the shore, Parties shall adopt appropriate land policy instruments and measures, including the process of planning.

2. To this end, and in order to ensure the sustainable management of public and private land of the coastal zones, Parties may inter alia adopt mechanisms for the acquisition, cession, donation or transfer of land to the public domain and institute easements on properties.

Article 21

ECONOMIC, FINANCIAL AND FISCAL INSTRUMENTS

For the implementation of national coastal strategies and coastal plans and programmes, Parties may take appropriate measures to adopt relevant economic, financial and/or fiscal instruments intended to support local, regional and national initiatives for the integrated management of coastal zones.

Part IV

RISKS AFFECTING THE COASTAL ZONE

Article 22

NATURAL HAZARDS

Within the framework of national strategies for integrated coastal zone management, the Parties shall develop policies for the prevention of natural hazards. To this end, they shall undertake vulnerability and hazard assessments of coastal zones and take prevention, mitigation and adaptation measures to address the effects of natural disasters, in particular of climate change.

Article 23

COASTAL EROSION

1. In conformity with the objectives and principles set out in Articles 5 and 6 of this Protocol, the Parties, with a view to preventing and mitigating the negative impact of coastal erosion more effectively, undertake to adopt the necessary measures to maintain or restore the natural capacity of the coast to adapt to changes, including those caused by the rise in sea levels.

2. The Parties, when considering new activities and works located in the coastal zone including marine structures and coastal defence works, shall take particular account of their negative effects on coastal erosion and the direct and indirect costs that may result. In respect

of existing activities and structures, the Parties should adopt measures to minimize their effects on coastal erosion.

3. The Parties shall endeavour to anticipate the impacts of coastal erosion through the integrated management of activities, including adoption of special measures for coastal sediments and coastal works.

4. The Parties undertake to share scientific data that may improve knowledge on the state, development and impacts of coastal erosion.

Article 24

RESPONSE TO NATURAL DISASTERS

1. The Parties undertake to promote international cooperation to respond to natural disasters, and to take all necessary measures to address in a timely manner their effects.

2. The Parties undertake to coordinate use of the equipment for detection, warning and communication at their disposal, making use of existing mechanisms and initiatives, to ensure the transmission as rapidly as possible of urgent information concerning major natural disasters. The Parties shall notify the Organization which national authorities are competent to issue and receive such information in the context of relevant international mechanisms.

3. The Parties undertake to promote mutual cooperation and cooperation among national, regional and local authorities, non-governmental organizations and other competent organizations for the provision on an urgent basis of humanitarian assistance in response to natural disasters affecting the coastal zones of the Mediterranean Sea.

PART V

INTERNATIONAL COOPERATION

Article 25

TRAINING AND RESEARCH

1. The Parties undertake, directly or with the assistance of the Organization or the competent international organizations, to cooperate in the training of scientific, technical and administrative personnel in the field of integrated coastal zone management, particularly with a view to:

(a) identifying and strengthening capacities;

(b) developing scientific and technical research;

(c) promoting centres specialized in integrated coastal zone management;

(d) promoting training programmes for local professionals.

2. The Parties undertake, directly or with the assistance of the Organization or the competent international organizations, to promote scientific and technical research into integrated coastal zone management, particularly through the exchange of scientific and technical information and the coordination of their research programmes on themes of common interest.

Article 26

SCIENTIFIC AND TECHNICAL ASSISTANCE

For the purposes of integrated coastal zone management, the Parties undertake, directly or with the assistance of the Organization or the competent international organizations to cooperate for the provision of scientific and technical assistance, including access to environmentally sound technologies and their transfer, and other possible forms of assistance, to Parties requiring such assistance.

Article 27

EXCHANGE OF INFORMATION AND ACTIVITIES OF COMMON INTEREST

1. The Parties undertake, directly or with the assistance of the Organization or the competent international organizations, to cooperate in the exchange of information on the use of the best environmental practices.

2. With the support of the Organization, the Parties shall in particular:

(a) define coastal management indicators, taking into account existing ones, and cooperate in the use of such indicators;

(b) establish and maintain up-to-date assessments of the use and management of coastal zones;

(c) carry out activities of common interest, such as demonstration projects of integrated coastal zone management.

Article 28

TRANSBOUNDARY COOPERATION

The Parties shall endeavour, directly or with the assistance of the Organization or the competent international organizations, bilaterally or multilaterally, to coordinate, where appropriate, their national coastal strategies, plans and programmes related to contiguous coastal zones. Relevant domestic administrative bodies shall be associated with such coordination.

Article 29

TRANSBOUNDARY ENVIRONMENTAL ASSESSMENT

1. Within the framework of this Protocol, the Parties shall, before authorizing or approving plans, programmes and projects that are likely to have a significant adverse effect on the coastal zones of other Parties, cooperate by means of notification, exchange of information and consultation in assessing the environmental impacts of such plans, programmes and projects, taking into account Article 19 of this Protocol and Article 4, paragraph 3 (d) of the Convention.

2. To this end, the Parties undertake to cooperate in the formulation and adoption of appropriate guidelines for the determination of procedures for notification, exchange of information and consultation at all stages of the process.

3. The Parties may, where appropriate, enter into bilateral or multilateral agreements for the effective implementation of this Article.

PART VI

INSTITUTIONAL PROVISIONS

Article 30

FOCAL POINTS

Each Party shall designate a Focal Point to serve as liaison with the Centre on the technical and scientific aspects of the implementation of this Protocol and to disseminate information at the national, regional and local level. The Focal Points shall meet periodically to carry out the functions deriving from this Protocol.

Article 31

REPORTS

The Parties shall submit to the ordinary Meetings of the Contracting Parties, reports on the implementation of this Protocol, in such form and at such intervals as these Meetings may determine, including the measures taken, their effectiveness and the problems encountered in their implementation.

Article 32

INSTITUTIONAL COORDINATION

1. The Organization shall be responsible for coordinating the implementation of this Protocol. For this purpose, it shall receive the support of the Centre, to which it may entrust the following functions:

(a) to assist the Parties to define a common regional framework for integrated coastal zone management in the Mediterranean pursuant to Article 17;

(b) to prepare a regular report on the state and development of integrated coastal zone management in the Mediterranean Sea with a view to facilitating implementation of the Protocol;

(c) to exchange information and carry out activities of common interest pursuant to Article 27;

(d) upon request, to assist the Parties:

- to participate in a Mediterranean coastal zone network pursuant to Article 16;

- to prepare and implement their national strategies for integrated coastal zone management pursuant to Article 18;

- to cooperate in training activities and in scientific and technical research programmes pursuant to Article 25;

- to coordinate, when appropriate, the management of transboundary coastal zones pursuant to Article 28;

(e) to organize the meetings of the Focal Points pursuant to Article 30;

(f) to carry out any other function assigned to it by the Parties.

2. For the purposes of implementing this Protocol, the Parties, the Organization and the Centre may jointly establish cooperation with nongovernmental organizations the activities of which are related to the Protocol.

Article 33

MEETINGS OF THE PARTIES

1. The ordinary meetings of the Parties to this Protocol shall be held in conjunction with the ordinary meetings of the Contracting Parties to the Convention held pursuant to Article 18 of the Convention. The Parties may also hold extraordinary meetings in conformity with that Article.

2. The functions of the meetings of the Parties to this Protocol shall be:

(a) to keep under review the implementation of this Protocol;

(b) to ensure that this Protocol is implemented in coordination and synergy with the other Protocols;

(c) to oversee the work of the Organization and of the Centre relating to the implementation of this Protocol and providing policy guidance for their activities;

(d) to consider the efficiency of the measures adopted for integrated coastal zone management and the need for other measures, in particular in the form of annexes or amendments to this Protocol;

(e) to make recommendations to the Parties on the measures to be adopted for the implementation of this Protocol;

(f) to examine the proposals made by the Meetings of Focal Points pursuant to Article 30 of this Protocol;

(g) to consider reports transmitted by the Parties and making appropriate recommendations pursuant to Article 26 of the Convention;

(h) to examine any other relevant information submitted through the Centre;

(i) to examine any other matter relevant to this Protocol, as appropriate.

PART VII

FINAL PROVISIONS

Article 34

RELATIONSHIP WITH THE CONVENTION

1. The provisions of the Convention relating to any Protocol shall apply with respect to this Protocol.

2. The rules of procedure and the financial rules adopted pursuant to Article 24 of the Convention shall apply with respect to this Protocol, unless the Parties to this Protocol agree otherwise.

Article 35

RELATIONS WITH THIRD PARTIES

1. The Parties shall invite, where appropriate, States that are not Parties to this Protocol and international organizations to cooperate in the implementation of this Protocol.

2. The Parties undertake to adopt appropriate measures, consistent with international law, to ensure that no one engages in any activity contrary to the principles and objectives of this Protocol.

Article 36

SIGNATURE

This Protocol shall be open for signature at Madrid, Spain, from 21 January 2008 to 20 January 2009 by any Contracting Party to the Convention.

Article 37

RATIFICATION, ACCEPTANCE OR APPROVAL

This Protocol shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Government of Spain, which will assume the functions of Depositary.

Article 38

ACCESSION

As from 21 January 2008 this Protocol shall be open for accession by any Party to the Convention.

Article 39

ENTRY INTO FORCE

This Protocol shall enter into force on the thirtieth day (30) following the deposit of at least six (6) instruments of ratification, acceptance, approval or accession.

Article 40

AUTHENTIC TEXTS

The original of this Protocol, of which the Arabic, English, French and Spanish texts are equally authentic, shall be deposited with the Depositary.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Protocol.

DONE AT MADRID, SPAIN, this twenty-first day of January two thousand and eight.

ANNEX 4

MEDITERRANEAN ICZM PROTOCOL SIGNATURE AND RATIFICATION STATUS AS OF JANUARY 2010

Contracting Parties	Signed	Ratified
Albania		
Algeria	21/01/2008	
Bosnia and Herzegovina		
Croatia	21/01/2008	
Cyprus		
Egypt		
European Community	2009	
France	21/01/2008	28/09/2009
Greece	21/01/2008	
Israel	21/01/2008	
Italy	21/01/2008	
Lebanon		
Libya		
Malta	21/01/2008	
Monaco	21/01/2008	
Montenegro	21/01/2008	
Morocco	21/01/2008	
Slovenia	21/01/2008	25/09/2009
Spain	21/01/2008	
Syria	21/01/2008	
Tunisia	21/01/2008	
Turkey		

ANNEX 5

ADOPTION, SIGNATURE, RATIFICATION AND ENTRY INTO FORCE OF LEGAL INSTRUMENTS

Presentation provided by Robert Wabunoha, United Nations Environment Programme Regional Office for Africa, during the National Focal Points Meeting of the Contracting Parties to the Nairobi Convention, Mombasa, Kenya, 8-9 December 2009

➢ Adoption, Credentials, Full Powers, Signature

•**Protocol:** in the context of treaty law and practice, has the same legal characteristics as a treaty. The term protocol is often used to describe agreements of a less formal nature than those entitled treaty or convention. Generally, a protocol amends, supplements or clarifies a multilateral treaty. The advantage of a protocol is that, while it is linked to the parent agreement, it can focus on a specific aspect of that agreement in greater detail.

- ✓ CP. 5/4: requested the Secretariat to organise (i) **negotiations** (ii) and to convene a Conference of Plenipotentiaries to **adopt** the Protocol and the revised Convention
- ✓ **Plenipotentiary:** a person authorised by an instrument of full powers to undertake a specific treaty action.
- ▪ Adoption of *protocols* under art. 18 and *amendments* of convention under art. 19 of NC are by a Conference of the Plenipotentiaries (2/3).
- ✓ only Head of States and Governments or Ministers for Foreign Affairs have full powers without an instrument of full powers.
- ✓ Others require a valid instrument of **"full powers"** (Art. 2 Vienna Conv.): "document .. designating a person (s) to represent the State for **negotiating**, **adopting** or **authenticating (signing)** a text of a treaty…., or for …..any other act with respect to a treaty."
- ➢ Therefore: both negotiations and adoption activities requires full powers.

Adoption, Credentials, Full Powers, Signature (ii)

- ▪ **NB:** Full powers are designed to protect the interests of parties and the integrity of the depositary. Typically, full powers are issued for the signature of a specified treaty and in this case for both the amended Convention and the Protocol.
- ✓ **Credentials**: a document authorising a delegate (ion) to attend a conference, including, for the purpose of negotiating and adopting the text of a treaty. Rule 14 &15 – Parties must be represented by accredited representative (s) issued by the Head of State or Government or by MOFA
- ✓ *Distinction between Credentials and Full powers:* Credentials permit a delegate or delegation to attend a conference, participate in adoption of the text of a treaty and/or sign the Final Act, while full powers permit a person to undertake any given treaty action, in particular, signature of treaties
- ✓ **Adoption:** formal act by which negotiating parties establish the form and content of a treaty/protocol or amendments or annexes.
- o **NB:** Adoption is a specific act expressing the will of the parties, e.g., by voting on the text, initialing, or signing, etc
- ✓ **Final Act**: a document summarising the proceedings of a diplomatic conference or the formal act concluding a negotiation.
- o **NB:** Signing the Final Act does not create legal obligations or bind the signatory State to sign or ratify the treaty attached to it.

Ratification, acceptance, approval (1)

- All these terms refer to the act undertaken on the international plane, whereby a State establishes its consent to be bound by a treaty and also a commitment to undertake the obligations in the treaty.
  - √ Ratification, acceptance and approval all require two steps:
    - executing an instrument expressing the intent to be bound by the relevant treaty; and
    - depositing the instrument with the Depositary;
- National level ratification actions are those activities a State may be required to undertake in accordance with its own constitutional provisions, before it consents to be bound internationally.
  - **NB:** Ratification at the national level is inadequate to establish the State's consent to be bound at the international level. (art. 2(1)(b), 11, 14 and 16 of the Vienna Convention)
  - Generally, there is no time limit for ratification of a treaty which a party has signed

Ratification, acceptance, approval (2)

- **Signature:** when a State signs the treaty, the signature is subject to ratification, acceptance or approval.
  - **NB:** The State has not expressed its consent to be bound by the treaty until it ratifies, accepts or approves it. In that case, a State that signs a treaty is obliged to refrain, in good faith, from acts that would defeat the object and purpose of the treaty. Signature alone does not impose on the State obligations under the treaty (articles 14 and 18 of Vienna Convention).
- **Accession:** act where a State that has not signed a treaty expresses its consent to become a party to and be bound by that treaty where the deadline for signature has passed by depositing an "instrument of accession." Accession has the same legal effect as ratification, acceptance or approval.
- **Acceptance or approval:** Acceptance or approval of a treaty following signature has the same legal effect as ratification, and the same rules apply, unless the treaty provides otherwise (see article 14(2) of the Vienna Convention 1969). If the treaty provides for acceptance or approval without prior signature, such acceptance or approval is treated as an accession, and the rules relating to accession would apply.

Practical Steps for national ratification

- After adoption of convention/protocol

✓ take the Final Act to MOFA for internal processing

✓Lead ministry/agency in charge of coastal marine or environment to initiate process of ratification at national level

✓Lead ministry prepares a draft policy paper containing the summary of the protocol, the benefits, possible costs involved, legal and policy implications possibly with the activities that may be required to domesticate or operationalise the protocol.

✓In some countries, carry out awareness/consensus building activities.

✓Forward paper for approval to the competent national institution/person in respect of treaties (with final decision powers e.g. Head of State, Parliament, MOFA, etc)

✓Competent national institution/person authorises the Minister of Foreign Affairs to ratify the convention/Protocol.

✓MoFA prepares, signs, seals and deposits instrument of ratification with treaty depository (i.e. Kenya Government) and also the national depository of treaties.

o**NB:** Remember to carry our all usual national processes such as inter agency/ministerial consultations, NGO and private sector consultations, cost benefit analysis, awareness raising, etc

Summary of the Process