

**FOURTH DRAFT PROTOCOL ADDITIONAL TO THE NAIROBI
CONVENTION**

**CONCERNING LAND-BASED SOURCES AND ACTIVITIES
(LBSA) IN THE EASTERN [AND SOUTHERN] AFRICAN
REGION**

Dated: 18th December 2008

Table of Contents

Page

Preamble

Part I: General Provisions

Article 1: Definitions

Article 2: Geographical Scope

Article 3: Protocol Application

Article 4: General Obligations

PART II: Provisions On Pollution And Other Degrading Activities And Sources

Article 5: Pollution From Point Sources

Article 6: Pollution From Diffuse Sources

Article 7: Degradation From Other Harmful Activities

Article 8: Transboundary Pollution

PART III: Provisions To Ensure Effective Implementation

Article 9: Measures Of Implementation

Article 10: Compliance And Enforcement

Article 11: Common Guidelines, Standards And Criteria

Article 12: Data Collection, Monitoring And Evaluation

Article 13: Environmental Impact Assessment And Audit

Article 14: Scientific And Technological Co-Operation, Technical Assistance And Capacity Building

Article 15: Public Participation, Educational And Awareness Programmes

Article 16: Reporting, Exchange Of And Access To Information

PART IV: Institutional And Financial Arrangements

Article 17: Secretariat And Coordination Mechanisms

Article 18: Meetings Of The Parties

Article 19: National Focal Points

Article 20: Financial Arrangements

PART V: Final Provisions

Article 21: Annexes

Article 22: Settlement Of Disputes

Article 23: Relationship Between This Protocol And The Convention

Article 24: Relationship Between This Protocol, Domestic Legislation And Third Parties

Article 25: Sovereignty Claims And Rights

Article 26: Signature, Ratification, Accession, Amendments, Depositary And Entry Into Force

Annexes

PreamBLEPREAMBLE

The Contracting Parties to this Protocol,

Being parties to the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern ~~and Southern~~ [and Southern] Africa Region signed in Nairobi on 21 June 1985 and amended on [.....2009]; ~~(and as amended to include Southern African region)~~

Determined to implement the Convention, in particular Article 7 thereof;

Conscious of the grave danger facing the coastal and marine environment, the rich diversity of resources as well as human health of the ~~*Eastern~~ [and Southern] African Region from various land-based sources* and activities ~~and sources~~, and affecting, *inter alia*, its rich heritage of biological diversity, coastal tourism, ports and harbours and other natural and human made endowments and resources;

(~~*This should be reflected in subsequent paragraphs~~)

Noting with particular concern the threats to the marine and coastal environment of the Eastern [and Southern] Africa Region from land based sources and activities, including but not limited to untreated domestic, sewage and industrial effluents and discharges,; solid domestic and industrial wastes; agricultural wastes and agricultural run-off,; including persistent organic pollutants, nutrients and silt; and activities causing physical alterations and destruction of habitats;

Conscious of the close and traditional dependency for livelihoods and other uses of ~~local and other communities on~~ the various coastal and marine resources, many of which are currently under serious threat from various land-based sources and activities,; (note: the French version is more detailed) and sources; and increasing poverty levels;

Noting the special circumstances and vulnerabilities of the Small Island Developing States (SIDS) of the Region, that is, (Comoros, Mauritius and Seychelles);

Mindful that coastal and marine natural and human-made resources and endowments constitute a rich heritage of scientific, cultural, social, educational, recreational, aesthetic and economic value that needs to be effectively and sustainably protected;

Stressing the urgent need for tackling the various land-based sources and activities ~~and sources~~ causing pollution and/or degradation of the coastal and marine environment of the Eastern- [and Southern] African RegionAfrican Region;

Aware of the need for proper and sustainable control, precaution, prevention, reduction, mitigation and to the maximum extent possible, complete elimination of those sources and activities ~~and sources;~~

Determined to pursue the protection and conservation of the coastal and marine environment as well as the sustainable development and/or use of the natural resources of the Eastern [and Southern] Africa Region, by, *inter alia*, proactive and inclusive planning processes, so as to meet the needs of the present and future generations in an equitable manner and thereby ensure inter-generational equity;

Considering that ~~all~~ Contracting Parties are committed to co-operate in regional efforts to conserve, protect and restore the health and integrity of the marine and coastal ~~and marine~~ environment of the Eastern [and Southern] Africa Region and that to this end, they have common but differentiated responsibilities;

Desirous of establishing closer collaboration and co-operation among the Contracting Parties in order to achieve the objective of better protection of the marine and coastal ~~and marine~~ environment of the Eastern [and Southern] African Region from pollution from land-based sources and activities ~~and sources~~;

Recognising that, notwithstanding some achievements in ~~efforts to reduce~~ marine and coastal ~~and marine~~ pollution and degradation from land-based sources and activities ~~and sources~~, ~~existing~~ efforts and measures at the local, national and regional levels ~~have been inadequate and~~ need to be enhanced and strengthened ~~further~~;

Recognising further the need for enhanced collaboration and co-operation with other states and relevant regional and international organizations for better protection of the marine and coastal ~~and marine~~ environment of the Eastern [and Southern] African Region;

Mindful of the provisions of the 1982 United Nations Convention on the Law of the Sea ~~Convention (1982)~~ and in particular ~~ly~~ Articles 207 and 213 thereof;

Mindful also of the various relevant and in many cases recent international and regional commitments and instruments, as well as developments in other regional seas programmes;

Taking into account global, regional and national efforts concerning environmental sustainability, poverty reduction and access to drinking water and sanitation;

Have agreed as follows: -

PART I: General Provisions

Article 1: Definitions

For the purposes of this Protocol:

- (i) “Best available technique” means the latest stage, in time, of development of a process, facility or method of operation which indicate the practical suitability of a particular measure for limiting discharges, emissions and waste. In this regard, “technique” include both the technology used and the manner in which the process, facility or method is designed, built, maintained, operated or dismantled.
- (ii) “Best environmental practice” means the application at the latest stage in time of the most appropriate combination of environmental control measures and strategies.
- ~~(i)~~(iii) “Convention” means the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern [and Southern] Africa Region;
- ~~(ii)~~(iv) “Contracting Party” means any state or regional economic, political or other organization, of which at least one member is a coastal state of the Eastern [and Southern] African Region and which exercises competence in the fields covered by this Protocol, and that has become a party to this Protocol; or a non coastal state which is upstream and riparian to watercourses draining into or connected with the Eastern [and Southern] African side of the Indian Ocean;
- ~~(iii)~~(v) “Land-based ~~sources and~~ activities ~~and sources~~” means sources and activities, ~~sources and factors~~ directly or indirectly causing or contributing to the pollution and pollution degradation of the marine and coastal ~~and marine~~ environment from the land-ward side as opposed to sources and activities, ~~sources and factors~~ from the sea-ward side;
- ~~(iv)~~(vi) “Hot spots” refers to a geographically defined ~~coastal and marine or~~ coastal areas ~~or and~~ other areas of the sea, of national, regional ~~or and/or,~~ or and/or, ~~global/~~international significance, ~~whose ere the~~ conditions are such as to adversely affect human health, threaten ecosystems functioning and, ~~reduce~~ biodiversity ~~and/or~~ degrade ~~compromise~~ resources and amenities of economic and social importance in a manner that ~~would appear to warrants~~ priority management attention;
- ~~(v)~~(vii) “Sensitive areas” refers to a geographically defined areas, of national, regional ~~and/or~~ international ~~global~~ significance which, although not degraded at present, ~~is are~~ threatened with future pollution or degradation, either because

of sensitivity of the receptor or the magnitude of the anthropogenic activity posing the threat;

~~(vi)~~(viii) “Point sources” means a sources of pollution where the discharges or and releases is are introduced into the environment from any clearly discernable confined and discrete conveyance including but not limited to a pipes, outfalls, channels, ditches, tunnels, conduits or wells from which pollutants are or may be discharged;

~~(vii)~~(ix) “Diffuse sources” means a sources of pollution other than a point sources, from which substances enter the environment as a result of land or surface run-off, precipitation, atmospheric deposition, drainage seepage or by hydrologic modifications or destruction of habitats;

~~(viii)~~(x) “Fresh water limit” means a the place in a water-course where at low tide or and in a period of low fresh-water flow; there is an appreciable or discernible increase in salinity due to presence of sea water;

~~(ix)~~(xi) “Emission controls” means a controls requiring a specific emission limitation, or otherwise specifying limits or conditions on the effects, nature or other characteristics of an emission or operating conditions which affect emissions;

~~(x)~~(xii) “Best available techniques” means the latest stage, in time, of development of a processes, facilities or methods of operation; which indicate the practical suitability of a particular measure for limiting discharges, emissions and waste. In this regard, “Techniques” includes both the technology used and the manner way in which the process, facility or method installation is designed, built, maintained, operated or and dismantled. ~~What is “best available techniques” for a particular process will change with time in the light of technological advances, economic and social factors, as well as changes in scientific knowledge and understanding;~~

~~(xi)~~(xiii) -“Best environmental practice” means the application at the latest stage in time of the most appropriate combination of environmental control measures and strategies. ~~“Best environmental practice” for a particular source will change with time in the light of technological advances, economic and social factors, as well as changes in scientific knowledge and understanding;~~

~~(xii)~~(xiv) “Environmental quality objectives” means a ~~set of~~ clearly identified objectives or goals for purposes of environmental quality whether in specific or general application to relevant environmental resources, activities or programmes;

~~(xiii)~~(xv) “Environmental quality standard” means the concentration of a particular substance or group of substances in water, sediment or biota which should not be exceeded in order to protect human health and the environment;

~~(xiv)~~(xvi) “Internal waters” means any water bodies or resources, such as a rivers, lakes, dams, wetlands or ~~and~~ other waters within the exclusive jurisdiction of a State, but does not include any shared or transboundary water bodies or resources.

~~(xv)~~(xvii) “Organization” means the body designated as responsible for carrying out secretariat functions pursuant to Article 16 of the Convention.

~~(xvi)~~(xviii) “Pollution” ~~is as defined in Article 2 of the Convention~~ means the introduction by human intervention, directly or indirectly, of substances or organisms or energy into the marine and coastal environment, including estuaries, resulting in such deleterious affects 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;

~~(xix)~~ “Sensitive area” refers to a geographically defined area of national, regional or international significance which although not degraded at present is threatened by anticipated future pollution or degradation either because of sensitivity of the receptor or the magnitude of the anthropogenic activity posing the threat;

~~(xvii)~~(xx) “Wetlands” means an areas of marsh, fen-, peat land or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or saline, including areas of marine water the depth of which at low tide does not exceed six metres.

Article 2: Geographical Scope

1. The geographical ~~scope area of to which~~ this Protocol ~~is the Eastern and Southern Africa region of the western Indian ocean~~ ~~applies the area as defined in Articles 1 and 2 of the Nairobi Convention (hereinafter referred to as the “Protocol Area”)~~ ~~is the Eastern and Southern African Region, including the Republic of South Africa, as defined in Articles 1 and 2 of the Convention.~~ ~~(h~~Herein-after referred to as “the Protocol Area”)

2. The Protocol Area shall comprise the riparian and internal waters constituting part of the natural river basin draining into the western Indian Ocean, the marine and coastal environment including the water shed of that part of the western Indian Ocean situated within the Eastern African [and Southern] Region and falling within the jurisdiction of the Contracting Parties to this Protocol.

3. Without prejudice to the generality of paragraph 2 above, the Protocol Area includes the following:

- (a) the seabed and its sub-soil;
- (b) the waters, seabed and its sub-soil on the landward side of the baseline from which the breadth of the territorial sea is measured and extending, in the case of water courses, up to the natural catchments or riparian limits upstream; and
- (c) the terrestrial coastal areas designated by each of the Contracting Parties, including wetlands.

4. ~~Subject to paragraphs 23 and 34 above and any other provisions in the Convention and the other protocols, The Protocol Area shall not include internal waters of the Contracting Parties that are not covered under paragraphs 2 and 3 above of this article. , consistently with Article 1(2) of the Convention.~~

Article 3: Protocol Application

This Protocol shall apply to: -

- (a) ~~a~~Activities within the territories of the Contracting Parties that may directly or indirectly affect the marine or coastal environment of the Protocol Area including developments which cause physical alteration of the natural state of the coast-line or otherwise result in physical alteration or destruction of habitats;
- (b) ~~d~~Discharges, releases or outflows originating from land-based point and diffuse sources and activities within the territories of the Contracting Parties that may ~~affect~~ directly or indirectly affect the coastal or marine environment of the Protocol Area. ~~These discharges, releases or outflows shall include those which reach the coastal and marine environment through canals or other water courses, ground water flow or through run-off and disposal under the seabed with access from land;~~
- (c) ~~i~~Inputs of polluting substances transported through the atmosphere into the coastal and marine environment of the Protocol Area from land-based sources and activities ~~and sourees~~ within or originating from the territoryies of any of the Contracting Parties;

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 the Convention and this Protocol, to prevent, reduce, mitigate, combat and to the extent possible, eliminate pollution or degradation of the Protocol Area from land-based sources and activities ~~and sourees and to ensure (sound environmental management) add definition of this of natural resources,~~ using, for this purpose, the best practicable means at their disposal, and in accordance with their respective capabilities.

2. The Contracting Parties shall, in particular:-

- (a) ~~a~~Apply the precautionary principle, by virtue of which, where there are threats of serious or irreversible damage to the coastal and marine environment or to public health, lack of full scientific certainty ~~shall-should~~ not be used as a reason for postponing prudent, precautionary and cost-effective measures to prevent such damage;
- (b) ~~a~~Apply the polluter pays principle, by virtue of which, the costs of pollution, prevention, control, mitigation and reduction measures ~~should are to~~ be borne by the polluter, with due regard to the prevailing public interest;
- (c) ~~e~~Ensure that new or existing activities, developments, programmes and processes which are likely to cause significant adverse impacts on the marine and coastal and marine environment are ~~made~~ subjected to environmental impact assessments (EIA) and prior authorization or environmental audit (EA), as appropriate, by a competent national authority or authorities as a matter of law; and
- (d) ~~c~~~~Commit themselves to apply Integrated Coastal Area and River Basin Management (ICARM) principles, including in trans boundary water basins and water courses, taking into account the sustainable use of natural resources in the coastal and marine environment.~~
- (e) ~~d~~Designate hotspots and sensitive areas of special regional, transboundary or national importance and cooperate in efforts to create other appropriate protection regimes and take measures to restore ~~and de-list~~ them as appropriate.;

3. The Contracting Parties shall take all appropriate measures in conformity with international law for proper and effective discharge of their obligations under the Convention and this Protocol and shall, to this end, endeavour to harmonise their programmes, policies, laws and other regulatory frameworks.

4. The Contracting Parties shall co-operate with the competent and relevant international, regional and sub-regional organizations to ensure the effective implementation of the Convention and this Protocol.

5. The Contracting Parties shall ensure that ~~in taking~~ the measures under paragraph 1 and 2 ~~of this article above, they~~ do not cause directly or indirectly pollution of the marine and coastal and marine environment outside the Protocol Area.

PART II: Provisions on Pollution and Other Degrading Sources and Activities
and Sources

Article 5: Pollution from Point Sources

1. The Contracting Parties shall ensure that the emission controls of point source discharges and releases of substances into water or air in the Protocol Area that reach and affect or may affect the marine and coastal and marine environment are based on best available techniques, best environmental practice as established under Annex A to this Protocol.

2. The Contracting Parties shall ensure that the emission controls of point source discharges and releases of substances into water or air in the Protocol Area are based on emission and discharge limit values taking into account the social, economic and technological conditions of the Parties as or the relevant emission limit values may be established under as may be elaborated in Annex to this Protocol.

3. The Contracting Parties shall establish the limits, environmental quality standards and environmental quality objectives, management practices and measures within a period of [two] years from the date of entry into force of this Protocol.

2.4. The Contracting Parties shall ensure that legal and administrative mechanisms are in place to authorise and regulate pPoint source discharges and releases, shall be subject to authorisation and/or regulation by the competent national authorities of the Contracting Parties as a matter of law, taking into account the provisions of this Protocol. In this regard, an indicative list of priority substances and activities may be established under is provided in Annex additional to this Protocol, and the same may be reviewed from time to time by the Contracting Parties.

5. The Contracting Parties shall designate hotspots and shall use the methodology for such designation as established under Annex B to this Protocol. The methodology contained in Annex B shall also used to elaborate national strategies and timetables for achieving substantial reductions of inputs of pollutants from point sources. [note:the periodic review will form part of Annex B]

The Contracting Parties shall designate hotspots and shall use the methodology for such designation as established under Annex B to this Protocol. The methodology contained in Annex B shall also used to The Contracting Parties may establish by Annex additional to this Protocol, methodology of listing and de-listing hot spots, as well as lists of hotspots, which shall form the basis for the elaborateion of national strategies and timetables for achieving substantial reductions of inputs of pollutants from point sources. Such methodology, if and when established, shall be reviewed periodically by the Contracting Parties. [the periodic review will form part of Annex B]

Article 6: Pollution From Diffuse Sources

1. The Contracting Parties shall take all necessary measures to ~~substantially,~~ prevent, reduce, mitigate, combat ~~and~~ or eliminate, as appropriate, the pollution load from diffuse sources, in particular, agricultural ~~activities areas~~ affecting the coastal and marine environment of the Protocol Area with a view to complying ~~iance~~ with ~~the agreed~~ environmental quality standards and environmental quality objectives ~~and emission limits elaborated~~ as may be established under in Annex to this Protocol.

2. The Contracting Parties shall ensure that the controls of diffuse sources of land-based pollution ~~in the Protocol Area~~ affecting or having the potential to affect the marine or coastal environment of the Protocol Area are based on best environmental practice and best available techniques. ~~as elaborated in Annex to this Protocol.~~

Article 7: Degradation From Other Harmful Activities

1. The Contracting Parties shall endeavour to ensure that activities within their respective territories ~~or regulatory control and which~~ which cause physical alteration and destruction of habitat affect or may affect in the coastal and marine environment of the Protocol Area and which are not covered ~~under by the provisions of~~ Articles 5 and 6 of this Protocol, are conducted on the basis of best available techniques and best environmental practice. ~~consistent with the Annex additional to this Protocol.~~

2. The Contracting Parties ~~shall are to~~ take measures to prevent, reduce, mitigate, combat, and to the extent possible, eliminate the effects of ~~those~~ activities or other sources of pollution or degradation contemplated under paragraph 1 of this Article, and ~~shall also~~ undertake restorative measures.

3. The Contracting Parties shall base the measures contemplated in articles 5, 6 and 7 on the priority substances and activities listed in Annex C to this Protocol. [review Annex C to include an explanation or definition of priority substances and activities]

4. ~~These~~ activities or other sources targeted under paragraphs 1, 2 and 3 of this Article shall include those which, while socio-economically beneficial, degrade or may degrade cause physical alteration and destruction of habitats in the marine and coastal ~~and marine~~ environment of the Protocol Area.

Article 8: Transboundary Pollution

~~1. In the event that pollution from land-based activities and sources originating from any Contracting Party is likely to adversely affect the coastal and marine environment of one or more of the other Contracting Parties, the Contracting Party concerned shall inform and consult with the affected Contracting Party or Parties, with a view to amicably resolve the issue.~~

1. ~~Where pollution from land-based sources and activities originating from any Contracting Party has affected or is likely to affect the marine and coastal and marine environment of another Contracting Party, the Contracting Party from where the pollution originates shall inform and consult with the affected and all other interested parties and cooperate in taking measures to reduce or prevent the effects or the likely effects of that pollution.~~

2. ~~Where~~ If discharges or releases ~~to from~~ a water course or body which flows through or traverses the territories of two or more Contracting Parties or forms a boundary between them, cause or are likely to cause pollution of the marine ~~and coastal~~ environment of the Protocol Area, the Contracting Parties ~~in question, respecting the provisions of this Protocol in so far as each of them is concerned,~~ shall endeavour to cooperate ~~with a view~~ to ensuring ~~the Protocol's~~ its full application.

3. ~~A Contracting Party shall not be responsible for any pollution originating on the territory of a non-Contracting Party, but the concerned~~ Each Contracting Party shall nevertheless endeavour to co-operate with ~~the said non-Contracting Parties y with a view to prevent transboundary pollution into the Protocol Area so as to make ing~~ possible the full application of this Protocol.

PART III: Provisions To Ensure for Effective Implementation

Article 9: Measures Of Implementation

In implementing this Protocol, the Contracting Parties shall :-

~~(a) Develop, prioritise~~ -and adopt national and regional programmes or plans of actions; based on source control and containing measures and designated hotspots and sensitive areas, where appropriate, with timetables for their completion.;

~~(b) Prioritize national and regional programmes or plans of action and measures concerning designated or listed hotspots;~~

~~(c) Address priority substances and activities listed in an Annex through the progressive development, adoption and implementation of national and regional:-~~

~~(i) Effluent and emission controls, including emission limits for relevant substances, environmental quality standards and environmental quality objectives, as well as management practices based on the factors defined in Annex ;and~~

~~(ii) Timetables for achieving the limits, environmental quality standards and environmental quality objectives, management practices and measures agreed by the Contracting Parties and without surpassing the emission limit values. [transferred to article 5]~~

~~(d) Utilize or promote the best available techniques and the best environmental practice and the application of, access to and transfer of environmentally sound technology, including cleaner production, taking into account the social, economic and technological conditions and criteria set out in Annex. [relevant provisions integrated in article 5(2)]~~

Article -10: Compliance ~~And~~ Enforcement

~~1. The meeting of Contracting Parties shall, as soon as possible, develop within two years of entry into force of this Protocol, develop and adopt procedures and mechanisms necessary to assess and promote compliance with and enforcement of this Protocol, including mechanisms for open exchange of information between the Contracting Parties. Procedures for the collection and submission of such information shall be determined by the meetings of the Contracting Parties.~~

~~1.2.~~ Each Contracting Party shall take all measures at its disposal, in accordance with its capacities, and consistent with its obligations and prevailing international law, to enforce and comply with this Protocol at the national level, including, in particular, by enacting relevant domestic legislation, establishing institutions and related measures.

~~2.3.~~ Each Contracting Party shall take all appropriate measures ~~in accordance with international law~~ to prevent and if necessary take corrective actions against ~~punish~~ acts contrary to the provisions of this Protocol.

~~3. The meeting of Contracting Parties shall, as soon as possible, develop and adopt procedures and mechanisms necessary to assess and promote compliance with and enforcement of this Protocol, including mechanisms for open exchange of information between the Contracting Parties. Procedures for the collection and submission of such information shall be determined by the meetings of the Contracting Parties. [moved to new para 1]~~

4. In pursuance of the obligations set out in ~~paragraph 2 of~~ Article 5 of this Protocol above, the Contracting Parties shall provide for a system of regular monitoring and inspection by their competent national authorities to assess compliance with authorisations and regulations of substances into water or air, or activities; through, *inter alia*, environmental impact assessments and audits as provided for under Article 13 of this Protocol below.

5. The Contracting Parties shall ~~take establish~~ appropriate measures ~~punitive or other sanctions in case of non-compliance to encourage compliance~~ with authorisations and regulations contemplated under paragraph 4 of this Article above and also ensure their effective application and enforcement.

6. The Contracting Parties shall ~~commit themselves to~~ offer advice, assistance or cooperation among themselves or with non-contracting parties and relevant international,

regional and sub-regional organizations in the a-spirit of mutual interest so as to enhance compliance with and enforcement of this Protocol.

Article 11: Common Guidelines, Standards ~~And~~ Criteria

1. The Contracting Parties shall, as soon as possible, from the date of entry into force of this Protocol, and in co-operation with competent regional and international organizations, adopt generic guidelines, standards or criteria concerning the various aspects of the identification, prevention, reduction, mitigation or, where feasible, elimination of ~~pollution or degradation of the coastal and marine environment of the Protocol Area.~~ In particular, and without prejudice to the generality of the foregoing, such common guidelines, standards and criteria should include ~~deal with~~ the following:—

- (a) sSpecific requirements concerning the quantities of the priority substances and activities listed in Annex C ~~discharged~~; their effluent concentration and the methods of discharging them;
- (b) sSpecial requirements for effluents necessitating separate treatment;
- (c) ~~t~~The quality of sea-water used for specific purposes that is necessary for the protection of human health, living resources and eco-systems;
- (d) ~~t~~The length, depth and position of design considerations of pipelines for coastal outfalls, taking into account, in particular, the methods used for pre-treatment of effluents; and [note: contact group composed of Tanzania, South Africa and Seychelles to provide a definition of “treatment”]
- (e) ~~t~~The control and progressive replacement of products, installations and industrial and other processes causing significant pollution and degradation of the marine and coastal environment.

2. The Contracting Parties shall within a period of [two] years from the entry into force of this Protocol establish common emission limits and other values, environmental quality standards or environmental quality objectives ~~established in Annex~~, as well as any timetables for their implementation of the measures aimed at preventing, reducing or eliminating, to the maximum extent possible, pollution and degradation from land-based activities and sources, shall be established regionally by the Contracting Parties and periodically reviewed by them.

3. The Each Contracting Party shall designate a competent authorityies or authorities to shall be responsible for establishment, review or implementation of corresponding national emission limits, values, measures, standards and; objectives ~~and limits~~; and shall submit ~~render~~ periodic reports in this regard to the Organization.

3. The common guidelines, standards and criteria under this Article may be amended reviewed by the meeting of the Contracting Parties on the proposal of one or more

~~Contracting Parties. Parties shall strive to achieve consensus on any proposed amendments.~~

Article 12: Data Collection, Monitoring ~~And~~ Evaluation

[Note: Article 12 (1) items in paragraphs (a) – (g) and article 13 (4) (a)- (j) to be moved to appropriate annexes]

1. The Contracting Parties shall carry out monitoring and evaluation programmes and activities, if necessary in co-operation or consultation with competent regional and international organizations in accordance with Annex D to this Protocol.~~order to:–~~

- ~~(a) Collect data on the conditions and features of the coastal and marine environment of the Protocol Area as regards its physical, biological and chemical characteristics;~~
- ~~(b) Collect data and prepare and regularly maintain an inventory of inputs of priority substances and activities listed in **Annex** from land based activities and sources including information on the distribution of activities and sources and the quantities of such substances introduced into the coastal and marine environment of the Protocol Area;~~
- ~~(c) Systematically assess the levels of pollution or other degradation within their internal and territorial waters, in particular with regard to the substances that may have a potential significant impact on the coastal and marine environment and to periodically report in this respect to the Organization;~~
- ~~(d) Systematically assess the state of the coastal and marine environment of the Protocol Area;~~
- ~~(e) Evaluate the effectiveness of action plans, programmes, authorisations, measures and activities adopted and implemented under this Protocol to prevent, reduce, control, mitigate or eliminate to the maximum extent possible, pollution or degradation of the coastal and marine environment from land-based activities and sources;~~
- ~~(f) Develop measurable indicators to assess the effectiveness of the measures under sub-paragraphs (c), (d), and (e) above;~~
- ~~(g) Evaluate the effectiveness of any other measures taken under this Protocol to meet the various environmental objectives set out.~~

2. The Contracting Parties shall co-operate and collaborate ~~jointly or collectively and~~ if necessary with competent regional, sub-regional and international organizations, to establish comparable national monitoring and analytical quality control programmes,~~as well as analytical quality control programmes and~~ to promote data storage, retrieval and exchange ~~as may be elaborated in **Annex** to this Protocol.~~

3. Each ~~of the~~ Contracting Parties shall establish or designate a national focal institution to ~~lead and~~ coordinate data collection, monitoring and evaluation programmes and activities under this Article and, consistent with Article 14 of the Convention, to form the nucleus of a regional network of national research centres and institutes. The nucleus of the regional network of national research centres and institutes shall assist in setting standards for data collection, monitoring, evaluation and information exchange to help in monitoring and setting standards and in ensuring compatible results. [Note: the functions and responsibilities under this Protocol lies with the contracting and others can only assist in implementing their work]

Article 13: Environmental Impact Assessment and Audit

1. ~~The Each~~ Contracting Parties shall establish by law or other binding procedure, requirements for environmental impact assessments or and evaluations on the possible direct, or indirect, immediate, or long-term, environmental impact, including the cumulative or and transboundary impact, impact of the activities, programmes and projects eesses being contemplated or planned or undertaken, as appropriate, that are likely to pollute or degrade the marine and coastal environment of the Protocol Area;

2. In addition to paragraph 1 of this Article, the Contracting Parties shall provide for, by law, regular and systematic environmental audits for on-going or existing development activities, programmes, and projects eesses with actual or potential polluting or degrading impact on the coastal and marine environment of the Protocol Area.

~~3. The Contracting Parties shall, in particular, require on priority basis an assessment or audit of the potential or actual environmental impacts during the planning and implementation stages of relevant development activities, programmes and projects within their territories, particularly in the coastal areas, which may cause significant risks of pollution or degradation from land-based activities and sources to the Protocol Area, and ensure that appropriate measures are taken to prevent, control, reduce, mitigate or eliminate to the maximum extent possible, such risks. [Note: article Paragraph has been merged and harmonised with paragraphs 1 and 2 of this article]~~

~~4.3.~~ The Contracting Parties shall may develop technical and other guidelines concerning the assessment or audit of the potential or actual environmental impacts of development activities, programmes and projects referred to in paragraph 1 and 2 of this Article, including the possible transboundary effects, and where feasible, ~~appropriate restorative measures.~~ The assessment or audit guidelines should, as appropriate, contain, *inter alia*, matters contained in Annex E to this Protocol. the following:—

~~(a) A description of the geographical location of the development activities, programmes and processes to be carried out;~~

- ~~(b) A description of the initial ecological state of the marine environment and the coastal area which may be affected by the development activities, programmes and processes;~~
- ~~(c) An indication of the nature, aims and scope of the development activities, programmes and processes;~~
- ~~(d) A description of the methods, installations and other means to be used or being used;~~
- ~~(e) A description of the foreseeable direct and indirect long term and short term effects of the activities on the coastal and marine environment, including biological diversity and the ecological balance;~~
- ~~(f) A statement setting out the measures proposed to reduce or mitigate to the minimum the risk of pollution or degradation by carrying out the development activities, programmes and processes and, in addition, possible process and pollution abatement alternatives to such measures, including restorative measures where feasible;~~
- ~~(g) An indication of the measures to be taken, or being taken, for the protection or restoration of the coastal and marine environment from pollution and degradation during and, as appropriate, at the end of the development activities, programmes and processes;~~
- ~~(h) Definition of commitments to ongoing environmental management and monitoring;~~
- ~~(i) Cost benefit analysis as appropriate; and~~
- ~~(j) A brief summary of the assessment or audit as appropriate.~~

4. Where the development activities, programmes or and projects planned contemplated under this Article have trans-boundary effects, the Contracting Parties may seek assistance of the Organization.

~~6. The implementation of the development activities, programmes, and projects referred to in paragraph 1 above should be made subject to prior written authorization from the competent national authorities which take fully into account the findings of the environmental impact assessment or audit as appropriate. [Note: paragraph covered and harmonised under aArticle 4 (2) (C)]~~

~~The Contracting Parties shall co-operate with the Organization, consistently with Articles 16 and 17 below, and in accordance with Article 23 of the Convention, to develop procedures for the dissemination to all Contracting Parties of the reports on the results of environmental assessments or audits with a view to enabling the Contracting Parties which may be affected by the environmental impacts of the development activities,~~

~~programmes and projects to consult with the Contracting Party concerned. [Note: paragraph moved into annex E]~~

~~5.~~

Article 14: Scientific ~~Andand~~ Technological Co-Operation, Technical Assistance ~~Andand~~ Capacity Building

1. ~~The Each~~ Contracting Parties shall, in conformity with Article 7 of the Convention, co-operate in scientific and technological fields related to pollution from land-based ~~sources and~~ activities ~~and sources~~, particularly research on inputs, pathways and effects of pollutants and on the development of new methods for their treatment, reduction or elimination. To this end, the Contracting Parties shall, in particular, endeavour to:

~~(a) e~~Exchange scientific and technical information;

~~(b) c~~Co-ordinate their research programmes of common nature; and

~~(c) d~~Develop relevant scientific and technical capacities.

2. ~~Each The~~ Contracting Parties shall, directly or with the assistance of the Organization or ~~other~~ competent regional and international organizations, co-operate with a view to formulate and implement programmes of assistance, particularly in the fields of ~~training of scientific and technical personnel, acquisition, utilization, maintenance and production of appropriate equipment and facilities~~ science, education and technology for the ~~purpose of~~ prevention, reduction, mitigation or elimination, to the maximum extent possible, of pollution and degradation from land-based ~~sources and~~ activities ~~and sources~~.

~~3. Technical assistance shall include, in particular, the training of scientific and technical personnel, as well as the acquisition, utilization, maintenance and production of appropriate equipment and facilities. [Note: merged with para 2 of this article]~~

~~The Contracting Parties shall, directly or with the assistance of the Organization or competent regional and international organizations, undertake capacity building programmes and initiatives, including the training and empowerment of scientific and technical personnel through international, regional and sub regional cooperation and inter institutional collaborations. [Note: merged and harmonised with para 2 of this article]~~

Article 15: Public Participation, Educational ~~Andand~~ Awareness Programmes

1. The Contracting Parties shall, ~~in accordance with their respective national laws and regulations~~, enhance, facilitate and promote ~~timely~~ public access to the widest possible extent, to relevant information and documentation concerning pollution and degradation of the Protocol Area from land-based ~~sources and~~ activities ~~and sources~~, as well as the opportunity for public participation in decision-making processes concerning the implementation of this Protocol.

2. Each Contracting Party shall provide effective access to judicial and administrative proceedings, including redress and remedy, for members of the public who are aggrieved by failure to allow them access information or participate in the decision making process provided for under paragraph (1) above. [Note: text provided by Kenya]

3. Each The Contracting Parties shall develop and implement ~~individually and collectively~~, and if ~~necessary~~ be in co-operation with other Contracting Parties, competent regional and international organizations, programmes and activities on environmental education and awareness for the public concerning or related to the need to prevent, reduce, control, mitigate or eliminate to the maximum extent possible pollution and degradation of the Protocol Area from land-based sources and activities ~~and sources~~, and shall to this end promote the training of individuals, the development of awareness materials in the most appropriate manner ~~different formats and languages of the contracting parties, and outreach campaigns.~~

4. Each The Contracting Parties shall encourage the participation of local communities and civil society in the processes of making adopting decisions that affect the marine and coastal environment or human livelihoods.

5. The Contracting Parties shall make available to ~~civil society and~~ local communities and civil society information on the status of the marine and coastal ~~and marine~~ environment of the Protocol Area, on the measures adopted or about to be adopted to prevent, control, reduce, mitigate and remedy adverse effects and the effectiveness of such measures.

or

5Bis The Contracting Parties shall make information on the status of marine and coastal environment of the Protocol Area available to ~~civil society and~~ local communities and civil society including measures adopted or about to be adopted to prevent, control, reduce, mitigate and remedy adverse effects and the effectiveness of such measures. [Note: Alternative text provided by group 3, Cape Town.]

Article 16: Reporting, Exchange ~~Of~~ ~~And~~ Access ~~To~~ Information

1. Each The Contracting Parties shall, in accordance with Article 23 of the Convention, submit regular reports to the Organization containing information or measures adopted, results obtained and any difficulties experienced in the implementation of this Protocol.

2. The ~~meeting of the~~ Contracting Parties at their regular meetings shall determine the nature of the information to be included and the collection, presentation and timing of these reports which shall be made available to the public with the exception of information deemed or classified as confidential in terms of paragraph 4 below. The Organization shall circulate the reports received under this paragraph to all Contracting Parties.

~~2.3.~~ The reports contemplated under paragraph 1 ~~above of this Article~~ shall include the data and information described under Article 12 ~~and Annex D of this Protocol above~~, and particularly:-

- (i) ~~d~~Data on the quantities of priority substances discharged from their territories;
- (ii) ~~d~~Data resulting from monitoring activities and programmes under this Protocol;
- (iii) ~~d~~Data on the authorisations, permissions and environmental assessments, evaluation and audits under this Protocol, as applicable;
- (iv) ~~i~~Information on legal and regulatory measures, action plans, programmes and other steps taken for the implementation of ~~thise~~ Protocol and other recommendations or actions adopted ~~there under~~there under;
- (v) ~~i~~Information on results achieved in the prevention, control, reduction or elimination as appropriate of any hot-spots in the territory of the respective Contracting Party;
- ~~1.(vi)~~1.(vi) ~~i~~Information on priority substances and activities ~~or substances~~ altering, or destroying the coastline, habitats within the marine and coastal ~~and marine~~ areas and related watersheds; and
- ~~2.(vii)~~ 2.(vii) ~~i~~Information on general results achieved and, if the case arises, difficulties encountered in the implementation of this Protocol.

~~3.4.~~ The Organization shall, on the basis of the information and reports provided by the Contracting Parties as described in paragraphs 1 and 2 above, prepare and disseminate periodic regional reports on the general implementation of this Protocol, including on the state of the marine and coastal ~~and marine~~ environment of the Protocol Area, noting to include, in this regard, baseline data from the most current and updated assessments.

~~4.5.~~ Where a Contracting Party designates a report, data or information as confidential, the same shall be used ~~ful~~ in such a manner as to ensure its confidentiality. Nothing in this Protocol shall require a Contracting Party to provide supply information the disclosure of which is contrary to the essential interests of its security.

~~5.6.~~ ~~Each The~~ Contracting Parties shall directly or through the Organization, regularly exchange information and develop systems and networks for the exchange of information to facilitate the implementation of this Protocol ~~and, for this purpose, the use of electronic and web-based formats shall be encouraged.~~

~~6.7.~~ Each Contracting Party ~~shall in accordance with its national laws and regulations shall~~ -facilitate public access to ~~the~~ information concerning conditions of the marine and

coastal ~~and marine~~ environment of the Protocol Area, measures undertaken or planned to be undertaken to prevent, control, reduce, mitigate or eliminate pollution and degradation, to the maximum extent possible, taking into account provisions of existing regional and international agreements concerning public access to environmental information.

PART IV: Institutional ~~And~~ Financial Arrangements

Article 17: Secretariat ~~And~~ Coordination Mechanisms

The Contracting Parties shall, consistent with Article 16 of the Convention, designate the Organization to carry out the following secretariat functions, *inter alia*: -

- (a) ~~c~~Convene and service meetings of the Contracting Parties;
- (b) ~~a~~Assist in raising funds for the implementation of this Protocol;
- (c) ~~p~~Provide such guidance and assistance to national focal points, national focal institutions or research institutions, any committee, group or taskforce established under this Protocol or by the Contracting Parties;
- (d) ~~f~~Formulate draft procedures and mechanisms necessary to assess and promote compliance with and enforcement of the Protocol under Article 10 of this Protocol, for consideration by the Contracting Parties;
- (e) ~~f~~Formulate draft recommendations or common guidelines, standards and criteria under Article 11 of this Protocol for consideration by the Contracting Parties;
- (f) ~~p~~Provide appropriate assistance as may be identified by the Contracting Parties to facilitate ~~the~~:—
 - (i) ~~the~~—development and implementation of the plans, programmes and measures necessary to achieve the objective of this Protocol, including the development of procedures and mechanisms for compliance and enforcement;
 - (ii) ~~the~~—development of incentive programmes to encourage the Contracting Parties to implement this Protocol;
 - (iii) ~~the~~—development of information systems and networks for the exchange of information for the purposes of facilitating the implementation of this Protocol; and
 - (iv) ~~the~~—development and implementation of environmental education, training and public awareness and participation under this Protocol.

- (g) ~~p~~Prepare common formats as directed by the Contracting Parties to be used as a basis for reports and other communication to the Organization;
- (h) ~~e~~Establish, maintain and up-date databases on national, sub-regional and regional measures adopted for the implementation of this Protocol, including any other pertinent information;
- (i) ~~c~~Compile and make available to the Contracting Parties and other relevant parties reports and studies which may be required for the implementation of this Protocol or upon request by the Contracting Parties;
- (j) ~~p~~Prepare for the meetings of Contracting Parties regular reports which shall include a draft budget for the forthcoming annual, bi-annual or other period as well as an audited revenue and expenditure statement for the preceding annual, bi-annual or other period as may be agreed by the meetings of the Contracting Parties;
- (k) ~~e~~Enter into any administrative and financial arrangements as may be required for the effective discharge of the Secretariat functions;
- (l) ~~a~~Assist ~~the~~ Contracting Parties, in co-operation with competent regional and international, inter-governmental and non-governmental organizations, to establish and manage programmes and activities on the prevention, control, reduction, mitigation or elimination to the maximum extent possible of pollution and degradation from land-based sources and activities ~~and sources~~ in the Protocol Area; and in this regard conduct programmes of technical, scientific and management research; prepare management plans and develop co-operative educational and training materials designed for various groups;
- (m) ~~c~~Convene, co-ordinate and/or organize the meetings of the National Focal Points and provide them with Secretariat facilitation and services;
- (n) ~~c~~Co-operate with regional, international, inter-governmental and non-governmental organizations concerned with the prevention, control, reduction, mitigation or elimination of pollution and degradation of the marine and coastal ~~and marine~~ environment of the Protocol Area from land-based sources and activities ~~and sources~~: provided that the specificity of each organization and the need to avoid the duplication of activities and roles are respected;
- (o) ~~p~~Perform all other functions as specified under Article 16 paragraph (1) and Article 17 of the Convention; and
- (p) Carry out any other functions assigned to it by the Contracting Parties.

Article 18: Meetings ~~Of~~ ~~The~~ Parties

1. Ordinary meetings of the Contracting Parties to this Protocol shall be held in conjunction with ordinary meetings of the Contracting Parties to the Convention held pursuant to Article 17 of the Convention. The Contracting Parties to this Protocol may also hold extra-ordinary meetings provided for in Article 17 paragraph (3) of the Convention.

2. It shall be the function of the meetings of the Contracting Parties to this Protocol, in particular: -

~~2.~~(a) to consider the efficacy of the measures adopted and to examine the need for other measures, in particular, in the form of **aAnnexes** in conformity with the provisions of Article 20 of the Convention;

~~3.~~(b) to adopt, review and amend as required any **Annex** in accordance with Article 22 to this Protocol;

~~4.~~(c) to consider the recommendations of meetings of National Focal Points established under Article 20 of this Protocol;

~~5.~~(d) to consider, as appropriate, information transmitted by the Contracting Parties to this Protocol to the Organization under Article 23 of the Convention; and

~~6.~~(e) to perform all other functions or exercise such powers as specified under Article 17 paragraph (1) of the Convention as appropriate.

Article 19: National Focal Points

Each Contracting Party shall designate National Focal Point(s), consistent with those for the Convention, to serve as liaison with the Organization on the technical and scientific, as well as legal, aspects of the implementation of this Protocol. The National Focal Points shall communicate regularly and meet periodically to carry out the functions deriving from this Protocol.

Article ~~RTICLE~~ 20: Financial Arrangements **INANCIAL ARRANGEMENTS**

1. ~~Each The~~ Contracting Parties ~~shall as far as possible and,~~ taking into account ~~its~~~~their~~ capabilities, and in accordance with ~~its~~~~their~~ obligations under Article 21 of the Convention, ~~shall as far as possible~~ ensure that adequate or substantial financial resources are available for the formulation, coordination and implementation of programmes, projects, measures and activities necessary to achieve the objectives of this Protocol, including the operating budget of the Secretariat. ~~These~~ financial resources may include voluntary contributions for the achievement of specific objectives of this Protocol made by the Contracting Parties, other governments and government agencies, international organizations, non-governmental organizations, the private sector and individuals.

2. In particular, the Contracting Parties shall: -

~~a.~~(a) ~~p~~Promote and facilitate the mobilisation of substantial financial resources, including national budgetary allocations, and grants and concessional loans from bilateral and multi-lateral funding sources and mechanisms;

~~b.~~(b) ~~c~~Commit and raise sufficient domestic and external financial resources on the basis of both assessed and voluntary contributions, grants, donations and loans; and

~~e.~~(c) ~~e~~Explore innovative methods and incentives for mobilising and channelling resources, including those of foundations, non-governmental organizations and other private sector entities.

3. In addition to the financial contributions by the Contracting Parties, the Organization may, in response to a request from any or all the Contracting Parties or on its own motion, seek additional funds or other forms of assistance for activities related to this Protocol; these funds may include voluntary contributions for the achievement of specific objectives of this Protocol made by the Contracting Parties, other governments and government agencies, international organizations, non-governmental organizations, private sector entities and individuals.

4. Each Contracting Party shall endeavour to prioritise, for funding purposes, national policies and strategies, plans, programmes, measures and activities related to this Protocol.

PART V: Final Provisions

Article 21: Annexes

1. The provisions as to establishment and status, relationship to the Protocol, and amendment of **Annexes** set out in Article 20 of the Convention apply *mutatis mutandis* to **Annexes** to this Protocol.

2. The Contracting Parties may also, in an evolutionary and progressive manner, develop such additional annexes as they deem appropriate and the provisions of Article 20 of the Convention shall apply *mutatis mutandis*.

Article 22: Settlement of ~~D~~isputes

The provisions of Article 24 of the Convention regarding the settlement of disputes shall apply *mutatis mutandis* to this Protocol.

Article 23: Relationship ~~Between~~between ~~t~~This Protocol ~~a~~And ~~t~~The Convention

1. The provisions of the Convention relating to its Protocols shall apply with respect to this Protocol.
2. The rules of procedure and the financial rules adopted pursuant to Article 21 of the Convention shall apply to this Protocol, unless the Contracting Parties to this Protocol agree otherwise.

Article 24: Relationship ~~Between~~ This Protocol, Domestic Legislation ~~a~~ And Third Parties

1. The provisions of this Protocol shall not affect the right of the Contracting Parties to enact relevant ~~stricter~~ domestic legislation or measures for the better implementation of this Protocol.
2. The Contracting Parties may invite non-States Parties to this Protocol, regional and international, inter-governmental and non-governmental organizations to co-operate in the implementation of this Protocol.
3. The Contracting Parties shall adopt appropriate measures, consistent with international law, to ensure that no one engages in any activity which is inconsistent with, contrary or prejudicial, to the objectives, principles or purposes of this Protocol.

Article 25: Sovereignty Claims ~~And~~ 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 state relating to the law of the sea, in particular, the 1982 United Nations Law of the Sea Convention, concerning the nature and the extent of marine areas, the delimitation of marine areas between states with opposite or adjacent coasts, freedom of navigation on the high seas, the right and the 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 jurisdiction of the coastal state, island or archipelagic states, the flag states and the port states.
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.

Article 26: Signature, Ratification, Accession, Amendments, Depository ~~And~~ Entry ~~Into~~ Force

1. The provisions of the Convention as to signature, ratification, accession, acceptance, approval, amendments, review, depositary and entry into force shall apply *mutatis mutandis* to this Protocol.

2. This Protocol shall be open for signature at [NAIROBI]’ ~~[OR WHEREVER]~~ from..... to.....(~~dates to be supplied~~) by any Contracting State Party to the Convention.

3. This Protocol shall be open for accession by any non-Contracting State Party to the Convention or organizations contemplated by Article 26 of the Convention, and in accordance with the provisions of Article 28 of the Convention, ~~—P~~provided that such acceding Sstate or organization has been duly invited by the Organization upon prior approval by ~~all~~ the Contracting Parties.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

DONE AT [NAIROBI] ~~(OR WHEREVER)~~ this..... day ofin a single copy of the English and French languages, the two texts being equally authentic.

*******END*******

Annex A

ANNEX ON BEST AVAILABLE TECHNIQUES AND BEST ENVIRONMENTAL PRACTICE

In accordance with ~~a~~Article 5 (1) of the Protocol, the Contracting Parties shall utilise or promote the application of the following Best Available Techniques (BAT) and Best Environmental Practice (BEP)

A. *Best Available Techniques*

1. The use of the best available techniques shall emphasize the use of non-waste technology, if available.
2. In determining whether a set of processes, facilities and methods of operation constitute the best available techniques in general or ~~specific individual~~ cases, special consideration shall be given to:
 - (a) Comparable processes, facilities or methods of operation which have recently been successfully tried out;
 - (b) Technological advances and changes in scientific knowledge and understanding;
 - (c) The economic feasibility of such techniques;
 - (d) Time limits for installation in both new and existing plants;
 - (e) The nature and volume of the discharges and emissions concerned; and
 - (f) The precautionary principle.
3. If the reduction of ~~waste~~ discharges and emissions resulting from the use of best available techniques does not lead to environmentally acceptable results, additional measures ~~should have to~~ be applied.

B. *Best Environmental Practice*

1. In making a selection for individual cases, at least the following graduated range of measures should be considered: -
 - (a) The provision of information and education to the public and to users about the environmental consequences of choice of particular activities and choice of products, their use and ultimate disposal;

- (b) The development and application of Codes of Good Environmental Practice which cover all aspects of the activity in the product's life;
 - (c) The mandatory application of labels informing users of environmental risks related to a product, its use and ultimate disposal;
 - (d) Saving of resources, including energy;
 - (e) Making collection and disposal systems available to the public;
 - (f) Avoiding the use of hazardous substances or products and the generation of hazardous waste;
 - (g) Recycling, recovery and re-use;
 - (h) The application of economic instruments to activities, products or groups of products;
 - (i) Establishing a system of licensing, involving a range of restrictions or a ban.
2. In determining what combination of measures constitute best environmental practice, in general or individual cases, particular consideration should be given to: -
- (a) The environmental hazard of the product and its production, use and ultimate disposal;
 - (b) The substitution by less polluting activities or substances;
 - (c) The scale of use;
 - (d) The potential environmental benefit or penalty of substitute materials or activities;
 - (e) Advances and changes in scientific knowledge and understanding;
 - (f) Time limits for implementation;
 - (g) Social and economic implications; and
 - (h) Precautionary principle.

3. ~~It therefore follows that b~~Best environmental practice for a particular source will change with time in the light of technological advances, economic and social factors, as well as changes in scientific knowledge and understanding.
4. If the reduction of inputs resulting from the use of best environmental practice does not lead to environmentally acceptable results, additional measures have to be applied and best environmental practice redefined.

Annex B

CRITERIA FOR DESIGNATION, LISTING AND DE-LSTING OF –
hHOTSPOTS

(to be finalized under TOR for Scientific Annexes)

Annex C

PRIORITY SUBSTANCES AND ACTIVITIES

1. In accordance with Article 7, the Contracting Parties shall base measures contemplated in Articles 5.6.7 of this Protocol on the priority substances and activities listed below.
2. *Priorities for action shall be established by the Contracting Parties by assessing the relative importance of impacts upon public health, coastal and marine resources, ecosystem health and social and economic benefits, including cultural values.*

A. Categories of substances

3. In the preparation of action plans, programmes and measures, Contracting Parties shall use as guidance the following categories of substances identified on the basis of their hazardousness or otherwise harmful characteristics:
 - (a) Organohalogen compounds and substances that may form such compounds in the marine environment. Priority will be accorded to aldrin, chlordane, DDT, dieldrin, dioxins and furans, endrin, heptachlor, hexachlorobenzene, mirex, polychlorinated biphenyls and toxaphene;
 - (b) Organophosphorus compounds and substances that may form such compounds in the marine environment;
 - (c) Organometallic compounds and substances that may form such compounds in the marine environment;
 - (d) Polycyclic aromatic hydrocarbons;
 - (e) Heavy metals and their compounds;
 - (f) Used lubricating oils;
 - (g) Radioactive substances;
 - (h) Biocides and their derivatives;
 - (i) Pathogenic micro-organisms;
 - (j) Endocrine- disrupting substances;
 - (k) Crude oils and hydrocarbons of petroleum origin;
 - (l) Cyanides and fluorides;
 - (m) Non-biodegradable detergents and other non-biodegradable surface-active substances;
 - (n) Nitrogen and phosphorus compounds and other substances that may cause eutrophication;
 - (o) Litter (any persistent manufactured or processed solid material that is discarded, disposed of, or abandoned in the marine environment and coastal areas);
 - (p) Thermal emissions;
 - (q) Acid or alkaline compounds that may impair water quality;
 - (r) Non-toxic substances that have an adverse effect on the oxygen content of the marine environment;
 - (s) Non-toxic substances that may interfere with any legitimate use of the sea;

- (t) Non-toxic substances that may have adverse effects on the physical or chemical characteristics of seawater;
- (u) Other substances that may be assessed, including lindane, endosulfan, atrazine, organic tin compounds, organic mercury compounds, chlorinated paraffins and polybrominated diphenyl ethers;
- (v) Substances that are only moderately persistent but that have been continuously released in large quantities;
- (w) Any other substances regulated under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Bamako Convention on the ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, the Stockholm Convention on Persistent Organic Pollutants, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

C. Characteristics of substances

- 4. In the preparation of action plans, programmes and measures the Contracting Parties shall take into account, where relevant, the following characteristics and factors:
 - 1. Persistence;
 - 2. Toxicity or other noxious properties (e.g., carcinogenicity, mutagenicity or teratogenicity);
 - 3. Bioaccumulation;
 - 4. Radioactivity;
 - 5. Ratio between observed concentrations and no observed effect concentrations;
 - 6. Potential for causing eutrophication;
 - 7. Health effects and risks;
 - 8. Transboundary significance;
 - 9. Risk of undesirable changes in the marine ecosystem and irreversibility or durability of effects;
 - 10. Negative impacts on marine life and the sustainable use of living resources or another legitimate uses of the sea;
 - 11. Effects on the taste or smell of marine products intended for human consumption;
 - 12. Effects on the smell, colour, transparency or other characteristics of seawater; and
 - 13. Distribution pattern (i.e., quantities involved, use patterns and probability of reaching the marine environment).

C. Activities

- 5. The following activities and their associated facilities or components shall be considered when setting priorities for the preparation of action plans, programmes and measures:

- 1) Agriculture;
- 2) Animal husbandry;
- 3) Aquaculture and mariculture;
- 4) Automobile industry and automobile workshops activities;
- 5) Beverages industry;
- 6) Cement production;
- 7) Disposal of sewage;
- 8) Waste management activities;
- 9) Incineration of waste and management of its residues
- 10) Management of municipal solid waste;
- 11) Dredging;
- 12) Electric and electronics industry;
- 13) Energy production;
- 14) Fertilizer production;
- 15) Food processing;
- 16) Extraction of Forest products;
- 17) Paper and paper-pulp industry;
- 18) Wood and timber products industry;
- 19) Leather tanning industry;
- 20) Metal industry;
- 21) Mining including sand and gravel extraction;
- 22) Petroleum refining;
- 23) Oil exploration and exploitation;
- 24) Petroleum and gas pipelines;
- 25) Pharmaceutical industry;
- 26) Production and formulation of biocides;
- 27) Other sectors and activities of the inorganic and organic chemical industry;
- 28) Ports and harbour development and operations;
- 29) Recycling industry;
- 30) Rubber and plastic industry;
- 31) Shipbuilding and repairing industry;
- 32) Iron and steel industry;
- 33) Textile industry;
- 34) Tourism;
- 35) Transport;
- 36) Other works or activities that cause physical alteration of the natural state of the coastline or destruction of habitats;

Annex D

DATA COLLECTION, ~~m~~MONITORING AND EVALUATION

In accordance with ~~A~~article 12 of this Protocol, the Contracting parties shall carry out monitoring programmes and evaluation activities as follows:

- (a) Collect data on the conditions and features of the coastal and marine environment of the Protocol Area as regards its physical, biological and chemical characteristics;
- (b) Collect data and prepare and regularly maintain an inventory of inputs of priority substances and activities provided for in Article 7 and Annex C of this Protocol including information on the distribution of sources and activities and the quantities and qualities of such substances and activities introduced into the coastal and marine environment of the Protocol Area;
- (c) Systematically assess the levels of pollution or other degradation within their internal and territorial waters, in particular with regard to the substances that may have a potential significant impact on the ~~marine and~~ coastal ~~and marine~~ environment and, in this respect, periodically report to the Organization;
- (d) Systematically assess the state of the ~~marine and~~ coastal ~~and marine~~ environment of the Protocol Area;
- (e) Evaluate the effectiveness of action plans, programmes, authorisations, measures and activities adopted and implemented under this Protocol to prevent, reduce, control, mitigate or eliminate to the maximum extent possible, pollution or degradation of the coastal and marine environment from land-based sources and activities;
- (f) Develop measurable indicators to assess the effectiveness of the measures under paragraphs (c), (d), and (e) of this Annex; and
- (g) Evaluate the effectiveness of any other measures taken under this Protocol to meet the various environmental objectives set out.

Annex E

ENVIRONMENT IMPACT ASSESSMENTS, EVALUATION AND AUDIT GUIDELINES

1. In accordance with Article 13 of this protocol, the Contracting Parties shall develop technical and other guidelines concerning environmental impact assessments, evaluations and audits taking into account the following:
 - (a) A description of the geographical location of the development activities, programmes and processes to be carried out;
 - (b) A description of the initial ecological state of the marine environment and the coastal area which may be affected by the development activities, programmes and processes;
 - (c) An indication of the nature, aims and scope of the development activities, programmes and projects;
 - (d) A description of the methods, installations and other means to be used or being used;
 - (e) A description of the foreseeable direct and indirect long-term and short-term effects of the activities on the marine and coastal environment, including biological diversity and the ecological balance;
 - (f) A statement setting out the measures proposed to reduce or mitigate to the minimum the risk of pollution or degradation as a result of development activities, programmes and projects and, in addition, possible process and pollution and degradation abatement alternatives, including restorative measures, where feasible;
 - (g) An indication of the measures to be taken, or being taken, for the protection or restoration of the marine and coastal environment from pollution and degradation during and throughout the life cycle of the development activities, programmes and projects;
 - (h) Definition of commitments to ongoing environmental management and monitoring;
 - (i) Cost-benefit analysis as appropriate; and
 - (j) A brief summary of the environmental assessment, evaluation or audit, as appropriate.
2. Each Contracting Party shall exchange data and information to or with all Contracting Parties of the reports on the results of environmental assessments, evaluation or audits with a view to enabling the Contracting Party or Parties which

| may be affected by the environmental impacts of the development activities, programmes and projects to consult with the Contracting Party concerned.