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FOURTH MEETING OF THE CONTRACTING PARTIES  
TO THE CONVENTION FOR THE PROTECTION,  
MANAGEMENT AND DEVELOPMENT OF THE  
MARINE AND COASTAL ENVIRONMENT  
OF THE EASTERN AFRICAN REGION  
Antananarivo, Madagascar, 6-8 July 2004

**NAIROBI CONVENTION**

**DRAFT NOTICE OF MOTION FOR COP 5 (SEPTEMBER 2007), CAPE TOWN SOUTH AFRICA**  
*(Akunga revised draft of 8th May 2007)*

## **A. THE MOTION**

Notice is hereby given under the provisions of the Nairobi Convention Article 19 that the 5<sup>th</sup> Conference of Parties of the Nairobi Convention shall be moved to convene a Conference of Plenipotentiaries to make the following amendments to the Nairobi Convention: -

1. **Preamble:** Additional paragraphs to recognize new developments in coastal and marine environmental law since the Convention was adopted in 1985.
2. **Article 1 and Title:** to widen the geographical coverage of the Convention to include the Republic of South Africa.
3. **Article 2: Definitions:** to better define the “Convention Area” and “pollution”.
4. **Article 3: General Provisions:** To take into account the provisions of the 1982 United Nations Convention on the Law of the Sea in the statement of general provisions.
5. **Article 4: General Obligations:** To include international environmental principles such as the precautionary principle, polluter pays principle and integrated coastal zone management in the statement of “general obligations”.

6. **Article 7: Pollution from Land –Based Sources.** To better define land-based sources and activities as a pollution category and to recognize applicable international rules and standards and recommended practices.
7. **Article 8 A:** A proposed new article concerning **“Pollution resulting from the Transboundary Movement of Hazardous Wastes and their Disposal”**.
8. **Article 10: Protected Areas:** To include new terminology, to wit, “biological diversity”, in lieu of “fauna and flora”.
9. **Article 13: Environmental Impact Assessment and Audit.** To better define the obligation and process of environmental impact assessment and environmental audit.
10. **Article 14: Scientific and Technical Co-operation.** To better define the scope of scientific research to include “coastal and marine research”, including physical and socio-economic aspects.
11. **Article 16: Institutional and Financial Arrangements:** To include “financial arrangements” as part of secretarial functions.

The proposed texts for the above amendments are in annex below.

## (C). Annex Text of Proposed Amendments

### Title:

DRAFT REVISED  
 CONVENTION FOR THE PROTECTION,  
 MANAGEMENT AND DEVELOPMENT  
 OF THE MARINE AND COASTAL ENVIRONMENT  
 OF THE EASTERN **AND SOUTHERN** AFRICAN REGION.

### Preamble

## The Contracting Parties,

Fully aware of the economic and social value of the marine and coastal environment of the Eastern African region;

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

*Recognizing* the special hydrographical 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 environmental management;

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

**Taking into account the relevant provisions of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10<sup>th</sup> December 1982, which entered into force in November 1994;**

**“Recognizing further the validity and the relevance of decisions adopted at the 1992 United Nations Conference on Environment and Development, particularly chapter 17 of Agenda 21, the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change, and other international environmental Conventions;**

**Recognizing further the Jakarta Mandate on Marine and Coastal Biodiversity born out of the second meeting of the Conference of the Parties to the Convention on Biological Diversity, held on 14 and 15 November 1995 in Jakarta, Indonesia;**

*Recognizing further* the desirability of promoting the wider acceptance and national implementation of existing international environmental agreements;

**Noting the role of non- governmental organizations and other major groups in the promotion of sound environmental management;**

**Conscious of the need to adopt integrated policies and practices of sustainable coastal zone management to improve the quality of life of our people;**

*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 African 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 African Region adopted at Nairobi on 21 June 1985.

Have agreed as follows,

(Option 1)

#### ARTICLE 1 : GEOGRAPHICAL COVERAGE

1. This Convention shall apply to the Eastern **and Southern** African region, hereinafter referred to as “the Convention area” as defined in paragraph (a) of article 2.
2. 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) The “Convention area” **shall comprise the riparian**, marine and coastal environment **including the water shed** of that part of the Western Indian Ocean also covering the Eastern **and Southern** African region and falling within the jurisdiction of the Contracting Parties to this Convention. The extent of the **watershed and 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 **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;
- (c) “Organization” means the body designated as responsible for carrying out secretariat functions pursuant to article 16 of this Convention.

## (Option 2)

ARTICLE 1

(a) This Convention shall apply to Western Indian Ocean covering the Eastern **and Southern** African region, hereinafter referred to as “the Convention area” as defined in paragraph (a) of article 2.

**(b) The application of the Convention may be extended to coastal and inland areas as defined by each contracting party within its own territory.**

**(c) Any protocol to this Convention may extend the geographical coverage to which that particular protocol applies.**

(d) 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 3: GENERAL PROVISIONS

1. The Contracting Parties may enter into bilateral or multilateral agreements, including regional or sub-regional 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 **and, in particular, the United Nations Convention on the Law of the Sea (1982).**

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.

**4. Nothing in this Convention and its protocols shall affect the sovereign immunity of warships owned or operated by a State while engaged in government non-commercial service. Nonetheless, each Contracting Party shall ensure that its vessels and aircraft, entitled to sovereign immunity under international law, act in a manner consistent with this Convention.**

## 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 environment 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 co-operate in the formulation and adoption of protocols to facilitate the effective implementation of this Convention.

3. The Contracting Parties shall take all appropriate measures conformity with international law for the effective discharge of the obligations prescribed in this Convention and its protocols and shall endeavor to harmonize their policies **and laws** in this regard.
4. The Contracting Parties shall co-operate with the competent international, regional and sub-regional 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 each of such measures does not cause pollution of the marine environment outside the Convention area, **and in this regard shall endeavor to apply relevant environmental principles, including, but not limited to: the precautionary principle; the polluter pays principle; and the promotion of integrated coastal zone management.**

#### **ARTICLE 7: POLLUTION FROM LAND-BASED SOURCES**

The Contracting Parties shall endeavor to take all appropriate measures to prevent, reduce and combat pollution of the Convention area **from land-based activities and sources** caused by coastal disposal or by discharges emanating from rivers, estuaries, coastal establishments, outfall structures, or any other sources within their territories. **In taking measures contracting parties may take into account applicable international rules and standards and recommended practices.**

#### **ARTICLE 8A: POLLUTION RESULTING FROM THE TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTES AND THEIR DISPOSAL**

**The Contracting parties shall take all appropriate measures to prevent, abate and, to the fullest possible extent, eliminate pollution of the environment which can be caused by transboundary movement and disposal of hazardous wastes, and to reduce to a minimum and, if possible, eliminate such transboundary movements.**

#### **ARTICLE 10: PROTECTED AREAS.**

1. The Contracting Parties shall, individually or jointly, take appropriate measures to protect and preserve rare or fragile ecosystems as well as rare, depleted, threatened or endangered species of **biological diversity** 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 any activity likely to have adverse effects on the species, ecosystems or biological processes that such areas are established to protect.

2. Such protected areas shall be established, inter alia, in order to safeguard:

- (a) The ecological and biological processes essential to the functioning of the Eastern Africa region;
- (b) Representative samples of all types of ecosystems of the Eastern African Region;
- (c) Populations of the greatest possible number of species of fauna and flora depending on these ecosystems;
- (d) Areas having particular importance by reason of their scientific, aesthetic, cultural or educational purposes.

3. In establishing protected areas, the Contracting Parties shall take into

account, inter alia, their importance as:

- (a) Natural habitats, and in particular as critical habitats, for species of fauna and flora, especially those which are rare, threatened or endemic;
- (b) Migration routes or as wintering, staging, feeding or moulting sites for migratory species;
- (c) Areas necessary for the maintenance of stocks of economically important marine species;
- (d) Reserves of genetic resources;
- (e) Rare or fragile ecosystems;
- (f) Areas of interest for scientific research and monitoring.

4. 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 13: ENVIRONMENTAL IMPACT ASSESSMENT( See alternative text below,13a)**

1. As part of their environmental management policies, the Contracting Parties shall, in co-operation 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 impacts 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 13a: ENVIRONMENTAL IMPACT ASSESSMENT AND AUDIT**

1The Contracting Parties shall establish by law or other binding procedure, impact assessments, strategic environmental assessments (SEA) and evaluations on the possible direct or indirect, immediate or long-term, environmental impact, including the cumulative and transboundary impact of the activities, programmes and processes being contemplated or planned.

2.In addition, the Contracting Parties shall provide for, by law, regular and systematic environmental audits for on-going or existing development activities, programmes, and processes

with actual or potential polluting or degrading impact on the coastal and marine environment of the Protocol Area.

**3. Without prejudice to the generality of the foregoing, the Contracting Parties shall 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 various activities and sources to the Protocol Area, in order to ensure that appropriate measures are taken to prevent, control, reduce, mitigate or eliminate to the maximum extent possible, such risks.**

**4. The Contracting Parties may, with the assistance of the Organization, 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, including possible transboundary effects, and where feasible, appropriate restorative measures.**

#### **(NEW) ARTICLE 13b: COMPLIANCE AND ENFORCEMENT**

**1. Each contracting party shall take all measures at its disposal, and in accordance with its capacities, and consistent with its obligations and prevailing international law, to enforce and comply with this Convention.**

**2. Each contracting party shall take all appropriate measures in accordance with international law to prevent and if necessary punish acts contrary to the provisions of this Convention.**

**3. The meeting of contracting parties shall as soon as possible, but not later than two years from the date of entry into force of this Convention, establish and adopt procedures and mechanisms necessary to assess and promote compliance with and enforcement of this Convention, including mechanisms for open exchange of information between the parties.**

**The contracting parties commit themselves to offer advice, assistance or co-operating among themselves or with non-contracting parties and relevant international, regional and sub-regional organizations in a spirit of mutual interest so as to enhance compliance with and enforcement of this Convention.**

#### **ARTICLE 14: SCIENTIFIC AND TECHNICAL CO-OPERATION**

1. The Contracting Parties shall co-operate, 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 co-ordinate their **marine and coastal** research and monitoring programmes **to include, inter, alia biophysical and socio-economic aspects** in the Convention area. **The Contracting Parties** shall establish, in co-operation 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 endeavor to participate in international arrangements for research and monitoring g outside the Convention area.

3. The Contracting Parties shall co-operate, 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.

4. The Contracting Parties shall encourage the coordination activities carried out under this Convention and other relevant international and local Conventions and/or agreements, particularly the United Nations Framework Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, in order to derive maximum benefit from activities under each Convention while avoiding duplication of effort.

#### **ARTICLE 16: INSTITUTIONAL AND FINANCIAL 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 the information received in accordance with articles 3,11,13 and 23;
  - (c) to perform the functions assigned to it by 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 its protocols;
  - (e) to coordinate the implementation of co-operative activities agreed upon by the meetings of Contracting Parties;
  - (f) to ensure the necessary co-ordination with other regional and international bodies that the contracting Parties consider competent; and
  - (g) to enter into such administrative **and financial** arrangements as may be required for the effective discharge of the secretariat functions.
2. Each Contracting Party shall designate an appropriate authority to serve as the channel of communication with the Organization for the purposes of this Convention and its protocols.