



United Nations
Environment
Programme

Distr.: General
12 June 2009

Original: English



**Final Negotiations Meeting on the Revised Text of the
Convention for the Protection, Management and
Development of the Coastal and Marine
Environment in Eastern and Southern Africa Region**

Mombasa, Kenya, 9-12 June 2009

**REPORT OF THE FINAL NEGOTIATIONS MEETING ON THE TEXT OF THE CONVENTION
FOR THE PROTECTION, MANAGEMENT AND DEVELOPMENT OF THE MARINE AND
COASTAL ENVIRONMENT IN EASTERN AND SOUTHERN AFRICA REGION**

1. Introduction

1.1 The final negotiations meeting on the revised text of the Convention for the Protection, Management and Development of the Coastal and Marine Environment in Eastern Africa Region was held at Whitesands Hotel, Mombasa, Kenya on 9th- 10th- 11th June 2009. The meeting was convened by the Secretariat for the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern Africa Region (Nairobi Convention) and hosted by the Government of Kenya.

1.2 The final negotiation meeting on the revised text of the Nairobi Convention was held in response to decisions reached during the 4th Regional Meeting of the Legal and Technical Review Task Force held in Cape Town, South Africa in November 2008. During the Cape Town meeting, the Nairobi Convention Secretariat was requested to organize a follow-up and final negotiation meeting on the revised text of the Nairobi Convention.

1.3 The meeting is also in response to the Conference of Contracting Parties decision CP 5/4 on the Revision of the Nairobi Convention and related Protocols, adopted during the fifth Conference of Contracting Parties to the Nairobi Convention (COP-5), held in Johannesburg, South Africa in November 2007.

1.4 The revised text of the Nairobi Convention has undergone review by the Legal and Technical Experts Regional Task Force consisting of legal and technical experts nominated by the Contracting Parties to the Nairobi Convention during the Cape Town meeting.

1.5 In accordance with the decision CP5/4 of COP-5, this meeting was convened with the goal of adopting the final text of the amended Nairobi Convention. The amended text of the Nairobi Convention will subsequently be submitted for adoption by the Contracting Parties during the 6th Conference of Contracting Parties (COP-6) scheduled to be held in Mauritius in November 2009.

1.6 The meeting was attended by all the accredited delegates in countries that are Contracting Parties to the Nairobi Convention. These include Seychelles, Comoros, Mauritius, France-Reunion,, South Africa,

Mozambique, Tanzania and Kenya. In addition to the Contracting Parties, in attendance were also representatives of various organizations that are partners to the Nairobi Convention. The list of participants is provided in Annex I of this report. In accordance with rule 15/16 of the Rules of Procedure of the Convention, the Officers of the Secretariat received and examined letters of accreditation of the representatives of the Contracting Parties that attended the negotiations meeting.

2. Opening of the meeting and welcome remarks

2.1 A representative of the Secretariat (Dr. Johnson U. Kitheka, Project Officer, UNEP WIO-LaB Project) called the meeting to order at 9.00 am on Tuesday 9th June 2009 and invited the Director of the Kenya Marine and Fisheries Research Institute (KMFRI), representative of UNEP/Nairobi Convention Secretariat and the Permanent Secretary in the Ministry of Fisheries Development in Kenya, to make some welcome remarks. Thereafter, the Assistant Minister of Fisheries Development read an official speech during the opening ceremony. The following are summaries of speeches that were made:

2.2 Dr. Johnson M. Kazungu, the Director of Kenya Marine and Fisheries Research Institute (KMFRI) which was the host institution of the LBSA Protocol negotiation meeting, welcomed delegates to Mombasa, Kenya and thanked UNEP for giving KMFRI the opportunity to host the meeting on behalf of the Republic of Kenya. Recognising that the meeting was attended by senior government officials from participating countries, he noted that it would yield important outputs that will benefit the Western Indian Ocean region.

2.3 Mr. Dixon Waruinge, the Programme Officer responsible for the Nairobi Convention Secretariat based at UNEP headquarters in Nairobi, Kenya, expressed profound gratitude to the Government of Kenya and in particular Kenya Marine and Fisheries Research Institute (KMFRI) for hosting the meeting in Mombasa on behalf of the Republic of Kenya. He also thanked the delegates for finding time to come to the meeting noting that this was a clear demonstration of the commitment of governments on matters related to the protection of the coastal and marine environment in Eastern and Southern Africa.

2.4 Mr. Waruinge also took the opportunity to brief the meeting on the process for the formulation of the LBSA Protocol and revision of the text of Nairobi Convention noting that the same begun way back in 2005 with the support received from the Government of Norway, Global Environment Facility (GEF) and the United Nations Environment Programme (UNEP). He noted that the several regional meetings on the formulation of the Protocol and revision of the text of the Convention have since been held in various countries in the Western Indian Ocean region, notably, Madagascar in 2005, Kenya in 2006, Zanzibar - Tanzania in 2007, and South Africa in 2008.

2.5 The Permanent Secretary in the Ministry of Fisheries Development of the Republic of Kenya, Prof. Micheni Ntiba in his opening remarks, noted that the Western Indian Ocean region is a beneficiary of several large projects and urged the participating countries to start gauging the impacts of the projects, citing in particular the UNEP-GEF WIO-LaB Project, World Bank –GEF Southwest Indian Ocean Fisheries Project and the UNEP-GEF Agulhas and Somali Current Large Marine Ecosystems Project. He underscored the importance of applying science to create wealth among the people in the Western Indian Ocean region. He also urged participating countries to widely disseminate the information about the LBSA Protocol so that it is known even at grassroot level. Prof. Ntiba also took the opportunity to brief the meeting on the recently launched Oceans and Marine Fisheries policy for Kenya noting the same will contribute towards the protection and management of the coastal and marine environment.

2.6 Following the above official remarks, the final negotiation meeting on the text of the Protocol for the Protection of the Coastal and Marine Environment from Land-based Sources and Activities (LBSA) and draft Amended Nairobi Convention was officially opened by the Assistant Minister of Fisheries Development of the Republic of Kenya, Honourable Abu Chiaba, MGH, MP. In his official remarks, the Minister noted the meeting comes only a day after the marking of the World Oceans Day which also focused on the overall protection of the oceans and marine resources. He informed the meeting that Kenya's Ministry of Fisheries Development is directly concerned with the protection of Kenya's portion of the Western Indian Ocean and has created a Directorate that will address the issues of marine fisheries, both as an income generation activity and as a

conservation measure. The Minister also informed the delegates that global warming has a potential of decimating valuable parts of the Kenya coastline with huge impacts on the coastal ecosystems and communities. Following the above remarks, the Assistant Minister wished the delegates fruitful deliberations and thereafter declared the meeting officially open.

3. Election of Officers and Examination of Credentials

3.1 The Chair of the Bureau of Nairobi Convention represented by Mr. Jogeewar Seewoobaduth, Divisional Environment Officer in the Mauritius Ministry of Environment and National Development Unit (NDU) introduced the above mentioned agenda item and proposed that South Africa be elected as the Chair of the present meeting. This proposal was seconded by Seychelles and was unanimously accepted by the delegates.

3.2 Mr. Mongezi Nqoro, Senior Policy Advisor in the South Africa's Department of Environmental Affairs Tourism accepted to chair the meeting on behalf of South Africa. Seychelles was unanimously designated as the Rapporteur of the meeting by virtue of it been the Rapporteur of the Bureau of Nairobi Convention.

4. Adoption of the Agenda and and presentation of the objectives of the meeting

4.1 The Chairperson, Mr. Mongezi Nqoro introduced the draft Provisional Agenda listed in the background documents for the meeting as document *UNEP/GEF/WIOLAB/LBSA/2009/2a* and requested delegates to consider and adopt the same. No changes were requested by the delegates on the draft provisional agenda and the same was unanimously adopted without any amendment.

4.2 The Chair then invited Mr. Robert Wabunoha, Legal Officer in the Freshwater and Marine Law and Governance Unit, UNEP's Division of Environmental Law and Conventions to present the objectives of the meeting as well as key elements of the negotiation skills. Mr. Wabunoha highlighted the main objectives of the meeting noting in particular the overall goal which was the adoption of the revised text of the Nairobi Convention. This will enable the Secretariat to proceed to organise a Conference of Contracting Parties that will officially adopt the Amended Nairobi Convention Text as per the Rules of Procedures.

4.3 Mr. Wabunoha also presented to the delegates some key elements on the treaty negotiation skills. The purpose of the presentation was to create awareness to the delegates on their specific roles during the meeting and also what will be expected of them during the negotiation process. He noted that negotiation is a give and take process and delegates should be flexible and respect opinion of other delegates. The presentation also highlighted key elements of negotiation etiquette. Specific examples of diplomatic words, methods of intervention on the floor and others were presented to the delegates.

5. Review of the revised text of the Nairobi Convention

5.1 Overview of the current Draft revised text of Nairobi Convention

5.1.1 The Chair introduced the above mentioned agenda item and invited the Secretariat to present an overview of the current updated draft text of Nairobi Convention. A Nairobi Convention Secretariat representative, Mr. Dixon Waruinge briefed the delegates on the justification for the revision of the text of the Nairobi Convention. He further noted that only minimal changes on the text of the Convention were expected during the meeting.

5.1.2 Mr Robert Wabunoha informed the meeting that the document with the revised text of the Convention was circulated to the participating countries and the Secretariat received useful comments that were used to prepare the revised text of the Convention as indicated in the document circulated to the delegates before the present meeting. The delegates were also informed that the goal of the meeting was to enable Contracting Parties to contribute on the revision of the draft text of Nairobi Convention and in particular determine the extent to which the Convention can be amended. The delegates were urged to limit the extend of amendments to the minimum so that the draft is amended with few changes during the forthcoming sixth Conference of Contracting Parties that is expected to officially adopt the revised text.

5.1.3 The Secretariat also informed the meeting that following the present meeting, the updated text of the Convention will be prepared by the Secretariat and circulated to the Contracting Parties and that the Contracting Parties will be given three months notification before the 6th COP that is scheduled to take place in November 2009.

5.2 Consideration of the Draft revised text of Nairobi Convention.

5.2.1 Following the above briefing by the Secretariat, the Chairperson with the support of the Nairobi Convention Secretariat proceeded to take the delegates through the updated revised text of Nairobi Convention. The delegates were provided with an opportunity of commenting on the proposed amendments to the convention as highlighted to the background document that was given to the delegates before and during the meeting.

5.2.2 The delegates were taken through each of the revised text of Nairobi Convention and there was agreement that these were consistent with the comments the Contracting Parties had sent to the Secretariat. During the meeting, the delegates provided further inputs which upon agreement by the delegates were integrated into the updated draft text of the Nairobi Convention.

5.3 Specific highlights on the negotiation of various Articles of the amended Convention

5.3.1 In view of the fact that the negotiations were conducted on Article by Article basis, the following account represents the highlights of the negotiations and decisions that was reached. The agreed Text of the Amended Nairobi Convention attached as Annex II to this report was simultaneously updated by the Secretariat as each and every Article was negotiated and agreed upon.

Title of the Convention

Following lengthy deliberations, the title of the convention was adopted with change. The adopted title is: *'The Amended Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean Region'*.

Preamble

Para. 1: Changed to include 'Western Indian Ocean'.

Para. 2: Comment provided by Mauritius was clarified and Secretariat provided additional clarifications. Following further deliberations, the paragraph was modified and adopted.

Para. 5: Adopted without changes.

Para. 6: Adopted with changes.

Para. 8: Comment by Mauritius was clarified. Following lengthy deliberations, the justification for mentioning/including texts on recent outcomes such as Johannesburg Plan of Action and Mauritius Strategy on SIDS including other conventions and agreements was not fully accepted by delegates. Contact Group consisting of the Secretariat, Kenya, Mauritius prepared a new text relevant to SIDS that was subsequently discussed and adopted.

Para. 9: Adopted without changes

Para.10: A new paragraph was adopted with changes.

Para. 11: New paragraph was adopted with changes.

Para. 12: Adopted with changes.

Para. 13: Adopted with changes.

Para. 14: New paragraph was adopted with changes.

France proposed a new paragraph on climate change similar to the one used in the LBSA Protocol to be added to the preamble, preferably before para. 2. The suggestion was accepted.

Article 1: GEOGRAPHICAL COVERAGE

Para.1: Adopted with change by including *'Southern Africa and Western Indian Ocean'*.

Para. 2: Following suggestions by France and Mauritius, an alternative text was adopted with change.

Article 2: DEFINITIONS

Para. a: Adopted with changes.

Para. b: Definition was adopted with changes.

Para. c: Adopted without changes.

Para. *c bis*: Adopted with changes.

Comment provided by Tanzania on the need for definition of ‘Contracting Parties’ and ‘non-Contracting Parties’ was clarified and a new definition was provided.

Article 3: GENERAL PROVISIONS

Para. 1: Comment by Tanzania was clarified and period of commencement indicated.

Para. 1: Comment by Mauritius was clarified and the paragraph was adopted with a minor change.

Para. 2: Secretariat clarified the comment. There being a justification for the additional text, para. 2 was adopted with proposed additional changes.

Para. 3: Adopted without additional changes

Para. 4 (new): Comment by France was clarified and considered. An alternative text provided by France was discussed and adopted with changes.

Article 4: GENERAL OBLIGATIONS

Para. 1: Adopted with minor changes.

Para. 2: Adopted without additional changes.

Para. 3: Adopted without additional changes.

Para. 4: Adopted without additional changes.

Para. 5: Adopted with changes proposed by Tanzania.

Article 5: POLLUTION FROM SHIPS

Adopted without changes.

Article 6: POLLUTION CAUSED BY DUMPING

Adopted without changes.

Article 7: POLLUTION FROM LAND-BASED SOURCES AND ACTIVITIES

Title of the Article and text were modified by adding...`and activities`.

Article 8: POLLUTION FROM SEABED ACTIVITIES

Comments by Mauritius and France on the inclusion of additional text were clarified. Article 8 was not changed. However, the additional text proposed by France was modified and adopted and considered as a separate Article (to be numbered 9).

Article 9: AIRBORNE POLLUTION

Adopted without changes.

Article 10: BIOLOGICAL DIVERSITY

Para. 1: Following concerns of Comoros and Mozambique, there followed lengthy discussions on the proposed changes. The text was modified and split into 3 paragraphs and title changed to ...`biological diversity`.

Para. 2: Adopted without changes.

Article 11: CO-OPERATION IN COMBATING POLLUTION IN CASES OF EMERGENCY

Adopted without changes.

Article 12: ENVIRONMENTAL DAMAGE FROM ENGINEERING ACTIVITIES

Adopted without changes.

Article 13: ENVIRONMENTAL IMPACT ASSESSMENT

Comment by France was clarified including suggestion to delete alternative texts in para. 1-3. However, it was decided that the original texts be retained.

Article 13bis: COMPLIANCE AND ENFORCEMENT: The Secretariat clarified and the suggested new Article was adopted and relocated to the later parts of the convention before Article 26.

Article 14: SCIENTIFIC AND TECHNICAL CO-OPERATION

Para. 1: Adopted without changes.

Para. 2: Secretariat clarified and the paragraph was adopted with suggested changes.

Para. 3: Adopted without changes.

Para. 4: Adopted with changes. Justification for mentioning names of other specific conventions was not established and instead only key areas that are relevant to coastal and marine were added.

Article 15: LIABILITY AND COMPENSATION

Adopted with minor changes.

Article 16: INSTITUTIONAL AND FINANCIAL ARRANGEMENTS

Adopted with minor changes.

Article 17: MEETINGS OF THE CONTRACTING PARTIES

Adopted without changes.

Article 18: ADOPTION OF PROTOCOLS

Adopted without changes.

Article 19: AMENDMENT OF THE CONVENTION AND ITS PROTOCOLS

Adopted without changes.

Article 20: ANNEXES AND AMENDMENTS OF ANNEXES

Adopted without changes.

Article 21: RULES OF PROCEDURES AND FINANCIAL RULES

Adopted without changes.

Article 22: SPECIAL EXERCISE OF THE RIGHT TO VOTE

Adopted without changes.

Article 23: TRANSMISSION OF INFORMATION

Comment by Tanzania was clarified. Following further discussions time period was set to 2 years instead of annually. The article was subsequently adopted with modifications.

Article 24: SETTLEMENT OF DISPUTES

Adopted without changes.

Article 25: RELATIONSHIP BETWEEN THE CONVENTION AND ITS PROTOCOLS

Proposal by France to move text in article 25 to article 28 since it deals with accession was considered. Following deliberations on the same, the proposal was adopted with changes. Para. 2 of Article 25 was deleted.

Article 25bis: SOVEREIGNTY CLAIMS AND RIGHTS

A new paragraph was adopted.

Article 26: SIGNATURE

Secretariat clarified on the proposed changes. Following deliberations on the same, the proposed changes were adopted.

Article 27: RATIFICATION, ACCEPTANCE, APPROVAL AND DEPOSITARY

The title of the article was amended and Article adopted with that change.

Article 28: ACCESSION

Text from article 25 was amended, inserted as para. 2 in article 28 and then adopted.

Article 29: ENTRY INTO FORCE

Proposal by France during the meeting to introduce a new paragraph was considered. Following deliberations on the same, the proposed new paragraph was adopted.

Article 30: WITHDRAWAL

Adopted without changes.

Article 31: RESPONSIBILITIES OF THE DEPOSITARY

Adopted with changes.

ANNEX ON ARBITRATION

Adopted with minor changes.

5.3.2 Following discussions detailed in section 5.3.1, the meeting adopted the amended text of the Nairobi Convention as the agreed negotiated text of '*The Amended Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean Region*', being the product of the Final Negotiations Meeting held in Mombasa, Kenya from 9th to 11th June, 2009, subject to any further editing and harmonization by the Secretariat as may become necessary. The adopted draft text of the Amended Nairobi Convention is attached to this report as Annex II.

6. Adoption of the report on the adoption of revised text of the Nairobi Convention

6.1 The Chair of the Bureau of Nairobi Convention introduced the above mentioned agenda item and invited the Rapporteur to present the Report of the discussions on the revised text of Nairobi Convention. The Rapporteur represented by Seychelles then proceeded to present the Report on the negotiation of the revised text of Nairobi Convention.

6.2 The delegates considered the draft report of the meeting presented by the Rapporteur and then unanimously adopted the report subject to any further editing by the Secretariat as may become necessary.

7. Administrative Matters and Any Other Business

7.1 The Chairperson invited the delegates to raise and consider any other matters. However, no any other matters were raised by the delegates. The Secretariat proceeded to make some few announcements to the delegates related to logistical arrangements and their travel arrangements back to their countries.

8. Closure of the Workshop

8.1 The Chair of the Bureau of the Nairobi Convention invited representatives of the host country, Kenya and the Nairobi Convention Secretariat to make some closing remarks. Short closing remarks were made by Mr. Dixon Waruinge of the Nairobi Convention Secretariat, Dr. Johnson M. Kazungu, the Director of KMFRI, and Prof. Micheni Ntiba, the Permanent Secretary in the Kenya's Ministry of Fisheries Development.

8.2 Dr. Johnson M Kazungu congratulated WIO-LaB Project for taking the lead in producing the Strategic Action Programme (SAP) focused on land-based sources and activities and also expressed appreciations to the Secretariat for giving the opportunity to KMFRI to host the two meetings. Mr. Waruinge thanked the Chair for effectively leading the discussions and also, the delegates for offering guidance on the three documents during the meeting. He also expressed gratitudes to the Kenya Marine and Fisheries Research Institute (KMFRI) for hosting the meeting.

8.3 Prof. Ntiba appreciated the extensive work that was undertaken during the meeting that led to the adoption of the three crucial documents (Draft LBSA Protocol, text of Amended Nairobi Convention). He reassured the delegates the support of the Kenya Government and urged countries in the Western Indian Ocean region to cooperate with each other in the management of transboundary marine resources of the Western Indian Ocean.

8.4 The Chair on behalf of the Bureau of the Nairobi Convention, thanked the Government of Kenya for hosting the meeting. The Chairperson also thanked the delegates as well as the Nairobi Convention Secretariat for all the arrangements for the meetings. He also expressed appreciations to the translators and all others that made the meeting a success.

8.5 There being no any other business, Chairperson formally closed the meeting at 6.50 pm 12th June 2009.

Annexes:

1. List of Participants

2. The agreed draft text of Amended Nairobi Convention for the Protection, Management and Development of the Coastal and Marine Environment in the Western Indian Ocean.