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REGIONAL SEAS

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Assessment of the Implementation of the Eastern African Action Plan and the Effectiveness of its Legal Instruments

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PREFACE

The Conference of the Plenipotentiaries on the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (Nairobi, 17-21 June 1985) adopted the Action Plan for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region and signed the Convention and its two Protocols in 1985.

Only four countries have since ratified the Convention and its Protocols, which are still not in force.

Many activities under the Regional Action Plan cannot be implemented due to non-payment of contributions to the Eastern African Trust Fund by the contracting parties.

In the light of the above, the Secretariat (UNEP) commissioned a consultant to write a report on the Assessment of the Implementation of the Action Plan for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region and the Effectiveness of its Legal Instruments.

The tasks of the consultant described in the terms of reference were to:

- Identify causes and obstacles which hinder the effective implementation of the Action Plan, i.e. failure to take into account the actual and/or differentiated implementing capacity of the parties, poor implementing mechanisms provided for in the agreements, and inadequate negotiation processes;

- Assess the impact, if any, of the legal instruments on the whole region, and, in particular, on the legal systems of the individual States;

- Identify possible weaknesses of the legal instruments; and

- Propose appropriate measures and remedies to improve the effectiveness of the legal instruments considered.

In this report, the consultant has attempted to identify the possible obstacles hindering the effective implementation of the regional Action Plan and has made recommendations to improve the effectiveness of the legal instruments for the successful implementation of the regional programme.

The report was adopted with amendments by the First Meeting of National Focal Points on the Action Plan for the Eastern African Region held in Nairobi, 27-28 October 1992, for presentation to the forthcoming Intergovernmental Meeting on the Action Plan for the Eastern African Region for consideration.

CONTENTS

		Page
EXECUTIVE SUMMARY		1
1.	INTRODUCTION	7
2.	NEED FOR REGIONAL COOPERATION	7
3.	THE EASTERN AFRICAN ACTION PLAN	8
4.	EASTERN AFRICAN CONVENTION AND ITS PROTOCOLS	11
5.	PROTOCOL CONCERNING PROTECTED AREAS AND WILD FAUNA AND FLORA IN THE EASTERN AFRICAN REGION	12
6.	PROTOCOL CONCERNING COOPERATION IN COMBATING MARINE POLLUTION IN CASES OF EMERGENCY IN THE EASTERN AFRICAN REGION	13
7.	STATUS OF THE CONVENTION AND ITS PROTOCOLS	14
8.	BENEFITS OF RATIFICATION OF THE CONVENTION AND ITS PROTOCOLS	14
9.	ADVANTAGES OF CONTRIBUTING TO THE EASTERN AFRICAN TRUST FUND	16
10.	ROLE OF UNEP (OCA/PAC) AS THE INTERIM SECRETARIAT	16
11.	COMMITMENTS OF THE CONTRACTING PARTIES	17
12.	IMPORTANCE OF THE ROLE OF NATIONAL FOCAL POINTS	17
13.	TRANSMITTING OF INFORMATION BY NATIONAL FOCAL POINTS	18
14.	POSSIBLE WEAKNESSES OF THE CONVENTION AND ITS PROTOCOLS	19
15.	GLOBAL CONVENTIONS	19
16.	IMPACT OF THE CONVENTION AND ITS PROTOCOLS ON THE LEGAL SYSTEMS OF THE STATES	19
17.	CONCLUSION	20
18.	RECOMMENDATIONS	20
ANNEX I:	ROLE OF UNEP (OCA/PAC) AS THE INTERIM SECRETARIAT OF THE EASTERN AFRICAN ACTION PLAN, CONVENTION AND ITS PROTOCOLS	23
ANNEX II:	SUGGESTED METHOD OF COORDINATION BETWEEN THE NATIONAL FOCAL POINTS AND THE SECRETARIAT TO PROMOTE EFFECTIVE IMPLEMENTATION OF THE EASTERN AFRICAN ACTION PLAN, CONVENTION AND ITS PROTOCOLS	29
BIBLIOGRAPHY		31

LIST OF FIGURES

Page

Figure 1: *The Eastern African Region* 6

Figure 2: *Illustration to show the exchange of information between the National Focal Points and the Secretariat (UNEP)* 18

EXECUTIVE SUMMARY

Introduction

The Eastern African Region has a beautiful coastline with rich natural marine resources, beaches of coral sand, vast mangrove forests, productive lagoons and beautiful islands. This beautiful area is, however, threatened by serious problems of coastal and marine pollution.

To combat the marine environmental problems of the Eastern African Region, the nine countries of the region, Comoros, France (Réunion), Kenya, Madagascar, Mauritius, Mozambique, Seychelles, Somalia, United Republic of Tanzania and the European Community, agreed to cooperate within the framework of the Eastern African Action Plan.

A number of preliminary steps taken by the Regional Seas Programme of the Oceans and Coastal Areas Programme Activity Centre (OCA/PAC) within UNEP towards the development of the Eastern African Action Plan led to the convening of a workshop of regional experts in Seychelles from 27-30 September 1982 to consider a draft action plan. The experts reviewed the environmental problems of the region, endorsed the Action Plan and defined the priority programme of activities to be implemented within the Regional Action Plan.

UNEP prepared first drafts of the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region and two Protocols: one concerning Protected Areas, Wild Fauna and Flora, and the second concerning Cooperation in Combating Marine Pollution in Cases of Emergency. Two successive meetings of experts from the countries concerned discussed, approved and recommended these drafts for consideration by the Conference of Plenipotentiaries, which adopted the regional Action Plan and signed the Convention and its two Protocols in Nairobi in 1985.

Need for Cooperation

Since marine and coastal environmental problems neither start nor end at national boundaries and since the countries of the region share common interests and a common sea, it is natural that they should agree to pool their resources to approach and tackle the common threats to their marine environment on a regional basis.

Due to the fact that a major oil tanker route passes through the region and that there is always the threat of a major oil spill, the countries of the region would benefit from regional cooperation since they cannot tackle such threats on an individual basis.

Eastern African Action Plan

The Eastern African Action Plan is intended to provide a framework for regional cooperation to conserve and develop the natural marine resources and to combat coastal and marine pollution problems in the region. The Action Plan has the following five main components:

Environmental assessment

Through this, the Action Plan assesses the regional capabilities and the main factors influencing environmental quality and encourages collaboration among the States of the region for the purpose of coordinating a marine pollution monitoring system.

Environmental management

This helps the States to prepare for pollution emergencies and cooperate in implementing existing measures to reduce and control pollution, and manage and develop marine resources.

Environmental legislation

A firm legal commitment on cooperation is provided in the form of the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region and its two Protocols. Harmonization of national laws and regulations on the protection and development of marine and coastal resources, whenever regional uniformity is required, and a compilation of national laws concerning

Institutional and financial arrangements

The agreed programme of activities under the Action Plan is primarily executed through national institutions. A Regional Coordinating Unit (RCU), however, has yet to be established to oversee and coordinate the implementation of the Action Plan, when the Convention comes into force.

When adopting the Action Plan, the Governments of the States of the region requested UNEP to act as the Interim Secretariat of the Action Plan and the Convention until the Regional Coordinating Unit is established.

UNEP, in cooperation with the relevant United Nations agencies and other organizations, has so far been providing the catalytic financing for the regional programme. However, when the Convention comes into force, the Governments of the region will assume financial responsibility through the Eastern African Trust Fund, with support from the Environment Fund and resources of UN specialized agencies and international organizations. The Eastern African Trust Fund has already been created, but contributions to it are not regular and it is therefore insufficient to finance the activities under the Action Plan.

Supporting measures

These are provided in the form of assistance in education and training, public awareness programmes and expert advice to improve the ability of national institutions to implement the Action Plan successfully.

All the components of the Action Plan are interdependent and each activity is intended to assist the Governments of the region to strengthen the process of formulating sound environmental management policies.

Eastern African Convention and its Protocols

Whereas the Eastern African Action Plan consists of coordinated arrangements to strengthen cooperation among the States of the region, the Convention and its Protocols are intended to be legal obligations to which these States are bound and they provide a legal commitment to activities under the Action Plan.

The Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African region provides that the contracting parties shall take the following appropriate measures:

- Prevent, reduce and combat marine pollution;
- Ensure sound environmental management of natural resources;
- Protect and preserve rare or fragile ecosystems;
- Cooperate in responding to oil pollution emergencies;
- Develop procedures for dissemination of information and consultation among the parties so as to strengthen cooperation;
- Hold ordinary meetings once every two years to review implementation of the Convention; and
- Transmit to the Secretariat information on the measures adopted by them for the implementation of the Convention and Protocols.

The Protocol concerning Protected Areas, Wild Fauna and Flora provides for cooperation in protecting the threatened and endangered species of flora and fauna and important national habitats in the Eastern African Region. It regulates the harvest and sale of threatened or depleted species of wild fauna, prohibits their capture or killing in certain circumstances, and provides for the establishment of protected areas, as necessary, to safeguard natural resources and important ecosystems.

The Protocol concerning Cooperation in Combating Marine Pollution in Cases of Emergency provides for cooperation in protecting the marine and coastal environment of the Eastern African Region through development of national contingency plans and a regional contingency plan.

Status of the Convention and Protocols

Since the Conference of Plenipotentiaries adopted the Eastern African Action Plan and the Convention and its Protocols in 1985, only four countries have ratified the Convention and its two Protocols, namely, France (Réunion), Kenya, Seychelles and Somalia. The Convention and its Protocols come into force on the sixth ratification. Two more ratifications are, therefore, needed before they come into force.

Benefits of Ratification of the Convention and Protocols

The Action Plan consists of numerous projects and activities from which the countries of the region could benefit if it was implemented effectively. However, considerable funds are needed and, until the Convention comes into force, contributions to the Trust Fund will not be regularly forthcoming. It is therefore, very important that the countries of the region ratify the Convention as early as possible.

To date, five priority projects have been earmarked for implementation to strengthen cooperation among the States:

- Protection and management of the marine and coastal areas (EAF/5);
- Assessment and control of pollution in the marine and coastal environment (EAF/6);
- Contingency planning for marine pollution emergencies (EAF/7);
- Coastal erosion and siltation (EAF/10); and
- Environmental impact assessment (EAF/11).

In addition to the benefits from these specific projects, the Convention and the Protocols themselves have a very effective mechanism for cooperation which saves a lot of effort and money on the part of individual States parties to the Convention and its Protocols. The mechanism provides for:

- Sharing of information concerning scientific research and data relevant to conservation, development and management of natural resources and the marine environment;
- Sharing of scientific and technical information and methodologies used in environmental impact assessment and coastal zone management;
- Exchange of experts; and
- Transfer of equipment from one country in the region to another to combat marine pollution emergencies.

Advantages of contributing to the Eastern African Trust Fund

Many activities under the Action Plan cannot be implemented due to lack of funds and, if the Governments of the region were to pay their pledged contributions to the Trust Fund regularly, thereby underlining their commitment to the Action Plan and the Convention, it would most probably attract additional funds from donor countries and/or international agencies.

Role of UNEP (OCA/PAC) as the Interim Secretariat

UNEP has initiated and developed all the 13 regional Action Plans, including the Eastern African Action Plan.

In 1985 UNEP was designated as the Interim Secretariat by the Conference of Plenipotentiaries until such time as the Regional Coordinating Unit (RCU) is established in the region after the Convention comes into force. Since then, UNEP has fulfilled the functions of the Secretariat of the Action Plan and has in that capacity supervised and coordinated all the activities carried out under the Action Plan, including the management of the Eastern African Trust Fund. UNEP, having acted as the Secretariat of the Action Plan and the Convention for such a long time, may have created the impression that the Action Plan is a UNEP Action Plan. To dispel this impression, it is necessary to clarify UNEP's role as the Secretariat of the Action Plan and the commitments of the contracting parties, as well

Commitments of the Contracting Parties

The contracting parties have the following obligations *inter alia*:

- Pay their contributions to the Trust Fund regularly;
- Take appropriate measures to prevent, reduce and combat marine and coastal pollution and to conserve and develop the natural marine resources of the region;
- Cooperate in dealing with threats of marine pollution emergencies;
- Facilitate harmonization of legislation and ratification of relevant global agreements;
- Attend meetings convened by the Secretariat;
- Report regularly on the implementation of the Action Plan, Convention and its Protocols; and
- Nominate a focal point to coordinate the activities of the regional programme and maintain regular contact with the Secretariat.

Importance of the Role of National Focal Points

The role of National Focal Points is very important for the successful implementation of the regional programme as they are the national coordinators and the contact points within the Governments with whom UNEP, as the Interim Secretariat, has to deal on matters relating to the implementation of the regional programme.

The National Focal Points should therefore represent their respective Governments at a high level and should be given a clear mandate to speak and take decisions on behalf of the Governments they represent. They should be in constant touch with the National Focal Points in other countries in the region and with UNEP as the Interim Secretariat.

Transmitting of Information by National Focal Points

To make the implementation of the regional programme more effective, it is suggested that coordination between the National Focal Points and the Secretariat (UNEP) should be more constant. It is therefore proposed that the National Focal Points should regularly transmit to the Secretariat and other National Focal Points in the region information on measures taken by them and on developments concerning the implementation of the regional programme.

Possible Weaknesses of the Convention and its Protocols

The Convention and the Protocols are excellently drafted legal instruments and have no particular major deficiencies. However, it seems that less emphasis was given to the responsibility of private individuals or corporate operators whose activities may sometimes cause considerable marine environmental damage. Therefore, an amendment to the Convention in that respect could be adopted in accordance with the procedure laid down in the Convention.

It should also be noted that adequate attention has not been given to liability and compensation. It would be more effective to spell out clearly the responsibilities of the offenders and make provision for compensation for failure to discharge them. The adoption of a new Protocol on Liability and Compensation would, therefore, be useful in reducing the threats to the marine and coastal environment in the region.

Global Conventions

Since the Convention clearly states that the measures taken by the contracting parties should be in conformity with international law, there is a constant need to ratify the relevant global conventions in the field of the marine and coastal environment. In this respect, it is suggested that UNEP, as the Interim Secretariat, should from time to time advise the countries of the region on the suitability of the relevant global conventions that could be ratified.

Impact of the Convention and its Protocols on the Legal Systems of the States

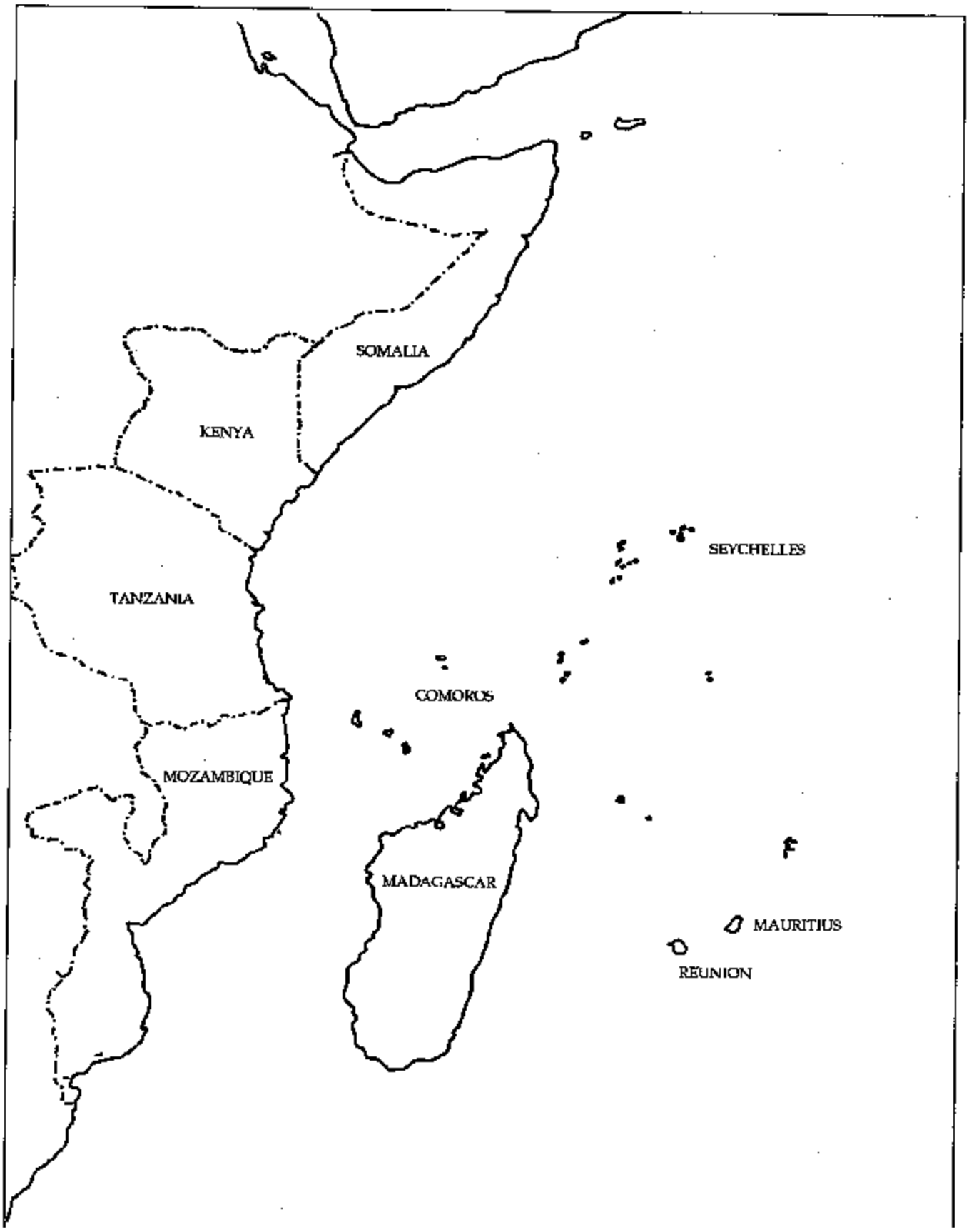
National laws dealing with the marine environment would have to be amended by the individual countries to reflect the concerns and measures adopted to protect and manage marine resources and the marine and coastal environment, in accordance with the Convention and its two Protocols. National laws will have to be harmonized to ensure the conservation of natural marine resources and to regulate or prohibit adverse effects on them. The Secretariat (UNEP) will have to extend assistance in this respect to the countries of the region.

Conclusion

Seven years after the adoption of the Regional Action Plan and signature of the Convention and its two Protocols, only four countries of the region have ratified the Convention and its Protocols.

The countries of the region should give serious thought to the problems hindering the implementation of the Action Plan and ratification of the Convention and its Protocols and suggest ways of overcoming these problems in order to gain maximum benefits from the Convention and the successful implementation of the Action Plan.

Figure 1: The Eastern African Region



1. INTRODUCTION

The coastline of the Eastern African Region is an area rich in natural marine resources and breathtaking scenic beauty, comprising exotic beaches of coral sand, vast mangrove forests, productive lagoons and several beautiful islands.

However, this beautiful marine and coastal environment is being seriously threatened by marine pollution, habitat destruction and the pressure of growing populations, urbanization and industrial installations in the coastal areas.

From the very beginning, UNEP's Governing Council has endorsed a regional approach to the control of marine pollution and the management of marine and coastal resources, and at its Eighth Session it called for the development of an Action Plan for the Protection and Management of the Marine and Coastal Environment of the Eastern African Region.

To combat the problems of marine pollution, the nine countries of the Eastern African Region, Comoros, France (Réunion), Kenya, Madagascar, Mauritius, Mozambique, Seychelles, Somalia, United Republic of Tanzania, and the European Community (EC) agreed to cooperate within the framework of the Eastern African Action Plan for the Protection, Management and Development of the Marine and Coastal Environment. The Action Plan was initiated and coordinated by the Regional Seas Programme of the Oceans and Coastal Areas Programme Activity Centre (OCA/PAC) of the United Nations Environment Programme.

A number of preliminary steps were taken by UNEP towards the development of the Eastern African Action Plan. They included a UNEP-sponsored joint exploratory mission to all the countries of the region, whose findings were then used to prepare and publish the sectoral reports together with an overview of the region's environmental problems.

A Workshop of experts was convened by UNEP in Seychelles from 27 to 30 September 1982 to consider a draft Action Plan prepared by UNEP, based on the findings of the above-mentioned mission. The experts reviewed the environmental problems of the region, endorsed the draft Action Plan and defined the priority programme of activities that they thought should be implemented within the framework of the regional Action Plan.

In accordance with the recommendations made at the Seychelles Workshop, UNEP prepared the first draft of the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region and two Protocols, the first concerning Protected Areas and Wild Fauna and Flora, and the second concerning Cooperation in Combating Marine Pollution in Cases of Emergency. UNEP subsequently convened a meeting of regional experts to discuss the draft Convention and the two Protocols.

Taking into consideration the recommendations of the first meeting of experts, the Executive Director of UNEP convened a second meeting of experts in Nairobi from 29 October to 2 November 1984 to consider the draft Convention and its Protocols. At the second meeting, the experts completed their discussions on the draft Convention and its Protocols and recommended that a Conference of Plenipotentiaries be convened.

A Conference of Plenipotentiaries comprising representatives of the Governments of the region was convened by the Executive Director of UNEP in Nairobi from 17 to 21 June 1985. The Conference adopted the Action Plan for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region and signed the Convention and the two Protocols.

2. NEED FOR REGIONAL COOPERATION

The regional experts at the Seychelles Workshop, after reviewing the environmental problems facing the countries of the region, realized that these could only be tackled through a regional effort and programme. The common environmental problems identified by them were as follows:

(a) Marine environmental degradation, including coastal erosion;

(b) Monitoring of sources, levels and effects of pollutants;

(d) Environmental impact assessment;

(e) Contingency planning to deal with marine pollution emergencies; and

(f) Environmental research, training and education.

Marine and coastal environmental problems neither start nor end at national boundaries. It is, therefore, not only natural but essential that countries which share common interests and a common sea should pool their financial and manpower resources to approach and tackle these common threats to their coastal and marine environment on a regional basis. Moreover, due to the fact that a major oil tanker route passes through the region, there is a constant threat of oil pollution and, since this problem cannot be solved by individual States, regional cooperation is indispensable.

States always stand to benefit from sharing information, methodologies and experiences, in particular, in modern times when resources for research are getting scarcer. The protection and management of coral reefs is a common problem in many Eastern African States. Many other common problems can be tackled by mutual cooperation, for example, contingency planning for cooperation in pollution emergencies, ecology of small islands, endangered habitats and species, lack of environmental impact assessment, etc.

The Eastern African Action Plan provides a framework for regional cooperation and consists of coordinated arrangements to facilitate cooperation among the States of the region with the objective of promoting overall development of their marine resources and combating coastal and marine pollution problems in the region.

3. THE EASTERN AFRICAN ACTION PLAN

The Eastern African Action Plan is a regional programme to develop and protect the marine and coastal environment of the region for the conservation and management of the natural resources and promotion of the health and well-being of the people living in the region. The Action Plan is intended to provide a framework for regional cooperation to tackle problems concerning the region's marine and coastal environment.

The Eastern African Action Plan has the following main objectives:

(a) Promote the sustainable development and sound management of the regional marine and coastal resources by:

  (i) Encouraging consultations and promoting technical cooperation among the States of the region;

  (ii) Emphasizing the economic and social importance of the resources of the marine and coastal environment; and

  (iii) Promoting cooperation on projects of mutual interest to the whole region.

(b) Develop appropriate legislation for the protection and development of the marine and coastal environment at the national and regional levels;

(c) Encourage and strengthen, through increased regional collaboration, the activities of institutions within the region involved in the study of marine and coastal resources and systems;

(d) Promote training in all fields relating to the protection and development of the marine and coastal environment;

(e) Stimulate the growth of public awareness of the value, interest and vulnerability of the region's marine and coastal environment;

(f) Prevent pollution of the marine and coastal environment within the region originating from activities within the States of the region or from operations primarily subject to the jurisdiction of extra-regional States; and

(g) Provide for the protection and rational development of the living resources of the region through the

The elements of the Action Plan have been conceived to be mutually dependent and to provide environmentally sound management tools based on realistic assessment of the state of the environment, taking into account regional needs and priorities.

The Eastern African Action Plan has the following components:

- Environmental assessment;
- Environmental management;
- Environmental legislation;
- Institutional and financial arrangements; and
- Supporting measures.

Environmental assessment

The Action Plan assesses the environmental process through a continuing systematic assessment of the main factors influencing the environmental quality of the region. The process includes:

(a) Assessment of national and subregional capabilities to investigate and manage environmental processes;

(b) Encouragement of collaboration among regional scientists and technicians and their institutions through a coordinated marine pollution monitoring programme;

(c) Compilation of an inventory of sources and amounts of pollutants;

(d) Collection, analysis and dissemination of data; and

(e) Survey and assessment of the socio-economic activities that may have an impact on the marine and coastal environment.

Environmental management

The purpose of the environmental management component is to assist the States of the region to take environmentally sound decisions on development of the marine and coastal environment.

The following activities *inter alia* may be undertaken to strengthen the ability of Governments to adopt appropriate environmental management policies:

(a) Cooperation in preparedness for pollution emergencies;

(b) Cooperation in application of existing international measures to reduce and control pollution by hydrocarbons;

(c) Formulation of guidelines and standards for management and control of domestic, agricultural and industrial wastes, including treatment and discharge of such wastes;

(d) Harmonization of policies on the management of wildlife, genetic resources and natural habitats;

(e) Cooperation in exploration and utilization of fisheries; and

(f) Studies of the environmental, social and cultural effects of tourism.

Environmental legislation

The Convention and its Protocols provide the legal framework for cooperative regional and national actions and also provide a firm legal commitment by the States of the region to conserve their natural marine resources and maintain and develop the environmental quality of the region shared by those States. To achieve this, it is appropriate to promote harmonization of national legislation and to encourage the adoption of regional and

The following activities could be undertaken *inter alia*:

(a) Review and, where necessary, updating and amendment of national legislation and regulations pertaining to the protection and development of the marine and coastal environment;

(b) Improvement in the enforcement of national regulations relating to marine and coastal resources, especially with respect to prevention of pollution of the marine environment and protection of marine species;

(c) Harmonization of national legislations and regulations on the protection and development of marine and coastal resources whenever such uniformity is required, e.g. protection and management of migratory marine species within the region; and

(d) Survey and updating of national environmental laws.

Institutional and financial arrangements

In carrying out the Action Plan, the national capabilities available in the region and the capabilities of regional and international organizations should be used to the greatest possible extent.

The agreed programme should be executed primarily through existing national institutions which, where necessary, should be strengthened.

To ensure the harmonious and integrated evolution of each of the components, a Regional Coordinating Unit (RCU) shall be established to oversee the implementation of the Action Plan.

When adopting the Action Plan, the Governments of the States of the region agreed to request UNEP to act as the Interim Secretariat of the Action Plan until such time as the Regional Coordinating Unit (RCU) was established.

Together with other United Nations specialized agencies and other organizations, UNEP has provided the catalytic financing for the regional programme so far. However, when the Convention comes into force, the Governments of the region will progressively assume financial responsibility, with support from the Environment Fund, the resources of UN specialized agencies and international organizations and counterpart contributions from the Governments concerned. Government financing is to be channelled through a regional Trust Fund to which all the Governments of the States parties to the Action Plan and the Convention have to contribute. The funds are currently being administered by UNEP, which acts as the Interim Secretariat, but will eventually be administered by the Regional Coordinating Unit (RCU) when established. The Unit will then assume the functions of the Secretariat of the Action Plan, the Convention and its Protocols.

A National Focal Point should be designated by each Government to facilitate the work of, and communication with, the Secretariat and to coordinate the programmes activities at the national level.

Supporting measures

To make the Action Plan successful, there is a need for supporting measures to enable Governments of the region to participate more vigorously in environmental activities. This support includes the provision of assistance in the form of education and training, equipment needed for the assessment of environmental quality, expert advice to help improve the ability of national institutions to participate in the Action Plan, harmonization of methodology to ensure the comparability of the results, assistance to promote public awareness programmes on national and regional issues relating to the protection and development of the marine and coastal environment, etc.

These activities, if carried out in earnest, should result in:

(a) Assessment and evaluation of the causes and consequences of environmental pollution, in particular marine and coastal pollution, and the study of coastal and marine activities, as well as the social and economic factors that may influence or be influenced by environmental degradation;

(b) Promotion of methods and practices for the management of socio-economic development activities that

(c) Adoption of regional legal agreements and strengthening of national legislation for the protection and development of the marine and coastal environment; and

(d) Establishment of institutional machinery and adoption of financial arrangements required for the successful implementation of the Action Plan.

All the components of the Action Plan are interdependent and provide a framework for comprehensive action which should contribute both to the protection of the marine and coastal environment and to the continued development and management of the natural marine resources of the region. Each activity under the Action Plan is intended to assist the Governments of the region to strengthen the process through which environmental management policies are formulated.

4. EASTERN AFRICAN CONVENTION AND ITS PROTOCOLS

Whereas the Eastern African Action Plan consists of coordinated arrangements to facilitate and foster cooperation among the States of the region, the Convention and its Protocols are intended to be a legal obligation to which the States of the region are bound and they provide a legal framework for regional and national activities under the Action Plan to combat marine and coastal pollution.

The Convention has the following main provisions:

(a) The "Convention area" is defined in Article 2 as the area comprising the marine and coastal environment of that part of the Indian Ocean situated within the Eastern African region and falling within the jurisdiction of the contracting parties to the Convention;

(b) The parties agree to:

(i) Take all appropriate measures, individually or jointly, to ensure sound environmental management of natural resources, to prevent, reduce or combat pollution of the "Convention area" (Article 4) caused by discharges from ships, ensuring effective implementation of applicable international rules (Article 5), as well as pollution caused by dumping of wastes and other matter at sea by ships, aircraft or man-made structures at sea (Article 6), caused by coastal disposal or by discharges emanating from rivers, coastal establishments or any other source (Article 7), pollution resulting directly or indirectly from exploration and exploitation of the seabed and its subsoil (Article 8) and airborne pollution (Article 9);

(ii) Take all appropriate measures to protect and preserve rare or fragile ecosystems, as well as the habitats of rare, depleted, threatened or endangered species of wild fauna and flora and other marine life, by establishing protected areas as parks and reserves (Article 10);

(iii) Cooperate in taking all necessary measures to respond to pollution emergencies, to reduce or eliminate pollution or the threat of pollution resulting therefrom, by developing contingency plans (Article 11);

(iv) Take all appropriate measures to prevent, reduce and combat environmental damage resulting from engineering activities such as dredging, land reclamation etc. (Article 12);

(v) Develop guidelines for the planning of development projects so as to prevent or minimize harmful impacts on the region and to develop procedures for the dissemination of information and consultation among the Contracting Parties (Article 13);

(vi) Cooperate directly, or with the assistance of competent regional and international organizations, in scientific research and monitoring and exchange of data and scientific information (Article 14);

(vii) Cooperate in the development of rules and procedures in conformity with international law to govern liability and compensation for damage resulting from pollution (Article 15);

(viii) Designate UNEP as the Secretariat of the Convention and an appropriate authority to serve as the channel of communication with the organization (Article 16);

(ix) Hold ordinary meetings once every two years to review the implementation of the Convention (Article 17);

(x) Adopt any additional protocols, if necessary, through a conference of plenipotentiaries (Article 18); and

(xi) Adopt any amendments to the Convention, if necessary, through a conference of plenipotentiaries (Article 19).

(c) Article 20 states that the Annexes to the Convention or to a Protocol shall form an integral part of the Convention or Protocol. The Convention presently includes an Annex on arbitration which sets out the procedure for settling disputes between the parties, if any.

(d) Article 23 puts an obligation on Contracting Parties to transmit regularly to the Secretariat information on the measures adopted by them to implement the Convention and Protocols to which they are parties.

(e) Accession to the Convention and Protocols is open to any State invited to participate in the Conference of Plenipotentiaries held in Nairobi from 17 - 21 June, 1985, and to any regional intergovernmental integration organization exercising competence in the fields covered by the Convention and its Protocols and having at least one member State belonging to the Eastern African Region, provided that such regional organization was invited to participate in the Conference of Plenipotentiaries.

5. PROTOCOL CONCERNING PROTECTED AREAS AND WILD FAUNA AND FLORA IN THE EASTERN AFRICAN REGION

The main objective of the Protocol concerning Protected Areas, Wild Fauna and Flora is to protect the threatened and endangered species of flora and fauna and important natural habitats in the Eastern African Region.

The Protocol has the following main provisions:

(a) The parties agree to:

(i) Take appropriate measures to protect and preserve rare or fragile ecosystems, as well as rare, depleted, threatened or endangered species of wild fauna and flora listed in Annexes I and II to the Protocol by prohibiting activities having adverse effects on the habitats of such species, as well as the capture, killing, possession and sale of such animals, or damage to or destruction of habitat (Articles 2, 3 and 4);

(ii) Regulate the harvest and sale of threatened or depleted species of wild fauna listed in Annex III or prohibit their capture and killing so as to protect the breeding stocks of such species and their critical habitat (Article 5);

(iii) Coordinate their efforts for the protection of the migratory species listed in Annex IV (Article 6);

(iv) Take all appropriate measures to prohibit the introduction of harmful, alien or new species which may cause significant or harmful changes (Article 7);

(v) Establish, as necessary, protected areas to safeguard the natural resources and important ecosystems that provide habitats for species of fauna and flora that are rare, threatened, endemic, migratory or economically important marine species, taking into account the traditional activities of local populations (Articles 8 and 12);

(vi) Adopt guidelines, standards or criteria concerning the selection, establishment and management of protected areas (Article 9);

(vii) Coordinate the establishment of protected areas contiguous to the frontier so as to ensure protection of such areas (Article 13);

(viii) Give appropriate publicity to the established protected areas and transmit such information to the

(ix) Endeavour to inform the public at large about the significance of protected areas and promote its participation in the protection of such areas and their wild fauna and flora (Article 15);

(x) Establish a regional programme for the creation of a network of protected areas in the Eastern African Region and encourage scientific research (Articles 16 and 17); and

(xi) Provide the Convention Secretariat with information about their activities under the Protocol and designate persons responsible for protected areas who shall meet at least once every two years to discuss and make recommendations concerning scientific, administrative and legal measures to improve application of the Protocol.

(b) The Protocol has four Annexes, listing the protected species of wild flora (Annex I), the species of wild fauna requiring special protection (Annex II), the harvestable species of wild fauna requiring protection (Annex III) and the protected migratory species (Annex IV).

(c) Accession is open to Contracting Parties to the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region.

6. PROTOCOL CONCERNING COOPERATION IN COMBATING MARINE POLLUTION IN CASES OF EMERGENCY IN THE EASTERN AFRICAN REGION

The Protocol concerning Cooperation in Combating Marine Pollution in Cases of Emergency in the Eastern African Region is a legal agreement entered into by the Contracting Parties to cooperate in protecting the region's marine and coastal environment through the development of national contingency plans and a regional contingency plan. The States would then know what would be the best ways of cooperating in the event of emergencies caused by major spillages.

The main objective of the Protocol is to provide a framework for coordinated response to major spillages of oil and other harmful substances in the Convention area.

The main provisions of the Protocol are:

(a) Article 1 defines the "Eastern African Region" for the purposes of the Protocol and states that it shall also include the coastal areas of the contracting parties and their internal waters related to the marine and coastal environment.

(b) The parties agree to:

(i) Cooperate in taking all necessary measures to prevent and combat marine pollution incidents, including enactment of necessary relevant legislation, preparation of contingency plans and exchange of information (Articles 3 and 4);

(ii) Establish procedures for the rapid reporting of marine pollution incidents (Article 5);

(iii) Provide assistance to the other States within the agreed framework of joint response action in the event of a marine pollution incident and take the operational measures necessary to prevent, reduce or eliminate the effects of the incident, including assessment, notification, consultation and monitoring (Articles 6 and 7); and

(iv) Enter into subregional arrangements to facilitate the implementation of the provisions of the Protocol (Article 8).

(c) The Convention Secretariat (UNEP) shall, with the cooperation of the International Maritime Organization (IMO), assist the Contracting Parties to prepare national contingency plans and coordinate regional emergency response activities under the Protocol (Article 9).

(d) The Protocol has only one Annex, which contains guidelines for reporting marine pollution incidents.

(e) Accession to the Protocol is open to Contracting Parties to the Convention for the Protection, Management and

7. STATUS OF THE CONVENTION AND ITS PROTOCOLS

France (Réunion), Madagascar, Seychelles and Somalia signed the Convention and Protocols on 21 June 1985 after the Conference of Plenipotentiaries adopted the Action Plan, the Convention and its two Protocols. The Conference was attended by representatives of France (Réunion), Kenya, Madagascar, Mauritius, Mozambique Seychelles, Somalia, United Republic of Tanzania and the European Community (EC). The EC signed the Convention and its Protocols on 19 June 1986.

Despite the serious problems of marine and coastal degradation faced by the region, nearly seven years after the adoption of the Action Plan, Convention and its Protocols by the Conference of Plenipotentiaries, only the following four countries have ratified the Convention and Protocols:

• Somalia	1 March 1988	(instruments of ratification not received)
• France (Réunion)	18 August 1989	
• Kenya	11 September 1990	
• Seychelles	18 December 1990	

The Convention and its Protocols only come into force on the ninetieth day following the deposit of the sixth instrument of ratification. This means that at least two more ratifications are needed before the Convention comes into force.

8. BENEFITS OF RATIFICATION OF THE CONVENTION AND ITS PROTOCOLS

A close look at the Action Plan, the Convention and the Protocols shows that the countries of the region could in fact derive several benefits from early ratification of the Convention and the Protocols.

The Action Plan includes several projects that benefit the countries of the region, but at present only the following priorities have been earmarked:

- Coastal management;
- Pollution monitoring;
- Contingency planning to combat marine pollution;
- Coastal erosion; and
- Environmental impact assessment.

The ongoing priority projects from which the States could immediately benefit are:

EAF/5: Protection and management of the marine and coastal areas in the Eastern African Region

The main objective of the project is:

(a) Develop national self-reliance in all matters relating to the integrated development and management of the environment in coastal areas.

EAF/6: Assessment and control of pollution in the marine and coastal environment of the Eastern African Region

The main objectives of the project are:

(a) Protect the ocean and coastal areas and resources of the Eastern African Region, with emphasis on the introduction of pollution control measures in the region;

(b) Encourage the adoption by the region's Governments of policies and measures designed to mitigate or eliminate marine pollution problems in the region; and

EAF/7: Contingency planning for marine pollution emergencies in the Eastern African Region

The main objectives of the project are:

(a) Develop further the capabilities of the region's States to respond to maritime emergencies and marine pollution incidents posing a threat to the environment and/or to the coastal population, as defined in the Protocol concerning Cooperation in Combating Marine Pollution in Cases of Emergency in the Eastern African Region; and

(b) Ensure enhanced cooperation among the Eastern African countries in the protection of the marine and coastal environment of the region based on the enactment and harmonization of national legislation and coordination of national and regional policies and practices.

EAF/10: Coastal erosion and siltation

The main objectives of the project are:

(a) Prepare an inventory and classification of the various instances of coastal erosion and siltation, and identify appropriate measures to remedy the situation; and

(b) Formulate national and regional institutional frameworks for coastal erosion and siltation control.

EAF/11: Environmental impact assessment

The main objective of the project is:

(a) Develop institutional capabilities in the region for the assessment of the impact on the marine environment of pollution and other effects originating from coastal area developments.

In addition to the benefits described above, the countries of the region have also received other benefits since the initiation of the Action Plan, for example:

(a) Training of personnel involved in the implementation of the Action Plan;

(b) Support for the establishment of national public awareness programmes through distribution by UNEP of posters, stickers, booklets and periodicals such as *Siren, Ambio, Pilot*, etc;

(c) Communication of the methodologies developed by UNEP for use in environmental impact assessment and coastal zone management; and

(d) Making available valuable scientific data and the preparation of scientific directories, etc.

Thus, by ratifying the Convention and its Protocols, the countries of the region stand to derive several long-term benefits. Among others, an enhanced national income would result from increased tourism activities encouraged by a cleaner marine and coastal environment resulting from the implementation of the recommendations and policies on pollution control based on the results of the projects under the Action Plan. The activities under the projects would further lead to:

(a) Protection of the marine and coastal ecosystems, for example:

  (i) Protection of the coral reef, which in addition to being a tourist attraction, protects the lagoon, providing a stable environment for marine organisms and, as such, is one of the most productive of the marine ecosystems; and

  (ii) Protection of mangroves which are threatened throughout the region, but play an important role in a country's economy.

(b) Proper utilization of resources, which is facilitated by sharing information and mapping areas through proper cooperation.

(c) Prevention of health hazards to the population living in the coastal areas through projects concerning sewage treatment and clean drinking water, etc.

Furthermore, the Convention and its Protocols themselves have a mechanism for cooperation among the Contracting States in the form of:

(a) Sharing of information on the conservation and management of natural resources;

(b) Sharing of technical information on the assessment and monitoring of pollutants;

(c) Exchange of information on scientific research and data relevant to the development and management of the marine and coastal environment;

(d) Exchange of experts; and

(e) Transfer of equipment from one country to another for use in cases of marine pollution emergencies.

9. ADVANTAGES OF CONTRIBUTING TO THE EASTERN AFRICAN TRUST FUND

An essential feature of the Regional Seas Programme is that each Regional Action Plan should progressively become financially self-supporting through regional trust funds. If the Governments of the region honoured their pledged contributions to the Eastern African Trust Fund and made efforts to ensure the regular and timely payment thereof, the benefits derived by their countries would exceed the amounts actually contributed.

Some countries might receive equipment, while others could benefit in the form of training of their personnel under projects within the framework of the Action Plan. (Kenya, Madagascar, Mozambique, Seychelles and Tanzania have been provided with equipment under project EAF/6. UNEP (OCA)/EAF IG.3/4).

Moreover, regular payment into the Trust Fund would encourage international agencies and donor countries to contribute more, which would in turn benefit the countries of the region, and some projects which are not being implemented because of lack of funds could then be implemented.

10. ROLE OF UNEP (OCA/PAC) AS THE INTERIM SECRETARIAT

UNEP has not only been very actively involved in the Eastern African Region, but has initiated a total of 13 regional Action Plans since the Governing Council of UNEP designated "Oceans" as one of its priority areas and the Regional Seas Programme was initiated by UNEP in 1974.

UNEP was designated by the Conference of Plenipotentiaries in 1985 as the organization responsible for the Secretariat functions of the Eastern African Action Plan, Convention and its Protocols until such time as the Regional Coordinating Unit (RCU) for the region was established.

The Regional Coordinating Unit (RCU), when established, is supposed to act as the nerve centre of the Regional Action Plan, Convention and its Protocols. It will perform the following functions *inter alia*:

(a) Gather information from all sources, analyse this information and return it to the Governments of the region with concrete recommendations for action;

(b) Cooperate with competent international organizations willing to assist in the Regional Action Plan; and

(c) Organize expert, focal point and intergovernmental meetings to review the progress of the Action Plan and the measures taken by the Governments in respect of the Convention and the Protocols and decide upon the future course of action, as well as the financial resources and budget needed to support it.

By performing the functions of the Interim Secretariat, which include the initiation of numerous activities in the field of the marine and coastal environment, the impression may have been created that the Action Plan is a UNEP Action Plan. It is important, therefore, to dispel this impression and, in doing so, it is necessary to clarify the role of UNEP as the Secretariat and the role of National Focal Points in the implementation of the Action Plan and the Convention. The role of UNEP as the Interim Secretariat is discussed in detail in Annex I. Briefly, UNEP's

11. COMMITMENTS OF THE CONTRACTING PARTIES

Under the Convention and its Protocols, the contracting parties are required to take all appropriate measures to prevent, reduce and combat marine and coastal pollution in the region from any source whatsoever, in conformity with international law.

The foremost obligation of the contracting parties is the regular payment of their contributions to the Trust Fund. As already mentioned, the failure to contribute to the Trust Fund, coupled with the lack of ratifications necessary to enable the Convention to come into force, has become a major obstacle to the concrete and fruitful implementation of the agreed activities under the Action Plan.

The Convention and the Protocols require a firm commitment from the States to maintain and improve the environmental quality and develop the natural marine resources of the region, which means taking all necessary steps to facilitate cooperation in the implementation of the Action Plan, Convention and its Protocols.

The effective implementation of the Convention and its Protocols will require the promotion of harmonization of national legislation and the adoption of regional and subregional agreements to foster regional cooperation, including the ratification of relevant global agreements. To facilitate the harmonization of legislation, each contracting party has to maintain an up-to-date compilation of its national laws relevant to the protection of the marine and coastal environment.

The contracting parties also have to cooperate with each other in responding to pollution emergencies in the region so as to reduce or eliminate marine and coastal pollution or the threat of any such pollution. The steps that could be taken to foster such cooperation would include providing inventories of equipment, lists of institutions and experts available in each State, speedy customs clearance for the equipment, visa facilities for experts visiting the countries and exchange of relevant information on pollution incidents. To achieve this, they must develop national and regional contingency plans, with the assistance of UNEP.

Each contracting party also has the obligation to notify the other States, as well as the competent international organizations, of any imminent danger of marine and coastal pollution, informing them also of any steps it has taken to minimize such pollution.

Furthermore, the contracting parties have the obligation to take appropriate measures to protect and preserve rare or fragile ecosystems, as well as rare, depleted, threatened or endangered species of wild fauna and flora, through the establishment of protected areas and the adoption of appropriate legislative measures to prohibit any adverse activities that might have a detrimental effect on the protected species and their habitats.

The contracting parties have to designate a National Focal Point to serve as a channel of communication with the Secretariat (UNEP) for the purposes of the Action Plan, the Convention and its Protocols.

The contracting parties also have the obligation to attend the meetings convened by UNEP, as the Interim Secretariat, to review the implementation of the Action Plan, Convention and its Protocols.

The contracting parties must regularly transmit to the Secretariat (UNEP) any information on the measures taken by them to implement the Convention and its Protocols. In this respect, the National Focal Points have a very important coordinating role to play between the contracting State and the Secretariat.

It would be appropriate to mention here that the Committee on Seas of the African Ministerial Conference on the Environment (AMCEN), at its second meeting held in Cairo from 20 - 22 December 1988, adopted a long-term plan for 1991-2000, a period the Committee envisages as the "African Decade for the Protection of the Marine and Coastal Environment". Targets set for the decade include continent-wide ratification of all regional and international agreements and full implementation of the Regional Action Plans, which include the Eastern African Action Plan.

12. IMPORTANCE OF THE ROLE OF NATIONAL FOCAL POINTS

There should be no doubt as to the importance of the role National Focal Points have to play in the successful implementation of the Action Plan, Convention and its Protocols. As they are the contact points within the Governments with whom UNEP, as the Interim Secretariat, deals and as the national coordinators for the implementation of the agreed regional programme, they must represent their Governments at a high level and

The Focal Points should clearly understand their duties regarding the implementation of the Action Plan. They should be in constant touch with the Secretariat and keep it informed of up-to-date developments in their respective countries regarding the projects under the Action Plan, the steps being taken and the difficulties encountered concerning ratification of the Convention and its Protocols, and payment to the Trust Fund. They should coordinate the activities of the various institutions in their countries dealing with the Action Plan and keep the Secretariat informed of these activities.

To ensure the timely and regular payment of contributions to the Trust Fund, the Focal Points could inform the Secretariat of the exact time of the preparation of the budget estimates so that the Secretariat could remind the Governments by issuing a circular concerning inclusion of provisions for the Trust Fund in the budget estimates.

The Focal Points may consider the appropriate mechanism to ensure the flow of information from the countries to the Secretariat and the Depositary. The role of Focal Points is discussed in detail in Annex II.

13. TRANSMITTING OF INFORMATION BY NATIONAL FOCAL POINTS

The importance of the role of the National Focal Points in the successful implementation of the Regional Action Plan, the Convention and its Protocols has already been mentioned.

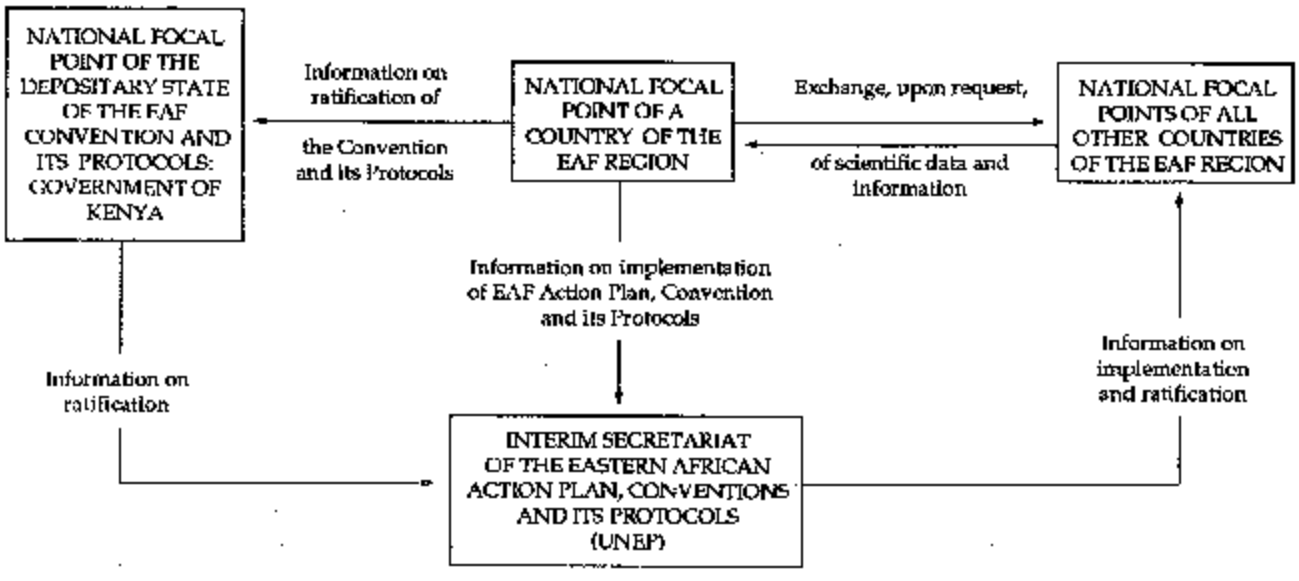
Article 23 of the Convention obliges the contracting parties to transmit regularly to the Secretariat, information on measures taken by them concerning the implementation of the Convention and its Protocols.

The National Focal Points are also obliged to transmit information to the Depositary on the progress made in ratifying the Convention and its Protocols.

The National Focal Point of the Depositary State has, therefore, from time to time to transmit to the Secretariat any information received on the status of the Convention and its Protocols.

The proposed mechanism for exchange of information is illustrated in Figure 2. The National Focal Points must also transmit information to the National Focal Points of other countries of the region on developments regarding implementation with a view to strengthening cooperation in the region to prevent and combat pollution. This will enable the active participation of the National Focal Points in all the components of the Action Plan, the Convention and its Protocols, and ensure that action is taken by the contracting States to follow up on the recommendations of the meetings.

Figure 2: Illustration to show the proposed mechanism for the exchange of information between the National Focal Points and the Secretariat



14. POSSIBLE WEAKNESSES OF THE CONVENTION AND ITS PROTOCOLS

The Convention and its Protocols provide a firm legal commitment by the States to maintain and improve the quality of the marine and coastal environment of the States of the region through a regional coordinated effort. The Convention and its Protocols have no major deficiencies and are in fact excellently drafted legal instruments aimed at combating the marine and coastal pollution of the region.

However, it may seem that too much emphasis was given to State obligations and undertakings with regard to the prevention and control of marine and coastal pollution, and not enough attention was paid to the role of individual or corporate operators whose activities may, and often do, cause substantial marine and coastal environmental damage. The inclusion of private, corporate or parastatal bodies covering their obligations towards the protection of the marine and coastal environment might prove useful and effective in preventing environmental damage. This could be achieved by amending the Convention, following the procedure laid down in Article 19, of the Convention and then through relevant national legislation.

It is noted that "internal waters" are excluded from the scope of the Convention, although the Protocol concerning Cooperation in Combating Marine Pollution in Cases of Emergency in the Eastern African Region does include "internal waters" related to the marine and coastal environment within its scope of application.

It seems however, that due attention has not been paid to the question of liability and compensation for marine and coastal environmental damage. Article 15 of the Convention states that the Contracting Parties shall cooperate in formulating and adopting appropriate rules and procedures in conformity with international law in the field of liability and compensation for damage resulting from pollution in the Convention area.

It would, therefore, be appropriate to adopt a new Protocol on Liability and Compensation, in accordance with Article 18 of the Convention. There is no doubt that a regime of liability and compensation can make a significant contribution to the objectives of the Convention. It would make the person or operator concerned fully aware of his responsibilities for pollution prevention and more conscious of the consequences of failure to discharge his responsibilities. It would also recognize the rights of victims or potential victims of marine environmental damage and grant them access to judicial and administrative bodies in order to seek redress and adequate compensation.

15. GLOBAL CONVENTIONS

The Eastern African Convention, in some of its provisions, expressly links certain of the contracting parties' obligations to the relevant provisions of international law (Articles 3, 4, and 15).

Article 4 states that "The Contracting Parties shall ... take all appropriate measures in conformity with international law ... to prevent, reduce and combat pollution".

However, despite the clear indication of the need to provide a link between the regional Convention and global conventions, countries of the region have ratified very few global conventions. Since the contracting parties have agreed that measures taken by them to implement the regional Convention would conform to international conventions and agreements, it would be in the interests of all concerned if the States of the region ratified at least those conventions that were directly linked to the protection of the marine and coastal environment. It would, therefore, be appropriate if the Secretariat of the Convention and Protocols (UNEP), from time to time, advised the countries of the region on the relevant global conventions they should ratify.

16. IMPACT OF THE CONVENTION AND ITS PROTOCOLS ON THE LEGAL SYSTEMS OF THE STATES

The Convention and its Protocols would in fact have a significant impact on the legal systems of the individual States of the region. Many laws and regulations would have to be amended in accordance with the provisions of the Convention and its two Protocols.

The main provisions of the Convention and its Protocols, already referred to above, require the States to take

National laws will have to be harmonized to ensure protection of the endangered wild fauna by establishing protected areas, and to regulate and prohibit activities which have adverse effects on the habitats of such species.

Therefore, the national laws and regulations dealing with marine and coastal environmental pollution - from whatever source it may originate - will have to reflect the concerns of the States in accordance with the provisions of the Convention and its Protocols.

The laws governing the national institutions designated to take part in the implementation of the agreed regional programme of activities, will also have to be amended in order to strengthen those institutions both technically and financially, and create an institutional framework to deal effectively with environmental problems.

New national environmental laws will have to be enacted to enable the States of the region to adopt regional, subregional and global agreements relevant to the marine and coastal concerns of the region. However, to accomplish this, the Secretariat (UNEP) will have to extend all possible assistance and advice in the form of legal expertise and drafting of proposals for new environmental legislation or amendments to existing laws. It is, therefore, suggested that a study of the legal systems of the individual participating States in the region be carried out.

17. CONCLUSION

It was in 1980 that the Governing Council of UNEP first called for the development of an Action Plan for the Protection and Management of the Marine and Coastal Environment of the Eastern African Region. A decade has passed since regional experts first assembled in Seychelles to review the marine and coastal environmental problems of their region, endorse a draft Action Plan and define a programme of priority activities to be developed within the Action Plan.

The Conference of Plenipotentiaries, comprising representatives of the Governments of the region, adopted the Eastern African Action Plan, the Convention and its two Protocols in Nairobi in 1985. However, seven years have now gone by and only four of the nine countries have ratified the Convention and its Protocols.

The region has a beautiful and productive marine and coastal environment which faces serious threats. This beautiful environment can be sustainably managed only if a regional effort is made through the implementation of the Action Plan, the Convention and its two Protocols by ratifying the Convention and its Protocols immediately and maintaining the regional Trust Fund.

From this report, it can be concluded that it is now time to give serious thought to the real problems hindering the implementation of the Eastern African Action Plan, including the process of ratification of the Convention and its Protocols and contributions to the Trust Fund.

18. RECOMMENDATIONS

In the light of the above, it is recommended that:

(a) A meeting of national experts/focal points should be convened to review the progress of, and impediments to, effective implementation of the Action Plan. The meeting could also provide the opportunity to discuss the role of national experts/focal points, as well as that of UNEP (OCA/PAC) as the Secretariat of the Action Plan, the Convention and its two Protocols, and the benefits that the countries could derive from the programme if the Convention and the Protocols came into force soon. National experts/focal points could then return home and convince their Governments that the Action Plan was not UNEP's Action Plan but their own, for which they have to make regular contributions in order to facilitate its successful implementation;

(b) The States parties should be encouraged to ratify or accede to the Convention and its Protocols urgently through the provision of advice on the necessary steps to be taken and even funds, where absolutely necessary, for the translation of the Convention and the Protocols into the national languages in order to facilitate and expedite the ratification process;

(c) The States parties should be urged to allocate special provisions for activities to prevent marine pollution and

(d) Visits by National Focal Points to other countries in the region should be undertaken in order to study the steps taken towards implementation of the Action Plan;

(e) A mission should be sent to countries of the region, upon request, to study their legal systems and suggest improvements in legislation, where necessary, with a view to promoting and encouraging the harmonization of national legislation;

(f) Model environmental laws should be developed for consideration by Governments of the region for possible adoption;

(g) A new Protocol on Liability and Compensation should be developed for future adoption according to the procedure laid down in Article 18 of the Convention;

(h) The countries of the region should be given encouragement and advice concerning the suitability and benefits of those global conventions that are relevant to the prevention and protection of the marine and coastal environment;

(i) Guidelines and advice should be provided on the effective implementation of the Action Plan on the basis of the experience gained in implementing the conventions already in force;

(j) Training programmes to train the technical and scientific personnel involved in the implementation of the Action Plan should be strengthened;

(k) The possibilities of obtaining additional financial resources for the successful implementation of the Eastern African regional programme should be explored further;

(l) National campaigns to promote public awareness concerning marine and coastal environment should be strengthened; and

(m) Assistance should be given for the introduction of the principles of integrated sustainable management of the marine and coastal environment in educational curricula at primary and secondary school levels through the training of special instructors.

ANNEX I

ROLE OF UNEP (OCA/PAC) AS THE INTERIM SECRETARIAT OF THE EASTERN AFRICAN ACTION PLAN, CONVENTION AND ITS PROTOCOLS

BACKGROUND

It is twenty years since the United Nations Conference on the Human Environment, held in Stockholm from 5 to 16 June 1972, adopted the Action Plan for the Human Environment, including the general principles for assessment and control of marine pollution.

In the light of the results of the Stockholm Conference, the United Nations General Assembly adopted resolution 2997 (XXVII) of 15 December 1972 establishing the United Nations Environment Programme (UNEP) as a focal point for the protection of the environment.

Subsequently, the Governing Council of UNEP chose the "Oceans" as one of the priority areas on which it would focus its attention and efforts.

The Regional Seas Programme was initiated by UNEP in 1974 and since then UNEP's Governing Council has repeatedly endorsed a regional approach to the control of marine pollution and the management of marine and coastal resources and has requested the development of regional action plans. The Regional Seas Programme has subsequently played a very active role in developing the regional action plans and conventions, which at present cover 13 regions.

The regional action plans were developed and adopted within the Regional Seas Programme. They consist of coordinated arrangements to facilitate cooperation among States in the respective regional areas with a view to promoting overall development of their maritime activities and preventing coastal and marine pollution within their areas.

The conventions and protocols constitute integral components of the relevant action plans and are considered to be legal instruments with binding regional and international obligations on the States which agree to be parties to them.

In resolution No. 8/13(c) of 29 April 1980, UNEP's Governing Council called for the development of an action plan for the protection and management of the marine and coastal environment of the Eastern African Region.

The Eastern African Region consists of nine countries, namely, Comoros, France (Réunion), Kenya, Madagascar, Mauritius, Mozambique, Seychelles, Somalia and the United Republic of Tanzania.

As a first step towards developing the Eastern African Action Plan, a joint exploratory mission sponsored by UNEP was sent to the countries of the region. Its findings were then used to prepare six sectoral reports and an overview of the region's environmental problems, together with a draft action plan. These were submitted to the Workshop on the Protection and Development of the Marine and Coastal Environment of the Eastern African Region, organized by UNEP and held in Mahé, Seychelles, from 27 to 30 September 1982, attended by experts of the region's Governments.

The experts reviewed the environmental problems of the region, endorsed the draft Action Plan and defined the priority programme of activities to be developed within the framework of the draft Action Plan.

Taking into consideration the recommendations made at the Workshop, UNEP prepared the first draft of the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region and its two Protocols, one concerning Protected Areas and Wild Fauna and Flora and the other concerning Cooperation in Combating Marine Pollution in Cases of Emergency.

In addition, a series of country reports was initiated and published by UNEP as three regional reports:

(a) Legal aspects of protecting and managing the marine and coastal environment of the East African region:

(b) Marine and coastal conservation in the East African region: National reports. UNEP Regional Seas Reports and Studies No. 50. UNEP, 1984; and

(c) Socio-economic activities that may have an impact on the marine and coastal environment of the East African region: National reports. UNEP Regional Seas Reports and Studies No. 51. UNEP, 1984.

The Executive Director of UNEP then convened a meeting of regional experts to discuss the draft Convention and its Protocols at UNEP Headquarters in Nairobi from 6 to 14 December 1983. Considerable progress was made but it was recommended that another meeting of experts should be held.

Accordingly, the Executive Director of UNEP convened a second meeting of regional experts to consider the draft Convention and its two Protocols which was held at UNEP Headquarters in Nairobi from 29 October to 2 November 1984. At this second meeting, the experts completed their discussions on the draft Convention and its Protocols and recommended that a Conference of Plenipotentiaries be convened.

The Conference of Plenipotentiaries, comprising representatives of the region's Governments, convened by the Executive Director of UNEP at UNEP Headquarters in Nairobi from 17 to 21 June 1985, adopted the Action Plan for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region and signed the regional Convention and the two Protocols.

Including the Eastern African Action Plan and the Convention, to date, 11 Action Plans and/or Conventions have been adopted, signed or ratified for the following regions:

- Mediterranean Region;
- Kuwait Region;
- West and Central African Region;
- East Asian Seas Region;
- South East Pacific Region;
- Red Sea and Gulf of Aden Region;
- South Pacific Region;
- Wider Caribbean Region;
- Eastern African Region;
- Black Sea Region; and
- South Asian Seas Region.

At least two more new regional action plans and conventions are at present being developed by UNEP (OCA/PAC), namely,

- North-West Pacific Region; and
- South-West Atlantic Region.

ROLE OF UNEP (OCA/PAC)

The Conference of Plenipotentiaries designated UNEP as the Interim Secretariat of the Eastern African Action Plan, the Convention and the two Protocols, until the establishment of a Regional Coordinating Unit (RCU), which will eventually assume the responsibilities of the Secretariat.

The Regional Coordinating Unit (RCU) of the Eastern African Action Plan will be established in one of the

The Conference of Plenipotentiaries also called upon UNEP, as the Secretariat of the Action Plan, Convention and Protocols to undertake the following:

(a) Make such arrangements as required to achieve the objectives of the Eastern African regional programme, with the cooperation of the governments of the region and the competent international organizations, and prepare a programme document describing the operational details of projects to be developed on the basis of priorities identified;

(b) Coordinate the implementation of the programmes adopted, subject to the availability of funds;

(c) Convene the meetings of the Bureau and Intergovernmental meetings of the States, parties to the Action Plan;

(d) Prepare two-yearly work plans and budget estimates for submission to Intergovernmental meetings for approval;

(e) Assume responsibility for administering the Eastern African Trust Fund according to the applicable rules of the United Nations; and

(f) Search for additional financial resources, in particular to approach the European Community on behalf of the States of the Eastern African Region regarding the implementation of the regional programme.

UNEP, in keeping with the decision of the Conference of Plenipotentiaries, has continued to perform the functions of the Secretariat for the Action Plan, the Convention and its two Protocols, including the management of the Trust Fund. In that capacity, UNEP (OCA/PAC) has supervised and coordinated the activities so far carried out under the Action Plan, through the cooperation of the relevant National Focal Points of the countries of the region and the specialized agencies of the United Nations.

Article 16 of the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region describes the functions of the Secretariat of the Convention and its two related Protocols as follows:

(a) Prepare and convene the meetings of contracting parties and conferences provided for in Articles 17, 18 and 19 of the Convention;

(b) Transmit to the contracting parties the information received in accordance with Articles 3, 11, 13 and 23 of the Convention;

(c) Perform the functions assigned to it by the Protocols to the Convention;

(d) Consider enquiries by, and information from, the contracting parties and consult with them on questions relating to the Convention and its Protocols;

(e) Coordinate the implementation of cooperative activities agreed upon by the meetings of contracting parties;

(f) Ensure the necessary coordination with other regional and international bodies that the contracting parties consider competent; and

(g) Enter into such administrative arrangements as may be required for the effective discharge of the Secretariat functions.

There is no doubt that, in its eighteen years of existence, UNEP has contributed considerably towards the objective of a cleaner and healthier environment, with a special emphasis on protecting and controlling the marine and coastal environment in the different regional programmes it has initiated and developed, including the Eastern African Action Plan. It may, however, have created the impression that the Action Plan is UNEP's Action Plan and that it is UNEP which should implement it.

It is very important to dispel this wrong impression by providing a clear picture of the actual role of UNEP as the Secretariat of the Action Plan, Convention and its Protocols.

It should be made clear that, although UNEP has been very actively involved in the initiation, formulation and development of the Action Plan, the Convention and its two Protocols and has also actively participated in the implementation of the activities under the Action Plan, its actual role is more one of a catalytic nature, mobilizing forces, coordinating efforts and activities by the countries of the region, ensuring an integrated approach. UNEP, as the Secretariat of the Action Plan, provides the States of the region with an important forum in which to meet, negotiate and cooperate to protect their marine and coastal environment.

Even though UNEP does not directly provide a large amount of funds, it provides some very valuable assistance to the countries of the region that are parties to the Action Plan in the form of training of personnel involved in the Plan's implementation, support for the establishment of national environment public awareness programmes by providing newsletters, pamphlets, video films, posters, stickers, and booklets for distribution, and development of methodologies to tackle environmental problems by providing simplified guidelines for application in environmental impact assessment, coastal zone management, assessment and control of marine pollution from land-based sources and assistance in developing national contingency plans to combat marine and coastal pollution.

Furthermore, UNEP organizes the training of experts and scientists from the region in application of the relevant methodologies and guidelines with the aim of enabling them to apply these to their specific problems within the region with assistance from UNEP (OCA/PAC) in the form of equipment and expertise.

It should also be made clear to the countries of the region that although UNEP has contributed towards the implementation of several activities in many countries of the region under the Action Plan, it is not a funding agency and an essential feature of the Regional Seas Programme is that each regional action plan should ultimately become financially self-supporting through regional trust funds. UNEP only explores the possibilities for additional financial resources available from donor countries, other international funding agencies and financial institutions for the implementation of activities under the Action Plan.

The countries of the region should note that the Eastern African Action Plan is the Action Plan of the countries of the region. Their experts reviewed, amended and recommended it to their respective Governments, which then adopted it at the Conference of Plenipotentiaries held in Nairobi in 1985, together with the Convention and its two Protocols. UNEP does not take any policy decisions and, as the Interim Secretariat, merely implements the Action Plan on behalf of the countries of the region and executes the decisions of the intergovernmental meetings comprising representatives of the Governments of the contracting parties by coordinating their efforts with the aim of achieving the objectives of the Action Plan.

In this context, it might be mentioned that coordination between UNEP (OCA/PAC) and the National Focal Points should be strengthened so as to become more constant and effective and the Secretariat should maintain close cooperation with the countries participating in the Action Plan, fully informing them at all stages of all the activities that are carried out with regard to implementation of the Action Plan. In this regard, more direct contacts and visits to the countries of the region could greatly help in overcoming many difficulties.

To summarize, UNEP, as the Secretariat of the Eastern African Action Plan, the Convention and the Protocols, performs, or should be performing, the following functions *inter alia:*

(a) Preparing and convening meetings of the countries of the region, thus providing a forum in which to meet, negotiate and cooperate to protect and manage the marine and coastal environment of the region;

(b) Administering the Eastern African Trust Fund and submitting from time to time to the countries of the region, reports on the status of the Trust Fund;

(c) Executing the Action Plan on behalf of the countries of the region by coordinating their efforts to achieve its objectives;

(d) Formulating project documents for specific activities agreed upon as part of the regional programme within the Action Plan;

(e) Coordinating the activities under the Action Plan and reporting on the status of the Action Plan, periodically informing the countries of the region on the progress achieved in implementing the activities and providing the countries with an up-to-date evaluation of activities carried out;

(f) Responding to enquiries by, and considering information received from, the countries of the region and, in particular, holding regular consultations with them on problems relating to the implementation of the Convention and its Protocols;

(g) Reporting to the States on the status of signature and ratification of the Convention and its Protocols and urging the countries which have not yet done so to ratify as early as possible;

(h) Preparing every two years the work plan and budget, and presenting it to the States for their approval;

(i) Taking follow-up action on the recommendations of the Bureau and the intergovernmental meetings;

(j) Providing training to the personnel of the region involved in the implementation of the Action Plan, specifically on the job and in the field training;

(k) Providing support for the national environmental public awareness programmes by providing newsletters, pamphlets, posters, video films and stickers for distribution;

(l) Developing specific methodologies to tackle environmental problems by providing simplified guidelines for application in environmental impact assessment, coastal zone management and assessment and control of marine pollution from land-based sources;

(m) Organizing training of regional experts, technicians and scientists on the application of relevant methodologies and guidelines with the aim of enabling them to apply these to the specific problems of their countries with assistance from UNEP (OCA/PAC);

(n) Assisting in developing national contingency plans to tackle marine pollution emergencies;

(o) Providing, on specific request by a contracting State, assistance and cooperation in the drafting and updating of the national environmental laws with a view to promoting the harmonization of the legislation, if necessary, of the countries of the region in the context of the Convention and its Protocols;

(p) Exploring and locating possible additional financial resources from donor countries and international funding agencies for the implementation of activities under the Action Plan;

(q) Coordinating and cooperating, when necessary, with other competent UN specialized agencies, international or regional organizations (UNDP, ECA, IOC, FAO, UNIDO, UNESCO, WHO, IMO, IAEA and IUCN, etc.) on the implementation of the Action Plan, the Convention and its Protocols; and

(r) Performing any other function provided for in the regional Convention and its two Protocols and such other functions as may from time to time be assigned to it by the contracting parties.

ANNEX II

SUGGESTED METHOD OF COORDINATION BETWEEN THE NATIONAL FOCAL POINTS AND THE SECRETARIAT TO PROMOTE EFFECTIVE IMPLEMENTATION OF THE EASTERN AFRICAN ACTION PLAN, CONVENTION AND ITS PROTOCOLS

The active participation and cooperation of the States parties to the Action Plan are the basic pre-requisites for the success of the Eastern African Action Plan. The Plan, the Convention and its Protocols are to be implemented primarily through the National Focal Points and the national and regional institutions of the participating States. In order to achieve efficient coordination and cooperation in the implementation of the Action Plan, Convention and its Protocols, a National Focal Point is established in each country of the region.

The National Focal Points (NFPs) are supposed to perform the following functions *inter alia* to promote the implementation of the regional Action Plan, Convention and its Protocols:

(a) Act as the official channel of communication between the Secretariat (UNEP) and their respective governments;

(b) Designate the national institutions (research centres, laboratories, government departments, universities, etc.) which will provide the institutional basis for carrying out project activities under the Action Plan, Convention and its Protocols;

(c) Coordinate the inputs of their national institutions into the Action Plan, Convention and its Protocols;

(d) Consult with all relevant organizations within their respective countries on the activities and the progress achieved in implementing the Action Plan and to report periodically to the Secretariat on these;

(e) Maintain constant contact with the Secretariat (UNEP) of the Action Plan, Convention and its Protocols;

(f) Communicate every six months to the Secretariat a report on the progress achieved and the difficulties faced in the process of ratifying the Convention and its Protocols and in contributing to the Trust Fund, upon receipt of which the Secretariat will synthesize the reports received and circulate them to the National Focal Points of the Contracting Parties concerned;

(g) Maintain contact with their counterparts in other countries of the region regarding development of activities under the Action Plan, at the same time keeping the Secretariat informed of the developments and problems faced; and

(h) Coordinate the follow-up action taken in accordance with the recommendations of the Bureau and intergovernmental meetings and inform the Secretariat accordingly.

The Focal Point of the Depositary State should, in addition to the above, transmit to the Secretariat the information received by him from the Contracting Parties.

The success of the Action Plan, Convention and its Protocols thus depends very much on the efficiency and administrative capability of National Focal Points.

Therefore, when nominating Focal Points, Governments should consider the importance of their role in the implementation of the Eastern African Action Plan, Convention and Protocols and ensure that they have a clear mandate to speak and take decisions on behalf of the Governments they represent so as to enable them to participate more vigorously and effectively in the success of the Regional Programme.

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