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**Draft Guidelines for Drafters and Negotiators of the ICZM Protocol  
to the Nairobi Convention.**

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**List of Abbreviations and Acronyms**

COP-Conference of Parties

EU- European Union

FAO- Food and Agriculture Organization of the United Nations

GESAMP- Group of Experts on the Scientific Aspects of Marine Environmental Protection

ICAM-Integrated Coastal Area Management

ICM-Integrated Coastal Management

ICZM- Integrated Coastal Zone Management

IOC- Indian Ocean Commission

LBSA- Land Based Sources and Activities

LTWG-Legal and Technical Working Group

MEAs-Multilateral Environmental Agreements

MOP-Meeting of Parties

NGOs-Non Governmental Organizations

ReCoMaP-Regional Coastal Management Programme of the Indian Ocean Countries

UNCLOS- United Nations Convention on the Law of the Sea.

UNEP-United Nations Environment Programme

US (A) - United States of America

WIO-Western Indian Ocean region

## 1. BACKGROUND AND CONTEXT

The Nairobi Convention framework consists of the Convention and its three other protocols namely, Protocol concerning protected areas, wild fauna and flora, Protocol concerning cooperation in combating marine pollution in cases of emergency in the Eastern African region (Emergency Protocol), and Protocol for the protection of the marine and coastal environment of the Western Indian Ocean from land based sources and activities (LBSA Protocol). The Nairobi Convention being a framework law only provided a broad obligation for the Contracting Parties to take all necessary measures to prevent, reduce and combat pollution and degradation, as well as management of the coastal and marine areas of the Western Indian Ocean (WIO) region.

Integrated Coastal Zone Management (ICZM) has grown conceptually and operationally mainly in the last four decades since its inception in the United States of America in the early 1970s. The concept and practice of ICZM is not yet well understood, although it has gained widespread acceptance as a management system and vehicle for rational and sustainable utilization of coastal zone resources and uses.

ICZM may be described generally as the management of human activities for sustainable use of coastal resources through proper policy management and technological interventions. It is deemed to be a useful management system that provides the essential approaches, methodologies, and a management framework for the attainment of sustainable development.

The concept and practice of Integrated Coastal Management (ICM) has gradually taken root in the WIO region especially since the 1993 Arusha Declaration and subsequent processes. There has been development and implementation of ICM/ICZM/ICAM projects, and the gradual establishment and development of national ICM institutional frameworks, policies, strategies and plans among the WIO countries. The latest region wide effort was by the Indian Ocean Commission (IOC) under its Regional Programme for the Sustainable Management of the Coastal Zones of the Countries of the Indian Ocean (ReCoMAP) Project which ended in 2011. During the project execution, a region wide consensus and shared understanding on the need for a regional framework on ICZM was realized. This laid the foundation for development of the proposed ICZM Protocol under the Nairobi Convention.

The foregoing developments eventually led to a decision by the Contracting Parties in the Sixth Conference of Parties (COP 6) to the Nairobi Convention on 29 March to 1 April 2010. The COP 6 acknowledged the importance of Integrated Coastal Zone Management (ICZM) and the work done by the Contracting Parties and the Indian Ocean Commission (IOC) on ICZM and the progress achieved in implementation of ICZM in the Western Indian Ocean Region, including the considerable investment and contribution made by the Regional Programme for the Sustainable Management of the Coastal Zones of the Countries of the Indian Ocean (ReCoMaP).

The COP 6 further adopted the following decision concerning ICZM:

*Decision CP 6/3: Strengthening Integrated Coastal Zone Management in the Western Indian Ocean Region*

1. *To endorse and support the use of the integrated coastal zone management approach for the long-term sustainable development of the coastal and marine areas of the Western Indian Ocean Region;*
2. *To request the Secretariat to promote and strengthen the application of ICZM tools, and in this regard work in collaboration with Indian Ocean Commission (IOC) and other partners;*
3. *To develop an ICZM protocol and request the Nairobi Convention Secretariat to support the development of such an ICZM Protocol, through a consultative process and in partnership with relevant regional and international organizations and programmes/projects, for consideration at the next COP.*

Following the above decision, the Legal and Technical Working Group (LTWG) held a number of meetings to develop a draft ICZM Protocol. During the LTWG meetings, it became evidently clear that the rationale and underlying principles behind most of the articles were not universally understood. Consequently, the LTWG spent inordinate amounts of time discussing different interpretations of the same article(s).

This Guidelines document is expected to offer guiding principles and explanations to guide both the drafters and the negotiators of the ICZM Protocol, by seeking to provide more clarity, understanding and rationale of the articles on ICZM concepts and issues as they appear in the 7<sup>th</sup> Draft ICZM Protocol.

The guiding principles and explanations are not justifications for the articles on ICZM concepts and issues in the draft ICZM Protocol, but an attempt to offer explanations that may help the drafters to better understand the core issue in each article, around which to craft well defined articles.

### Does the Nairobi Convention Need an ICZM Protocol?

According to Birnie, Boyle and Redgwell<sup>1</sup>, in spite of difficulties in their practical operation, there are advantages in a regional approach to some environmental issues, including:

- a. Such arrangements facilitate policies and rules appropriate to the needs of particular areas;
- b. Political consensus may be obtainable at a regional level which could not be obtainable at global level;
- c. Cooperation in enforcement, monitoring and information exchange may be easier to arrange.

However, the authors also caution that the weaknesses of many regional regimes should not be overlooked, and emphasize the benefits to be derived from ensuring that such regimes are structured within a framework of minimum global standards with some oversight and supervision at global level.<sup>2</sup>

On the other hand, in relation to national approaches, a regional approach is beneficial as it creates standards to which national frameworks can aspire or adapt. The proposed regional ICZM Protocol will create standards and obligations for the countries of the WIO Region, and thus improve the national ICZM frameworks. The synergy between regional and national approaches should lead to better understanding and implementation of ICZM in the WIO Region.

The following may be identified as the generic justifications for the development of an ICZM Protocol to the Nairobi Convention:

- i. *Scientific and technical justifications*: It is increasingly harder to draw a clear dividing line between the marine environment and the land environment. The greatest impact on the marine environment comes both from land based sources and activities and sea based sources but much more so from the former.<sup>3</sup>
- ii. *Implementation of Framework Provisions of 1982 UNCLOS*: The Nairobi Convention framework generally can be held to be a means of giving effect to the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Moreover, it demonstrates evidence of the adoption and implementation of the 1982 UNCLOS' main provisions on ICM at regional level.

Moreover, the proposed ICZM Protocol to the Nairobi Convention may also be seen as part of the efforts in the WIO Region to provide more specific rules on an aspect covered by the 1982 UNCLOS and Agenda 21 (1992). The latter, a major international environmental policy document, specifically calls upon countries to implement ICZM. In this regard, there is need for a region wide cooperative and collaborative approach to secure the WIO Region. The ICZM Protocol fits well within the overall structure of regional protection of the marine environment contemplated under the 1982 UNCLOS, Agenda 21, as well as the 2002 Johannesburg Declaration and Plan of Implementation.

- iii. *Filling gaps in national legal frameworks*: Despite progress made in the last decades, several gaps do exist in national legal frameworks, which constitute obstacles against ICM implementation. One of the primary goals of the ICZM Protocol is therefore to consolidate States' legal frameworks related to coastal zones.<sup>4</sup> A major added value of an ICZM Protocol to the Nairobi Convention is therefore to anchor ICZM principles and instruments into national legal frameworks.<sup>5</sup>
- iv. *Strengthening the Existing or Emerging Institutional and Administrative Frameworks*. The proposed ICZM Protocol is expected to strengthen such national institutional and administrative arrangements and other inter-sectoral frameworks.<sup>6</sup>
- v. *Rationalizing Regional and National Efforts*. The proposed ICZM Protocol, regarded as a powerful methodological instrument, may assist to rationalize and converge regional and national efforts and

<sup>1</sup>Birnie, P, Boyle, A and Redgwell, C:International Law and the Environment, 3<sup>rd</sup> ed, 2008, p 89

<sup>2</sup>Ibid

<sup>3</sup>Ibid, see also UNEP/Nairobi Convention Secretariat, 2009b. Transboundary Diagnostic Analysis of Land based Sources and Activities Affecting the Western Indian Ocean Coastal and Marine Environment, UNEP Nairobi, Kenya 378p

<sup>4</sup>Rochette, J and Bille, R: ICZM Protocols to Regional Seas Conventions: What? Why? How? *Marine Policy* 36 (2012) 977-984)

<sup>5</sup>Ibid.

<sup>6</sup>Ibid.

initiatives concerning the implementation of sustainable management of marine and coastal resources and therefore avoid dispersion of efforts.<sup>7</sup>

- I. According to the Feasibility Assessment Study (February 2010) carried out by the Indian Ocean Commission (IOC) under the Regional Coastal Management Programme of the Indian Ocean Countries (ReCoMaP) prior to the development of the draft ICZM Protocol to the Nairobi Convention, several other justifications explain the need for an ICZM Protocol to the Nairobi Convention: All countries of the WIO Region are inter-linked by ecological, socio-economic and political issues, including climate change, thus necessitating region wide, anticipatory and coordinated efforts.
- II. There are several gaps in existing regional and national normative frameworks, with transboundary effect, thus necessitating a regional ICZM Protocol framework.
- III. Developments in most countries of the Region, such as national ICZM laws, bodies, policies, strategies and plans, all necessitating a regional coordinative framework.
- IV. Need for a shared theoretical and methodological framework for managing sectoral issues across the countries of the WIO Region.
- V. The impacts of some of the threats to the coastal zone such as climate change and natural disasters cut across not only different sectors at national level but also affect multiple countries. Effective mitigation requires integrated frameworks.
- VI. An ICZM Protocol could motivate international partnerships in ICZM issues in the WIO Region, including support for implementation of the instrument.

Thus the development of the ICZM Protocol is geared towards ensuring that the development and use of natural resources in the coastal zone is socio-economically justifiable across the WIO Region. The ICZM Protocol is an expression of regionally shared commitment and responsibility to wisely and prudently manage coastal natural and other resources and in this regard manage their complex relationships with humans.

## 2. TITLE OF THE PROTOCOL

The title of the Protocol is really its name. The title seeks to capture the essence of the legal instrument, in this case *integrated management*. Over the years, the concept of integrated management has remained consistent but dynamic, and is generally understood and accepted. However, there have been different phraseology and conceptual understanding among practitioners and scholars over the decades since the concept was first configured, particularly concerning the “coastal zone” or “coastal area” or their derivatives. Consequently, “**Integrated coastal zone management**” (ICZM), “**Integrated Coastal Area Management**” (ICAM) and “**Integrated Coastal Management**” (ICM), “**Integrated Coastal and Ocean Management**” have been variously used.<sup>8</sup> In the present case, while there have been continuing discussions on the name, “Integrated Coastal Zone Management” appears in the title. In the process it is often difficult to accurately define or agree on the meaning of the concept of the “zone.” By way of comparison, the Mediterranean Convention framework has a Protocol on Integrated Coastal Zone Management in the Mediterranean.” The WIO has essentially borrowed from the only other regional ICZM protocol so far. Moreover, the concept of “zone” appears to enjoy common usage in the WIO Region.

The title of the protocol should be guided by what the protocol is trying to achieve, and must be reflective of the desire of what the protocol is trying to achieve and its geographical coverage i.e. the *interchange between land and sea*, and also perhaps include the *exclusive economic zone (EEZ)* and the issues to be dealt with in an **ecosystems wide approach**.

The framing of the title should also be consistent with the Nairobi Convention and the other protocols.

The title should also be futuristic in the sense that it should address the present and future issues as informed by science.

<sup>7</sup> Ibid.

<sup>8</sup> See for example, FAO, Rome (1998): Integrated Coastal Area Management and Agriculture, Forestry and Fisheries.

### 3. PREAMBLE

A preamble may be described as a set of opening statements of an international (or national or local) agreement, decision, resolution, or recommendation and in the present case the ICZM Protocol. The preamble provides the context and the underlying philosophy of the document and statements of fact that contributed to the development of the agreement or other instrument. It states the fundamental purposes, principles, and goals of the Protocol.

The preamble of a protocol gives insight into the broader issues and themes behind its development, adoption and the geo-socio-economic and political context. It broadly conveys some of the themes pursued in the text of the protocol and sheds light on the broader issues. A preamble often refers to related international agreements that are considered as relevant. For example, an ICZM protocol may refer to the 1982 UNCLOS or the 1992 Convention on Biological Diversity (CBD). In some instances, some concepts and terms found in the preamble paragraphs may not be developed into operational or binding provisions in the protocol. A preamble assists Parties in developing coherent and complimentary legislation and policies implementing ICZM.

Preambles also often capture the historical and cataclysmic events or processes which inform and provide context for the development of the particular instrument or specific aspects of it. Preambles will also often reflect differences of views that remain unresolved, and which contracting parties may wish to leave at the non-binding level in the instrument. For example, countries negotiating a climate change instrument may be unable to agree on green house gas emission controls or targets; others negotiating land based sources instrument may be unable to agree on source controls or water quality standards; or more generic issues such as institutional and financial arrangements or the inclusion of transient processes such as outcomes and resolutions of global or regional forums. In such circumstances it may be safer and more pragmatic to articulate the issues in the preamble.

To the extent possible, the preamble should be specific, harmonious and consistent in its statements.

The legal purpose of a preamble is to provide contextual interpretation of the protocol or assistance in resolving ICZM related disputes. The paragraphs in preambles ordinarily have no binding legal effect, except in certain civil law systems.

## OPERATIVE ARTICLES

### 4. DEFINITIONS

This article explains the meaning of certain terms used in the text of the protocol. The list of defined terms helps provide clarity and certainty about the meaning attributed to specific terms throughout the text. It also facilitates drafting national legislation. Legal definitions are specific to a particular legal text and are intended solely to facilitate the interpretation of the different terms used. This means that the terms may differ from those in ordinary, scientific or technical use. They provide a common framework for interpreting the contents of the Protocol.

Definitions should provide clear and concise meaning of terms, phrases or concepts used in the Protocol, clearly consistent with and linked to or cross-referenced with the Nairobi Convention, its other protocols, and other environmental instruments. This article should give the definitions of key words and concepts, such as, *inter alia*, “Parties,” “Convention,” “Secretariat,” “coastal zone,” “integrated coastal zone management”, etc. The words defined must be in the body of the Protocol. Commonly used or understood words (in English or French) need not be defined, but words having more than one meaning or likely to be ambiguous may need to be defined.

The two terms/concepts, namely “coastal zone” and “integrated coastal zone management” are the more problematic among key definitions.

#### (a) Coastal zone:

Two main options are possible for the definition of the coastal zone: either WIO States decide to come up with their own definition, or they use an existing one provided by international organisations or other relevant documents.

Examples of definitions provided by international organisations or other institutional documents include the following:

- **World Bank:** “The coastal zone is the interface where the land meets the ocean, encompassing shoreline environments as well as adjacent coastal waters. Its components can include river deltas, coastal plains, wetlands, beaches and dunes, reefs, mangrove forests, lagoons and other coastal features<sup>9</sup>”
- **Mediterranean ICZM Protocol:** “Coastal zone means the geomorphologic area on either side of the seashore in which the interaction between the marine and land parts occurs in the form of complex ecological and resource systems made up of biotic and abiotic components coexisting and interacting with human communities and relevant socio-economic activities.”
- **1972 US Coastal Management Act:** coastal zone means “... the coastal waters (including the land therein and there under) and the adjacent shore lines (including the waters therein and there under), strongly influenced by each and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands and beaches.”

**(b) Integrated Coastal (Zone) Management (ICZM):**

Two main options are available for the definition of ICZM: either WIO States decide to elaborate their own definition, or they use an existing one provided by international organisations or other relevant documents.

Examples of existing definitions:

- **GESAMP:** “ICM is a dynamic and continuous process by which progress towards sustainable use and development of coastal areas may be achieved.<sup>10</sup>”
- **World Bank:** “ICZM is a process of governance and consists of the legal and institutional framework necessary to ensure that development and management plans for coastal zones are integrated with environmental (including social) goals and are made with the participation of those affected. The purpose of ICZM is to maximize the benefits provided by the coastal zone and to minimize the conflicts and harmful effects of activities upon each other, on resources and on the environment.<sup>11</sup>”
- **Mediterranean ICZM Protocol:** “Integrated coastal zone management” means a dynamic process for the sustainable management and use of coastal zones, taking into account at the same time the fragility of coastal ecosystems and landscapes, the diversity of activities and uses, their interactions, the maritime orientation of certain activities and uses and their impact on both the marine and land parts.”
- **UNEP:** “Integrated Coastal Area Management” (ICAM) is a continuous, proactive and adaptive process of resource management for environmentally sustainable development in coastal areas.<sup>12</sup>”
- **Cicin-Sain and Knecht:** “**Integrated Coastal Management** can be defined as a continuous and dynamic process by which decisions are made for the sustainable use, development and protection of coastal and marine areas and resources. First and foremost, the process is designed to overcome the fragmentation inherent in both the sectoral management approach and the splits in jurisdiction among levels of government and the land-water interface. This is done by ensuring that the decisions of all sectors (e.g. fisheries, oil and gas production, water quality) and all levels of government are harmonized and consistent with the coastal policies of the nation in question. A key part of ICM is the design of institutional processes to accomplish this harmonization in a politically acceptable manner.<sup>13</sup>”

<sup>9</sup> Post J.C, Lundin C.G, (Ed), 1996, Guidelines for integrated coastal zone management, Environmentally Sustainable Development Studies and Monographs Series N°9, The World Bank, Washington D.C.

<sup>10</sup> GESAMP, (1996), The Contributions of Science to Coastal Zone Management, Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection, IMO/FAO/UNESCO-IOC/WMO/WHO/IAEA/UN/UNEP.

<sup>11</sup> Post J.C, Lundin C.G, (Ed), 1996, Guidelines for integrated coastal zone management, Environmentally Sustainable Development Studies and Monographs Series N°9, The World Bank, Washington D.C.

<sup>12</sup> UNEP-PAP/RAC, (1995), Guidelines for integrated management of coastal and marine areas with particular reference to Mediterranean basin, UNEP Regional Seas Reports and Studies N°161, Nairobi.

<sup>13</sup> Cicin-Saint B., Knecht R.W., (1998), Integrated coastal and ocean management, concepts and practices, Island Press, Washington, D.C.



- **Coastal Area Management and Planning Network:** “A dynamic process in which a coordinated strategy is developed and implemented for the allocation of environmental, socio-cultural, and institutional resources to achieve the conservation and sustainable multiple use of the coastal zone.<sup>14</sup>”

Each definition offered should be based on sound scientific and technical bases and within the context of the WIO.

## 5. GEOGRAPHICAL COVERAGE

The geographical coverage of the Protocol refers to the geographical region or area for which the protocol or other instrument applies. “Geographical coverage” and “protocol area” are often used inter-changeably.

In most coastal, island or archipelagic states there are differences in climatic, biophysical, economic, social, political, institutional and cultural aspects among different parts of the coast. Moreover, the complexity of national coastal areas makes it impractical to manage the area purely at the national level. It’s therefore imperative that, area boundaries be determined pragmatically and flexibly.

Delineating the scope of application of the legal instrument is also very important. Firstly, because it helps to determine the nature and extent of rights and obligations to manage, own or use coastal areas that will be recognized in law, and who will hold these rights. Secondly, it helps to manage conflicts between users of the coast and between different sectors and levels of government both locally and internationally.

The Geographical coverage/Protocol Area should comply with maritime boundary regimes recognized under the international law of the sea, and be consistent with the Nairobi Convention and its other protocols. The geographical coverage of the ICZM Protocol identifies its field of application both at land and sea. In this regard, a flexible approach may be adopted in defining the geographical coverage of the Protocol. Article 2(b) of the Amended Nairobi Convention states that the “*Convention area shall comprise the riparian, marine and coastal environment including the watershed of the Contracting Parties to this Convention. The extent of 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*”.

At sea, reference could be made to the States’ territorial sea (12 nautical miles) in accordance with the 1982 UNCLOS. The countries also have options to consider extensions up to the EEZ and the continental shelf due to the socio-economic benefits attaching thereto.

At land, the minimal field of application of the Protocol should be the smallest administrative entity, usually the municipality or village. Nevertheless, in many cases, this area is too narrow to be relevant to ICZM implementation. The ecosystem approach, for instance, could demand the extension of this area of application, taking into account hydrological basins. The terrestrial coverage of the Protocol should therefore be flexible, authorizing States to adapt their fields of intervention according to, *inter alia*, geographical, human and ecological circumstances.

Mainland states will usually provide geographical coverage over only a portion or strip or zone of their territory, while island states may provide entire national territories as being covered.

All states have a responsibility in accordance with the Charter of the United Nations and the principles of international law, including Principle 21 of the Declaration of the 1972 United Nations Conference on the Human Environment, which have also been affirmed in many treaties, to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. This principle may be applied in the development of this protocol.

## 6. PURPOSE OF THE PROTOCOL

The purpose of the protocol or other legal instrument is its reason for existence, or the underlying reason for its elaboration or adoption. It is necessary to make the purpose clear so that the elaboration of other articles is in tandem with the overall purpose of the protocol or other legal instrument. Ordinarily the purpose of a protocol is to complement, extend the scope or further elaborate the rules of an existing convention or other legal instrument. In the present instance, the over-arching purpose of the Protocol should be to establish a governance

<sup>14</sup> Coastal Area Management and Planning Network, (1989), The status of Integrated Coastal Zone Management: A Global Assessment (Summary report of a workshop convened at Charleston, South Carolina, July 4-9, 1989), Rosensteil School of Marine Sciences, University of Miami, Miami, FL, USA, 1989.

system that enables, facilitates and supports an integrated approach to managing human uses of coastal areas/zones, while retaining a strong link to the existing framework convention and other international legal instruments, and be seen to promote the implementation of the latter. However, a protocol is an independent and autonomous legal instrument. The background section of this document provides detailed justifications for the development of the ICZM Protocol which reinforce the purpose of the protocol.

The Mediterranean ICZM Protocol does not have a specific article on the purposes of the Protocol, but the same could be deduced from the preamble and other articles on general obligations and objectives of ICZM.

## 7. PRESERVATION OF RIGHTS

The phrase “preservation of rights” is used as a substitute for Reservations. A reservation is a unilateral statement by a State that, however phrased, purports to preserve, exclude or modify the legal effect of specific provisions of a treaty on that State. States usually preserve rights that are within their national interest. In international law the effect of this is both to preserve the rights of the reserving State and to place obligations on other Parties.

Sometimes States use the term “interpretive statement” to make what could nevertheless be construed as a reservation. Upon becoming Party to an agreement/convention, a State may formulate reservations to it unless the agreement expressly prohibits it.

An article on reservations is a reaffirmation of the right of Parties to develop and implement other relevant international agreements in general and, in particular, others relating to this particular subject matter. The legal capacity of a Party to develop and implement any international instrument comes from international law directly.<sup>15</sup> The provision on reservations therefore reiterates this principle.

Sometimes reservations may be made only on specific provisions. Moreover, if there is no provision on reservations in an agreement, parties may make reservations that are not contrary to the object and purpose of the main legal instrument. However, this is often discouraged with the intention of promoting consistency and coherence of implementation of a convention or protocol among Parties.

An objection to a reservation does not preclude the entry into force of the convention or protocol as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State.

A State may modify or withdraw its reservation or objection to a reservation completely or partially at any time.

## 8. GENERAL OBLIGATIONS.

The “General Obligations” or key generic obligations of the States should be adequately elaborated so that States know the full extent and nature of their obligations and legal commitments under the Protocol. Such statements of obligation form the overall basis upon which several other more specific State obligations are set out in the Protocol. By nature the provisions in the “General Obligations” article are very broad, while more specific obligations are provided in the other articles of the Protocol.

These provisions have an important interpretive value during the implementation stages of the convention or protocol. Sometimes when Parties are unsuccessful in negotiating more specific operative provisions of a convention, protocol or other legal instrument, they will try to accomplish similar objectives in this article.

“General obligations” are typically generic in their language and intent, are generally “politically correct” and therefore more likely to be acceptable to the States compared to more specific operational obligations elsewhere in the Protocol or other legal instrument. However, they also usually provide a basis for more specific provisions in other articles.

## 9. OBJECTIVES OF ICZM

An objective is the aim of an action, or what is intended to be achieved. Any objective will include explicit statements against which progress can be measured, and will identify which outcomes are important and the way that they interrelate.

<sup>15</sup>1969 Vienna Convention, Article 6.

A statement of “Objectives” in the Protocol or other legal instrument provides basis and improves understanding of the Protocol, especially when read together with the article on “Purpose of the Protocol.” The latter usually refers to the overall goal, while the former are specific and actionable aspirations. By nature, objectives are measurable and achievable, and should therefore be concisely stated, and be short, medium and long term.

An important discussion in the context of the development of the ICZM Protocol for the WIO Region is whether these are “Objectives of the Protocol” or “Objectives of ICZM.” It is more preferable to define “Objectives of the Protocol” in the draft since objectives of ICZM are scientific and can be sourced from text books and other published sources.<sup>16</sup> In comparison, the Mediterranean ICZM Protocol provides for “Objectives of ICZM”.

## 10. PRINCIPLES OF ICZM

Principles are general propositions that can be used to evaluate human behavior. They are derived from the fundamental values that inhere in all systems of governance. Principles are of different kinds. Some may be pure non-scientific value judgments or deduced from experience.

Principles that are derived from science should be founded on scientific, technical or social propositions that are able to get easy acceptability among the contracting parties to the Protocol. Principles derived from social norms/values should have wide acceptability. Principles need not be scientifically tested nor be based on empirical evidence but they should be generally acceptable.

However, in the context of Integrated Coastal Management (ICM), principles are more often distilled from experience. For example, The European Union (EU) formulated its approach to ICM by examining the findings of a number of coastal demonstration projects conducted in different countries and under diverse circumstances in order to determine the pros and cons of each approach. These findings were then used to draw general conclusions about how ICM should be implemented and were ultimately formulated into the principles that govern ICM in the region.<sup>17</sup>

Moreover, principles differ from rules. A system of rules is used to determine a precise answer and should be structured in such a way that no two rules are contradictory. Principles on the other hand tend to be far more general, and any one principle may conflict to some extent with other principles in the system. Consequently, the decision-maker must decide not only the principle that applies but also the importance or weight that should be attached to each principle. Unlike rules, principles do not give a precise answer to any particular decision. This is advantageous because they can be applied to a range of situations including unforeseen circumstances whereas rules tend to apply to a narrowly defined range of circumstances.<sup>18</sup>

Principles have multiple uses. Firstly, they can help to articulate the fundamental features of a programme in a clear and accessible manner; secondly the flexibility inherent in applying a set of principles allows decisions to be adapted to particular circumstances without detracting from the main goals set out by the principles. Thirdly, the cross-sectoral applicability of most principles can have a powerful integrating and inter-dependent effect within the relevant sectoral agencies.<sup>19</sup>

It is possible to have a broad set of principles that may be used to describe ICZM and how it is to be conducted on the one hand, and a narrower set of more precisely defined principles which may be incorporated into legislation on the other. The first set represents principles that are not suitable for inclusion in legislation in the form of legally enforceable principles but still play a critical role in shaping legislation. The second set represents those principles that are capable of being defined reasonably clearly and can therefore be spelt out expressly in the legislation.<sup>20</sup>

## 11. NATIONAL ICZM FRAMEWORKS

National ICZM frameworks are mechanisms for national level implementation of ICZM. They will show how the Protocol will be internalized in the national structures and how such national structures will implement the

<sup>16</sup> Cicin –Sain and Knecht (1998) Chapters 2,3, on principles related to environment and development, and special character of oceans and coasts

<sup>17</sup> UN FAO Legislative Study No. 93: ICM Law (2006).

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> Ibid

protocol and report on it. They will also provide for evaluation of effectiveness of the ICZM implementation and national reporting through such mechanisms as the state of the coast reports.

There are two key aspects of the national ICZM frameworks: national ICZM strategy and national ICZM committees. This does not, however, preclude other frameworks such as action plans, regulations and the like.

A National ICZM Strategy or similar framework could be elaborated by each State. The aim of such of a document should be to organise and coordinate efforts to implement the Protocol. In particular, the National ICZM Strategy could, *inter alia*: (i) assess the state of the coastal zones and the threats the coastal ecosystems are facing (sensitivity, vulnerability, resilience, exposure, etc.), taking into account risks associated to climate change; (ii) include a national strategy for the implementation of the ICZM Protocol, taking into consideration specific management approaches for different ecological types of the national coastline; (iii) provide for the elaboration of regional planning documents, specifying the distribution of competences and roles between States and intra-State authorities; and (iv) identify and mobilize financial resources for its implementation.

National ICZM Strategies could be adopted by national authorities, after consultation of all relevant sector line agencies and administrative services involved in coastal issues and coastal management, both at national and sub-national levels, and should be regularly updated. National authorities should make the National ICZM Strategy readily available to local authorities, stakeholders and the public and ensure respective sensitisation and awareness of its existence and relevance.

A National ICZM Committee or a similar framework could be created and sustainably institutionalized by each State in order to (i) support and facilitate the implementation of the National ICZM Strategy; (ii) ensure coordination between the relevant sector line agencies and administrative services involved in coastal issues and coastal management; (iii) elaborate or command reports and studies dedicated to coastal issues; (iv) propose legal, institutional, administrative and technical measures to ensure effective ICZM implementation; (v) create relationships and partnerships with local authorities and stakeholders, and (vi) provide frameworks for implementing the protocol and the sustainability of the National committees, among others.

The National ICZM Committee should be composed of representatives from all relevant sector line agencies and administrative services involved in coastal issues and coastal management, as well as non-Government stakeholders.

As part of national ICZM frameworks, enhanced sector plans or more comprehensive ICZM plans could be developed at national, regional or local level, depending on national circumstances.

## 12. ICZM INSTRUMENTS

The rationale for this article is to provide guidance to the States concerning the range of available “ICZM instruments” which the States could choose to implement ICZM at the national level. “ICZM instruments” are tools or mechanisms through which to operationalize integrated coastal zone/area management. Without being exhaustive, examples of “ICZM instruments” may include strategic environmental assessments; zoning and spatial planning; sensitivity mapping and vulnerability assessment; coastal setback lines; monitoring and evaluation; ecosystem valuation; environmental impact assessments; environmental auditing; coastal strategy, plans and programmes; marine and coastal protected areas; contingency planning and disaster risk management, and socio-economic instruments such as removing unsustainable public subsidies, and applying tax and fiscal incentives. However, some of the instruments are invariably more effective or even more famous than others.

The list and variety of “ICZM instruments” in the Protocol should be open ended and it should also be within the discretion of the States to utilize any combination of them to suit their national circumstances.

## 13. COASTAL SETBACK LINE(S)

Coastal set back line(s) are part of the “ICZM instruments” in the previous article. Coastal setback lines are perhaps the most important tools from spatial planning and zoning perspective and usually require specific provisions of law (i.e. particular sections, articles in Acts of Parliament, or regulations) to define and enforce them.

A setback line is a prescribed boundary set at a distance from a landscape or physical feature such as a cliff top, water course, shoreline or line of permanent vegetation, within which all or certain types of development or uses are prohibited or otherwise regulated.

For both continental and island states, coastal set back lines may be established for various reasons and there may be more than one setback line in any given area. That is, there may be a uniform setback line or multiple setback lines. For example, one set back line may be an anticipated erosion setback line, while another may relate to aesthetics and for control of the height of buildings to protect a specific scenic landscape.<sup>21</sup> Setback lines are put in place to regulate development; to protect ecologically sensitive or vulnerable areas; to ensure public access to the shore; and to maintain cultural land and seascapes.

In effect, coastal set back lines prohibit or restrict the construction, extension or repair of structures that are either wholly or partly seaward of the line, in order to protect or preserve ecologically sensitive and vulnerable areas, coastal public property such as beaches, coastal private property such as residences and business properties, public safety or the aesthetics of the coastal zone.<sup>22</sup>

#### 14. ECONOMIC AND FINANCIAL INSTRUMENTS

Most of the ICZM instruments require the force of law and traditionally they are referred to as “command and control” instruments, which rely on sanctions such as fines and jail terms. There are other kinds of instruments that are becoming increasingly popular, but are not sufficiently applied in coastal management. These may include market-based instruments, or economic and financial instruments. Because these instruments are not sufficiently applied it may seem reasonable to either create a sub-article under the article covering “ICZM instruments” generally in order to flag them, or to have a separate article altogether on economic and financial instruments. The important thing is that all instruments should be considered together, and if well understood and used they are very effective.

Economic instruments make use of fiscal incentives (subsidies) and deterrents (taxes), as well as market measures such as tradable emissions permits, rather than regulating specific outcomes. Thus, these instruments allow agents to respond to stimuli in a way that they consider to be beneficial without succumbing to regulatory pressures.

Economic instruments work efficiently when those aspects of the economic system that work against ecosystem management objectives are changed. This can be achieved, for example, by reducing market distortions, eliminating perverse incentives, aligning economic incentives with management goals and internalizing costs and benefits as far as possible so that the costs of conservation are borne by the polluters or main beneficiaries of the ecosystem.

Provision of financial assistance on the other hand encourages and enables the development of new initiatives that are consistent with relevant policy objectives. This instrument is far more effective than the command and control approach, which relies on using sanctions to enforce legal requirements.

The Contracting Parties should thus consider adopting relevant economic instruments and mechanisms to support the implementation of ICZM, at national and local levels. These include removing unsustainable public subsidies, tax and fiscal incentives, and others as above.

#### 15. INFORMATION, PARTICIPATION AND ACCESS TO JUSTICE

The rationale of this article emanates from the three pillars of public participation, access to information and justice as contained in Principle 10 of the Rio Declaration and Agenda 21, and more recently in the Rio+20 Outcome Document. Participation and access to information and justice is important for ICZM because; firstly, it improves the quality of decisions; secondly, it increases the likelihood of voluntary compliance with management measures; and thirdly, it reduces the potential for conflicts among users. Participation also increases ownership and hence better care of coastal environmental and other resources.

It is possible to identify various levels or types of public involvement:

- information sharing in the form of dissemination to groups affected or interested in a decision;
- consultation, where feedback is sought from affected groups and interested parties prior to the making of decisions; and

<sup>21</sup> Celliers, L *et al* (2009): A User Friendly Guide to South Africa’s Integrated Coastal Management Act. The Department of Environmental Affairs and SSI Engineers and Environmental Consultants, Cape Town, South Africa, p 26.

<sup>22</sup> Ibid.

- participation by multiple stakeholders in the decision-making process itself.

Also, the right of the public to participate in decision-making regarding ICZM, particularly at local scale, should be recognised and organised by national authorities. In particular, States should provide for public participation mechanisms for the elaboration of coastal policies, including the National ICZM Strategy and local coastal zoning and planning documents. Such mechanisms could include public hearings, inquiries and consultations. The State may be obliged by law to inform the public when it has to make important decisions concerning the coastal zone/ area.

Finally, as a corollary of the communication, information and participation rights, the right to challenge public decisions or acts should be attributed to anyone having a “sufficient interest”. There should thus be provisions and mechanisms for access to justice.

## 16. AWARENESS, EDUCATION, CAPACITY BUILDING AND TRAINING

This article obliges states to organize, at national and local levels, sensitization and awareness-raising activities as well as educational and training programmes on coastal environmental issues in general and on ICZM in particular. The article seeks to empower people with knowledge on ICZM generally; raise awareness and enhance understanding; and improve voluntary compliance. For education, capacity building and training the purpose is to generate knowledge to improve understanding on the linkages and provide the basis for enforcement strategies.

It is important that the system charged with implementation of ICZM as a whole is able to deliver relevant service. However, individual state government agencies rarely have expertise in participatory methods and integrated natural resource management. Thus, forming a team or teams that is or are proficient in strategy and methods requires in-service training. This training should be geared towards enhancing the capacity of officials to deal with compliance and enforcement of the Protocol.

## 17. MONITORING AND REPORTING

This article is on monitoring and reporting on the implementation of different activities by the contracting parties. It is related to the article dealing with “information, participation and access to justice”, particularly when there is active involvement of different actors on monitoring and reporting.

National reporting is one of the mechanisms by which conferences of parties (COPs) fulfil their mandate to monitor and review activities undertaken by Governments to implement conventions or protocols.

While reporting, parties are required to assess in a transparent manner, the measures that they have taken to implement their commitments and consider the effectiveness of those measures. This helps the Parties and other interested bodies to discern potential trends in compliance and enforcement, identify innovative approaches that might serve as models for other States, and allocate resources to improve compliance and enforcement.

Monitoring on the other hand, involves the collection of data. It is used to assess compliance with a convention or protocol, identify compliance problems and indicate solutions. It also includes evaluation of the physical environment to determine its health or well being over time.

Sometimes States may be required to make regular, timely reports on compliance, using an appropriate common format. A simple and brief format may be designed to ensure consistency, efficiency and convenience. The secretariat may be tasked with the role of consolidating responses received to assist in the assessment of compliance and non-compliance. Many Secretariats of international legal instruments have established standardized reporting formats and guidelines

In accordance to Article 23 of the Nairobi Convention, the Contracting Parties are obliged to transmit regularly to the Secretariat, information on the measures adopted to implement the Convention and its Protocols. A reporting template has been developed to facilitate the transmission of such information from Parties to the Secretariat. The structure of the questionnaire is designed to allow for easy sharing of information on issues related to the implementation of the Convention and its Protocols as envisaged in Articles 16b<sup>23</sup> and d<sup>24</sup>, 11<sup>25</sup>, 13<sup>26</sup> and 23<sup>27</sup> of the convention and related protocols.

<sup>23</sup> Article 16b: to transmit to the Contracting Parties information received in accordance with articles 11, 13 and 23

<sup>24</sup> Article 16d: to consider inquiries by, and information from the Contracting Parties and to consult with them on questions relating to this Convention and Protocols;

## **18. CONSERVATION AND REHABILITATION OF COASTAL ECOSYSTEMS, BIODIVERSITY AND LANDSCAPES**

This article reconfirms the countries' pre-existing international commitments concerning protection of biodiversity as it relates to ICZM in particular. It also reaffirms the recognition of ICZM in the existence of equally important systems in the coastal zone/areas which are important to other sectors. It brings out the socio-economic importance of resource management, sustainable livelihoods, and sustainable development generally.

The conservation and rehabilitation of ecosystems, biodiversity and landscapes should become an obligation integrated into any coastal policy, strategy and planning document and decision. In particular: (i) special attention should be paid to fragile and vulnerable ecosystems, such as wetlands, coral reefs, dunes, lagoons; (ii) States should adopt regulations dealing with the conservation and sustainable management of ecosystems and biodiversity beyond protected areas; (iii) all coastal activities should respect the need for integrity of coastal and marine ecosystems, biodiversity and landscapes; and (iv) the principle of trans-boundary resource management should be incorporated. Also, states should provide for valuation of ecosystem goods and services.

This article should be referenced to the Protocol on Protected Areas, Wild Fauna and Flora and Protocol on Land Based Sources and Activities to the Nairobi Convention, as well as the 1992 Convention on Biological Diversity.

## **19. CLIMATE CHANGE AND VARIABILITY IN THE COASTAL ZONE**

The article should place emphasis on the fact that adaptation to climate change transcends different sectors and ICZM is considered an effective adaptation strategy to climate change and therefore offers a platform where different sectors can come together and find cost effective solutions. In this regard, States should (i) take into account all climate-induced risks coastal zones are facing due to, in particular, sea level rise, increase in frequency / intensity of extreme weather events, ocean acidification, and their related consequences on ecosystems and populations; (ii) conduct, insofar as practicable, studies of climate change impacts on coastal policies; and (iii) ensure that coastal policies contribute to building resilience of coastal and marine ecosystems, economies and populations to climate change.

## **20. REGIONAL POLICY PLATFORM**

The rationale of the article is to create a forum or avenue for bringing different actors to share experiences on ICZM matters. It is conceived as a forum to articulate and share policy level as well as scientific and technical experiences and knowledge on the implementation of ICZM nationally and regionally.

However, this proposed forum should not duplicate the functions of other institutions, and particularly the Conference of Parties/Meeting of Parties (COP/MOP), and the Secretariat. The functions of COP/MOP are described elsewhere in this document.

## **21. DISASTER RISK MANAGEMENT**

Coastal areas are generally prone to disasters such as floods, tsunamis, cyclones, storm surges, etc. As disasters in coastal areas tend to cut across many sectors, disaster mitigation therefore requires an integrated approach. A successful early warning system needs to bring in different sectors and stakeholders in an integrated manner. Early warning systems should take into consideration impact of mitigation. In disaster risk management, the decisions proposed should not cause more harm.

Disaster risk management is an instrument of ICZM. This article obliges the Contracting States to cooperate in organizing disaster management procedures and mechanisms, providing, for instance, (i) early warning systems for natural disasters or phenomena such as tsunamis, cyclones, etc; (ii) regional catastrophe risk insurance facility to reduce socio-economic impacts of natural catastrophes.

Disaster risk management is the systematic process of using administrative directives, organizations, and operational skills and capacities to implement strategies, policies and improved coping capacities in order to lessen the adverse impacts of hazards and the possibility of disaster.

<sup>25</sup> Article 11: Co-operation in combating pollution in cases of emergency

<sup>26</sup> Article 13: Environmental Impact Assessment

<sup>27</sup> Article 23: Transmission of Information

Disaster risk management aims to avoid, lessen or transfer the adverse effects of hazards through activities and measures for prevention, mitigation and preparedness.

## 22. RESEARCH

This article should create a framework for integrated research (multidisciplinary research) to aid decision making in ICZM. The purpose of research is to generate data and information to provide a basis for action. Under this article, the disparity in the quality of data, use of common methodologies for comparison, standardization of methodologies and capacity and standards in research across countries may be addressed through cooperative work.

Conventions or protocols rely largely on research and reporting as a tool to encourage compliance with substantive control provisions. Given the complexities and uncertainties that exist in the coastal zone, ICZM must be built upon the best science (natural and social) available. Techniques such as risk assessment, economic valuation, vulnerability assessments, resource accounting, cost-benefit analysis and outcome-based monitoring should all be built into the ICZM processes, as appropriate.

States should cooperate, through the Secretariat and relevant international and regional organisations, bilaterally or multilaterally, to develop and promote scientific research and technical knowledge in the field of ICZM. This requires increased joint and complimentary national efforts towards data collection and the promotion of standardised, regionally applicable analysis and modelling tools. Regional research cooperation could be reached by, *inter alia*, (i) the creation and networking of scientific partnerships between national public and/or private institutes, and (ii) the elaboration and coordination of research projects.

## 23. OTHER BILATERAL AND MULTILATERAL COOPERATION

This article provides for bilateral or multilateral cooperation between countries and with third parties who are not contracting parties of the Convention.

This article seeks to formalize the rights and obligations of contracting parties to cooperate bilaterally and multilaterally in order to achieve the objectives of the Protocol. This is in recognition of the fact that ICZM traverses geo-political territories, and therefore cooperation beyond the confines of the national and regional realms is critical. Such cooperation can be with other States, international organizations or even Secretariats of other conventions, etc.

## 24. SECRETARIAT AND COORDINATION MECHANISMS

The purpose of this article is to define the role and functions of the Secretariat. The Contracting Parties as individual States cannot coordinate across states as required under the convention and the protocols, and therefore the need to delegate the day to day coordination activities of the protocol to a body or organization with stated mandates. The Secretariat acts as the focal point to all the activities of the protocol. It also acts as a link between the countries and the international community.

The Secretariat is a body established under an international convention or protocol or other legal instrument to arrange and service meetings of the governing body of that legal instrument, and to assist Parties in coordinating implementation of the concerned legal instrument. It also performs other functions as assigned to it under the particular legal instrument and the decisions of its governing body. It is also responsible for the day-to-day activities of coordinating the implementation of the convention, protocol or other legal instrument. It is the operational and service providing arm of the convention or protocol.

The Secretariat established under the Nairobi Convention itself serves its protocols including the proposed ICZM Protocol. The Contracting Parties can wish to either cross-refer the functions of the Secretariat in the Convention or have separate "functions article" in the protocol or have both a cross-reference and additional functions that are specific to the protocol.

## 25. FINANCIAL ARRANGEMENTS

The purpose of this article is to define the financial commitments and obligations of the Contracting Parties to the protocol and the basis for assessment for the contributions to the Trust Fund. The Nairobi Convention



framework provides for a system of both assessed and voluntary contributions by Contracting Parties in order to finance its Secretariat and coordination mechanisms. Consequently, what is required is to set the financial mechanisms and requirements for implementation of the ICZM Protocol at regional and national levels. On national level implementation, the obligation to implement agreed commitments lies with the contracting party.

## 26. NATIONAL FOCAL POINTS

The purpose of this article is to provide links between the Contracting parties in their individual capacities as States and their institutions through designated persons/officers with the organization. Such State representatives or links are commonly called “national focal points.”

Contracting parties often designate one or more focal points to be responsible for the convention or protocol or other legal instrument. There are two types of focal points: political and technical. The political focal point is usually responsible for the international processes, such as negotiating agreements and participating in COPs/MOPs. In this sense the national focal point becomes the link between the convention, protocol or other legal instrument and the Contracting State.

A technical focal point often bears the responsibility for implementing specific actions of the convention, protocol or other legal instrument at the national level.

States may be required to designate a Focal Institution and a focal point within the institution. In this respect, the focal point(s) for the ICZM Protocol for the WIO Region may be shared with the Nairobi Convention and the other three protocols. Whichever way the contracting parties decide, it would be preferable that it is reflected in the protocol provisions.

## 27. MEETINGS OF THE PARTIES

This article is intended to provide for the Meeting of Parties (MOP). The terminology differs according to the particular legal instrument. In practice, there is a tendency within environment negotiating forums to use “Conference of the Parties” for the conventions and “Meeting of the Parties” for the protocols. A MOP will often be held in conjunction with a COP, in order to create coherence and efficiency while ensuring the independence of each legal instrument. Combined COPs/MOPs minimize meetings and the attendant costs.

A MOP is a governing body for the Parties, with decision-making authority as the supreme body for the instrument. A MOP is attended by the contracting parties (designated focal point for the protocol), observers, civil society and other invited parties.

A COP/MOP is a policy-making body comprising countries that have ratified a convention, protocol or other legal instrument that meets periodically to take stock of implementation of the concerned legal instrument, and adopt decisions, resolutions or recommendations for the future implementation of the particular legal instrument.

It is envisioned that the COP/MOP for the ICZM Protocol for the WIO Region should be held concurrently with the COP/MOP of the Nairobi Convention and its other Protocols. However, for reporting on the implementation of the protocol or for transacting any other business specific to the protocol, a separate session could be held within the framework of the COP/MOP.

## 28. RELATIONSHIP WITH THE CONVENTION

In accordance with the principle of *pacta sunt servanda* in international law, a State is legally bound to comply with all the treaties to which it is a party and perform them in good faith.<sup>28</sup>

The protocol is an independent and separate instrument and therefore the need to create a legal relationship with the Convention. The Protocol is also an elaboration of the Convention and as such the two instruments should not be in contradiction but supportive of each other. This also applies to the other protocols of the Convention.

The article should also provide for situations where the protocol and the Convention or its other protocols are in conflict. Ordinarily, the Convention supersedes its protocols in the event of conflict.

<sup>28</sup> 1969 Vienna Convention on the Law of Treaties, Article 26.

## 29. RELATIONSHIP WITH THIRD PARTIES

It may also be necessary to elaborate an article concerning the relationship of the Protocol or its contracting parties with “third parties”, or non-Contracting Parties to the Protocol. This essentially amounts to “disclaimers” in the sense that the adoption of the Protocol does not preclude the enactment by Contracting Parties of more strict ICZM legislations, or their membership in other concurrent regional or global legal frameworks. Moreover, at the level of implementation of ICZM, Contracting Parties may involve non-contracting parties or entities with similar objectives to support or collaborate.

## 30. SIGNATURE, RATIFICATION, ACCESSION, ENTRY INTO FORCE

### Signature

This is an act by which the Head of State or government, the foreign minister, or another designated official indicates the authenticity of an international convention, protocol or other legal instrument, and where ratification is not necessary it may also indicate the consent of the State to be bound by that particular instrument.

### Ratification

This is the formal process by which a Head of State or appropriate governmental official or authority signs a document which signals the consent of the State to become a Party to an international convention, protocol or other legal instrument once the legal instrument has entered into force. It's also a proclamation of a State's willingness to be bound by the legal instrument.

Often Multilateral Environmental Agreements (MEAs) allow countries to sign agreements ‘subject to ratification’. Governments are then given time to consider internally their formal position on the international legal instrument. The process of ratification ensures that country representatives have not overstepped their authority in negotiating the legal instrument.

Typically, there is a formal period of time for which an international legal instrument is open for ‘ratification’ by the governments signing the international legal instrument. However, in certain instances, the signing of an international legal instrument may amount to ratification. For this reason, country representatives attending adoption and signing conferences should have full authority from their governments to adopt and sign the international legal instrument being agreed upon.

### Accession

Accession is similar to ratification, only that the latter is usually preceded by signature. It is an act whereby a State becomes a Party to an international legal instrument already negotiated and signed by other States but not by the acceding party. Accession has the same legal effect as ratification.

### Entry into force

This is the coming into legal effect of an international legal instrument. It is the time at which an international convention, protocol or other legal instrument becomes legally binding for the States that have ratified it or acceded to it or otherwise expressed their consent to be bound by the international legal instrument.

During the pre-negotiation or negotiation phases of a convention, protocol or other international legal instrument, parties will agree to specific rules regarding entry into force of the Agreement.

In most cases entry into force depends on a particular number of ratifications, acceptances, approvals, or accessions received. This ensures the achievement of a ‘critical mass’ of participating States so that the Parties that commit to the international legal instrument are capable of realizing its goals and objectives.

## Other Key Terms

### “Withdrawal”

This refers to the situation where a country that is already a contracting party to the protocol or Convention takes its own initiative to come out, cease or “resign” or “retire” from membership of the Protocol or Convention. It is usually considered a legitimate exercise of State Sovereignty, although it is also considered rather unwelcome or undesirable.

**“Depositary”**

This refers to the State or Organization or Institution which is authorized by the contracting parties to a protocol or convention to receive and keep in custody or deposit all instruments of signature, ratification, accession, reservations, withdrawal, etc from the contracting parties. It is the “focal point” for all formal instruments as specified above. Usually this is the Ministry of Foreign Affairs of one of the Contracting Parties to the protocol or convention. It could also be a Secretariat, such as the UN Secretary General.

**“Authentic Languages”**

This refers to the official languages of the legal instrument, i.e. the protocol or convention. While the UN system has adopted several “official UN languages” reflecting the major linguistic civilizations and regions of the world, a region or sub-region such as WIO, may choose its official languages taking into account its geo-political constituency. The Nairobi Convention framework has adopted English and French as its official languages in the Convention and its protocols. However, it is a matter of discussion whether Portuguese should be added as one of the official languages.

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