

# Groundwater in international law

Compilation of treaties  
and other legal instruments

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for the  
Development Law Service  
FAO Legal Office

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## FOREWORD

Despite the social, economic, environmental and political importance of groundwater, international law has paid relatively little attention to this resource. Groundwater represents about ninety-seven percent of the fresh water resources available, excluding the water locked in the polar ice. It serves the basic needs of more than one-half of the world's population and it is often the only source of water in arid and semi-arid countries. Improvements in pumping technology and growth in industry, agriculture, and global population are leading to ever increasing levels of use of this resource, and to growing reliance on it. Largely as a result of these phenomena, groundwater resources and the social, economic and environmental systems dependent on them have, over the last fifty years, come under pressure from over-abstraction and pollution, seriously threatening their sustainability.

International law has so far only rarely taken account of groundwater. While surface water treaties abound, groundwater is either nominally included in the scope of these instruments, mainly if it is "related" to surface waters, or it is not mentioned at all. Only few legal instruments contain groundwater-specific provisions, and even fewer address groundwater exclusively.

As groundwater quickly emerges from the limelight and gains strategic importance as a source of often high-quality freshwater in the face of the impending water crisis world-wide, the need for rules of international law addressing groundwater management and protection becomes ever more compelling. It is perhaps no coincidence that the United Nations International Law Commission (ILC) has the topic "Shared Natural Resources", comprising groundwater, oil and gas, in its programme of work. In addition, a trend can be detected to increasingly address groundwater in international agreements, non-binding instruments and interstate compacts, from a resource management as well as an environmental perspective.

It is against this backdrop that FAO and UNESCO have joined forces and embarked on this publication project. It brings together a variety of binding and non-binding international law instruments that, in varying degrees and from different angles, deal with groundwater. Its aim is to report developments in international law and to contribute to detecting law in-the-making in this important field.

The publication was prepared by FAO in connection with the UNESCO projects on international waters "Internationally Shared Aquifer Resources Management" (ISARM) and "From Potential Cooperation to Cooperation Potential" (PC-CP).

Stefano Burchi, Senior Legal Officer, and Kerstin Mechlem, Legal Officer, Development Law Service, FAO, are responsible for the scope and structure of the publication, for the selection of legal materials and their arrangement.

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## LIST OF SELECTED ACRONYMS AND ABBREVIATIONS

ASEAN	Association of Southeast Asian Nations
Doc.	Document
FAO	Food and Agriculture Organization of the United Nations
GEF	Global Environment Facility
ibid.	ibidem
ILA	International Law Association
ILM	International Legal Materials
IUCN	International Union for Conservation of Nature and Natural Resources
No.	Number
NSAS	Nubian Sandstone Aquifer System
OJ	Official Journal of the European Union
OSS	Observatoire du Sahara et du Sahel Sahara and Sahel Observatory
p.	page
para.	paragraph
(s)	signatory
SASS	Système Aquifère du Sahara Septentrional Northwestern Sahara Aquifer System
TIAS	Treaties and Other International Acts Series
UN	United Nations
UN/ECE	United Nations Economic Commission for Europe
UNTS	United Nations Treaty Series
UNESCO	United Nations Educational, Scientific and Cultural Organization
UN	United Nations
Vol.	Volume

## **I. INTRODUCTION**

### **Scope**

This publication contains a variety of international legal instruments on groundwater resources, both transboundary and domestic. The extent to which each instrument covers groundwater varies; some deal exclusively with this resource whereas others contain merely a passing reference to the subject.

Some instruments are binding, others are non-binding. Among the binding ones are global, multi- and bilateral international treaties and agreements, inter-state agreements of Australia and the United States of America and directives of the European Community. The non-binding legal instruments emanate from a variety of governmental and non-governmental sources. While some reflect binding law, others indicate law-in-the-making, or are pointers to the future direction of the international law and policy of groundwater resources.

A predecessor to the present collection is the book *International Groundwater Law* edited by Ludwik A. Teclaff and Albert E. Utton (London, Rome, New York: Oceana Publishers, Inc., 1981). The instruments included in that book have not been reproduced in this publication.

### **Arrangement of the Materials**

The material included in this publication has been divided in four chapters. Chapter II covers all international agreements which deal exclusively with groundwater resources. Other than those featured in *International Groundwater Law*, by Ludwik A. Teclaff and Albert E. Utton, only three legal instruments – all multilateral – could be identified. Chapter III contains treaties which include provisions on groundwater within the larger scope of each instrument. These are set out according to their geographic scope from global to multilateral to bilateral. The multilateral instruments, in turn, have been subdivided by geographic scope into regional treaties and treaties concerning a specific river or lake basin. The bilateral treaties have been arranged in alphabetical order, by pairs of states parties. In all, twenty-four legal instruments can be found in this chapter. Chapter IV includes interstate agreements, i.e., legal instruments concluded between member states of a federal country, which either deal exclusively with groundwater or reflect attention to it within their broader scope. One of these was concluded

between states of the United States of America, and five by states of Australia. Finally, Chapter V contains other legal instruments: two European Community directives and a proposal for a directive, as well as a selection of eleven non-binding instruments, including three by non-governmental organizations. The proposed European Community Directive on the Protection of Groundwater Against Pollution has exceptionally been included in this publication in view of its apparent relevance, notwithstanding its draft status at the time of going to print.

With the exception already indicated as to bilateral treaties, the legal instruments within each chapter and sub-chapter have been arranged in chronological order.

### **Presentation of Selected Instruments**

The instruments which deal exclusively with a specific aquifer have been reproduced in full. With respect to all other instruments, only those parts which directly or indirectly address groundwater have been retained. The selection of relevant parts inevitably reflects a degree of judgment. In their choice the editors have drawn upon FAO expertise in hydro-geological and related sciences.

As a general rule, provisions concerning institutional arrangements, the settlement of disputes, final clauses, and other matters of a strictly procedural nature have been systematically omitted from this publication. Maps and annexes of highly technical content have not been reproduced either. Whenever entire articles, sections, annexes and maps have been left out, their headings have been retained marked as [ ], so that the reader would have an overview of the full scope of the relevant instrument. Where only part of an article is omitted, it is replaced by an ellipsis (...).

### **Parties and Entry into Force**

The states parties to the Groundwater Agreements (chapter II), to the Bilateral Treaties (chapter III.iii), and to the Interstate Agreements (chapter IV) are indicated immediately before the title of the relevant legal instrument. In view of their large numbers, the states parties and/or signatories to Global Conventions (chapter III.i) and to Multilateral Treaties (chapter III.ii) are listed in a footnote. A distinction is made between states parties and signatories (the latter being identified with an (s)), whenever the information

was available to the editors. If known, information on the entry into force of legally binding instruments is provided in a footnote.

### **Sources and References**

FAOLEX, FAO's on-line database of domestic natural resources legislation and international freshwater treaties (<http://faolex.fao.org/faolex/index.htm>), the International Treaties & Compacts database hosted by Oregon State University (<http://mgd.nacse.org/cgi-bin/qml2.0/watertreaty/irealJS.qml>), other internet sources as well as published international legal materials, notably the United Nations Treaty Series (UNTS) and International Legal Materials (ILM), were used in the research phase of this project. Additional instruments have been obtained through the editors' informal network of resource persons.

### **Additional Information**

The texts of the legal instruments reproduced here are faithful to the texts which have been retrieved from the referenced sources. Obvious spelling errors and other textual errors have not been corrected, but have been highlighted by the word [sic]. Footnotes indicated by an asterisk have been inserted by the editors and are not part of the original texts.

### **Disclaimer**

For all the care and attention to detail the editors have invested in this publication, there can be no pretence of exhaustiveness or of definitiveness to it. Important legal instruments may have been missed in the search, errors of judgment may have been made in the selection of parts of any given legal instrument, or other mistakes may have crept in. The editors invite the readership to flag such errors and omissions to them, in view of a subsequent edition and update of this publication.

## II. GROUNDWATER AGREEMENTS

### ***Chad - Egypt - Libya - Sudan***

#### **1. Programme for the Development of a Regional Strategy for the Utilisation of the Nubian Sandstone Aquifer System (NSAS) - Terms of Reference For the Monitoring and Exchange of Groundwater Information of the Nubian Sandstone Aquifer System [Tripoli, 5 October 2000]\***

For sustainable utilisation of the Nubian Sandstone Aquifer System, consolidation of the existing data and information in such a usable accessible manner and the continuous update of knowledge in the Aquifer Systems should be maintained. In order to accomplish this objective and to assure the exchange and flow of information between the four countries sharing the NSAS. It is herewith, the four countries namely, Chad, Egypt, Libya and Sudan represented by their National Coordinators formulated and signed the following agreements;

#### **Agreement No. 1 – Terms of Reference for the Monitoring and Exchange of Groundwater Information of the Nubian Sandstone Aquifer System [Tripoli, 5 October 2000]†**

Consolidated data throughout the implementation of the "Programme for the Development of a Regional Strategy for the utilisation of the Nubian Sandstone Aquifer System" was achieved through a Regional Information System called the Nubian Aquifer Regional Information System (NARIS). This integrated Information System is conceived to fulfill the following tasks:

- Storing and documenting the different data, covering all fields relevant to the Nubian Sandstone Aquifer System.
- Processing, analysis and display of basic data.

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\* FAOLEX (FAO legal database online). Reprinted in: Centre for Environment & Development for the Arab Region and Europe (CEDARE), *Regional Strategy for the Utilisation of the Nubian Sandstone Aquifer System*, Volume IV, Appendix II, Cairo, 2001.

† Ibid.

- Preparing the input parameters which are needed for the modeling at different scales and calibration of the groundwater model and comparison of the results of modeling with other data for planning and decision making.
- Provide an easy link between the participating countries through a system ensuring the exchange and flow of information.

Therefore it is herewith agreed that the four countries namely; Chad, Egypt, Libya and Sudan share the data that was consolidated throughout the implementation of the Programme mentioned above and included in the Nubian Aquifer Regional Information System (NARIS) in addition to information on developmental aspects including socio-economic data, management of harsh environment, drilling experiences, meteorological data, .. etc. and also agreed to update this system as specified in the Agreement on Terms of Reference for Monitoring and Data Sharing.

The sharing of this information will be accomplished according to the setup specified below;

Internet Environment - Server and access through internet.

In this protocol the data will be stored on a server and accessed through internet by the four countries through web-based Oracle. A level of security is maintained in this technique, so that access is enabled only to the four countries.

### **Agreement No. 2 – Terms of Reference for Monitoring and Data Sharing [Tripoli, 5 October 2000]\***

For sustainable development and proper management of the Nubian Sandstone Aquifer System, continuous monitoring of the aquifer should be maintained. In order to observe the regional behaviour of the NSAS, monitored parameters of the aquifer should be shared between the concerned countries.

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\* Ibid.

Hence, it is herewith agreed between the four countries sharing the Nubian Sandstone Aquifer System, namely Chad, Egypt, Libya and Sudan, represented by their National Coordinators to monitor and share among them the following information:

- Yearly extraction in every extraction site, specifying geographical location and number of producing wells and springs in every site.
- Representative Electrical Conductivity measurements (EC), taken once a year in each extraction site, followed by a complete chemical analysis if drastic changes in salinity is [sic] observed.
- Water level measurements taken twice a year in the locations shown in the attached maps and tables. The proposed monitoring network is subject to changes upon the feedback of the National Coordinators of the concerned countries.

These measurements should be undertaken within the Nubian Aquifer System and the Post Nubian Aquifer System.

...

[Omitted: Proposed regional well monitoring network, Regional monitoring network in the Nubian Aquifer, Regional monitoring network in the Post Nubian Aquifer]

### ***Algeria - Libya - Tunisia***

#### **2. Establishment of a Consultation Mechanism for the Northwestern Sahara Aquifer System (SASS) [2002]\***

...

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\* Excerpts of the procès verbal (Minutes) of a meeting of representatives of Algeria, Libya and Tunisia held at the Headquarters of the Food and Agriculture Organization of the United Nations (FAO) in Rome, Italy, on 19 and 20 December 2002. The procès verbal was subsequently endorsed by Algeria on 6 January 2003, Tunisia on 15 February 2003 and Libya on 23 February 2003. The Minutes and the subsequent letters of endorsement signified an agreement to establish the Consultation Mechanism. The procès verbal is on file with the editors, in the English and French originals.

### Consultation mechanism

...

A consensus has emerged on an *evolutionary approach* that, starting from a simple structure (phase 1), evolves into a more complex and autonomous structure charged with specific functions (phase 2).

[Omitted: Sketch of consultation mechanism - (phase 1)]

### Features of consultation mechanism (phase 1)

The consultation mechanism presents the following features:

(i) Objective

To coordinate, promote and facilitate the rational management of the NWSAS water resources.

(ii) Structure

- *a steering committee* composed of representatives of the national agencies in charge of water resources, acting as national focal points; the committee meets in ordinary session once a year, and in extraordinary session upon the request of one of the three states; sessions are held alternatively in each country; the committee's chairmanship is held by the representative of the host country.
- *a coordination unit* directed by a coordinator designated by the OSS in consultation with the steering committee;
- *an ad hoc scientific committee* for evaluation and scientific guidance, to be convened when the need arises.

(iii) Legal status

The coordination unit is administered and hosted by the OSS.

(iv) Functions

- to manage the tools developed under the SASS project (hydrogeologic data base and simulation model);
- to develop and follow-up a reference observation network;
- to process, analyze and validate data relating to the knowledge of the resource;
- to develop databases on socio-economic activities in the region, in relation to water uses;
- to develop and publish indicators on the resource and its uses in the three countries;
- to promote and facilitate the conduct of joint or coordinated studies and research by experts from the three countries;
- to formulate and implement training programmes;
- to update the NWSAS model on a regular basis;
- to devise and formulate proposals relating to the evolution and functioning of the consultation mechanism, and to its operationalization during phase 2.

(v) Financing

Each state bears the operating costs of its own focal point. The functioning of the coordination unit is financed out of subventions and gifts granted to the OSS by the concerned states, cooperating countries, etc.

...

### **III. WATER RESOURCES AND ENVIRONMENTAL TREATIES CONTAINING PROVISIONS ON GROUNDWATER**

#### **i. Global Conventions**

#### **3. United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa [Paris, 17 June 1994]\***

The Parties to this Convention,

...

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\* 33 ILM 1328 (1994). Entry into force: 26 December 1996. Parties: Afghanistan, Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, European Community, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Niue, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, The Former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Vanuatu, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe, as at 31 July 2004.

Reaffirming the Rio Declaration on Environment and Development which states, in its Principle 2, that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility 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,

...

Have agreed as follows:

### Part I - Introduction

#### Article 1 - Use of terms

For the purposes of this Convention:

- (a) "desertification" means land degradation in arid, semi-arid and dry sub-humid areas resulting from various factors, including climatic variations and human activities;
- (b) "combating desertification" includes activities which are part of the integrated development of land in arid, semi-arid and dry sub-humid areas for sustainable development which are aimed at:
  - (i) prevention and/or reduction of land degradation;
  - (ii) rehabilitation of partly degraded land; and
  - (iii) reclamation of desertified land;
- (c) "drought" means the naturally occurring phenomenon that exists when precipitation has been significantly below normal recorded levels, causing serious hydrological imbalances that adversely affect land resource production systems;
- (d) "mitigating the effects of drought" means activities related to the prediction of drought and intended to reduce the vulnerability of society and natural systems to drought as it relates to combating desertification;

- (e) "land" means the terrestrial bio-productive system that comprises soil, vegetation, other biota, and the ecological and hydrological processes that operate within the system;
- (f) "land degradation" means reduction or loss, in arid, semi-arid and dry sub-humid areas, of the biological or economic productivity and complexity of rainfed cropland, irrigated cropland, or range, pasture, forest and woodlands resulting from land uses or from a process or combination of processes, including processes arising from human activities and habitation patterns, such as:
  - (i) soil erosion caused by wind and/or water;
  - (ii) deterioration of the physical, chemical and biological or economic properties of soil; and
  - (iii) long-term loss of natural vegetation;
- (g) "arid, semi-arid and dry sub-humid areas" means areas, other than polar and sub-polar regions, in which the ratio of annual precipitation to potential evapotranspiration falls within the range from 0.05 to 0.65;
- (h) "affected areas" means arid, semi-arid and/or dry sub-humid areas affected or threatened by desertification;
- (i) "affected countries" means countries whose lands include, in whole or in part, affected areas;
- (j) "regional economic integration organization" means an organization constituted by sovereign States of a given region which has competence in respect of matters governed by this Convention and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Convention;
- (k) "developed country Parties" means developed country Parties and regional economic integration organizations constituted by developed countries.

Article 2 - Objective

1. The objective of this Convention is to combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification, particularly in Africa, through effective action at all levels, supported by international cooperation and partnership arrangements, in the framework of an integrated approach which is consistent with Agenda 21, with a view to contributing to the achievement of sustainable development in affected areas.
2. Achieving this objective will involve long-term integrated strategies that focus simultaneously, in affected areas, on improved productivity of land, and the rehabilitation, conservation and sustainable management of land and water resources, leading to improved living conditions, in particular at the community level.

Article 3 - Principles

In order to achieve the objective of this Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

...

- (c) the Parties should develop, in a spirit of partnership, cooperation among all levels of government, communities, non-governmental organizations and landholders to establish a better understanding of the nature and value of land and scarce water resources in affected areas and to work towards their sustainable use; and

...

Part II - General provisionsArticle 4 - General obligations

...

2. In pursuing the objective of this Convention, the Parties shall:

...

- (d) promote cooperation among affected country Parties in the fields of environmental protection and the conservation of land and water resources, as they relate to desertification and drought;

...

Article 5 - Obligations of affected country Parties

In addition to their obligations pursuant to article 4, affected country Parties undertake to:

- (a) give due priority to combating desertification and mitigating the effects of drought, and allocate adequate resources in accordance with their circumstances and capabilities;
- (b) establish strategies and priorities, within the framework of sustainable development plans and/or policies, to combat desertification and mitigate the effects of drought;
- (c) address the underlying causes of desertification and pay special attention to the socio-economic factors contributing to desertification processes;
- (d) promote awareness and facilitate the participation of local populations, particularly women and youth, with the support of non-governmental organizations, in efforts to combat desertification and mitigate the effects of drought; and
- (e) provide an enabling environment by strengthening, as appropriate, relevant existing legislation and, where they do not exist, enacting new laws and establishing long-term policies and action programmes.

[Omitted: Article 6 - Obligations of developed country Parties, Article 7 - Priority for Africa, Article 8 - Relationship with other conventions]

Part III - Action programmes, scientific and technical cooperation and supporting measures

Section 1: Action programmes

[Omitted: Article 9 - Basic approach; Article 10 - National action programmes, Article 11 - Subregional and regional action programmes, Article 12 - International cooperation, Article 13 - Support for the elaboration and implementation of action programmes, Article 14 - Coordination in the elaboration and implementation of action programmes]

Article 15 - Regional implementation Annexes

Elements for incorporation in action programmes shall be selected and adapted to the socio-economic, geographical and climatic factors applicable to affected country Parties or regions, as well as to their level of development. Guidelines for the preparation of action programmes and their exact focus and content for particular subregions and regions are set out in the regional implementation Annexes.

[Omitted: Section 2: Scientific and technical cooperation: Article 16 - Information collection, analysis and exchange, Article 17 - Research and development, Article 18 - Transfer, acquisition, adaptation and development of technology; Section 3: Supporting measures: Article 19 - Capacity building, education and public awareness, Article 20 - Financial resources, Article 21 - Financial mechanisms]

Part IV - Institutions

[Omitted: Article 22 - Conference of the Parties, Article 23 - Permanent Secretariat, Article 24 - Committee on Science and Technology, Article 25 - Networking of institutions, agencies and bodies]

Part V - Procedures

[Omitted: Article 26 - Communication of information, Article 27 - Measures to resolve questions on implementation, Article 28 - Settlement of disputes]

Article 29 - Status of Annexes

1. Annexes form an integral part of the Convention and, unless expressly provided otherwise, a reference to the Convention also constitutes a reference to its Annexes.
2. The Parties shall interpret the provisions of the Annexes in a manner that is in conformity with their rights and obligations under the articles of this Convention.

[Omitted: Article 30 - Amendments to the Convention, Article 31 - Adoption and amendment of Annexes, Article 32 - Right to vote]

Part VI - Final provisions

[Omitted: Article 33 - Signature, Article 34 - Ratification, acceptance, approval and accession, Article 35 - Interim arrangements, Article 36 - Entry into force, Article 37 - Reservations, Article 38 - Withdrawal, Article 39 - Depositary, Article 40 - Authentic texts]

...

[Omitted: Annex I - Regional implementation Annex for Africa, Annex II - Regional implementation Annex for Asia, Annex III - Regional implementation Annex for Latin America and the Caribbean]

Annex IV

Regional implementation Annex for the northern Mediterranean

Article 1 - Purpose

The purpose of this Annex is to provide guidelines and arrangements necessary for the effective implementation of the Convention in affected country Parties of the northern Mediterranean region in the light of its particular conditions.

Article 2 - Particular conditions of the northern Mediterranean region

The particular conditions of the northern Mediterranean region referred to in article 1 include:

- (a) semi-arid climatic conditions affecting large areas, seasonal droughts, very high rainfall variability and sudden and high- intensity rainfall;
- (b) poor and highly erodible soils, prone to develop surface crusts;
- (c) uneven relief with steep slopes and very diversified landscapes;
- (d) extensive forest coverage losses due to frequent wildfires;
- (e) crisis conditions in traditional agriculture with associated land abandonment and deterioration of soil and water conservation structures;
- (f) unsustainable exploitation of water resources leading to serious environmental damage, including chemical pollution, salinization and exhaustion of aquifers; and
- (g) concentration of economic activity in coastal areas as a result of urban growth, industrial activities, tourism and irrigated agriculture.

#### Article 3 - Strategic planning framework for sustainable development

1. National action programmes shall be a central and integral part of the strategic planning framework for sustainable development of the affected country Parties of the northern Mediterranean.
2. A consultative and participatory process, involving appropriate levels of government, local communities and non-governmental organizations, shall be undertaken to provide guidance on a strategy with flexible planning to allow maximum local participation, pursuant to article 10, paragraph 2 (f) of the Convention.

#### Article 4 - Obligation to prepare national action programmes and timetable

Affected country Parties of the northern Mediterranean region shall prepare national action programmes and, as appropriate, subregional, regional or joint action programmes. The preparation of such programmes shall be finalized as soon as practicable.

### Article 5 - Preparation and implementation of national action programmes

In preparing and implementing national action programmes pursuant to articles 9 and 10 of the Convention, each affected country Party of the region shall, as appropriate:

- (a) designate appropriate bodies responsible for the preparation, coordination and implementation of its programme;
- (b) involve affected populations, including local communities, in the elaboration, coordination and implementation of the programme through a locally driven consultative process, with the cooperation of local authorities and relevant non-governmental organizations;
- (c) survey the state of the environment in affected areas to assess the causes and consequences of desertification and to determine priority areas for action;
- (d) evaluate, with the participation of affected populations, past and current programmes in order to design a strategy and elaborate activities in the action programme;
- (e) prepare technical and financial programmes based on the information gained through the activities in subparagraphs (a) to (d); and
- (f) develop and utilize procedures and benchmarks for monitoring and evaluating the implementation of the programme.

### Article 6 - Content of national action programmes

Affected country Parties of the region may include, in their national action programmes, measures relating to:

- (a) legislative, institutional and administrative areas;
- (b) land use patterns, management of water resources, soil conservation, forestry, agricultural activities and pasture and range management;
- (c) management and conservation of wildlife and other forms of biological diversity;

- (d) protection against forest fires;
- (e) promotion of alternative livelihoods; and
- (f) research, training and public awareness.

Article 7 - Subregional, regional and joint action programmes

1. Affected country Parties of the region may, in accordance with article 11 of the Convention, prepare and implement subregional and/or regional action programmes in order to complement and increase the efficiency of national action programmes. Two or more affected country Parties of the region, may similarly agree to prepare a joint action programme between or among them.
2. The provisions of articles 5 and 6 shall apply *mutatis mutandis* to the preparation and implementation of subregional, regional and joint action programmes. In addition, such programmes may include the conduct of research and development activities concerning selected ecosystems in affected areas.
3. In preparing and implementing subregional, regional or joint action programmes, affected country Parties of the region shall, as appropriate:
  - (a) identify, in cooperation with national institutions, national objectives relating to desertification which can better be met by such programmes and relevant activities which could be effectively carried out through them;
  - (b) evaluate the operational capacities and activities of relevant regional, subregional and national institutions; and
  - (c) assess existing programmes relating to desertification among Parties of the region and their relationship with national action programmes.

Article 8 - Coordination of subregional, regional and joint action programmes

Affected country Parties preparing a subregional, regional or joint action programme may establish a coordination committee composed of representatives of each affected country Party concerned to review progress

in combating desertification, harmonize national action programmes, make recommendations at the various stages of preparation and implementation of the subregional, regional or joint action programme, and act as a focal point for the promotion and coordination of technical cooperation pursuant to articles 16 to 19 of the Convention.

Article 9 - Non-eligibility for financial assistance

In implementing national, subregional, regional and joint action programmes, affected developed country Parties of the region are not eligible to receive financial assistance under this Convention.

Article 10 - Coordination with other subregions and regions

Subregional, regional and joint action programmes in the northern Mediterranean region may be prepared and implemented in collaboration with those of other subregions or regions, particularly with those of the subregion of northern Africa.

**4. United Nations Convention on the Law of the Non-navigational Uses of International Watercourses [New York, 21 May 1997]\***

The Parties to the present Convention,

Conscious of the importance of international watercourses and the non-navigational uses thereof in many regions of the world,

Having in mind Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Considering that successful codification and progressive development of rules of international law regarding non-navigational uses of international

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\* 36 ILM 710 (1997). Not yet in force. Parties and signatories (s): Côte d'Ivoire (s), Finland, Germany (s), Hungary, Iraq, Jordan, Lebanon, Luxembourg (s), Namibia, Netherlands, Norway, Paraguay (s), Portugal (s), Qatar, South Africa, Sweden, Syrian Arab Republic, Tunisia (s), Venezuela (s), Yemen (s), as at 31 July 2004.

watercourses would assist in promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

Taking into account the problems affecting many international watercourses resulting from, among other things, increasing demands and pollution,

Expressing the conviction that a framework convention will ensure the utilization, development, conservation, management and protection of international watercourses and the promotion of the optimal and sustainable utilization thereof for present and future generations,

Affirming the importance of international cooperation and good-neighbourliness in this field,

Aware of the special situation and needs of developing countries, Recalling the principles and recommendations adopted by the United Nations Conference on Environment and Development of 1992 in the Rio Declaration and Agenda 21,

Recalling also the existing bilateral and multilateral agreements regarding the non-navigational uses of international watercourses,

...

Have agreed as follows:

## Part I - Introduction

### Article 1 - Scope of the present Convention

1. The present Convention applies to uses of international watercourses and of their waters for purposes other than navigation and to measures of protection, preservation and management related to the uses of those watercourses and their waters.
2. The uses of international watercourses for navigation is not within the scope of the present Convention except insofar as other uses affect navigation or are affected by navigation.

Article 2 - Use of terms

For the purposes of the present Convention:

- (a) "Watercourse" means a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus;
- (b) "International watercourse" means a watercourse, parts of which are situated in different States;
- (c) "Watercourse State" means a State Party to the present Convention in whose territory part of an international watercourse is situated, or a Party that is a regional economic integration organization, in the territory of one or more of whose Member States part of an international watercourse is situated;
- (d) "Regional economic integration organization" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

Article 3 - Watercourse agreements

1. In the absence of an agreement to the contrary, nothing in the present Convention shall affect the rights or obligations of a watercourse State arising from agreements in force for it on the date on which it became a party to the present Convention.
2. Notwithstanding the provisions of paragraph 1, parties to agreements referred to in paragraph 1 may, where necessary, consider harmonizing such agreements with the basic principles of the present Convention.
3. Watercourse States may enter into one or more agreements, hereinafter referred to as "watercourse agreements", which apply and adjust the provisions of the present Convention to the characteristics and uses of a particular international watercourse or part thereof.
4. Where a watercourse agreement is concluded between two or more watercourse States, it shall define the waters to which it applies. Such

an agreement may be entered into with respect to an entire international watercourse or any part thereof or a particular project, programme or use except insofar as the agreement adversely affects, to a significant extent, the use by one or more other watercourse States of the waters of the watercourse, without their express consent.

5. Where a watercourse State considers that adjustment and application of the provisions of the present Convention is required because of the characteristics and uses of a particular international watercourse, watercourse States shall consult with a view to negotiating in good faith for the purpose of concluding a watercourse agreement or agreements.

Where some but not all watercourse States to a particular international watercourse are parties to an agreement, nothing in such agreement shall affect the rights or obligations under the present Convention of watercourse States that are not parties to such an agreement.

#### Article 4 - Parties to watercourse agreements

1. Every watercourse State is entitled to participate in the negotiation of and to become a party to any watercourse agreement that applies to the entire international watercourse, as well as to participate in any relevant consultations.
2. A watercourse State whose use of an international watercourse may be affected to a significant extent by the implementation of a proposed watercourse agreement that applies only to a part of the watercourse or to a particular project, programme or use is entitled to participate in consultations on such an agreement and, where appropriate, in the negotiation thereof in good faith with a view to becoming a party thereto, to the extent that its use is thereby affected.

#### Part II - General principles

##### Article 5 - Equitable and reasonable utilization and participation

1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable

utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.

2. Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present Convention.

#### Article 6 - Factors relevant to equitable and reasonable utilization

1. Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including:
  - (a) Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;
  - (b) The social and economic needs of the watercourse States concerned;
  - (c) The population dependent on the watercourse in each watercourse State;
  - (d) The effects of the use or uses of the watercourses in one watercourse State on other watercourse States;
  - (e) Existing and potential uses of the watercourse;
  - (f) Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;
  - (g) The availability of alternatives, of comparable value, to a particular planned or existing use.
2. In the application of article 5 or paragraph 1 of this article, watercourse States concerned shall, when the need arises, enter into consultations in a spirit of cooperation.

3. The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is a reasonable and equitable use, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.

#### Article 7 - Obligation not to cause significant harm

1. Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States.
2. Where significant harm nevertheless is caused to another watercourse State, the States whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard for the provisions of articles 5 and 6, in consultation with the affected State, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.

#### Article 8 - General obligation to cooperate

1. Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse.
2. In determining the manner of such cooperation, watercourse States may consider the establishment of joint mechanisms or commissions, as deemed necessary by them, to facilitate cooperation on relevant measures and procedures in the light of experience gained through cooperation in existing joint mechanisms and commissions in various regions.

#### Article 9 - Regular exchange of data and information

1. Pursuant to article 8, watercourse States shall on a regular basis exchange readily available data and information on the condition of the watercourse, in particular that of a hydrological, meteorological, hydrogeological and ecological nature and related to the water quality as well as related forecasts.

2. If a watercourse State is requested by another watercourse State to provide data or information that is not readily available, it shall employ its best efforts to comply with the request but may condition its compliance upon payment by the requesting State of the reasonable costs of collecting and, where appropriate, processing such data or information.
3. Watercourse States shall employ their best efforts to collect and, where appropriate, to process data and information in a manner which facilitates its utilization by the other watercourse States to which it is communicated.

#### Article 10 - Relationship between different kinds of uses

1. In the absence of agreement or custom to the contrary, no use of an international watercourse enjoys inherent priority over other uses.
2. In the event of a conflict between uses of an international watercourse, it shall be resolved with reference to articles 5 to 7, with special regard being given to the requirements of vital human needs.

#### Part III - Planned measures

##### Article 11 - Information concerning planned measures

Watercourse States shall exchange information and consult each other and, if necessary, negotiate on the possible effects of planned measures on the condition of an international watercourse.

##### Article 12 - Notification concerning planned measures with possible adverse effects

Before a watercourse State implements or permits the implementation of planned measures which may have a significant adverse effect upon other watercourse States, it shall provide those States with timely notification thereof. Such notification shall be accompanied by available technical data and information, including the results of any environmental impact assessment, in order to enable the notified States to evaluate the possible effects of the planned measures.

Article 13 - Period for reply to notification

Unless otherwise agreed:

- (a) A watercourse State providing a notification under article 12 shall allow the notified States a period of six months within which to study and evaluate the possible effects of the planned measures and to communicate the findings to it;
- (b) This period shall, at the request of a notified State for which the evaluation of the planned measures poses special difficulty, be extended for a period of six months.

Article 14 - Obligations of the notifying State during the period for reply

During the period referred to in article 13, the notifying State:

- (a) Shall cooperate with the notified States by providing them, on request, with any additional data and information that is available and necessary for an accurate evaluation; and
- (b) Shall not implement or permit the implementation of the planned measures without the consent of the notified States.

Article 15 - Reply to notification

The notified States shall communicate their findings to the notifying State as early as possible within the period applicable pursuant to article 13. If a notified State finds that implementation of the planned measures would be inconsistent with the provisions of articles 5 or 7, it shall attach to its finding a documented explanation setting forth the reasons for the finding.

Article 16 - Absence of reply to notification

1. If, within the period applicable pursuant to article 13, the notifying State receives no communication under article 15, it may, subject to its obligations under articles 5 and 7, proceed with the implementation of the planned measures, in accordance with the notification and any other data and information provided to the notified States.

2. Any claim to compensation by a notified State which has failed to reply within the period applicable pursuant to article 13 may be offset by the costs incurred by the notifying State for action undertaken after the expiration of the time for a reply which would not have been undertaken if the notified State had objected within that period.

Article 17 - Consultations and negotiations concerning planned measures

1. If a communication is made under article 15 that implementation of the planned measures would be inconsistent with the provisions of articles 5 or 7, the notifying State and the State making the communication shall enter into consultations and, if necessary, negotiations with a view to arriving at an equitable resolution of the situation.
2. The consultations and negotiations shall be conducted on the basis that each State must in good faith pay reasonable regard to the rights and legitimate interests of the other State.
3. During the course of the consultations and negotiations, the notifying State shall, if so requested by the notified State at the time it makes the communication, refrain from implementing or permitting the implementation of the planned measures for a period of six months unless otherwise agreed.

Article 18 - Procedures in the absence of notification

1. If a watercourse State has reasonable grounds to believe that another watercourse State is planning measures that may have a significant adverse effect upon it, the former State may request the latter to apply the provisions of article 12. The request shall be accompanied by a documented explanation setting forth its grounds.
2. In the event that the State planning the measures nevertheless finds that it is not under an obligation to provide a notification under article 12, it shall so inform the other State, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy the other State, the two States shall, at the request of that other State, promptly enter into consultations and negotiations in the manner indicated in paragraphs 1 and 2 of article 17.

3. During the course of the consultations and negotiations, the State planning the measures shall, if so requested by the other State at the time it requests the initiation of consultations and negotiations, refrain from implementing or permitting the implementation of those measures for a period of six months unless otherwise agreed.

#### Article 19 - Urgent implementation of planned measures

1. In the event that the implementation of planned measures is of the utmost urgency in order to protect public health, public safety or other equally important interests, the State planning the measures may, subject to articles 5 and 7, immediately proceed to implementation, notwithstanding the provisions of article 14 and paragraph 3 of article 17.
2. In such case, a formal declaration of the urgency of the measures shall be communicated without delay to the other watercourse States referred to in article 12 together with the relevant data and information.
3. The State planning the measures shall, at the request of any of the States referred to in paragraph 2, promptly enter into consultations and negotiations with it in the manner indicated in paragraphs 1 and 2 of article 17.

#### Part IV - Protection, preservation and management

##### Article 20 - Protection and preservation of ecosystems

Watercourse States shall, individually and, where appropriate, jointly, protect and preserve the ecosystems of international watercourses.

##### Article 21 - Prevention, reduction and control of pollution

1. For the purpose of this article, "pollution of an international watercourse" means any detrimental alteration in the composition or quality of the waters of an international watercourse which results directly or indirectly from human conduct.
2. Watercourse States shall, individually and, where appropriate, jointly, prevent, reduce and control the pollution of an international watercourse that may cause significant harm to other watercourse States or to their environment, including harm to human health or safety, to

the use of the waters for any beneficial purpose or to the living resources of the watercourse. Watercourse States shall take steps to harmonize their policies in this connection.

3. Watercourse States shall, at the request of any of them, consult with a view to arriving at mutually agreeable measures and methods to prevent, reduce and control pollution of an international watercourse, such as:
  - (a) Setting joint water quality objectives and criteria;
  - (b) Establishing techniques and practices to address pollution from point and non-point sources;
  - (c) Establishing lists of substances the introduction of which into the waters of an international watercourse is to be prohibited, limited, investigated or monitored.

#### Article 22 - Introduction of alien or new species

Watercourse States shall take all measures necessary to prevent the introduction of species, alien or new, into an international watercourse which may have effects detrimental to the ecosystem of the watercourse resulting in significant harm to other watercourse States.

#### Article 23 - Protection and preservation of the marine environment

Watercourse States shall, individually and, where appropriate, in cooperation with other States, take all measures with respect to an international watercourse that are necessary to protect and preserve the marine environment, including estuaries, taking into account generally accepted international rules and standards.

#### Article 24 - Management

1. Watercourse States shall, at the request of any of them, enter into consultations concerning the management of an international watercourse, which may include the establishment of a joint management mechanism.

2. For the purposes of this article, "management" refers, in particular, to:
  - (a) Planning the sustainable development of an international watercourse and providing for the implementation of any plans adopted; and
  - (b) Otherwise promoting the rational and optimal utilization, protection and control of the watercourse.

#### Article 25 - Regulation

1. Watercourse States shall cooperate, where appropriate, to respond to needs or opportunities for regulation of the flow of the waters of an international watercourse.
2. Unless otherwise agreed, watercourse States shall participate on an equitable basis in the construction and maintenance or defrayal of the costs of such regulation works as they may have agreed to undertake.
3. For the purposes of this article, "regulation" means the use of hydraulic works or any other continuing measure to alter, vary or otherwise control the flow of the waters of an international watercourse.

#### Article 26 - Installations

1. Watercourse States shall, within their respective territories, employ their best efforts to maintain and protect installations, facilities and other works related to an international watercourse.
2. Watercourse States shall, at the request of any of them which has reasonable grounds to believe that it may suffer significant adverse effects, enter into consultations with regard to:
  - (a) The safe operation and maintenance of installations, facilities or other works related to an international watercourse; and
  - (b) The protection of installations, facilities or other works from wilful or negligent acts or the forces of nature.

Part V - Harmful conditions and emergency situationsArticle 27 - Prevention and mitigation of harmful conditions

Watercourse States shall, individually and, where appropriate, jointly, take all appropriate measures to prevent or mitigate conditions related to an international watercourse that may be harmful to other watercourse States, whether resulting from natural causes or human conduct, such as flood or ice conditions, water-borne diseases, siltation, erosion, salt-water intrusion, drought or desertification.

Article 28 - Emergency situations

1. For the purposes of this article, "emergency" means a situation that causes, or poses an imminent threat of causing, serious harm to watercourse States or other States and that results suddenly from natural causes, such as floods, the breaking up of ice, landslides or earthquakes, or from human conduct, such as industrial accidents.
2. A watercourse State shall, without delay and by the most expeditious means available, notify other potentially affected States and competent international organizations of any emergency originating within its territory.
3. A watercourse State within whose territory an emergency originates shall, in cooperation with potentially affected States and, where appropriate, competent international organizations, immediately take all practicable measures necessitated by the circumstances to prevent, mitigate and eliminate harmful effects of the emergency.
4. When necessary, watercourse States shall jointly develop contingency plans for responding to emergencies, in cooperation, where appropriate, with other potentially affected States and competent international organizations.

## Part VI - Miscellaneous provisions

### Article 29 - International watercourses and installations in time of armed conflict

International watercourses and related installations, facilities and other works shall enjoy the protection accorded by the principles and rules of international law applicable in international and non-international armed conflict and shall not be used in violation of those principles and rules.

### Article 30 - Indirect procedures

In cases where there are serious obstacles to direct contacts between watercourse States, the States concerned shall fulfil their obligations of cooperation provided for in the present Convention, including exchange of data and information, notification, communication, consultations and negotiations, through any indirect procedure accepted by them.

### Article 31 - Data and information vital to national defence or security

Nothing in the present Convention obliges a watercourse State to provide data or information vital to its national defence or security. Nevertheless, that State shall cooperate in good faith with the other watercourse States with a view to providing as much information as possible under the circumstances.

### Article 32 - Non-discrimination

Unless the watercourse States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who have suffered or are under a serious threat of suffering significant transboundary harm as a result of activities related to an international watercourse, a watercourse State shall not discriminate on the basis of nationality or residence or place where the injury occurred, in granting to such persons, in accordance with its legal system, access to judicial or other procedures, or a right to claim compensation or other relief in respect of significant harm caused by such activities carried on in its territory.

### Article 33 - Settlement of disputes

1. In the event of a dispute between two or more Parties concerning the interpretation or application of the present Convention, the Parties

concerned shall, in the absence of an applicable agreement between them, seek a settlement of the dispute by peaceful means in accordance with the following provisions.

2. If the Parties concerned cannot reach agreement by negotiation requested by one of them, they may jointly seek the good offices of, or request mediation or conciliation by, a third party, or make use, as appropriate, of any joint watercourse institutions that may have been established by them or agree to submit the dispute to arbitration or to the International Court of Justice.
3. Subject to the operation of paragraph 10, if after six months from the time of the request for negotiations referred to in paragraph 2, the Parties concerned have not been able to settle their dispute through negotiation or any other means referred to in paragraph 2, the dispute shall be submitted, at the request of any of the parties to the dispute, to impartial fact-finding in accordance with paragraphs 4 to 9, unless the Parties otherwise agree.
4. A Fact-finding Commission shall be established, composed of one member nominated by each Party concerned and in addition a member not having the nationality of any of the Parties concerned chosen by the nominated members who shall serve as Chairman.
5. If the members nominated by the Parties are unable to agree on a Chairman within three months of the request for the establishment of the Commission, any Party concerned may request the Secretary-General of the United Nations to appoint the Chairman who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. If one of the Parties fails to nominate a member within three months of the initial request pursuant to paragraph 3, any other Party concerned may request the Secretary-General of the United Nations to appoint a person who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. The person so appointed shall constitute a single-member Commission.
6. The Commission shall determine its own procedure.
7. The Parties concerned have the obligation to provide the Commission with such information as it may require and, on request, to permit the

Commission to have access to their respective territory and to inspect any facilities, plant, equipment, construction or natural feature relevant for the purpose of its inquiry.

8. The Commission shall adopt its report by a majority vote, unless it is a single-member Commission, and shall submit that report to the Parties concerned setting forth its findings and the reasons therefor and such recommendations as it deems appropriate for an equitable solution of the dispute, which the Parties concerned shall consider in good faith.
9. The expenses of the Commission shall be borne equally by the Parties concerned.
10. When ratifying, accepting, approving or acceding to the present Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute not resolved in accordance with paragraph 2, it recognizes as compulsory ipso facto and without special agreement in relation to any Party accepting the same obligation:
  - (a) Submission of the dispute to the International Court of Justice; and/or
  - (b) Arbitration by an arbitral tribunal established and operating, unless the parties to the dispute otherwise agreed, in accordance with the procedure laid down in the annex to the present Convention.

A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with subparagraph (b).

#### Part VII - Final clauses

[Omitted: Article 34 - Signature, Article 35 - Ratification, acceptance, approval or accession]

#### Article 36 - Entry into force

1. The present Convention shall enter into force on the ninetieth day following the date of deposit of the thirty-fifth instrument of

ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.
3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States.

[Omitted: Article 37 - Authentic texts, Annex - Arbitration]

ii. **Multilateral Treaties**

a. **Regional Treaties**

5. **ASEAN Agreement on the Conservation of Nature and Natural Resources [Kuala Lumpur, 9 July 1985]\***

[The Contracting Parties]

...

Recognizing the importance of natural resources for present and future generations;

Conscious of their ever-growing value from a scientific, cultural, social and economic point of view;

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\* Reprinted in: Burhenne, Wolfgang E., (ed.), IUCN Environmental Law Centre/FUST Treaty Series - International Environment Law: Multilateral Treaties, Volume V, p. 985:51, Berlin, 1985. Not yet in force. Parties and/or signatories: Negara Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore, Thailand.

Conscious also that the interrelationship between conservation and socio-economic development implies both that conservation is necessary to ensure sustainability of development, and that socio-economic development is necessary for the achievement of conservation on a lasting basis;

Recognizing the interdependence of living resources, between them and with other natural resources, within ecosystems of which they are part;

Wishing to undertake individual and joint action for the conservation and management of their living resources and the other natural elements on which they depend;

Recognizing that international co-operation is essential to attain many of these goals;

Convinced that an essential means to achieve such concerted action is the conclusion and implementation of an Agreement;

Have agreed as follows:

## Chapter I - Conservation and development

### Article 1 - Fundamental principle

1. The Contracting Parties, within the framework of their respective national laws, undertake to adopt singly, or where necessary and appropriate through concerted action, the measures necessary to maintain essential ecological processes and life-support systems, to preserve genetic diversity, and to ensure the sustainable utilization of harvested natural resources under their jurisdiction in accordance with scientific principles and with a view to attaining the goal of sustainable development.
2. To this end they shall develop national conservation strategies, and shall co-ordinate such strategies within the framework of a conservation strategy for the Region.

### Article 2 - Development planning

1. The Contracting Parties shall take all necessary measures, within the framework of their respective national laws, to ensure that conservation

and management of natural resources are treated as an integral part of development planning at all stages and at all levels.

2. To that effect they shall, in the formulation of all development plans, give as full consideration to ecological factors as to economic and social ones.
3. The Contracting Parties shall, where necessary, take appropriate action with a view to conserving and managing natural resources of significant importance for two or several Contracting Parties.

## Chapter II - Conservation of species and ecosystems

[Omitted: Article 3 - Species - Genetic diversity, Article 4 - Species - Sustainable use, Article 5 - Species - Endangered and endemic]

### Article 6 - Vegetation cover and forest resources

...

- (e) designate areas whose primary function shall be the maintenance of soil quality in the catchment considered and the regulation of the quantity and quality of the water delivered from it;

...

### Article 7 - Soil

1. The Contracting Parties shall, in view of the role of soil in the functioning of natural ecosystems, take measures, wherever possible towards soil conservation, improvement and rehabilitation; they shall, in particular, endeavour to take steps to prevent soil erosion and other forms of degradation, and promote measures which safeguard the processes of organic decomposition and thereby its continuing fertility.
2. To that effect, they shall, in particular, endeavour to:
  - (a) establish land use policies aimed at avoiding losses of vegetation cover, substantial soil losses, and damages to the structure of the soil;
  - (b) take all necessary measures to control erosion, especially as it may affect coastal or freshwater ecosystems, lead to siltation of downstream areas

such as lakes or vulnerable ecosystems such as coral reefs, or damage critical habitats, in particular that of endangered or endemic species;

- (c) take appropriate measures to rehabilitate eroded or degraded soils including rehabilitation of soil affected by mineral exploitation.

#### Article 8 - Water

1. The Contracting Parties shall, in view of the role of water in the functioning of natural ecosystems, take all appropriate measures towards the conservation of their underground and surface water resources.
2. They shall, to that effect, in particular, endeavour to:
  - (a) undertake and promote the necessary hydrological research especially with a view to ascertaining the characteristics of each watershed;
  - (b) regulate and control water utilization with a view to achieving sufficient and continuous supply of water for, inter alia, the maintenance of natural life supporting systems and aquatic fauna and flora;
  - (c) when planning and carrying out water resource development projects take fully into account possible effects of such projects on natural processes or on other renewable natural resources and prevent or minimize such effects.

[Omitted: Article 9 - Air]

### Chapter III - Conservation of ecological processes

#### Article 10 - Environmental degradation

The Contracting Parties, with a view to maintaining the proper functioning of ecological processes, undertake, wherever possible, to prevent, reduce and control degradation of the natural environment and, to this end, shall endeavour to undertake, in addition to specific measures referred to in the following article:

- (a) to promote environmentally sound agricultural practice by, inter alia, controlling the application of pesticides, fertilizers and other chemical

products for agricultural use, and by ensuring that agricultural development schemes, in particular for wetland drainage or forest clearance, pay due regard to the need to protect critical habitats as well as endangered and economically important species;

- (b) to promote pollution control and the development of environmentally sound industrial processes and products;
- (c) to promote adequate economic or fiscal incentives for the purposes of sub-paragraphs (a) and (b) above;
- (d) as far as possible to consider the originator of the activity which may lead to environmental degradation responsible for its prevention, reduction and control as well as, wherever possible, for rehabilitation and remedial measures required;
- (e) to take into consideration, when authorizing activities likely to affect the natural environment, the foreseeable interactions between the new activities proposed and those already taking place in the same area, and the result of such interactions on the air, waters and soils of the area;
- (f) to pay particular attention to the regulation of activities which may have adverse effects on processes which are ecologically essential or on areas which are particularly important or sensitive from an ecological point of view, such as the breeding and feeding grounds of harvested species.

#### Article 11 - Pollution

The Contracting Parties, recognizing the adverse effect that polluting discharges or emissions may have on natural processes and the functioning of natural ecosystems as well as on each of the individual ecosystem components, especially animal and plants species, shall endeavour to prevent, reduce and control such discharges, emissions or applications in particular by:

- (a) submitting activities likely to cause pollution of the air, soil, freshwater, or the marine environment, to controls which shall take into consideration both the cumulative effects of the pollutants concerned and the self-purificating aptitude of the recipient natural environment;
- (b) making such controls conditional on, inter alia, appropriate treatment of polluting emissions; and

- (c) establishing national environmental quality monitoring programmes, particular attention being paid to the effects of pollution on natural ecosystems, and co-operation in such programmes for the Region as a whole.

#### Chapter IV - Environmental planning measures

##### Article 12 - Land use planning

1. The Contracting Parties shall, wherever possible in the implementation of their development planning, give particular attention to the national allocation of land usage. They shall endeavour to take the necessary measures to ensure the integration of natural resource conservation into the land use planning process and shall, in the preparation and implementation of specific land use plans at all levels, give as full consideration as possible to ecological factors as to economic and social ones. In order to achieve optimum sustainable land use, they undertake to base their land use plans as far as possible on the ecological capacity of the land.
2. The Contracting Parties shall, in carrying out the provisions of paragraph 1 above, particularly consider the importance of retaining the naturally high productivity of areas such as coastal zones and wetlands.
3. They shall, where appropriate, co-ordinate their land use planning with a view to conserving and managing natural resources of significant importance for two or several Contracting Parties.

##### Article 13 - Protected areas

1. The Contracting Parties shall as appropriate establish, in areas under their jurisdiction, terrestrial, freshwater, coastal or marine protection areas for the purpose of safeguarding:
  - the ecological and biological processes essential to the functioning of the ecosystems of the Region;
  - representative samples of all types of ecosystem of the Region;
  - satisfactory population levels for the largest possible number of species of fauna and flora belonging to those ecosystems;

- areas of particular importance because of their scientific, educational, aesthetic, or cultural interest;

and taking into account their importance in particular as:

- the natural habitat of species of fauna and flora, particularly rare or endangered or endemic species;
- zones necessary for the maintenance of exploitable stocks of economically important species;
- pools of genetic material and safe refuges for species, especially endangered ones;
- sites of ecological, aesthetic or cultural interest;
- reference sources for scientific research;
- areas for environmental education.

They shall, in particular, take all measures possible in their power to preserve those areas which are of an exceptional character and are peculiar to their country or the Region as well as those which constitute the critical habitats of endangered or rare species, of species that are endemic to a small area and of species that migrate between countries of Contracting Parties.

2. Protected areas established pursuant to this Agreement shall be regulated and managed in such a way as to further the objectives for the purpose of which they have been created. Contracting Parties shall, wherever possible, prohibit within such protected areas activities which are inconsistent with such objectives.
3. Protected areas shall include:
  - (a) National Parks:
    - (i) This expression denotes natural areas that are sufficiently large to allow for ecological self-regulation of one or several ecosystems, and which have not been substantially altered by human occupation or exploitation.

- (ii) National Parks shall be placed under public control, their boundaries shall not be altered nor shall any portion of any National Park be alienated except by the highest competent authority.
  - (iii) National Parks shall be dedicated to conservation and to scientific, educational and recreational uses and the common welfare of the people.
- (b) Reserves:
  - (i) This expression denotes areas set aside for the purpose of preserving a specific ecosystem, the critical habitat of certain species of fauna or flora, a water catchment area or for any other specific purpose relating to the conservation of natural resources or objects or areas of scientific, aesthetic cultural, educational or recreational interest.
  - (ii) After reserves have been established their boundaries shall not be altered nor shall any portion of such reserves be alienated except by the authority establishing them or by higher authority.
  - (iii) Reserves shall be dedicated to the purposes for which they have been created and, in the light of the national interests of the Contracting Parties, any activity inconsistent with such purposes shall be prohibited.
- 4. Contracting Parties shall, in respect of any protected area established pursuant to this Agreement:
  - (a) prepare a management plan and manage the area on the basis of this plan;
  - (b) establish, wherever appropriate, terrestrial or aquatic buffer zones that shall be located around protected areas and which, in the case of marine areas, may include coastal land areas or watersheds of rivers flowing into the protected area; in such buffer zones all activities that may have harmful consequences on the ecosystems that such areas purport to protect shall be prohibited or regulated and activities which are consistent with the purpose of the protected area shall be promoted.

5. Contracting Parties shall, in respect of any protected area established pursuant to this Agreement, endeavour to:
  - (a) prohibit the introduction of exotic animal or plant species;
  - (b) prohibit the use or release of toxic substances or pollutants which could cause disturbance or damage to protected ecosystems or to the species they contain;
  - (c) to the maximum extent possible, prohibit or control any activity exercised outside protected areas when such an activity is likely to cause disturbance or damage to the ecosystems or species that such protected areas purport to protect.
6. Contracting Parties shall co-operate in the development of principles, objectives, criteria and guidelines for the selection, establishment and management of protected areas in the Region with a view to establishing a co-ordinated network of protected areas throughout the Region, giving particular attention to those of regional importance. An Appendix containing such principles, objectives, criteria and guidelines shall be drawn up in the light of the best scientific evidence as adapted to the conservation requirements of the Region and shall be adopted by a meeting of Contracting Parties.
7. In addition to the establishment of the protected areas referred to in paragraph 3 of this Article, Contracting Parties shall promote, through the adoption of appropriate measures, the conservation of natural areas by private owners, community or local authorities.

#### Article 14 - Impact assessment

1. The Contracting Parties undertake that proposals for any activity which may significantly affect the natural environment shall as far as possible be subjected to an assessment of their consequences before they are adopted, and they shall take into consideration the results of this assessment in their decision-making process.
2. In those cases where any such activities are undertaken, the Contracting Parties shall plan and carry them out so as to overcome or minimize any assessed adverse effects and shall monitor such effects with a view to taking remedial action as appropriate.

[Omitted: Chapter V - National supporting measures: Article 15 - Scientific research, Article 16 - Education, information and participation of the public, training, Article 17 - Administrative machinery]

#### Chapter VI - International co-operation

[Omitted: Article 18 - Co-operative activities]

#### Article 19 - Shared resources

1. Contracting Parties that share natural resources shall co-operate concerning their conservation and harmonious utilization, taking into account the sovereignty, rights and interests of the Contracting Parties concerned in accordance with generally accepted principles of international law.
2. To that end, they shall, in particular:
  - (a) co-operate with a view to controlling, preventing, reducing or eliminating adverse environmental effects which may result in one Contracting Party from the utilization of such resources in another Party;
  - (b) endeavour to conclude bilateral or multilateral agreements in order to secure specific regulation of their conduct in respect of the resources concerned;
  - (c) as far as possible, make environmental assessments prior to engaging in activities with respect of shared natural resources which may create a risk of significantly affecting the environment of another sharing Contracting Party or other sharing Contracting Parties;
  - (d) notify in advance the other sharing Contracting Party or the other sharing Contracting Parties of pertinent details of plans to initiate, or make a change in, the conservation or utilization of the resource which can reasonably be expected to affect significantly the environment in the territory of the other Contracting Party or Contracting Parties;
  - (e) upon request of the other sharing Contracting Party or sharing Contracting Parties, enter into consultation concerning the above-mentioned plans;

- (f) inform the other sharing Contracting Party or other sharing Contracting Parties of emergency situations or sudden grave natural events which may have repercussions on their environment;
  - (g) whenever appropriate, engage in joint scientific studies and assessments with a view to facilitating co-operation with regard to environmental problems related to a shared resource, on the basis of agreed data.
3. Contracting Parties shall especially co-operate together and, where appropriate, shall endeavour to co-operate with other Contracting Parties, with a view to:
- (a) the conservation and management of:
    - border or contiguous protected areas;
    - shared habitats of species listed in Appendix 1;
    - shared habitats of any other species of common concern;

...

Article 20 - Transfrontier environmental effects

1. Contracting Parties have in accordance with generally accepted principles of international law the responsibility of ensuring that activities under their jurisdiction or control do not cause damage to the environment or the natural resources under the jurisdiction of other Contracting Parties or of areas beyond the limits of national jurisdiction.
2. In order to fulfil this responsibility, Contracting Parties shall avoid to the maximum extent possible and reduce to the minimum extent possible adverse environmental effects of activities under their jurisdiction or control, including effects on natural resources, beyond the limits of their national jurisdiction.
3. To that effect, they shall endeavour:
  - (a) to make environmental impact assessment before engaging in any activity that may create a risk of significantly affecting the environment

- or the natural resources of another Contracting Party or the environment or natural resources beyond national jurisdiction;
- (b) to notify in advance the other Contracting Party or Contracting Parties concerned of pertinent details of plans to initiate, or make a change in, activities which can reasonably be expected to have significant effects beyond the limits of national jurisdiction;
  - (c) to enter into consultation concerning the above-mentioned plans upon request of the Contracting Party or Contracting Parties in question;
  - (d) to inform the Contracting Party or Contracting Parties in question of emergency situations or sudden grave natural events which may have repercussion beyond national jurisdiction.
4. Contracting Parties shall, in particular, endeavour to refrain from actions which might directly or indirectly adversely affect wildlife habitats situated beyond the limits of national jurisdiction, especially habitats of species listed in Appendix 1 or habitats included in protected areas.

[Omitted: Chapter VII - International supporting measures: Article 21 - Meeting of the contracting parties, Article 22 - Secretariat, Article 23 - National focal points, Chapter VIII: Article 24 - Adoption of protocols, Article 25 - Amendment of the agreement, Article 26 - Appendices and amendments to appendices, Article 27 - Rules of procedure, Article 28 - Reports, Article 29 - Relationships with other agreements, Article 30 - Settlement and disputes, Article 31 - Ratification, Article 32 - Accession, Article 33 - Entry into force, Article 34 - Responsibility of the depositary, Article 35 - Deposit and registration, List of species for Appendix 1 A, List of species for Appendix 1 B]

**6. Convention on Environmental Impact Assessment in a Transboundary Context [Espoo, 25 February 1991]\***

The Parties to this Convention,

Aware of the interrelationship between economic activities and their environmental consequences,

Affirming the need to ensure environmentally sound and sustainable development,

Determined to enhance international co-operation in assessing environmental impact in particular in a transboundary context,

Mindful of the need and importance to develop anticipatory policies and of preventing, mitigating and monitoring significant adverse environmental impact in general and more specifically in a transboundary context,

Recalling the relevant provisions of the Charter of the United Nations, the Declaration of the Stockholm Conference on the Human Environment, the Final Act of the Conference on Security and Co-operation in Europe (CSCE) and the Concluding Documents of the Madrid and Vienna Meetings of Representatives of the Participating States of the CSCE,

Commending the ongoing activities of States to ensure that, through their national legal and administrative provisions and their national policies, environmental impact assessment is carried out,

Conscious of the need to give explicit consideration to environmental factors at an early stage in the decision-making process by applying environmental impact assessment, at all appropriate administrative levels, as a necessary tool to improve the quality of information presented to decision makers so that environmentally sound decisions can be made paying careful attention to

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\* 30 ILM 800 (1991). Entry into force: 10 September 1997. Parties and signatories(s): Albania, Armenia, Austria, Azerbaijan, Belarus (s), Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, European Community, Finland, France, Germany, Greece, Hungary, Iceland (s), Ireland, Italy, Kazakhstan, Kyrgystan, Latvia, Liechtenstein, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation (s), Slovakia, Slovenia, Spain, Sweden, Switzerland, The Former Yugoslav Republic of Macedonia, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America (s), as at 31 July 2004.

minimizing significant adverse impact, particularly in a transboundary context,

...

Have agreed as follows:

#### Article 1 - Definitions

For the purposes of this Convention,

- (i) "Parties" means, unless the text otherwise indicates, the Contracting Parties to this Convention;
- (ii) "Party of origin" means the Contracting Party or Parties to this Convention under whose jurisdiction a proposed activity is envisaged to take place;
- (iii) "Affected Party" means the Contracting Party or Parties to this Convention likely to be affected by the transboundary impact of a proposed activity;
- (iv) "Concerned Parties" means the Party of origin and the affected Party of an environmental impact assessment pursuant to this Convention;
- (v) "Proposed activity" means any activity or any major change to an activity subject to a decision of a competent authority in accordance with an applicable national procedure;
- (vi) "Environmental impact assessment" means a national procedure for evaluating the likely impact of a proposed activity on the environment;
- (vii) "Impact" means any effect caused by a proposed activity on the environment including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; it also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors;
- (viii) "Transboundary impact" means any impact, not exclusively of a global nature, within an area under the jurisdiction of a Party caused by a

proposed activity the physical origin of which is situated wholly or in part within the area under the jurisdiction of another Party;

- (ix) "Competent authority" means the national authority or authorities designated by a Party as responsible for performing the tasks covered by this Convention and/or the authority or authorities entrusted by a Party with decision-making powers regarding a proposed activity;
- (x) "The Public" means one or more natural or legal persons.

#### Article 2 - General provisions

1. The Parties shall, either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities.
2. Each Party shall take the necessary legal, administrative or other measures to implement the provisions of this Convention, including, with respect to proposed activities listed in Appendix I that are likely to cause significant adverse transboundary impact, the establishment of an environmental impact assessment procedure that permits public participation and preparation of the environmental impact assessment documentation described in Appendix II.
3. The Party of origin shall ensure that in accordance with the provisions of this Convention an environmental impact assessment is undertaken prior to a decision to authorize or undertake a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact.
4. The Party of origin shall, consistent with the provisions of this Convention, ensure that affected Parties are notified of a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact.
5. Concerned Parties shall, at the initiative of any such Party, enter into discussions on whether one or more proposed activities not listed in Appendix I is or are likely to cause a significant adverse transboundary impact and thus should be treated as if it or they were so listed. Where those Parties so agree, the activity or activities shall be thus treated.

General guidance for identifying criteria to determine significant adverse impact is set forth in Appendix III.

6. The Party of origin shall provide, in accordance with the provisions of this Convention, an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding proposed activities and shall ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin.
7. Environmental impact assessments as required by this Convention shall, as a minimum requirement, be undertaken at the project level of the proposed activity. To the extent appropriate, the Parties shall endeavour to apply the principles of environmental impact assessment to policies, plans and programmes.
8. The provisions of this Convention shall not affect the right of Parties to implement national laws, regulations, administrative provisions or accepted legal practices protecting information the supply of which would be prejudicial to industrial and commercial secrecy or national security.
9. The provisions of this Convention shall not affect the right of particular Parties to implement, by bilateral or multilateral agreement where appropriate, more stringent measures than those of this Convention.
10. The provisions of this Convention shall not prejudice any obligations of the Parties under international law with regard to activities having or likely to have a transboundary impact.

### Article 3 - Notification

1. For a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact, the Party of origin shall, for the purposes of ensuring adequate and effective consultations under Article 5, notify any Party which it considers may be an affected Party as early as possible and no later than when informing its own public about that proposed activity.

2. This notification shall contain, *inter alia*:
  - (a) Information on the proposed activity, including any available information on its possible transboundary impact;
  - (b) The nature of the possible decision; and
  - (c) An indication of a reasonable time within which a response under paragraph 3 of this Article is required, taking into account the nature of the proposed activity;

and may include the information set out in paragraph 5 of this Article.

3. The affected Party shall respond to the Party of origin within the time specified in the notification, acknowledging receipt of the notification, and shall indicate whether it intends to participate in the environmental impact assessment procedure.
4. If the affected Party indicates that it does not intend to participate in the environmental impact assessment procedure, or if it does not respond within the time specified in the notification, the provisions in paragraphs 5, 6, 7 and 8 of this Article and in Articles 4 to 7 will not apply. In such circumstances the right of a Party of origin to determine whether to carry out an environmental impact assessment on the basis of its national law and practice is not prejudiced.
5. Upon receipt of a response from the affected Party indicating its desire to participate in the environmental impact assessment procedure, the Party of origin shall, if it has not already done so, provide to the affected Party:
  - (a) Relevant information regarding the environmental impact assessment procedure, including an indication of the time schedule for transmittal of comments; and
  - (b) Relevant information on the proposed activity and its possible significant adverse transboundary impact.
6. An affected Party shall, at the request of the Party of origin, provide the latter with reasonably obtainable information relating to the potentially affected environment under the jurisdiction of the affected Party, where such information is necessary for the preparation of the

environmental impact assessment documentation. The information shall be furnished promptly and, as appropriate, through a joint body where one exists.

7. When a Party considers that it would be affected by a significant adverse transboundary impact of a proposed activity listed in Appendix I, and when no notification has taken place in accordance with paragraph 1 of this Article, the concerned Parties shall, at the request of the affected Party, exchange sufficient information for the purposes of holding discussions on whether there is likely to be a significant adverse transboundary impact. If those Parties agree that there is likely to be a significant adverse transboundary impact, the provisions of this Convention shall apply accordingly. If those Parties cannot agree whether there is likely to be a significant adverse transboundary impact, any such Party may submit that question to an inquiry commission in accordance with the provisions of Appendix IV to advise on the likelihood of significant adverse transboundary impact, unless they agree on another method of settling this question.
8. The concerned Parties shall ensure that the public of the affected Party in the areas likely to be affected be informed of, and be provided with possibilities for making comments or objections on, the proposed activity, and for the transmittal of these comments or objections to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin.

#### Article 4 - Preparation of the environmental impact assessment documentation

1. The environmental impact assessment documentation to be submitted to the competent authority of the Party of origin shall contain, as a minimum, the information described in Appendix II.
2. The Party of origin shall furnish the affected Party, as appropriate through a joint body where one exists, with the environmental impact assessment documentation. The concerned Parties shall arrange for distribution of the documentation to the authorities and the public of the affected Party in the areas likely to be affected and for the submission of comments to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin within a reasonable time before the final decision is taken on the proposed activity.

Article 5 - Consultations on the basis of the environmental impact assessment documentation

The Party of origin shall, after completion of the environmental impact assessment documentation, without undue delay enter into consultations with the affected Party concerning, inter alia, the potential transboundary impact of the proposed activity and measures to reduce or eliminate its impact. Consultations may relate to:

- (a) Possible alternatives to the proposed activity, including the no-action alternative and possible measures to mitigate significant adverse transboundary impact and to monitor the effects of such measures at the expense of the Party of origin;
- (b) Other forms of possible mutual assistance in reducing any significant adverse transboundary impact of the proposed activity; and
- (c) Any other appropriate matters relating to the proposed activity.

The Parties shall agree, at the commencement of such consultations, on a reasonable timeframe for the duration of the consultation period. Any such consultations may be conducted through an appropriate joint body, where one exists.

Article 6 - Final decision

1. The Parties shall ensure that, in the final decision on the proposed activity, due account is taken of the outcome of the environmental impact assessment, including the environmental impact assessment documentation, as well as the comments thereon received pursuant to Article 3, paragraph 8 and Article 4, paragraph 2, and the outcome of the consultations as referred to in Article 5.
2. The Party of origin shall provide to the affected Party the final decision on the proposed activity along with the reasons and considerations on which it was based.
3. If additional information on the significant transboundary impact of a proposed activity, which was not available at the time a decision was made with respect to that activity and which could have materially affected the decision, becomes available to a concerned Party before work on that

activity commences, that Party shall immediately inform the other concerned Party or Parties. If one of the concerned Parties so requests, consultations shall be held as to whether the decision needs to be revised.

#### Article 7 - Post-project analysis

1. The concerned Parties, at the request of any such Party, shall determine whether, and if so to what extent, a post-project analysis shall be carried out, taking into account the likely significant adverse transboundary impact of the activity for which an environmental impact assessment has been undertaken pursuant to this Convention. Any post-project analysis undertaken shall include, in particular, the surveillance of the activity and the determination of any adverse transboundary impact. Such surveillance and determination may be undertaken with a view to achieving the objectives listed in Appendix V.
2. When, as a result of post-project analysis, the Party of origin or the affected Party has reasonable grounds for concluding that there is a significant adverse transboundary impact or factors have been discovered which may result in such an impact, it shall immediately inform the other Party. The concerned Parties shall then consult on necessary measures to reduce or eliminate the impact.

[Omitted: Article 8 - Bilateral and multilateral co-operation, Article 9 - Research programmes, Article 10 - Status of the appendices, Article 11 - Meeting of parties, Article 12 - Right to vote, Article 13 - Secretariat, Article 14 - Amendments to the Convention, Article 15 - Settlement of disputes, Article 16 - Signature, Article 17 - Ratification, acceptance, approval and accession, Article 18 - Entry into force, Article 19 - Withdrawal, Article 20 - Authentic texts]

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#### Appendices

##### Appendix I - List of activities

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10. Waste-disposal installations for the incineration, chemical treatment or landfill of toxic and dangerous wastes.

...

12. Groundwater abstraction activities in cases where the annual volume of water to be abstracted amounts to 10 million cubic metres or more.

...

14. Major mining, on-site extraction and processing of metal ores or coal.

...

Appendix II - Content of the environmental impact assessment documentation

Information to be included in the environmental impact assessment documentation shall, as a minimum, contain, in accordance with Article 4:

- (a) A description of the proposed activity and its purpose;
- (b) A description, where appropriate, of reasonable alternatives (for example, locational or technological) to the proposed activity and also the no-action alternative;
- (c) A description of the environment likely to be significantly affected by the proposed activity and its alternatives;
- (d) A description of the potential environmental impact of the proposed activity and its alternatives and an estimation of its significance;
- (e) A description of mitigation measures to keep adverse environmental impact to a minimum;
- (f) An explicit indication of predictive methods and underlying assumptions as well as the relevant environmental data used;
- (g) An identification of gaps in knowledge and uncertainties encountered in compiling the required information;
- (h) Where appropriate, an outline for monitoring and management programmes and any plans for post-project analysis; and

- (i) A non-technical summary including a visual presentation as appropriate (maps, graphs, etc.).

Appendix III - General criteria to assist in the determination of the environmental significance of activities not listed in Appendix I

1. In considering proposed activities to which Article 2, paragraph 5, applies, the concerned Parties may consider whether the activity is likely to have a significant adverse transboundary impact in particular by virtue of one or more of the following criteria:
  - (a) Size: proposed activities which are large for the type of the activity;
  - (b) Location: proposed activities which are located in or close to an area of special environmental sensitivity or importance (such as wetlands designated under the Ramsar Convention, national parks, nature reserves, sites of special scientific interest, or sites of archaeological, cultural or historical importance); also, proposed activities in locations where the characteristics of proposed development would be likely to have significant effects on the population;
  - (c) Effects: proposed activities with particularly complex and potentially adverse effects, including those giving rise to serious effects on humans or on valued species or organisms, those which threaten the existing or potential use of an affected area and those causing additional loading which cannot be sustained by the carrying capacity of the environment.
2. The concerned Parties shall consider for this purpose proposed activities which are located close to an international frontier as well as more remote proposed activities which could give rise to significant transboundary effects far removed from the site of development.

Appendix IV - Inquiry procedure

1. The requesting Party or Parties shall notify the secretariat that it or they submit(s) the question of whether a proposed activity listed in Appendix I is likely to have a significant adverse transboundary impact to an inquiry commission established in accordance with the provisions of this Appendix. This notification shall state the subject-matter of the inquiry. The secretariat shall notify immediately all Parties to this Convention of this submission.

2. The inquiry commission shall consist of three members. Both the requesting party and the other party to the inquiry procedure shall appoint a scientific or technical expert, and the two experts so appointed shall designate by common agreement the third expert, who shall be the president of the inquiry commission. The latter shall not be a national of one of the parties to the inquiry procedure, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the matter in any other capacity.
3. If the president of the inquiry commission has not been designated within two months of the appointment of the second expert, the Executive Secretary of the Economic Commission for Europe shall, at the request of either party, designate the president within a further two-month period.
4. If one of the parties to the inquiry procedure does not appoint an expert within one month of its receipt of the notification by the secretariat, the other party may inform the Executive Secretary of the Economic Commission for Europe, who shall designate the president of the inquiry commission within a further two-month period. Upon designation, the president of the inquiry commission shall request the party which has not appointed an expert to do so within one month. After such a period, the president shall inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further two-month period.
5. The inquiry commission shall adopt its own rules of procedure.
6. The inquiry commission may take all appropriate measures in order to carry out its functions.
7. The parties to the inquiry procedure shall facilitate the work of the inquiry commission and, in particular, using all means at their disposal, shall:
  - (a) Provide it with all relevant documents, facilities and information; and
  - (b) Enable it, where necessary, to call witnesses or experts and receive their evidence.

8. The parties and the experts shall protect the confidentiality of any information they receive in confidence during the work of the inquiry commission.
9. If one of the parties to the inquiry procedure does not appear before the inquiry commission or fails to present its case, the other party may request the inquiry commission to continue the proceedings and to complete its work. Absence of a party or failure of a party to present its case shall not constitute a bar to the continuation and completion of the work of the inquiry commission.
10. Unless the inquiry commission determines otherwise because of the particular circumstances of the matter, the expenses of the inquiry commission, including the remuneration of its members, shall be borne by the parties to the inquiry procedure in equal shares. The inquiry commission shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.
11. Any Party having an interest of a factual nature in the subject-matter of the inquiry procedure, and which may be affected by an opinion in the matter, may intervene in the proceedings with the consent of the inquiry commission.
12. The decisions of the inquiry commission on matters of procedure shall be taken by majority vote of its members. The final opinion of the inquiry commission shall reflect the view of the majority of its members and shall include any dissenting view.
13. The inquiry commission shall present its final opinion within two months of the date on which it was established unless it finds it necessary to extend this time limit for a period which should not exceed two months.
14. The final opinion of the inquiry commission shall be based on accepted scientific principles. The final opinion shall be transmitted by the inquiry commission to the parties to the inquiry procedure and to the secretariat.

#### Appendix V - Post-project analysis

Objectives include:

- (a) Monitoring compliance with the conditions as set out in the authorization or approval of the activity and the effectiveness of mitigation measures;
- (b) Review of an impact for proper management and in order to cope with uncertainties;
- (c) Verification of past predictions in order to transfer experience to future activities of the same type.

[Omitted: Appendix VI - Elements for bilateral and multilateral co-operation, Appendix VII - Arbitration]

## **7. Convention on the Protection and Use of Transboundary Watercourses and International Lakes [Helsinki, 17 March 1992]\***

### Preamble

The Parties to this Convention,

Mindful that the protection and use of transboundary watercourses and international lakes are important and urgent tasks, the effective accomplishment of which can only be ensured by enhanced co-operation,

Concerned over the existence and threats of adverse effects, in the short or long term, of changes in the conditions of transboundary watercourses and international lakes on the environment, economies and well-being of the member countries of the Economic Commission for Europe (ECE),

Emphasizing the need for strengthened national and international measures to prevent, control and reduce the release of hazardous substances into the aquatic environment and to abate eutrophication and acidification, as well as

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\* 31 ILM 1312 (1992). Entry into force: 6 October 1996. Parties and signatories (s): Albania, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, European Community, Finland, France, Germany, Greece, Hungary, Italy, Kazakhstan, Latvia, Liechtenstein, Luxembourg, Netherlands, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland (s), as at 31 July 2004.

pollution of the marine environment, in particular coastal areas, from land-based sources,

Commending the efforts already undertaken by the ECE Governments to strengthen co-operation, on bilateral and multilateral levels, for the prevention, control and reduction of transboundary pollution, sustainable water management, conservation of water resources and environmental protection,

Recalling the pertinent provisions and principles of the Declaration of the Stockholm Conference on the Human Environment, the Final Act of the Conference on Security and Co-operation in Europe (CSCE), the Concluding Documents of the Madrid and Vienna Meetings of Representatives of the Participating States of the CSCE, and the Regional Strategy for Environmental Protection and Rational Use of Natural Resources in ECE Member Countries covering the Period up to the Year 2000 and Beyond,

Conscious of the role of the United Nations Economic Commission for Europe in promoting international co-operation for the prevention, control and reduction of transboundary water pollution and sustainable use of transboundary waters, and in this regard recalling the ECE Declaration of Policy on Prevention and Control of Water Pollution, including Transboundary Pollution; the ECE Declaration of Policy on the Rational Use of Water; the ECE Principles Regarding Co-operation in the Field of Transboundary Waters; the ECE Charter on Groundwater Management; and the Code of Conduct on Accidental Pollution of Transboundary Inland Waters,

...

Emphasizing that co-operation between member countries in regard to the protection and use of transboundary waters shall be implemented primarily through the elaboration of agreements between countries bordering the same waters, especially where no such agreements have yet been reached,

Have agreed as follows:

#### Article 1 - Definitions

For the purposes of this Convention,

1. "Transboundary waters" means any surface or groundwaters which mark, cross or are located on boundaries between two or more States; wherever transboundary waters flow directly into the sea, these transboundary waters end at a straight line across their respective mouths between points on the low-water line of their banks;
2. "Transboundary impact" means any significant adverse effect on the environment resulting from a change in the conditions of transboundary waters caused by a human activity, the physical origin of which is situated wholly or in part within an area under the jurisdiction of a Party, within an area under the jurisdiction of another Party. Such effects on the environment include effects on human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; they also include effects on the cultural heritage or socio-economic conditions resulting from alterations to those factors;
3. "Party" means, unless the text otherwise indicates, a Contracting Party to this Convention;
4. "Riparian Parties" means the Parties bordering the same transboundary waters;
5. "Joint body" means any bilateral or multilateral commission or other appropriate institutional arrangements for co-operation between the Riparian Parties;
6. "Hazardous substances" means substances which are toxic, carcinogenic, mutagenic, teratogenic or bio-accumulative, especially when they are persistent;
7. "Best available technology" (the definition is contained in Annex I to this Convention).

#### Part I - Provisions relating to all Parties

##### Article 2 - General provisions

1. The Parties shall take all appropriate measures to prevent, control and reduce any transboundary impact.

2. The Parties shall, in particular, take all appropriate measures:
  - (a) To prevent, control and reduce pollution of waters causing or likely to cause transboundary impact;
  - (b) To ensure that transboundary waters are used with the aim of ecologically sound and rational water management, conservation of water resources and environmental protection;
  - (c) To ensure that transboundary waters are used in a reasonable and equitable way, taking into particular account their transboundary character, in the case of activities which cause or are likely to cause transboundary impact;
  - (d) To ensure conservation and, where necessary, restoration of ecosystems.
3. Measures for the prevention, control and reduction of water pollution shall be taken, where possible, at source.
4. These measures shall not directly or indirectly result in a transfer of pollution to other parts of the environment.
5. In taking the measures referred to in paragraphs 1 and 2 of this article, the Parties shall be guided by the following principles:
  - (a) The precautionary principle, by virtue of which action to avoid the potential transboundary impact of the release of hazardous substances shall not be postponed on the ground that scientific research has not fully proved a causal link between those substances, on the one hand, and the potential transboundary impact, on the other hand;
  - (b) The polluter-pays principle, by virtue of which costs of pollution prevention, control and reduction measures shall be borne by the polluter;
  - (c) Water resources shall be managed so that the needs of the present generation are met without compromising the ability of future generations to meet their own needs.
6. The Riparian Parties shall co-operate on the basis of equality and reciprocity, in particular through bilateral and multilateral agreements, in order to develop harmonized policies, programmes and strategies

covering the relevant catchment areas, or parts thereof, aimed at the prevention, control and reduction of transboundary impact and aimed at the protection of the environment of transboundary waters or the environment influenced by such waters, including the marine environment.

7. The application of this Convention shall not lead to the deterioration of environmental conditions nor lead to increased transboundary impact.
8. The provisions of this Convention shall not affect the right of Parties individually or jointly to adopt and implement more stringent measures than those set down in this Convention.

### Article 3 - Prevention, control and reduction

1. To prevent, control and reduce transboundary impact, the Parties shall develop, adopt, implement and, as far as possible, render compatible relevant legal, administrative, economic, financial and technical measures, in order to ensure, inter alia, that:
  - (a) The emission of pollutants is prevented, controlled and reduced at source through the application of, inter alia, low- and non-waste technology;
  - (b) Transboundary waters are protected against pollution from point sources through the prior licensing of waste-water discharges by the competent national authorities, and that the authorized discharges are monitored and controlled;
  - (c) Limits for waste-water discharges stated in permits are based on the best available technology for discharges of hazardous substances;
  - (d) Stricter requirements, even leading to prohibition in individual cases, are imposed when the quality of the receiving water or the ecosystem so requires;
  - (e) At least biological treatment or equivalent processes are applied to municipal waste water, where necessary in a step-by-step approach;
  - (f) Appropriate measures are taken, such as the application of the best available technology, in order to reduce nutrient inputs from industrial and municipal sources;

- (g) Appropriate measures and best environmental practices are developed and implemented for the reduction of inputs of nutrients and hazardous substances from diffuse sources, especially where the main sources are from agriculture (guidelines for developing best environmental practices are given in Annex II to this Convention);
  - (h) Environmental impact assessment and other means of assessment are applied;
  - (i) Sustainable water-resources management, including the application of the ecosystems approach, is promoted;
  - (j) Contingency planning is developed;
  - (k) Additional specific measures are taken to prevent the pollution of groundwaters;
  - (l) The risk of accidental pollution is minimized.
2. To this end, each Party shall set emission limits for discharges from point sources into surface waters based on the best available technology, which are specifically applicable to individual industrial sectors or industries from which hazardous substances derive. The appropriate measures mentioned in paragraph 1 of this article to prevent, control and reduce the input of hazardous substances from point and diffuse sources into waters, may, inter alia, include total or partial prohibition of the production or use of such substances. Existing lists of such industrial sectors or industries and of such hazardous substances in international conventions or regulations, which are applicable in the area covered by this Convention, shall be taken into account.
3. In addition, each Party shall define, where appropriate, water-quality objectives and adopt water-quality criteria for the purpose of preventing, controlling and reducing transboundary impact. General guidance for developing such objectives and criteria is given in Annex III to this Convention. When necessary, the Parties shall endeavour to update this annex.

#### Article 4 - Monitoring

The Parties shall establish programmes for monitoring the conditions of transboundary waters.

#### Article 5 - Research and development

The Parties shall co-operate in the conduct of research into and development of effective techniques for the prevention, control and reduction of transboundary impact. To this effect, the Parties shall, on a bilateral and/or multilateral basis, taking into account research activities pursued in relevant international forums, endeavour to initiate or intensify specific research programmes, where necessary, aimed, inter alia, at:

- (a) Methods for the assessment of the toxicity of hazardous substances and the noxiousness of pollutants;
- (b) Improved knowledge on the occurrence, distribution and environmental effects of pollutants and the processes involved;
- (c) The development and application of environmentally sound technologies, production and consumption patterns;
- (d) The phasing out and/or substitution of substances likely to have transboundary impact;
- (e) Environmentally sound methods of disposal of hazardous substances;
- (f) Special methods for improving the conditions of transboundary waters;
- (g) The development of environmentally sound water-construction works and water-regulation techniques;
- (h) The physical and financial assessment of damage resulting from transboundary impact.

The results of these research programmes shall be exchanged among the Parties in accordance with Article 6 of this Convention.

#### Article 6 - Exchange of information

The Parties shall provide for the widest exchange of information, as early as possible, on issues covered by the provisions of this Convention.

#### Article 7 - Responsibility and liability

The Parties shall support appropriate international efforts to elaborate rules, criteria and procedures in the field of responsibility and liability.

#### Article 8 - Protection of information

The provisions of this Convention shall not affect the rights or the obligations of Parties in accordance with their national legal systems and applicable supranational regulations to protect information related to industrial and commercial secrecy, including intellectual property, or national security.

### Part II - Provisions relating to Riparian Parties

#### Article 9 - Bilateral and multilateral co-operation

1. The Riparian Parties shall on the basis of equality and reciprocity enter into bilateral or multilateral agreements or other arrangements, where these do not yet exist, or adapt existing ones, where necessary to eliminate the contradictions with the basic principles of this Convention, in order to define their mutual relations and conduct regarding the prevention, control and reduction of transboundary impact. The Riparian Parties shall specify the catchment area, or part(s) thereof, subject to co-operation. These agreements or arrangements shall embrace relevant issues covered by this Convention, as well as any other issues on which the Riparian Parties may deem it necessary to co-operate.
2. The agreements or arrangements mentioned in paragraph 1 of this article shall provide for the establishment of joint bodies. The tasks of these joint bodies shall be, inter alia, and without prejudice to relevant existing agreements or arrangements, the following:
  - (a) To collect, compile and evaluate data in order to identify pollution sources likely to cause transboundary impact;

- (b) To elaborate joint monitoring programmes concerning water quality and quantity;
  - (c) To draw up inventories and exchange information on the pollution sources mentioned in paragraph 2 (a) of this article;
  - (d) To elaborate emission limits for waste water and evaluate the effectiveness of control programmes;
  - (e) To elaborate joint water-quality objectives and criteria having regard to the provisions of Article 3, paragraph 3 of this Convention, and to propose relevant measures for maintaining and, where necessary, improving the existing water quality;
  - (f) To develop concerted action programmes for the reduction of pollution loads from both point sources (e.g. municipal and industrial sources) and diffuse sources (particularly from agriculture);
  - (g) To establish warning and alarm procedures;
  - (h) To serve as a forum for the exchange of information on existing and planned uses of water and related installations that are likely to cause transboundary impact;
  - (i) To promote co-operation and exchange of information on the best available technology in accordance with the provisions of Article 13 of this Convention, as well as to encourage co-operation in scientific research programmes;
  - (j) To participate in the implementation of environmental impact assessments relating to transboundary waters, in accordance with appropriate international regulations.
3. In cases where a coastal State, being Party to this Convention, is directly and significantly affected by transboundary impact, the Riparian Parties can, if they all so agree, invite that coastal State to be involved in an appropriate manner in the activities of multilateral joint bodies established by Parties riparian to such transboundary waters.
4. Joint bodies according to this Convention shall invite joint bodies, established by coastal States for the protection of the marine

environment directly affected by transboundary impact, to co-operate in order to harmonize their work and to prevent, control and reduce the transboundary impact.

5. Where two or more joint bodies exist in the same catchment area, they shall endeavour to co-ordinate their activities in order to strengthen the prevention, control and reduction of transboundary impact within that catchment area.

#### Article 10 - Consultations

Consultations shall be held between the Riparian Parties on the basis of reciprocity, good faith and good-neighbourliness, at the request of any such Party. Such consultations shall aim at co-operation regarding the issues covered by the provisions of this Convention. Any such consultations shall be conducted through a joint body established under Article 9 of this Convention, where one exists.

#### Article 11 - Joint monitoring and assessment

1. In the framework of general co-operation mentioned in Article 9 of this Convention, or specific arrangements, the Riparian Parties shall establish and implement joint programmes for monitoring the conditions of transboundary waters, including floods and ice drifts, as well as transboundary impact.
2. The Riparian Parties shall agree upon pollution parameters and pollutants whose discharges and concentration in transboundary waters shall be regularly monitored.
3. The Riparian Parties shall, at regular intervals, carry out joint or co-ordinated assessments of the conditions of transboundary waters and the effectiveness of measures taken for the prevention, control and reduction of transboundary impact. The results of these assessments shall be made available to the public in accordance with the provisions set out in Article 16 of this Convention.
4. For these purposes, the Riparian Parties shall harmonize rules for the setting up and operation of monitoring programmes, measurement systems, devices, analytical techniques, data processing and evaluation procedures, and methods for the registration of pollutants discharged.

### Article 12 - Common research and development

In the framework of general co-operation mentioned in Article 9 of this Convention, or specific arrangements, the Riparian Parties shall undertake specific research and development activities in support of achieving and maintaining the water-quality objectives and criteria which they have agreed to set and adopt.

### Article 13 - Exchange of information between riparian parties

1. The Riparian Parties shall, within the framework of relevant agreements or other arrangements according to Article 9 of this Convention, exchange reasonably available data, inter alia, on:
  - (a) Environmental conditions of transboundary waters;
  - (b) Experience gained in the application and operation of best available technology and results of research and development;
  - (c) Emission and monitoring data;
  - (d) Measures taken and planned to be taken to prevent, control and reduce transboundary impact;
  - (e) Permits or regulations for waste-water discharges issued by the competent authority or appropriate body.
2. In order to harmonize emission limits, the Riparian Parties shall undertake the exchange of information on their national regulations.
3. If a Riparian Party is requested by another Riparian Party to provide data or information that is not available, the former shall endeavour to comply with the request but may condition its compliance upon the payment, by the requesting Party, of reasonable charges for collecting and, where appropriate, processing such data or information.
4. For the purposes of the implementation of this Convention, the Riparian Parties shall facilitate the exchange of best available technology, particularly through the promotion of: the commercial exchange of available technology; direct industrial contacts and co-operation, including joint ventures; the exchange of information and

experience; and the provision of technical assistance. The Riparian Parties shall also undertake joint training programmes and the organization of relevant seminars and meetings.

#### Article 14 - Warning and alarm systems

The Riparian Parties shall without delay inform each other about any critical situation that may have transboundary impact. The Riparian Parties shall set up, where appropriate, and operate co-ordinated or joint communication, warning and alarm systems with the aim of obtaining and transmitting information. These systems shall operate on the basis of compatible data transmission and treatment procedures and facilities to be agreed upon by the Riparian Parties. The Riparian Parties shall inform each other about competent authorities or points of contact designated for this purpose.

#### Article 15 - Mutual assistance

1. If a critical situation should arise, the Riparian Parties shall provide mutual assistance upon request, following procedures to be established in accordance with paragraph 2 of this article.
2. The Riparian Parties shall elaborate and agree upon procedures for mutual assistance addressing, inter alia, the following issues:
  - (a) The direction, control, co-ordination and supervision of assistance;
  - (b) Local facilities and services to be rendered by the Party requesting assistance, including, where necessary, the facilitation of border-crossing formalities;
  - (c) Arrangements for holding harmless, indemnifying and/or compensating the assisting Party and/or its personnel, as well as for transit through territories of third Parties, where necessary;
  - (d) Methods of reimbursing assistance services.

#### Article 16 - Public information

1. The Riparian Parties shall ensure that information on the conditions of transboundary waters, measures taken or planned to be taken to prevent, control and reduce transboundary impact, and the

effectiveness of those measures, is made available to the public. For this purpose, the Riparian Parties shall ensure that the following information is made available to the public:

- (a) Water-quality objectives;
  - (b) Permits issued and the conditions required to be met;
  - (c) Results of water and effluent sampling carried out for the purposes of monitoring and assessment, as well as results of checking compliance with the water-quality objectives or the permit conditions.
2. The Riparian Parties shall ensure that this information shall be available to the public at all reasonable times for inspection free of charge, and shall provide members of the public with reasonable facilities for obtaining from the Riparian Parties, on payment of reasonable charges, copies of such information.

### Part III - Institutional and final provisions

[Omitted: Article 17 - Meeting of Parties, Article 18 - Right to vote, Article 19 - Secretariat]

### Article 20 - Annexes

Annexes to this Convention shall constitute an integral part thereof.

[Omitted: Article 21 - Amendments to the Convention, Article 22 - Settlement of disputes, Article 23 - Signature, Article 24 - Depositary, Article 25 - Ratification, acceptance, approval and accession, Article 26 - Entry into force, Article 27 - Withdrawal, Article 28 - Authentic texts]

...

### Annex I - Definition of the term "best available technology"

1. The term "best available technology" is taken to mean the latest stage of development of processes, facilities or methods of operation which indicate the practical suitability of a particular measure for limiting discharges, emissions and waste. In determining whether a set of processes, facilities and methods of operation constitute the best

available technology in general or specific cases, special consideration is given to:

- (a) Comparable processes, facilities or methods of operation which have recently been successfully tried out;
  - (b) Technological advances and changes in scientific knowledge and understanding;
  - (c) The economic feasibility of such technology;
  - (d) Time limits for installation in both new and existing plants;
  - (e) The nature and volume of the discharges and effluents concerned;
  - (f) Low- and non-waste technology.
2. It therefore follows that what is "best available technology" for a particular process will change with time in the light of technological advances, economic and social factors, as well as in the light of changes in scientific knowledge and understanding.

#### Annex II - Guidelines for developing best environmental practices

1. In selecting for individual cases the most appropriate combination of measures which may constitute the best environmental practice, the following graduated range of measures should be considered:
  - (a) Provision of information and education to the public and to users about the environmental consequences of the choice of particular activities and products, their use and ultimate disposal;
  - (b) The development and application of codes of good environmental practice which cover all aspects of the product's life;
  - (c) Labels informing users of environmental risks related to a product, its use and ultimate disposal;
  - (d) Collection and disposal systems available to the public;
  - (e) Recycling, recovery and reuse;

- (f) Application of economic instruments to activities, products or groups of products;
  - (g) A system of licensing, which involves a range of restrictions or a ban.
2. In determining what combination of measures constitute best environmental practices, in general or in individual cases, particular consideration should be given to:
- (a) The environmental hazard of:
    - (i) The product;
    - (ii) The product's production;
    - (iii) The product's use;
    - (iv) The product's ultimate disposal;
  - (b) Substitution by less polluting processes or substances;
  - (c) Scale of use;
  - (d) Potential environmental benefit or penalty of substitute materials or activities;
  - (e) Advances and changes in scientific knowledge and understanding;
  - (f) Time limits for implementation;
  - (g) Social and economic implications.
3. It therefore follows that best environmental practices for a particular source will change with time in the light of technological advances, economic and social factors, as well as in the light of changes in scientific knowledge and understanding.

Annex III - Guidelines for developing water-quality objectives and criteria

Water-quality objectives and criteria shall:

- (a) Take into account the aim of maintaining and, where necessary, improving the existing water quality;
- (b) Aim at the reduction of average pollution loads (in particular hazardous substances) to a certain degree within a certain period of time;
- (c) Take into account specific water-quality requirements (raw water for drinking-water purposes, irrigation, etc.)
- (d) Take into account specific requirements regarding sensitive and specially protected waters and their environment, e.g. lakes and groundwater resources;
- (e) Be based on the application of ecological classification methods and chemical indices for the medium- and long-term review of water-quality maintenance and improvement;
- (f) Take into account the degree to which objectives are reached and the additional protective measures, based on emission limits, which may be required in individual cases.

[Omitted: Annex IV - Arbitration]

**8. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters [Aarhus, 25 June 1998]\***

The Parties to this Convention,

Recalling principle 1 of the Stockholm Declaration on the Human Environment,

Recalling also principle 10 of the Rio Declaration on Environment and Development,

Recalling further General Assembly resolutions 37/7 of 28 October 1982 on the World Charter for Nature and 45/94 of 14 December 1990 on the need to ensure a healthy environment for the well-being of individuals,

Recalling the European Charter on Environment and Health adopted at the First European Conference on Environment and Health of the World Health Organization in Frankfurt-am-Main, Germany, on 8 December 1989,

Affirming the need to protect, preserve and improve the state of the environment and to ensure sustainable and environmentally sound development,

Recognizing that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself,

Recognizing also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations,

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\* 38 ILM 517 (1999). Entry into force: 30 October 2001. Parties and signatories (s): Albania, Armenia, Austria (s), Azerbaijan, Belarus, Belgium, Bulgaria, Croatia (s), Cyprus, Czech Republic, Denmark, Estonia, European Community (s), Finland (s), France, Georgia, Germany (s), Greece (s), Hungary, Iceland (s), Ireland (s), Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein (s), Lithuania, Luxembourg (s), Malta, Monaco (s), Netherlands (s), Norway, Poland, Portugal, Republic of Moldova, Romania, Slovenia (s), Spain (s), Sweden (s), Switzerland (s), Tajikistan, The Former Yugoslav Republic of Macedonia, Turkmenistan, Ukraine, United Kingdom of Great Britain and Northern Ireland (s), as at 31 July 2004.

Considering that, to be able to assert this right and observe this duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters, and acknowledging in this regard that citizens may need assistance in order to exercise their rights,

Recognizing that, in the field of the environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns,

...

Have agreed as follows:

#### Article 1 - Objective

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

#### Article 2 - Definitions

For the purposes of this Convention,

1. "Party" means, unless the text otherwise indicates, a Contracting Party to this Convention;
2. "Public authority" means:
  - (a) Government at national, regional and other level;
  - (b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;
  - (c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment,

under the control of a body or person falling within subparagraphs (a) or (b) above;

- (d) The institutions of any regional economic integration organization referred to in article 17 which is a Party to this Convention.

This definition does not include bodies or institutions acting in a judicial or legislative capacity;

- 3. "Environmental information" means any information in written, visual, aural, electronic or any other material form on:
  - (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
  - (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;
  - (c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;
- 4. "The public" means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;
- 5. "The public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

Article 3 - General provisions

1. Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.
2. Each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters.
3. Each Party shall promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice in environmental matters.
4. Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.
5. The provisions of this Convention shall not affect the right of a Party to maintain or introduce measures providing for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by this Convention.
6. This Convention shall not require any derogation from existing rights of access to information, public participation in decision-making and access to justice in environmental matters.
7. Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.

8. Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings.
9. Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

#### Article 4 - Access to environmental information

1. Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:
  - (a) Without an interest having to be stated;
  - (b) In the form requested unless:
    - (i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or
    - (ii) The information is already publicly available in another form.
2. The environmental information referred to in paragraph 1 above shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.

3. A request for environmental information may be refused if:
  - (a) The public authority to which the request is addressed does not hold the environmental information requested;
  - (b) The request is manifestly unreasonable or formulated in too general a manner; or
  - (c) The request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.
4. A request for environmental information may be refused if the disclosure would adversely affect:
  - (a) The confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law;
  - (b) International relations, national defence or public security;
  - (c) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;
  - (d) The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed;
  - (e) Intellectual property rights;
  - (f) The confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law;
  - (g) The interests of a third party which has supplied the information requested without that party being under or capable of being put under a legal obligation to do so, and where that party does not consent to the release of the material; or

- (h) The environment to which the information relates, such as the breeding sites of rare species.

The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.

5. Where a public authority does not hold the environmental information requested, this public authority shall, as promptly as possible, inform the applicant of the public authority to which it believes it is possible to apply for the information requested or transfer the request to that authority and inform the applicant accordingly.
6. Each Party shall ensure that, if information exempted from disclosure under paragraphs 3(c) and 4 above can be separated out without prejudice to the confidentiality of the information exempted, public authorities make available the remainder of the environmental information that has been requested.
7. A refusal of a request shall be in writing if the request was in writing or the applicant so requests. A refusal shall state the reasons for the refusal and give information on access to the review procedure provided for in accordance with article 9. The refusal shall be made as soon as possible and at the latest within one month, unless the complexity of the information justifies an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.
8. Each Party may allow its public authorities to make a charge for supplying information, but such charge shall not exceed a reasonable amount. Public authorities intending to make such a charge for supplying information shall make available to applicants a schedule of charges which may be levied, indicating the circumstances in which they may be levied or waived and when the supply of information is conditional on the advance payment of such a charge.

[Omitted: Article 5 - Collection and dissemination of environmental information]

Article 6 - Public participation in decisions on specific activities

1. Each Party:
  - (a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I;
  - (b) Shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions; and
  - (c) May decide, on a case-by-case basis if so provided under national law, not to apply the provisions of this article to proposed activities serving national defence purposes, if that Party deems that such application would have an adverse effect on these purposes.
2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:
  - (a) The proposed activity and the application on which a decision will be taken;
  - (b) The nature of possible decisions or the draft decision;
  - (c) The public authority responsible for making the decision;
  - (d) The envisaged procedure, including, as and when this information can be provided:
    - (i) The commencement of the procedure;
    - (ii) The opportunities for the public to participate;
    - (iii) The time and venue of any envisaged public hearing;
    - (iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;

- (v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and
  - (vi) An indication of what environmental information relevant to the proposed activity is available; and
- (e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.
3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.
4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.
5. Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.
6. Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 4, paragraphs 3 and 4. The relevant information shall include at least, and without prejudice to the provisions of article 4:
- (a) A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;
  - (b) A description of the significant effects of the proposed activity on the environment;

- (c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;
  - (d) A non-technical summary of the above;
  - (e) An outline of the main alternatives studied by the applicant; and
  - (f) In accordance with national legislation, the main reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance with paragraph 2 above.
7. Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or enquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.
  8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.
  9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.
  10. Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied *mutatis mutandis*, and where appropriate.
  11. Each Party shall, within the framework of its national law, apply, to the extent feasible and appropriate, provisions of this article to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

[Omitted: Article 7 - Public participation concerning plans, programmes and policies relating to the environment, Article 8 - Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments]

Article 9 - Access to justice

1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law.

In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.

Final decisions under this paragraph 1 shall be binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused under this paragraph.

2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned
  - (a) Having a sufficient interestor, alternatively,
  - (b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition,

have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the

interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.
4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.
5. In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.

[Omitted: Article 10 - Meeting of the Parties, Article 11 - Right to vote, Article 12 - Secretariat, Article 13 - Annexes, Article 14 - Amendments to the Convention, Article 15 - Review of compliance, Article 16 - Settlement of disputes, Article 17 - Signature, Article 18 - Depositary, Article 19 - Ratification, acceptance, approval and accession, Article 20 - Entry into force, Article 21 - Withdrawal, Article 22 - Authentic texts]

...

Annex I - List of activities referred to in article 6, paragraph 1 (a)

...

5. Waste management:

- Installations for the incineration, recovery, chemical treatment or landfill of hazardous waste;
- Installations for the incineration of municipal waste with a capacity exceeding 3 tons per hour;
- Installations for the disposal of non-hazardous waste with a capacity exceeding 50 tons per day;
- Landfills receiving more than 10 tons per day or with a total capacity exceeding 25,000 tons, excluding landfills of inert waste.

...

10. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.

11. (a) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year;

(b) In all other cases, works for the transfer of water resource between river basins where the multiannual average flow of the basin of abstraction exceeds 2,000 million cubic metres/year and where the amount of water transferred exceeds 5 per cent of this flow.

In both cases transfers of piped drinking water are excluded.

...

[Omitted: Annex II - Arbitration]

**9. Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes [London, 17 June 1999]\***

The Parties to this Protocol,

Mindful that water is essential to sustain life and that the availability of water in quantities, and of a quality, sufficient to meet basic human needs is a prerequisite both for improved health and for sustainable development,

Acknowledging the benefits to human health and well-being that accrue from wholesome and clean water and a harmonious and properly functioning water environment,

Aware that surface waters and groundwater are renewable resources with a limited capacity to recover from adverse impacts from human activities on their quantity and quality, that any failure to respect those limits may result in adverse effects, in both the short and long terms, on the health and well-being of those who rely on those resources and their quality, and that in consequence sustainable management of the hydrological cycle is essential for both meeting human needs and protecting the environment,

Aware also of the consequences for public health of shortfalls of water in the quantities, and of the quality, sufficient to meet basic human needs, and of the serious effects of such shortfalls, in particular on the vulnerable, the disadvantaged and the socially excluded,

...

Basing themselves upon the conclusions of the United Nations Conference on Environment and Development (Rio de Janeiro, 1992), in particular the Rio Declaration on Environment and Development and Agenda 21, as well as upon the programme for the further implementation of Agenda 21 (New York, 1997) and the consequent decision of the Commission on Sustainable

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\* UN Doc. MP.WAT/2000/1. Not yet in force. Parties and signatories (s): Albania, Armenia (s), Azerbaijan, Belgium, Bulgaria (s), Croatia (s), Cyprus (s), Czech Republic, Denmark (s), Estonia, Finland (s), France (s), Georgia (s), Germany (s), Greece (s), Hungary, Iceland (s), Italy (s), Latvia (s), Lithuania, Luxembourg, Malta (s), Monaco (s), Netherlands (s), Norway, Poland (s), Portugal (s), Republic of Moldova (s), Romania, Russian Federation, Slovakia, Slovenia (s), Spain (s), Sweden (s), Switzerland (s), Ukraine, United Kingdom of Great Britain and Northern Ireland (s), as at 31 July 2004.

Development on the sustainable management of freshwater (New York, 1998),

...

Have agreed as follows:

Article 1 - Objective

The objective of this Protocol is to promote at all appropriate levels, nationally as well as in transboundary and international contexts, the protection of human health and well-being, both individual and collective, within a framework of sustainable development, through improving water management, including the protection of water ecosystems, and through preventing, controlling and reducing water-related disease.

Article 2 - Definitions

For the purposes of this Protocol,

1. "Water-related disease" means any significant adverse effects on human health, such as death, disability, illness or disorders, caused directly or indirectly by the condition, or changes in the quantity or quality, of any waters;
2. "Drinking water" means water which is used, or intended to be available for use, by humans for drinking, cooking, food preparation, personal hygiene or similar purposes;
3. "Groundwater" means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil;
- ...
5. "Transboundary waters" means any surface or groundwaters which mark, cross or are located on boundaries between two or more States;
6. "Transboundary effects of water-related disease" means any significant adverse effects on human health, such as death, disability, illness or disorders, in an area under the jurisdiction of one Party, caused directly

or indirectly by the condition, or changes in the quantity or quality, of waters in an area under the jurisdiction of another Party, whether or not such effects constitute a transboundary impact;

7. "Transboundary impact" means any significant adverse effect on the environment resulting from a change in the conditions of transboundary waters caused by a human activity, the physical origin of which is situated wholly or in part within an area under the jurisdiction of a Party to the Convention, within an area under the jurisdiction of another Party to the Convention. Such effects on the environment include effects on human health and safety, flora, fauna, soil, air, water, climate, landscape, and historical monuments or other physical structures or the interaction among these factors;

...

10. "Water-management plan" means a plan for the development, management, protection and/or use of the water within a territorial area or groundwater aquifer, including the protection of the associated ecosystems;
11. "The public" means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;
12. "Public authority" means:
- (a) Government at national, regional and other levels;
  - (b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment, public health, sanitation, water management or water supply;
  - (c) Any other natural or legal persons having public responsibilities or functions, or providing public services, under the control of a body or person falling within subparagraphs (a) or (b) above;
  - (d) The institutions of any regional economic integration organization referred to in article 21 which is a Party.

This definition does not include bodies or institutions acting in a judicial or legislative capacity;

13. "Local" refers to all relevant levels of territorial unit below the level of the State;
14. "Convention" means the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, done at Helsinki on 17 March 1992;
15. "Meeting of the Parties to the Convention" means the body established by the Parties to the Convention in accordance with its article 17;
16. "Party" means, unless the text otherwise indicates, a State or a regional economic integration organization referred to in article 21 which has consented to be bound by this Protocol and for which this Protocol is in force;
17. "Meeting of the Parties" means the body established by the Parties in accordance with article 16.

### Article 3 - Scope

The provisions of this Protocol shall apply to:

- (a) Surface freshwater;
- (b) Groundwater;
- (c) Estuaries;
- (d) Coastal waters which are used for recreation or for the production of fish by aquaculture or for the production or harvesting of shellfish;
- (e) Enclosed waters generally available for bathing;
- (f) Water in the course of abstraction, transport, treatment or supply;
- (g) Waste water throughout the course of collection, transport, treatment and discharge or reuse.

Article 4 - General provisions

1. The Parties shall take all appropriate measures to prevent, control and reduce water-related disease within a framework of integrated water-management systems aimed at sustainable use of water resources, ambient water quality which does not endanger human health, and protection of water ecosystems.
2. The Parties shall, in particular, take all appropriate measures for the purpose of ensuring:
  - (a) Adequate supplies of wholesome drinking water which is free from any micro-organisms, parasites and substances which, owing to their numbers or concentration, constitute a potential danger to human health. This shall include the protection of water resources which are used as sources of drinking water, treatment of water and the establishment, improvement and maintenance of collective systems;
  - ...
  - (c) Effective protection of water resources used as sources of drinking water, and their related water ecosystems, from pollution from other causes, including agriculture, industry and other discharges and emissions of hazardous substances. This shall aim at the effective reduction and elimination of discharges and emissions of substances judged to be hazardous to human health and water ecosystems;
  - ...
3. Subsequent references in this Protocol to "drinking water" and "sanitation" are to drinking water and sanitation that are required to meet the requirements of paragraph 2 of this article.
4. The Parties shall base all such measures upon an assessment of any proposed measure in respect of all its implications, including the benefits, disadvantages and costs, for:
  - (a) Human health;
  - (b) Water resources; and

- (c) Sustainable development, which takes account of the differing new impacts of any proposed measure on the different environmental mediums.
- 5. The Parties shall take all appropriate action to create legal, administrative and economic frameworks which are stable and enabling and within which the public, private and voluntary sectors can each make its contribution to improving water management for the purpose of preventing, controlling and reducing water-related disease.
- 6. The Parties shall require public authorities which are considering taking action, or approving the taking by others of action, that may have a significant impact on the environment of any waters within the scope of this Protocol to take due account of any potential impact of that action on public health.
- 7. Where a Party is a Party to the Convention on Environmental Impact Assessment in a Transboundary Context, compliance by public authorities of that Party with the requirements of that Convention in relation to a proposed action shall satisfy the requirement under paragraph 6 of this article in respect of that action.

...

#### Article 5 - Principles and approaches

In taking measures to implement this Protocol, the Parties shall be guided in particular by the following principles and approaches:

- (a) The precautionary principle, by virtue of which action to prevent, control or reduce water-related disease shall not be postponed on the ground that scientific research has not fully proved a causal link between the factor at which such action is aimed, on the one hand, and the potential contribution of that factor to the prevalence of water-related disease and/or transboundary impacts, on the other hand;
- (b) The polluter-pays principle, by virtue of which costs of pollution prevention, control and reduction shall be borne by the polluter;
- (c) States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their

own resources pursuant to their own environmental and developmental policies, and the responsibility 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;

- (d) Water resources shall be managed so that the needs of the present generation are met without compromising the ability of future generations to meet their own needs;
- (e) Preventive action should be taken to avoid outbreaks and incidents of water-related disease and to protect water resources used as sources of drinking water because such action addresses the harm more efficiently and can be more cost-effective than remedial action;
- (f) Action to manage water resources should be taken at the lowest appropriate administrative level;
- (g) Water has social, economic and environmental values and should therefore be managed so as to realize the most acceptable and sustainable combination of those values;
- (h) Efficient use of water should be promoted through economic instruments and awareness-building;
- (i) Access to information and public participation in decision-making concerning water and health are needed, *inter alia*, in order to enhance the quality and the implementation of the decisions, to build public awareness of issues, to give the public the opportunity to express its concerns and to enable public authorities to take due account of such concerns. Such access and participation should be supplemented by appropriate access to judicial and administrative review of relevant decisions;
- (j) Water resources should, as far as possible, be managed in an integrated manner on the basis of catchment areas, with the aims of linking social and economic development to the protection of natural ecosystems and of relating water-resource management to regulatory measures concerning other environmental mediums. Such an integrated approach should apply across the whole of a catchment area, whether transboundary or not, including its associated coastal waters, the whole of a groundwater aquifer or the relevant parts of such a catchment area or groundwater aquifer;

- (k) Special consideration should be given to the protection of people who are particularly vulnerable to water-related disease;
- (l) Equitable access to water, adequate in terms both of quantity and of quality, should be provided for all members of the population, especially those who suffer a disadvantage or social exclusion;
- (m) As a counterpart to their rights and entitlements to water under private law and public law, natural and legal persons and institutions, whether in the public sector or the private sector, should contribute to the protection of the water environment and the conservation of water resources; and
- (n) In implementing this Protocol, due account should be given to local problems, needs and knowledge.

#### Article 6 - Targets and target dates

1. In order to achieve the objective of this Protocol, the Parties shall pursue the aims of:
  - (a) Access to drinking water for everyone;
  - (b) Provision of sanitation for everyone within a framework of integrated water-management systems aimed at sustainable use of water resources, ambient water quality which does not endanger human health, and protection of water ecosystems.
2. For these purposes, the Parties shall each establish and publish national and/or local targets for the standards and levels of performance that need to be achieved or maintained for a high level of protection against water-related disease. These targets shall be periodically revised. In doing all this, they shall make appropriate practical and/or other provisions for public participation, within a transparent and fair framework, and shall ensure that due account is taken of the outcome of the public participation. Except where national or local circumstances make them irrelevant for preventing, controlling and reducing water-related disease, the targets shall cover, inter alia:

...

- (f) The application of recognized good practice to the management of water supply and sanitation, including the protection of waters used as sources for drinking water;
- (g) The occurrence of discharges of:
  - (i) Untreated waste water; and
  - (ii) Untreated storm water overflowsfrom waste-water collection systems to waters within the scope of this Protocol;
- (h) The quality of discharges of waste water from waste-water treatment installations to waters within the scope of this Protocol;
- ...
- (j) The quality of waters which are used as sources for drinking water, which are generally used for bathing or which are used for aquaculture or for the production or harvesting of shellfish;
- ...
- (l) The identification and remediation of particularly contaminated sites which adversely affect waters within the scope of this Protocol or are likely to do so and which thus threaten to give rise to water-related disease;
- (m) The effectiveness of systems for the management, development, protection and use of water resources, including the application of recognized good practice to the control of pollution from sources of all kinds;
- (n) The frequency of the publication of information on the quality of the drinking water supplied and of other waters relevant to the targets in this paragraph in the intervals between the publication of information under article 7, paragraph 2.

3. Within two years of becoming a Party, each Party shall establish and publish targets referred to in paragraph 2 of this article, and target dates for achieving them.
4. Where a long process of implementation is foreseen for the achievement of a target, intermediate or phased targets shall be set.
5. In order to promote the achievement of the targets referred to in paragraph 2 of this article, the Parties shall each:
  - (a) Establish national or local arrangements for coordination between their competent authorities;
  - (b) Develop water-management plans in transboundary, national and/or local contexts, preferably on the basis of catchment areas or groundwater aquifers. In doing so, they shall make appropriate practical and/or other provisions for public participation, within a transparent and fair framework, and shall ensure that due account is taken of the outcome of the public participation. Such plans may be incorporated in other relevant plans, programmes or documents which are being drawn up for other purposes, provided that they enable the public to see clearly the proposals for achieving the targets referred to in this article and the respective target dates;

...

Article 7 - Review and assessment of progress

1. The Parties shall each collect and evaluate data on:
  - (a) Their progress towards the achievement of the targets referred to in article 6, paragraph 2;

...

[Omitted: Article 8 - Response systems]

Article 9 - Public awareness, education, training, research and development and information

1. The Parties shall take steps designed to enhance the awareness of all sectors of the public regarding:
  - (a) The importance of, and the relationship between, water management and public health;
  - (b) The rights and entitlements to water and corresponding obligations under private and public law of natural and legal persons and institutions, whether in the public sector or the private sector, as well as their moral obligations to contribute to the protection of the water environment and the conservation of water resources.
2. The Parties shall promote:
  - (a) Understanding of the public-health aspects of their work by those responsible for water management, water supply and sanitation; and
  - (b) Understanding of the basic principles of water management, water supply and sanitation by those responsible for public health.
3. The Parties shall encourage the education and training of the professional and technical staff who are needed for managing water resources and for operating systems of water supply and sanitation, and encourage the updating and improvement of their knowledge and skills. This education and training shall include relevant aspects of public health.

...

Article 10 - Public information

1. As a complement to the requirements of this Protocol for Parties to publish specific information or documents, each Party shall take steps within the framework of its legislation to make available to the public such information as is held by public authorities and is reasonably needed to inform public discussion of:

- (a) The establishment of targets and of target dates for their achievement and the development of water-management plans in accordance with article 6;

...

- (c) The promotion of public awareness, education, training, research, development and information in accordance with article 9.

2. Each Party shall ensure that public authorities, in response to a request for other information relevant to the implementation of this Protocol, make such information available within a reasonable time to the public, within the framework of national legislation.

3. The Parties shall ensure that information referred to in article 7, paragraph 4, and paragraph 1 of this article shall be available to the public at all reasonable times for inspection free of charge, and shall provide members of the public with reasonable facilities for obtaining from the Parties, on payment of reasonable charges, copies of such information.

4. Nothing in this Protocol shall require a public authority to publish information or make information available to the public if:

...

5. Nothing in this Protocol shall require a public authority to publish information or make information available to the public if disclosure of the information would adversely affect:

...

#### Article 11 - International cooperation

The Parties shall cooperate and, as appropriate, assist each other:

- (a) In international actions in support of the objectives of this Protocol;
- (b) On request, in implementing national and local plans in pursuance of this Protocol.

Article 12 - Joint and coordinated international action

In pursuance of article 11, subparagraph (a), the Parties shall promote cooperation in international action relating to:

- (a) The development of commonly agreed targets for matters referred to in article 6, paragraph 2;

...

Article 13 - Cooperation in relation to transboundary waters

1. Where any Parties border the same transboundary waters, as a complement to their other obligations under articles 11 and 12, they shall cooperate and, as appropriate, assist each other to prevent, control and reduce transboundary effects of water-related disease. In particular, they shall:
  - (a) Exchange information and share knowledge about the transboundary waters and the problems and risks which they present with the other Parties bordering the same waters;
  - (b) Endeavour to establish with the other Parties bordering the same transboundary waters joint or coordinated water-management plans in accordance with article 6, paragraph 5 (b), and surveillance and early-warning systems and contingency plans in accordance with article 8, paragraph 1, for the purpose of responding to outbreaks and incidents of water-related disease and significant threats of such outbreaks and incidents, especially from water-pollution incidents or extreme weather events;
  - (c) On the basis of equality and reciprocity, adapt their agreements and other arrangements regarding their transboundary waters in order to eliminate any contradictions with the basic principles of this Protocol and to define their mutual relations and conduct regarding the aims of this Protocol;
  - (d) Consult each other, at the request of any one of them, on the significance of any adverse effect on human health which may constitute a water-related disease.

2. Where the Parties concerned are Parties to the Convention, the cooperation and assistance in respect of any transboundary effects of water-related disease which are transboundary impacts shall take place in accordance with the provisions of the Convention.

Article 14 - International support for national action

When cooperating and assisting each other in the implementation of national and local plans in pursuance of article 11, subparagraph (b), the Parties shall, in particular, consider how they can best help to promote:

- (a) Preparation of water-management plans in transboundary, national and/or local contexts and of schemes for improving water supply and sanitation;
- (b) Improved formulation of projects, especially infrastructure projects, in pursuance of such plans and schemes, in order to facilitate access to sources of finance;
- (c) Effective execution of such projects;
- (d) Establishment of systems for surveillance and early-warning systems, contingency plans and response capacities in relation to water-related disease;
- (e) Preparation of legislation needed to support the implementation of this Protocol;
- (f) Education and training of key professional and technical staff;
- (g) Research into, and development of, cost-effective means and techniques for preventing, controlling and reducing water-related disease;
- (h) Operation of effective networks to monitor and assess the provision and quality of water-related services, and development of integrated information systems and databases;
- (i) Achievement of quality assurance for monitoring activities, including inter-laboratory comparability.

[Omitted: Article 15 - Review of compliance, Article 16 - Meeting of the Parties, Article 17 - Secretariat, Article 18 - Amendments to the Protocol, Article 19 - Right to vote, Article 20 - Settlement of disputes, Article 21 - Signature, Article 22 - Ratification, acceptance, approval and accession, Article 23 - Entry into force, Article 24 - Withdrawal, Article 25 - Depositary, Article 26 - Authentic texts]

...

## **10. Revised Protocol on Shared Watercourses in the Southern African Development Community (SADC) [Windhoek, 7 August 2000]\***

### Preamble

[The Parties]

Bearing in mind the progress with the development and codification of international water law initiated by the Helsinki Rules and that the United Nations subsequently adopted the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses;

Recognising the relevant provisions of Agenda 21 of the United Nations Conference on Environment and Development, the concepts of environmentally sound management, sustainable development and equitable utilisation of shared watercourses in the SADC Region;

Considering the existing and emerging socio-economic development programmes in the SADC Region and their impact on the environment;

Desirous of developing close co-operation for judicious, sustainable and co-ordinated utilisation of the resources of the shared watercourses in the SADC Region;

Convinced of the need for co-ordinated and environmentally sound development of the resources of shared watercourses in the SADC Region in order to support sustainable socio-economic development;

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\* 40 ILM 321 (2001). Entry into force: 22 September 2003. Parties and/or signatories: Angola, Botswana, Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia, Zimbabwe.

Recognising that there are as yet no regional conventions regulating common utilisation and management of the resources of shared watercourses in the SADC Region;

Mindful of the existence of other Agreements in the SADC Region regarding the common utilisation of certain watercourses; and

In accordance with Article 22 of the Treaty, have agreed as follows:

Article 1 - Definitions

1. For the purposes of this Protocol the following terms shall have the meanings ascribed to them hereunder:

"Agricultural use" means use of water for irrigation purposes;

"Domestic use" means use of water for drinking, washing, cooking, bathing, sanitation and stock watering purposes;

"Emergency situation" means a situation that causes or poses an imminent threat of causing serious harm to Watercourse States and which results suddenly from natural causes, such as torrential rains, floods, landslides or earthquakes or from human conduct;

"Environmental use" means the use of water for the preservation and maintenance of ecosystems;

"Industrial use" means use of water for commercial, electrical power generation, industrial, manufacturing and mining purposes;

"Management of a shared watercourse" means

(i) planning the sustainable development of a shared watercourse and providing for the implementation of any plans adopted; and

(ii) otherwise promoting the rational, equitable and optimal utilisation, protection, and control of the watercourse;

"Navigational use" means use of water for sailing whether it be for transport, fishing, recreation or tourism;

"Pollution of a shared watercourse" means any detrimental alteration in the composition or quality of the waters of a shared watercourse which results directly or indirectly from human conduct;

"Regulation of the flow of the waters of a shared watercourse" means the use of hydraulic works or any other continuing measure to alter, vary or otherwise control the flow of waters of a shared watercourse;

"Shared watercourse" means a watercourse passing through or forming the border between two or more Watercourse States;

"Significant Harm" means non-trivial harm capable of being established by objective evidence without necessarily rising to the level of being substantial;

"State Party" means a member of SADC that ratifies or accedes to this Protocol;

"Watercourse" means a system of surface and groundwaters consisting by virtue of their physical relationship a unitary whole normally flowing into a common terminus such as the sea, lake or aquifer;

"Watercourse State" means a State Party in whose territory part of a watercourse is situated.

2. Any other term defined in the Treaty and used in this Protocol shall have the same meaning as ascribed to it in the Treaty.

### Article 2 - Objective

The overall objective of this Protocol is to foster closer cooperation for judicious, sustainable and co-ordinated management, protection and utilisation of shared watercourses and advance the SADC agenda of regional integration and poverty alleviation. In order to achieve this objective, this Protocol seeks to:

- (a) promote and facilitate the establishment of shared watercourse agreements and Shared Watercourse Institutions for the management of shared watercourses;
- (b) advance the sustainable, equitable and reasonable utilisation of the shared watercourses;

- (c) promote a co-ordinated and integrated environmentally sound development and management of shared watercourses;
- (d) promote the harmonisation and monitoring of legislation and policies for planning, development, conservation, protection of shared watercourses, and allocation of the resources thereof; and
- (e) promote research and technology development, information exchange, capacity building, and the application of appropriate technologies in shared watercourses management.

### Article 3 - General principles

For the purposes of this Protocol the following general principles shall apply:

1. The State Parties recognise the principle of the unity and coherence of each shared watercourse and in accordance with this principle, undertake to harmonise the water uses in the shared watercourses and to ensure that all necessary interventions are consistent with the sustainable development of all Watercourse States and observe the objectives of regional integration and harmonisation of their socio-economic policies and plans.
2. The utilisation of shared watercourses within the SADC Region shall be open to each Watercourse State, in respect of the watercourses within its territory and without prejudice to its sovereign rights, in accordance with the principles contained in this Protocol. The utilisation of the resources of the watercourses shall include agricultural, domestic, industrial, navigational and environmental uses.
3. State Parties undertake to respect the existing rules of customary or general international law relating to the utilisation and management of the resources of shared watercourses.
4. State Parties shall maintain a proper balance between resource development for a higher standard of living for their people and conservation and enhancement of the environment to promote sustainable development.

5. State Parties undertake to pursue and establish close co-operation with regard to the study and execution of all projects likely to have an effect on the regime of the shared watercourse.
6. State Parties shall exchange available information and data regarding the hydrological, hydrogeological, water quality, meteorological and environmental condition of shared watercourses.
7.
  - (a) Watercourse States shall in their respective territories utilise a shared watercourse in an equitable and reasonable manner. In particular, shared watercourse shall be used and developed by Watercourse States with a view to attain optimal and sustainable utilisation thereof and benefits therefrom, taking into account the interests of the Watercourse States concerned, consistent with adequate protection of the watercourse for the benefit of current and future generations.
  - (b) Watercourse States shall participate in the use, development and protection of a shared watercourse in an equitable and reasonable manner. Such participation, includes both the right to utilise the watercourse and the duty to co-operate in the protection and development thereof, as provided in this Protocol.
8.
  - (a) Utilisation of a shared watercourse in an equitable and reasonable manner within the meaning of Article 7(a) and (b) requires taking into account all relevant factors and circumstances including:
    - (i) geographical, hydrographical, hydrological, climatical, ecological and other factors of a natural character;
    - (ii) the social, economic and environmental needs of the Watercourse States concerned;
    - (iii) the population dependent on the shared watercourse in each Watercourse State;
    - (iv) the effects of the use or uses of a shared watercourse in one Watercourse State on other Watercourse States;
    - (v) existing and potential uses of the watercourse;

- (vi) conservation, protection, development and economy of use of the water resources of the shared watercourse and the costs of measures taken to that effect; and
  - (vii) the availability of alternatives, of comparable value, to a particular planned or existing use.
- (b) The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is an equitable and reasonable use, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.
9. State Parties shall deal with planned measures in conformity with the procedure set out in Article 4 (1).
10. (a) State Parties shall, in utilising a shared watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other Watercourse States.
- (b) Where significant harm is nevertheless caused to another Watercourse State, the State whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard for the provisions of paragraph (a) above in consultation with the affected States, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.
- (c) Unless the Watercourse States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who have suffered or are under a serious threat of suffering significant transboundary harm as a result of activities related to a shared watercourse, a Watercourse State shall not discriminate on the basis of nationality or residence or place where the injury occurred, in granting to such persons, in accordance with its legal system, access to judicial or other procedures, or a right to claim compensation or other relief in respect of significant harm caused by such activities carried on in its territory.

Article 4 - Specific provisions1. Planned Measures(a) Information concerning planned measures

State Parties shall exchange information and consult each other and, if necessary, negotiate the possible effects of planned measures on the condition of a shared watercourse.

(b) Notification concerning planned measures with possible adverse effects

Before a State Party implements or permits the implementation of planned measures which may have a significant adverse effect upon other Watercourse States, it shall provide those States with timely notification thereof. Such notification shall be accompanied by available technical data and information, including the results of any environmental impact assessment, in order to enable the notified States to evaluate the possible effects of the planned measures.

(c) Period for reply to notification

- (i) Unless otherwise agreed, a State Party providing a notification under paragraph (b) shall allow the notified States a period of six months within which to study and evaluate the possible effects of the planned measures and to communicate the findings to it;
- (ii) This period shall, at the request of a notified State for which the evaluation of the planned measures poses difficulty, be extended for a period of six months.

(d) Obligations of the notifying State during the period for reply

During the period referred to in paragraph (c), the notifying State:

- (i) shall co-operate with the notified States by providing them, on request, with any additional data and information that is available and necessary for an accurate evaluation; and
- (ii) shall not implement or permit the implementation of the planned measures without the consent of the notified States.

(e) Reply to Notification

The notified States shall communicate their findings to the notifying State as early as possible within the period applicable pursuant to paragraph (c). If a notified State finds that implementation of the planned measures would be inconsistent with the provisions of Article 3 (7) or (10), it shall attach to its finding a documented explanation setting the reasons for the findings.

(f) Absence of reply to notification

- (i) If, within the period applicable pursuant to paragraph (c), the notifying State receives no communication under (e), it may, subject to its obligations under Article 3 (7) and (10), proceed with the implementation of the planned measures, in accordance with the notification and any other data and information provided to the notified States.
- (ii) Any claim to compensation by a notified State which has failed to reply within the period applicable pursuant to paragraph (c) may be offset by the costs incurred by the notifying State for action undertaken after the expiration of the time for a reply which would not have been undertaken if the notified State had objected within that period.

(g) Consultations and negotiations concerning planned measures

- (i) If a communication is made under paragraph (e) that implementation of the planned measures would be inconsistent with the provisions of Article 3 (7) or (10), the notifying State and the State making the communication shall enter into consultations and, if necessary, negotiations with a view to arriving at an equitable resolution of the situation.
- (ii) The consultations and negotiations shall be conducted on the basis that each State must in good faith pay reasonable regard to the rights and legitimate interests of the other States.
- (iii) During the course of the consultations and negotiations, the notifying State shall, if so requested by the notified State at the time it makes the communication, refrain from implementing or

permitting the implementation of the planned measures for a period of six months unless otherwise agreed.

(h) Procedures in the absence of notification

- (i) If a State Party has reasonable grounds to believe that another Watercourse State is planning measures that may have a significant adverse effect upon it, the former State may request the latter to apply the provisions of paragraph (b). The request shall be accompanied by a documented explanation setting forth its grounds.
- (ii) If the State planning the measures finds that it is not under an obligation to provide a notification under paragraph (b), it shall so inform the other State, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy the other State, the two States shall, at the request of that other State, promptly enter into consultations and negotiations in the manner provided in sub-paragraphs (i) and (ii) of paragraph (g).
- (iii) During the course of the consultations and negotiations, the State planning the measures shall, if so requested by the other State at the time it requests the initiation of consultations and negotiations, refrain from implementing or permitting the implementation of those measures for a period of six months unless otherwise agreed.

(i) Urgent implementation of planned measures

- (i) In the event that the implementation of planned measures is of the utmost urgency in order to protect public health, public safety or other equally important interests, the State planning the measures may, subject to paragraphs 7 and 10 of Article 3, immediately proceed to implementation, notwithstanding the provisions of paragraph (d) and sub-paragraph (iii) of paragraph (g).
- (ii) In such case, a formal declaration of the urgency of the measures shall be communicated without delay to the other Watercourse States referred to in paragraph (b) together with the relevant data and information.

- (iii) The State planning the measures shall, at the request of any of the States referred to in paragraph (ii), promptly enter into consultations and negotiations with it in the manner indicated in sub-paragraphs (i) and (ii) of paragraph (g).

2. Environmental Protection and Preservation

(a) Protection and preservation of ecosystems

State Parties shall, individually and, where appropriate, jointly, protect and preserve the ecosystems of a shared watercourse.

(b) Prevention, reduction and control of pollution

- (i) State Parties shall, individually and, where appropriate, jointly, prevent, reduce and control the pollution and environmental degradation of a shared watercourse that may cause significant harm to other Watercourse States or to their environment, including harm to human health or safety, to the use of the waters for any beneficial purpose or to the living resources of the watercourse.
- (ii) Watercourse States shall take steps to harmonise their policies and legislation in this connection.
- (iii) State Parties shall, at the request of any one or more of them, consult with a view to arriving at mutually agreeable measures and methods to prevent, reduce and control pollution of a shared watercourse, such as:
  - (aa) setting joint water quality objectives and criteria;
  - (bb) establishing techniques and practices to address pollution from point and non-point sources;
  - (cc) establishing lists of substances the introduction of which, into the waters of a shared watercourse, is to be prohibited, limited, investigated or monitored.

(c) Introduction of alien or new species

State Parties shall take all measures necessary to prevent the introduction of species, alien or new, into a shared watercourse which may have effects detrimental to the ecosystems of the watercourse resulting in significant harm to other Watercourse States.

(d) Protection and preservation of the aquatic environment

State Parties shall individually and, where appropriate, in co-operation with other States, take all measures with respect to a shared watercourse that are necessary to protect and preserve the aquatic environment, including estuaries, taking into account generally accepted international rules and standards.

3. Management of Shared Watercourses

(a) Management

Watercourse States shall, at the request of any of them, enter into consultations concerning the management of a shared watercourse, which may include the establishment of a joint management mechanism.

(b) Regulation

- (i) Watercourse States shall co-operate, where appropriate, to respond to needs or opportunities for regulation of the flow of the waters of a shared watercourse.
- (ii) Unless otherwise agreed, Watercourse States shall participate on an equitable and reasonable basis in the construction and maintenance or defrayal of the costs of such regulation works as they may have agreed to undertake.

(c) Installations

- (i) Watercourse States shall, within their respective territories, employ their best efforts to maintain and protect installations, facilities and other works related to a shared watercourse.

- (ii) Watercourse States shall, at the request of any of them which has reasonable grounds to believe that it may suffer significant adverse effects, enter into consultations with regards to:
  - (aa) the safe operation and maintenance of installations, facilities, or other works related to a shared watercourse; and
  - (bb) the protection of installations, facilities or other works from willful or negligent acts or the forces of nature.
- (iii) Shared watercourses and related installations, facilities and other works shall enjoy the protection accorded by the principles and rules of international law applicable in international and non-international armed conflict and shall not be used in violation of those principles and rules.

#### 4. Prevention and mitigation of harmful conditions

- (a) State Parties shall individually and, where appropriate, jointly take all appropriate measures to prevent or mitigate conditions related to a shared watercourse that may be harmful to other Watercourse States, whether resulting from natural causes or human conduct, such as floods, water-borne diseases, siltation, erosion, salt-water intrusion, drought or desertification.
- (b) State Parties shall require any person intending to use the waters of a shared watercourse within their respective territories for purposes other than domestic or environmental use or who intends to discharge any type of waste into such waters, to first obtain a permit, licence or other similar authorisation from the relevant authority within the State concerned. The permit or other similar authorisation shall be granted only after such State has determined that the intended use or discharge will not cause significant harm on the regime of the watercourse.

#### 5. Emergency situations

State Parties shall, without delay, notify other potentially affected States, the SADC Water Sector Co-ordinating Unit and competent international organisations of any emergency situation originating within their respective territories and promptly supply the necessary information to such affected

States and competent organisations with a view to co-operate in the prevention, mitigation, and elimination, of harmful effects of the emergency.

Article 5 - Institutional framework for implementation

1. The following institutional mechanisms responsible for the implementation of this Protocol are hereby established -

(a) SADC Water Sector Organs

(i) the Committee of Water Ministers;

(ii) the Committee of Water Senior Officials;

(iii) the Water Sector Co-ordinating Unit; and

(iv) the Water Resources Technical Committee and sub-Committees.

(b) Shared Watercourse Institutions

(c) The Committee of Water Ministers shall consist of Ministers responsible for water.

(d) The Committee of Water Senior Officials shall consist of the Permanent Secretaries or officials of equivalent rank responsible for water.

(e) The Water Sector Coordinating Unit which shall be the executing agency of the Water Sector shall be headed by a Co-ordinator appointed by the State Party responsible for coordinating the Water Sector, and he or she shall be assisted by such supporting staff of professional, administrative and secretarial personnel as the Coordinator may deem necessary.

2. The SADC Water Sector Organs shall have the following functions:

(a) The Committee of Water Ministers

(i) Oversee and monitor the implementation of the Protocol and assist in resolving potential conflicts on shared watercourses.

- (ii) Guide and co-ordinate cooperation and harmonisation of legislation, policies, strategies, programmes and projects.
- (iii) Advise the Council on policies to be pursued.
- (iv) Recommend to Council the creation of such other organs as may be necessary for the implementation of this Protocol.
- (v) Provide regular updates to the Council on the status of the implementation of this Protocol.

(b) The Committee of Water Senior Officials

- (i) Examine all reports and documents put before them by the Water Resources Technical Committee and the Water Sector Co-ordinating Unit.
- (ii) Initiate and advise the Committee of Water Ministers on policies, strategies, programmes and projects to be presented to the Council for approval.
- (iii) Recommend to the Committee of Water Ministers the creation of such other organs as may be necessary for the implementation of this Protocol.
- (iv) Provide regular updates to the Committee of Water Ministers on the status of the implementation of this Protocol.

(c) The Water Sector Co-ordinating Unit

- (i) Monitor the implementation of this Protocol.
- (ii) Liaise with other SADC organs and Shared Watercourse Institutions on matters pertaining to the implementation of this Protocol.
- (iii) Provide guidance on the interpretation of this Protocol.
- (iv) Advise State Parties on matters pertaining to this Protocol.
- (v) Organise and manage all technical and policy meetings.

- (vi) Draft terms of reference for consultancies and manage the execution of those assignments.
  - (vii) Mobilise or facilitate the mobilisation of financial and technical resources for the implementation of this Protocol.
  - (viii) Annually submit a status report on the implementation of the Protocol to the Council through the Committee of Water Ministers.
  - (ix) Keep an inventory of all shared watercourse management institutions and their agreements on shared watercourses within the SADC Region.
- (d) The Water Resources Technical Committee
- (i) Provide technical support and advice to the Committee of Water Senior Officials through the Water Sector Co-ordinating Unit with respect to the implementation of this Protocol.
  - (ii) Discuss issues tabled by the Water Sector Co-ordinating Unit and prepare for the Committee of Water Senior Officials.
  - (iii) Consider and approve terms of reference for consultancies, including the appointment of consultants.
  - (iv) Recommend to the Committee of Water Senior Officials any matter of interest to it on which agreement has not been reached.
  - (v) Appoint working groups for short-term tasks and standing sub-committees for longer term tasks.
  - (vi) Address any other issues that may have implications on the implementation of this Protocol.
3. Shared watercourse institutions
- (a) Watercourse States undertake to establish appropriate institutions such as watercourse commissions, water authorities or boards as may be determined.

- (b) The responsibilities of such institutions shall be determined by the nature of their objectives which must be in conformity with the principles set out in this Protocol.
  - (c) Shared Watercourse Institutions shall provide on a regular basis or as required by the Water Sector Co-ordinating Unit, all the information necessary to assess progress on the implementation of the provisions of this Protocol, including the development of their respective agreements.
4. State Parties undertake to adopt appropriate measures to give effect to the institutional framework referred to in this Article for the implementation of this Protocol.

#### Article 6 - Shared watercourse agreements

1. In the absence of any agreement to the contrary, nothing in this Protocol shall affect the rights or obligations of a Watercourse State arising from agreements in force for it on the date on which it became a party to the Protocol.
2. Notwithstanding the provisions of paragraph 1, parties to agreements referred to in paragraph 1 may harmonise such agreements with this Protocol.
3. Watercourse States may enter into agreements, which apply the provision of this Protocol to the characteristics and uses of a particular shared watercourse or part thereof.
4. Where a watercourse agreement is concluded between two or more Watercourse States, it shall define the waters to which it applies. Such an agreement may be entered into with respect to an entire shared watercourse or any part thereof or a particular project, programme or use except insofar as the agreement adversely affects, to a significant extent, the use by one or more other Watercourse States of the waters of the watercourse, without their express consent.
5. Where some but not all Watercourse States to a particular shared watercourse are parties to an agreement, nothing contained in such agreement shall affect the rights or obligations under this Protocol of Watercourse States that are not parties to such an agreement.

6. Every Watercourse State is entitled to participate in the negotiation of and to become a party to any watercourse agreement that applies to the entire shared watercourse, as well as to participate in any relevant consultations.
7. A Watercourse State whose use of a shared watercourse may be affected to a significant extent by the implementation of a proposed watercourse agreement that applies only to a part of the watercourse or to a particular project, programme or use is entitled to participate in consultations on such an agreement and, where appropriate, in the negotiation thereof in good faith with a view to becoming a party thereto, to the extent that its use is thereby affected.

#### Article 7 - Settlement of disputes

1. State Parties shall strive to resolve all disputes regarding the implementation, interpretation or application of the provisions of this Protocol amicably in accordance with the principles enshrined in Article 4 of the Treaty.
2. Disputes between State Parties regarding the interpretation or application of the provisions of this Protocol which are not settled amicably, shall be referred to the Tribunal.
3. If a dispute arises between SADC on the one hand and a State Party on the other, a request shall be made for an advisory opinion in accordance with article 16(4) of the Treaty.

[Omitted: Article 8 - Signature, Article 9 - Ratification, Article 10 - Entry into force, Article 11 - Accession, Article 12 - Amendment, Article 13 - Withdrawal, Article 14 - Termination, Article 15 - Depositary]

#### Article 16 - Protocol on shared watercourse systems in the SADC region

1. Upon entry into force of this Protocol, the Protocol on Shared Watercourse Systems in the Southern African Development Community (SADC) Region, which entered into force on 29th September 1998, shall be repealed and replaced by this Protocol.

...

**11. Framework Convention on the Protection and Sustainable Development of the Carpathians [Kiev, 22 May 2003]\***

"The Parties",

Acknowledging that the Carpathians are a unique natural treasure of great beauty and ecological value, an important reservoir of biodiversity, the headwaters of major rivers, an essential habitat and refuge for many endangered species of plants and animals and Europe's largest area of virgin forests, and aware that the Carpathians constitute a major ecological, economic, cultural, recreational and living environment in the heart of Europe, shared by numerous peoples and countries;

...

Being aware of the fact that efforts to protect, maintain and sustainably manage the natural resources of the Carpathians cannot be achieved by one country alone and require regional cooperation, and of the added value of transboundary cooperation in achieving ecological coherence;

Have agreed as follows:

Article 1 - Geographical scope

1. The Convention applies to the Carpathian region (hereinafter referred to as the "Carpathians"), to be defined by the Conference of the Parties.
2. Each Party may extend the application of this Convention and its Protocols to additional parts of its national territory by making a declaration to the Depositary, provided that this is necessary to implement the provisions of the Convention.

Article 2 - General objectives and principles

1. The Parties shall pursue a comprehensive policy and cooperate for the protection and sustainable development of the Carpathians with a view

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\* FAOLEX (FAO legal database online). UN Doc. ECE/CEP/104. Parties and/or signatories: Czech Republic, Hungary, Poland, Romania, Serbia and Montenegro, Slovakia, Ukraine.

to inter alia improving quality of life, strengthening local economies and communities, and conservation of natural values and cultural heritage.

2. In order to achieve the objectives referred to in paragraph 1, the Parties shall take appropriate measures, in the areas covered by Articles 4 to 13 of this Convention by promoting:
  - (a) the precaution and prevention principles,
  - (b) the "polluter pays" principle,
  - (c) public participation and stakeholder involvement,
  - (d) transboundary cooperation,
  - (e) integrated planning and management of land and water resources,
  - (f) a programmatic approach, and
  - (g) the ecosystem approach.
3. To achieve the objectives set forth in this Convention and to ensure its implementation, the Parties may, as appropriate, develop and adopt Protocols.

#### Article 3 - Integrated approach to the land resources management

The Parties shall apply the approach of the integrated land resources management as defined in Chapter 10 of the Agenda 21, by developing and implementing appropriate tools, such as integrated management plans, relating to the areas of this Convention.

[Omitted: Article 4 - Conservation and sustainable use of biological and landscape diversity, Article 5 - Spatial planning]

#### Article 6 - Sustainable and integrated water/river basin management

Taking into account the hydrological, biological and ecological, and other specificities of mountain river basins, the Parties shall:

- (a) take appropriate measures to promote policies integrating sustainable use of water resources, with land-use planning, and aim at pursuing policies and plans based on an integrated river basin management approach, recognizing the importance of pollution and flood management, prevention and control, and reducing water habitats fragmentation,
- (b) pursue policies aiming at sustainable management of surface and groundwater resources, ensuring adequate supply of good quality surface and groundwater as needed for sustainable, balanced and equitable water use, and adequate sanitation and treatment of waste water,
- (c) pursue policies aiming at conserving natural watercourses, springs, lakes and groundwater resources as well as preserving and protecting of wetlands and wetland ecosystems, and protecting against natural and anthropogenic detrimental effects such as flooding and accidental water pollution,
- (d) further develop a coordinated or joint system of measures, activities and early warning for transboundary impacts on the water regime of flooding and accidental water pollution, as well as co-operate in preventing and reducing the damages and giving assistance in restoration works.

[Omitted: Article 7 - Sustainable agriculture and forestry, Article 8 - Sustainable transport and infrastructure, Article 9 - Sustainable tourism, Article 10 - Industry and energy, Article 11 - Cultural heritage and traditional knowledge]

Article 12 - Environmental assessment/information system, monitoring and early warning

1. The Parties shall apply, where necessary, risk assessments, environmental impact assessments, and strategic environmental assessments, taking into account the specificities of the Carpathian mountain ecosystems, and shall consult on projects of transboundary character in the Carpathians, and assess their environmental impact, in order to avoid transboundary harmful effects.

2. The Parties shall pursue policies, using existing methods of monitoring and assessment, aiming at promoting:
  - (a) cooperation in the carrying out of research activities and scientific assessments in the Carpathians,
  - (b) joint or complementary monitoring programmes, including the systematic monitoring of the state of the environment,
  - (c) comparability, complementarity and standardization of research methods and related data-acquisition activities,
  - (d) harmonization of existing and development of new environmental, social and economic indicators,
  - (e) a system of early warning, monitoring and assessment of natural and man-made environmental risks and hazards, and
  - (f) an information system, accessible to all Parties.

[Omitted: Article 13 - Awareness raising, education and public participation, Article 14 - Conference of the Parties, Article 15 - Secretariat, Article 16 - Subsidiary bodies, Article 17 - Financial contributions, Article 18 - Protocols, Article 19 - Amendments to the Convention, Article 20 - Settlement of disputes, Article 21 - Entry into force, Article 22 - Withdrawal, Article 23 - Depositary]

...

**12. African Convention on the Conservation of Nature and Natural Resources [Maputo, 11 July 2003]\***

Preamble

We, the Heads of State and Government of the Member States of the African Union (AU),

Conscious that the natural environment of Africa and the natural resources with which Africa is endowed are an irreplaceable part of the African heritage and constitute a capital of vital importance to the continent and humankind as a whole;

...

Conscious of the ever-growing importance of natural resources from economic, social, cultural and environmental points of view;

...

Re-affirming that States have, in accordance with the Charter of the United Nations and the principles of international law, a sovereign right to exploit their own resources pursuant to their environmental and developmental policies, and the responsibility 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;

Re-affirming further that States are responsible for protecting and conserving their environment and natural resources and for using them in a sustainable manner with the aim to satisfy human needs according to the carrying capacity of the environment;

Conscious of the dangers which threaten some of these irreplaceable assets;

Desirous of undertaking individual and joint action for the conservation, utilization and development of these assets by establishing and maintaining their sustainable use;

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\* FAOLEX (FAO legal database online). Parties and/or signatories: Benin, Burundi, Djibouti, Gambia, Ghana, Guinea, Kenya, Liberia, Mali, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Sierra Leone, Tanzania, Togo, Uganda, Zimbabwe.

...

Conscious of the need to continue furthering the principles of the Stockholm Declaration, to contribute to the implementation of the Rio Declaration and of Agenda 21, and to work closely together towards the implementation of global and regional instruments supporting their goals;

...

Convinced that the above objectives would be better achieved by amending the 1968 Algiers Convention on the Conservation of Nature and Natural Resources by expanding elements related to sustainable development;

Have agreed as follows:

#### Article I - Scope

This Convention shall apply

1. to all areas which are within the limits of national jurisdiction of any Party; and
2. to the activities carried out under the jurisdiction or control of any Party within the area of its national jurisdiction or beyond the limits of its national jurisdiction.

#### Article II - Objectives

The objectives of this Convention are:

1. to enhance environmental protection;
2. to foster the conservation and sustainable use of natural resources; and
3. to harmonize and coordinate policies in these fields with a view to achieving ecologically rational, economically sound and socially acceptable development policies and programmes.

### Article III - Principles

In taking action to achieve the objectives of this Convention and implement its provisions, the Parties shall be guided by the following:

1. the right of all peoples to a satisfactory environment favourable to their development;
2. the duty of States, individually and collectively to ensure the enjoyment of the right to development;
3. the duty of States to ensure that developmental and environmental needs are met in a sustainable, fair and equitable manner.

### Article IV - Fundamental obligation

The Parties shall adopt and implement all measures necessary to achieve the objectives of this Convention, in particular through preventive measures and the application of the precautionary principle, and with due regard to ethical and traditional values as well as scientific knowledge in the interest of present and future generations.

### Article V - Use of terms

For purposes of this Convention:

1. "Natural Resources" means renewable resources, tangible and non tangible, including soil, water, flora and fauna and non renewable resources. Whenever the text of the Convention refers to non renewable resources this will be specified.

...

6. "Conservation area" means

...

- (b) other areas designated and/or managed primarily for the conservation and sustainable use of natural resources, for which criteria may be adopted and from time to time reviewed by the Conference of the Parties.

...

Article VI - Land and soil

1. The Parties shall take effective measures to prevent land degradation, and to that effect shall develop long-term integrated strategies for the conservation and sustainable management of land resources, including soil, vegetation and related hydrological processes.
2. They shall in particular adopt measures for the conservation and improvement of the soil, to, inter alia, combat its erosion and misuse as well as the deterioration of its physical, chemical and biological or economic properties.
3. To this end:
  - (a) they shall establish land-use plans based on scientific investigations as well as local knowledge and experience and, in particular, classification and land-use capability;
  - (b) they shall, when implementing agricultural practices and agrarian reforms,
    - (i) improve soil conservation and introduce sustainable farming and forestry practices, which ensure long-term productivity of the land,
    - (ii) control erosion caused by land misuse and mismanagement which may lead to long-term loss of surface soils and vegetation cover,
    - (iii) control pollution caused by agricultural activities, including aquaculture and animal husbandry;
  - (c) they shall ensure that non-agricultural forms of land use, including but not limited to public works, mining and the disposal of wastes, do not result in erosion, pollution, or any other form of land degradation;
  - (d) they shall, in areas affected by land degradation, plan and implement mitigation and rehabilitation measures.

4. Parties shall develop and implement land tenure policies able to facilitate the above measures, inter alia by taking into account the rights of local communities.

#### Article VII - Water

1. The Parties shall manage their water resources so as to maintain them at the highest possible quantitative and qualitative levels. They shall, to that effect, take measures designed to:
  - (a) maintain water-based essential ecological processes as well as to protect human health against pollutants and water-borne diseases,
  - (b) prevent damage that could affect human health or natural resource in another State by the discharge of pollutants, and
  - (c) prevent excessive abstraction, to the benefit of downstream communities and States.
2. The Parties shall establish and implement policies for the planning, conservation, management, utilization and development of underground and surface water, as well as the harvesting and use of rain water, and shall endeavour to guarantee for their populations a sufficient and continuous supply of suitable water, taking appropriate measures with due regard to:
  - (a) the study of water cycles and the investigation of each catchment area,
  - (b) the integrated management of water resources,
  - (c) the conservation of forested and other catchment areas and the co-ordination and planning of water resources development projects,
  - (d) the inventory and management of all water resources, including the administration and control of all water utilization, and
  - (e) the prevention and control of water pollution through, inter alia, the establishment of effluent and water quality standards.
3. Where surface or underground water resources and related ecosystems, including wetlands, are transboundary to two or more of the Parties,

the latter shall act in consultation, and if the need arises, set up inter-State Commissions for their rational management and equitable utilization and to resolve disputes arising from the use of these resources, and for the cooperative development, management and conservation thereof.

4. The Parties undertake, individually or within sub-regional arrangements, to cooperate in rational water husbandry and conservation in irrigated agriculture for improved food security and sustainable agro-based industrialization.

#### Article VIII - Vegetation cover

1. The Parties shall take all necessary measures for the protection, conservation, sustainable use and rehabilitation of vegetation cover. To this end they shall:
  - (a) adopt scientifically-based and sound traditional conservation, utilization and management plans for forests, woodlands, rangelands, wetlands and other areas with vegetation cover, taking into account the social and economic needs of the peoples concerned, the importance of the vegetation cover for the maintenance of the water balance of an area, the productivity of soils and the habitat requirements of species;

...

[Omitted: Article IX - Species and genetic diversity, Article X - Protected species, Article XI - Trade in specimens and products thereof]

#### Article XII - Conservation areas

1. The Parties shall establish, maintain and extend, as appropriate, conservation areas. They shall, preferably within the framework of environmental and natural resources policies, legislation and programmes, also assess the potential impacts and necessity of establishing additional conservation areas and wherever possible designate such areas, in order to ensure the long term conservation of biological diversity, in particular to:

- (a) conserve those ecosystems which are most representative of and peculiar to areas under their jurisdiction, or are characterized by a high degree of biological diversity;
- (b) ensure the conservation of all species;
- ...

and of the habitats that are critical for the survival of such species.

- 2. The Parties shall seek to identify areas critically important to the goals referred to in sub paragraph 1(a) and 1(b) above which are not yet included in conservation areas, taking into consideration the work of competent international organisations in this field.
- 3. The Parties shall promote the establishment by local communities of areas managed by them primarily for the conservation and sustainable use of natural resources.
- 4. The Parties shall, where necessary and if possible, control activities outside conservation areas which are detrimental to the achievement of the purpose for which the conservation areas were created, and establish for that purpose buffer zones around their borders.

Article XIII - Processes and activities affecting the environment and natural resources

- 1. The Parties shall, individually or jointly, and in collaboration with the competent international organizations concerned, take all appropriate measures to prevent, mitigate and eliminate to the maximum extent possible, detrimental effects on the environment, in particular from radioactive, toxic, and other hazardous substances and wastes. For this purpose, they shall use the best practicable means and shall endeavour to harmonize their policies, in particular within the framework of relevant conventions to which they are Parties.
- 2. To that effect, Parties shall
  - (a) establish, strengthen and implement specific national standards, including for ambient environmental quality, emission and discharge limits as well as process and production methods and product quality;

- (b) provide for economic incentives and disincentives, with a view to preventing or abating harm to the environment, restoring or enhancing environmental quality, and implementing international obligations in these regards; and
- (c) adopt measures necessary to ensure that raw materials, non-renewable resources, and energy, are conserved and used as efficiently as possible, and that used materials are reused and recycled to the maximum extent possible while nondegradable materials are disposed of in the most effective and safe way.

Article XIV - Sustainable development and natural resources

1. The Parties shall ensure that
  - (a) conservation and management of natural resources are treated as an integral part of national and/or local development plans;
  - (b) in the formulation of all development plans, full consideration is given to ecological, as well as to economic, cultural and social factors in order to promote sustainable development.
2. To this end, the Parties shall:
  - (a) to the maximum extent possible, take all necessary measures to ensure that development activities and projects are based on sound environmental policies and do not have adverse effects on natural resources and the environment in general;
  - (b) ensure that policies, plans, programmes, strategies, projects and activities likely to affect natural resources, ecosystems and the environment in general are the subject of adequate impact assessment at the earliest possible stage and that regular environmental monitoring and audit are conducted;
  - (c) monitor the state of their natural resources as well as the impact of development activities and projects upon such resources.

[Omitted: Article XV - Military and hostile activities]

Article XVI - Procedural rights

1. The Parties shall adopt legislative and regulatory measures necessary to ensure timely and appropriate
  - (a) dissemination of environmental information;
  - (b) access of the public to environmental information;
  - (c) participation of the public in decision-making with a potentially significant environmental impact; and
  - (d) access to justice in matters related to protection of environment and natural resources.
2. Each Party from which a transboundary environmental harm originates shall ensure that any person in another Party affected by such harm has a right of access to administrative and judicial procedures equal to that afforded to nationals or residents of the Party of origin in cases of domestic environmental harm.

Article XVII - Traditional rights of local communities and indigenous knowledge

1. The Parties shall take legislative and other measures to ensure that traditional rights and intellectual property rights of local communities including farmers' rights are respected in accordance with the provisions of this Convention.
2. The Parties shall require that access to indigenous knowledge and its use be subject to the prior informed consent of the concerned communities and to specific regulations recognizing their rights to, and appropriate economic value of, such knowledge.
3. The Parties shall take the measures necessary to enable active participation by the local communities in the process of planning and management of natural resources upon which such communities depend with a view to creating local incentives for the conservation and sustainable use of such resources.

Article XVIII - Research

1. The Parties shall strengthen their capabilities to carry out scientific and technological research in conservation, sustainable utilization and management of natural resources paying particular attention to ecological and socio-economic factors as well as their integration, and shall ensure the application of research results to the development and implementation of their environmental conservation policies.
2. The Parties shall promote cooperation in scientific and technological research, as well as in economic and marketing systems, between themselves and with third parties in the field of environmental conservation and sustainable use of natural resources.

To that end, they shall in particular:

- (a) coordinate their research programmes with a view to achieving maximum synergy and complementarity;
- (b) promote the exchange of research results; and
- (c) promote the development of joint research activities and programmes in the fields covered by this Convention.

Article XIX - Development and transfer of technology

1. The Parties shall encourage and strengthen cooperation for the development and use, as well as access to and transfer of, environmentally sound technologies on mutually agreed terms, with a view to accelerating the transition to sustainable development, in particular by establishing joint research programmes and ventures.
2. To that effect the Parties shall adopt legislative and regulatory measures which provide for inter alia, economic incentives for the development, importation, transfer and utilization of environmentally sound technologies in the private and public sectors.

In implementing paragraphs 1. and 2. above, attention shall be paid to technologies which can be used locally by individuals, local communities and small/medium enterprises.

Article XX - Capacity building, education and training

1. (a) The Parties shall promote environmental education, training and awareness creation at all levels in order to enhance their peoples' appreciation of their close dependence on natural resources and their understanding of the reasons and rules for the sustainable use of these resources.
- (b) For this purpose they shall ensure that environmental matters:

...

Article XXI - National authorities

Each Party shall establish or designate, if it has not already done so, a national authority empowered to deal with all matters covered by this Convention, and/or, where appropriate, establish a co-ordinating machinery between existing national institutions.

Article XXII - Co-operation

1. The Parties shall co-operate between themselves and, where appropriate and possible, with other States:
  - (a) to give effect to the provisions of this Convention;
  - (b) whenever any national measure is likely to affect the environment or natural resources of any other State or areas beyond national jurisdiction;
  - (c) in order to enhance the individual and combined effectiveness of their policies and legislations, as well as measures adopted under this Convention and under other international conventions in the fields of environmental protection and natural resources conservation and use; and
  - (d) in order to harmonize their policies and laws at the continental or regional levels, as appropriate.

2. In particular:
- (a) whenever an environmental emergency or natural disaster occurring in a Party is likely to affect the natural resources of another State, the latter shall be provided with all relevant available data by the former as early as practicable;
  - (b) when a Party has reasons to believe that a programme, activity or project to be carried out in areas under its jurisdiction may have adverse effects on the natural resources of another State, it shall provide that other State with relevant information on the proposed measures and their possible effects, and shall consult with that State;
  - (c) whenever a Party objects to an activity referred to in sub-paragraph b) above, they shall enter into negotiations;
  - (d) Parties shall develop disaster preparedness, prevention and management programmes, and as the need arises hold consultations towards mutual assistance initiatives;
  - (e) whenever a natural resource or an ecosystem is transboundary, the Parties concerned shall undertake to cooperate in the conservation, development and management of such resource or ecosystem and if the need arises, set up interstate commissions for their conservation and sustainable use;
- ...
- (h) the Parties shall exchange information bilaterally or through competent international agencies on activities and events likely to affect the natural resources and the environment of areas beyond national jurisdiction.

[Omitted: Article XXIII - Compliance]

#### Article XXIV - Liability

The Parties shall, as soon as possible, adopt rules and procedures concerning liability and compensation of damage related to matters covered by this Convention.

[Omitted: Article XXV - Exceptions, Article XXVI - Conference of the Parties, Article XXVII - The Secretariat, Article XXVIII - Financial resources]

Article XXIX - Reports and information

1. The Parties shall present, through the Secretariat, to the Conference of the Parties reports on the measures adopted by them in the implementation of this Convention and the results thereof in applying its provisions in such form and at such intervals as the Conference of the Parties may determine. This presentation shall be accompanied by the comments of the Secretariat, in particular regarding failure to report, adequacy of the report and of the measures described therein.
2. The Parties shall supply the Secretariat with:
  - (a) the texts of laws, decrees, regulations and instructions in force which are intended to ensure the implementation of this Convention;
  - (b) any other information that may be necessary to provide complete documentation on matters dealt with by this Convention;
  - (c) the names of the agencies or coordinating institutions empowered to be focal points in matters under this Convention; and
  - (d) information on bilateral or multilateral agreements relating to the environment and natural resources to which they are parties.

[Omitted: Article XXX - Settlement of disputes, Article XXXI - Amendments of the Convention, Article XXXII - Adoption and amendments of Annexes, Article XXXIII - Right to vote, Article XXXIV - Relationship between Parties to the revised Convention and Parties bound by the 1968 Algiers Convention, Article XXXV - Relationship with other international Conventions, Article XXXVI - Signature and ratification, Article XXXVII - Accession, Article XXXVIII - Entry into force, Article XXXIX - Reservations, Article XL - Withdrawal, Article XLI - Secretariat interim arrangements, Article XLII - Depositary, Article XLIII - Authentic texts]

...

[Omitted: Annex 1 - Threatened species definition, Annex 2 - Conservation areas, Annex 3 - Prohibited means of taking]

**b. Treaties Concerning Specific River/Lake Basins**

**13. Convention on Cooperation for the Protection and Sustainable Use of the River Danube [Sofia, 29 June 1994]\***

The Contracting Parties,

...

Determined by the strong intention to intensify their water management cooperation in the field of water protection and water use;

Concerned over the occurrence and threats of adverse effects, in the short or long term, of changes in conditions of watercourses within the Danube River Basin on the environment, economics and well-being of the Danubian States;

Emphasizing the urgent need for strengthened domestic and international measures to prevent, control and reduce significant adverse transboundary impact from the release of hazardous substances and of nutrients into the aquatic environment within the Danube Basin with due attention also given to the Black Sea;

Commending the measures already taken on the domestic initiative of Danubian Countries and on the bilateral and multilateral level of their cooperation as well as the efforts already undertaken within the CSCE-process, by the United Nations Economic Commission for Europe and by the European Community to promote the cooperation, on bilateral and multilateral levels, for the prevention and control of transboundary pollution, sustainable water management, rational use and conservation of water resources;

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\* Official Journal of the European Union L 342, 12.12.1997, p. 19. Entry into force 22 October 1998. Parties and/or signatories: Austria, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, European Community, Germany, Hungary, Republic of Moldova, Romania, Slovenia, Slovakia, Ukraine, Yugoslavia.

Referring in particular to the Convention on the protection and use of transboundary watercourses and international lakes of 17 March 1992 as well as the existing bi- and multilateral cooperation among Danubian States, which will be continued and duly taken into account by the cooperation of all Danubian States, as well as pointing to the Convention on the protection of the Black Sea against pollution of 21 April 1992;

Striving at a lasting improvement and protection of Danube River and of the waters within its catchment area in particular in the transboundary context and at sustainable water management taking duly into account the interests of the Danubian States in the field of water use and at the same time contributing to the protection of the marine environment of the Black Sea;

Have agreed as follows

#### Part I - General provisions

##### Article 1 - Definitions

For the purposes of this Convention:

- (a) "Danubian States" mean sovereign States sharing a considerable part of the hydrological catchment area of the Danube River. As considerable part there is assumed a share exceeding 2000 km<sup>2</sup> of the total hydrological catchment area.
- (b) "Catchment area" of the Danube River means the hydrological river basin as far as it is shared by the Contracting Parties.
- (c) "Transboundary impact" means any significant adverse effect on the riverine environment resulting from a change in the conditions of waters caused by human activity and stretching out beyond an area under the jurisdiction of a Contracting Party. Such changes may affect life and property, safety of facilities and the aquatic ecosystems concerned.
- (d) "Hazardous substances" means substances which have toxic, cancerogenic, mutagenic, teratogenic or bioaccumulative effects, in particular those being persistent and having significant adverse impact on living organisms.

- (e) "Substances hazardous to water" means substances the hazard potential of which to water resources is extraordinarily high so that their handling requires special preventive and protective measures;
- (f) "Point and non-point sources of water pollution" means the sources of pollutants and nutrients the input of which to waters is caused either by locally determined discharges (point source) or by diffuse effects being wide spread over the catchment areas (non-point sources);
- (g) "Water balance" means the relationship characterising the natural water household of an entire river basin as to its components (precipitation, evaporation, surface and underground run-off). In addition a component of current man-made effects originating from water use and influencing water quantity is included.
- (h) "Connecting data" means summarised data derived from upstream water balances as far as being relevant as an input necessary for the elaboration of downstream water balances and of a general water balance for the Danube River. To this extent connecting data cover the components of the water balance for all significant transboundary waters within the catchment area of the Danube River. Connecting data refer to cross sections of transboundary waters where they mark, cross or are located on boundaries between the Contracting Parties.
- (i) "International Commission" means the organisation established by Article 18 of this Convention.

#### Article 2 - Objectives and principles of cooperation

1. The Contracting Parties shall strive at achieving the goals of a sustainable and equitable water management, including the conservation, improvement and the rational use of surface waters and groundwater in the catchment area as far as possible. Moreover the Contracting Parties shall make all efforts to control the hazards originating from accidents involving substances hazardous to water, floods and ice-hazards of the Danube River. Moreover they shall endeavour to contribute to reducing the pollution loads of the Black Sea from sources in the catchment area.
2. The Contracting Parties pursuant to the provisions of this Convention shall cooperate on fundamental water management issues and take all

appropriate legal, administrative and technical measures, to at least maintain and improve the current environmental and water quality conditions of the Danube River and of the waters in its catchment area and to prevent and reduce as far as possible adverse impacts and changes occurring or likely to be caused.

3. To this end the Contracting Parties, taking into account the urgency of water pollution abatement measures and of rational, sustainable water use, shall set priorities as appropriate and shall strengthen, harmonise and coordinate measures taken and planned to be taken at the domestic and international level throughout the Danube Basin aiming at sustainable development and environmental protection of the Danube River. This objective in particular is directed to ensure the sustainable use of water resources for municipal, industrial and agricultural purposes as well as the conservation and restoration of ecosystems and to cover also other requirements occurring as to public health.
4. The Polluter pays principle and the Precautionary principle constitute a basis for all measures aiming at the protection of the Danube River and of the waters within its catchment area.
5. Water management cooperation shall be oriented on sustainable water management, that means on the criteria of a stable, environmentally sound development, which are at the same time directed to:
  - maintain the overall quality of life;
  - maintain continuing access to natural resources;
  - avoid lasting environmental damage and protect ecosystems;
  - exercise preventive approach.
6. The application of this Convention by no means shall cause any significant direct or indirect increase of impacts to the riverine environment.
7. Each Contracting Party has the right to adopt and implement measures being more stringent than those resulting from the provisions of this Convention.

Article 3 - Scope

1. This Convention applies to the catchment area of the Danube River as defined under Article 1, paragraph (b).
2. Subject to this Convention in particular shall be the following planned activities and ongoing measures as far as they cause or are likely to cause transboundary impacts:
  - (a) the discharge of waste water, the input of nutrients and hazardous substances both from point and non-point sources as well as heat discharge;
  - (b) planned activities and measures in the field of water construction works, in particular regulation as well as run-off and storage level control of water courses, flood control and ice-hazards abatement, as well as the effect of facilities situated in or aside the watercourse on its hydraulic regime;
  - (c) other planned activities and measures for the purposes of water use, such as water power utilization, water transfer and withdrawal;
  - (d) the operation of the existing hydrotechnical constructions e.g. reservoirs, water power plants; measures to prevent environmental impact including: deterioration in the hydrological conditions, erosion, abrasion, inundation and sediment flow; measures to protect the ecosystems;
  - (e) the handling of substances hazardous to water and the precautionary prevention of accidents.
3. This Convention is applicable to issues of fishery and inland navigation as far as problems of water protection against pollution caused by these activities are concerned.

Article 4 - Forms of cooperation

The forms of cooperation under this Convention as a rule are the following:

- (a) consultations and joint activities in the framework of the International Commission pursuant to the provisions of this Convention;
- (b) exchange of information on bi- and multilateral agreements, legal regulations and on measures in the field of water management; exchange of legal documents and directives and of other publications; other forms for the exchange of information and experiences.

## Part II - Multilateral cooperation

### Article 5 - Prevention, control and reduction of transboundary impact

1. The Contracting Parties shall develop, adopt and implement relevant legal, administrative and technical measures as well as provide for the domestic preconditions and basis required in order to ensure efficient water quality protection and sustainable water use and thereby also to prevent, control and reduce transboundary impact.
2. To this end the Contracting Parties shall separately or jointly take in particular the measures indicated below:
  - (a) Record conditions of natural water resources within the Danube River catchment area applying agreed quantity and quality parameters including the methodology concerned.
  - (b) Adopt legal provisions providing for requirements including time limits to be met by waste water discharges.
  - (c) Adopt legal provisions for the handling of substances hazardous to water.
  - (d) Adopt legal provisions for reducing inputs of nutrients or hazardous substances from non-point sources, especially for the application of nutrients as well as of plant protection agents and pesticides in agriculture.
  - (e) With the aim of harmonising these regulations at a high level of protection as well as for the harmonised implementation of corresponding measures the Contracting Parties shall take into account results and proposals put forward by the International Commission.

- (f) The Contracting Parties shall cooperate and take appropriate measures to avoid the transboundary impacts of wastes and hazardous substances in particular originating from transport.

#### Article 6 - Specific water resources protection measures

The Contracting Parties shall take appropriate measures aiming at the prevention or reduction of transboundary impacts and at a sustainable and equitable use of water resources as well as at the conservation of ecological resources, especially:

- (a) enumerate groundwater resources subject to a long-term protection as well as protection zones valuable for existing or future drinking water supply purposes;
- (b) prevent the pollution of groundwater resources, especially those in a long-term perspective reserved for drinking water supply, in particular caused by nitrates, plant protection agents and pesticides as well as other hazardous substances;
- (c) minimise by preventive and control measures the risks of accidental pollution;
- (d) take into account possible influences on the water quality resulting from planned activities and ongoing measures pursuant to Article 3 paragraph 2;
- (e) evaluate the importance of different biotope elements for the riverine ecology and propose measures for improving the aquatic and littoral ecological conditions.

#### Article 7 - Emission limitation: water quality objectives and criteria

1. The Contracting Parties taking into account the proposals from the International Commission shall set emission limits applicable to individual industrial sectors or industries in terms of pollution loads and concentrations and based in the best possible way on low-and non-waste technologies at source. Where hazardous substances are discharged, the emission limits shall be based on the best available techniques for the abatement at source and/or for waste water purification. For municipal waste water, emission limits shall be based

on the application of at least biological or an equivalent level of treatment.

2. Supplementary provisions for preventing or reducing the release of hazardous substances and nutrients shall be developed by the Contracting Parties for non-point sources, in particular where the main sources are originating from agriculture, taking into account the best environmental practice.
3. For the purpose of paragraphs 1 and 2 Annex II to this Convention contains a list of industrial sectors and industries as well as an additional list of hazardous substances and groups of substances, the discharge of which from point and non-point sources shall be prevented or considerably reduced. The updating of Annex II lies with the International Commission.
4. The Contracting Parties in addition shall, where appropriate, define water quality objectives and apply water quality criteria for the purpose of preventing, controlling and reducing transboundary impact. General guidance for this is given in Annex III, which shall be applied and specified by the Contracting Parties both, at the domestic level and jointly, where appropriate.
5. Aiming at an efficient limitation of the emissions in areas under their jurisdiction the Contracting Parties shall ensure necessary preconditions and implementation.

They shall ensure that:

- (a) the domestic regulations for emission limitation and their level of standards imposed are harmonised step by step with the emission limitation pursuant to this Convention;
- (b) waste water discharges without exception are based on a permit imposed by the competent authorities in advance and for a limited period of validity;
- (c) regulations and permits for prevention and control measures in case of new or modernised industrial facilities, in particular where hazardous substances are involved, are oriented on the best available techniques and are implemented with high priority;

- (d) more stringent provisions than the standards - in individual case even prohibition - are imposed, where the character of the receiving water and of its ecosystem so requires in connection with paragraph 4;
- (e) competent authorities surveille, that activities likely to cause transboundary impacts are carried out in compliance with the permits and provisions imposed;
- (f) environmental impact assessment in line with supranational and international regulations or other procedures for evaluation and assessment of environmental effects are applied;
- (g) when planning, licensing and implementing activities and measures as referred to in Article 3, paragraph 2 and in Article 16, paragraph 2 the competent authorities take into account risks of accidents involving substances hazardous to water by imposing preventive measures and by ordering rules of conduct for post accident response measures.

#### Article 8 - Emission inventories, action programmes and progress reviews

1. The Contracting Parties shall undertake periodically inventories of the relevant point and non-point sources of pollution within the catchment area of Danube River including the prevention and abatement measures already taken for the respective discharges as well as on the actual efficiency of these measures, taking duly into account Article 5, paragraph 2, subpara a.
2. Based on that the Contracting Parties shall in stages establish a list of further prevention and abatement measures to be taken step by step as far as this is necessary for reaching the objectives of this Convention.
3. The inventory of emissions and the list of measures to be taken from the basis for developing joint action programmes to be developed by the Contracting Parties taking into account priorities set in terms of urgency and efficiency. These action programmes in particular shall be aimed at the reduction of pollution loads and concentrations both from industrial and municipal point sources as well as from non-point sources. They shall inter alia contain the prevention and abatement measures including the timing and cost estimates.

4. In addition the Contracting Parties shall monitor the progress made in the implementation of the joint action programmes by establishing periodical progress reviews. These reviews shall contain both, the protection measures implemented and the progress made as to the riverine conditions in the light of the actual assessment.

#### Article 9 - Monitoring programmes

On the basis of their domestic activities, the Contracting Parties shall cooperate in the field of monitoring and assessment.

1. For this aim, they shall:
  - harmonise or make comparable their monitoring and assessment methods as applied on their domestic levels, in particular in the field of river quality, emission control, flood forecast and water balance, with a view to achieving comparable results to be introduced into the joint monitoring and assessment activities;
  - develop concerted or joint monitoring systems applying stationary or mobile measurement devices, communication and data processing facilities;
  - elaborate and implement joint programmes for monitoring the riverine conditions in the Danube catchment area concerning both water quality and quantity, sediments and riverine ecosystems, as a basis for the assessment of transboundary impacts such as transboundary pollution and changes of the riverine regimes as well as of water balances, floods and ice-hazards;
  - develop joint or harmonised methods for monitoring and assessment of waste water discharges including processing, evaluation and documentation of data taking into account the branch-specific approach of emission limitation (Annex II, Part 1);
  - elaborate inventories on relevant point sources including the pollutants discharged (emission inventories) and estimate the water pollution from non-point sources taking into account Annex II, Part 2; review these documents according to the actual state.

2. In particular they shall agree upon monitoring points, river quality characteristics and pollution parameters regularly to be evaluated for the Danube River with a sufficient frequency taking into account the ecological and hydrological character of the watercourse concerned as well as typical emissions of pollutants discharged within the respective catchment area.
3. The Contracting Parties shall establish, on the basis of a harmonised methodology, domestic water balances, as well as the general water balance of the Danube River Basin. As an input for this purpose the Contracting Parties to the extent necessary shall provide connecting data which are sufficiently comparable through the application of the harmonised methodology. On the same data base water balances can also be compiled for the main tributaries of Danube River.
4. They shall periodically assess the quality conditions of Danube River and the progress made by their measures taken aiming at the prevention, control and reduction of transboundary impacts. The results will be presented to the public by appropriate publications.

#### Article 10 - Obligations of reporting

The Contracting Parties shall report to the International Commission on basic issues required for the Commission to comply with its tasks. These reports shall in particular involve:

...

- (f) communication on planned activities, which for reason of their character are likely to cause transboundary impacts.

#### Article 11 - Consultations

1. Having had a prior exchange of information the Contracting Parties involved shall at the request of one or several Contracting Parties concerned enter into consultations on planned activities as referred to in Article 3, paragraph 2, which are likely to cause transboundary impacts, as far as this exchange of information and these consultations are not yet covered by bilateral or other international cooperation. The consultations are carried out as a rule in the framework of the International Commission, with the aim to achieve a solution.

2. Prior to a decision on planned activities the competent authorities - with the exception of pending danger - shall wait for the results of the consultations except the case, that they are not finalised one year after their commencement at the latest.

Article 12 - Exchange of information

1. As determined by the International Commission the Contracting Parties shall exchange reasonably available data, inter alia, on:
  - (a) the general conditions of the riverine environment within the catchment area of the Danube River;
  - (b) Experience gained in the application and operating of best available techniques and results of research and development;
  - (c) Emission and monitoring data;
  - (d) Measures taken and planned to be taken to prevent, control and reduce transboundary impact;
  - (e) Regulations for waste water discharges;
  - (f) Accidents involving substances hazardous to water.
2. In order to harmonise emission limits, the Contracting Parties shall undertake the exchange of information on their regulations.
3. If a Contracting Party is requested by any other Contracting Party to provide data or information that is not available, the former shall endeavour to comply with the request but may condition its compliance upon the payment, by the requesting Party, of reasonable charges for collecting and, where appropriate, processing such data or information.
4. For the purposes of the implementation of this Convention, the Contracting Parties shall facilitate the exchange of best available techniques, particularly through the promotion of: the commercial exchange of available techniques, direct industrial contacts and cooperation, including joint ventures; the exchange of information and experience; and the provision of technical assistance. The Contracting

Parties shall also undertake joint training programmes and the organisation of relevant seminars and meetings.

...

[Omitted: Article 13 - Protection of information supplied, Article 14 - Information to the public, Article 15 - Research and development]

Article 16 - Communication, warning and alarm systems, emergency plans

1. The contracting Parties shall provide for coordinated or joint communication, warning and alarm systems in the basin-wide context to the extent this is necessary to supplement the systems established and operated at a bilateral level. They shall consult on ways and means of harmonising domestic communication, warning and alarm systems and emergency plans.
2. The Contracting Parties shall in the framework of the International Commission inform each about competent authorities or points of contact designated for this purpose in case of emergency events such as accidental pollution, other critical water conditions, floods and ice-hazards. Accordingly the competent authorities shall cooperate to establish joint emergency plans, where necessary, supplementary to existing plans on the bilateral level.
3. If a competent authority identifies a sudden increase of hazardous substances in the Danube River or in waters within its catchment area or receives note of a disaster or of an accident likely to cause serious impact on the water quality of Danube River and to affect downstream Danubian States this authority shall immediately inform the contact points designated and the International Commission according to the way of procedure introduced by the Commission.
4. In order to control and reduce the risks originating from floods including ice-hazards, the competent authorities shall immediately inform the downstream Danubian States likely to be affected and the International Commission on the occurrence and run-off of floods as well as on forecasts of icehazards.

[Omitted: Article 17 - Mutual assistance]

Part III - International Commission

Article 18 - Establishment, tasks and competences

1. With a view to implementing the objectives and provisions of this Convention the International Commission for the Protection of the Danube River, referred to in this Convention as International Commission, shall be established. The Contracting Parties shall cooperate in the framework of the International Commission. For implementing the obligations of the Contracting Parties pursuant to Articles 1 to 18 the International Commission elaborates proposals and recommendations addressed to the Contracting Parties.
2. The structure and the procedures of the International Commission as well as its competences are stipulated in detail in Annex IV to this Convention constituting the Statute of the Commission.
3. In addition to affairs explicitly entrusted the International Commission is competent to deal with all other affairs the Commission is entrusted with by mandate from the Contracting Parties in the framework of Article 3 of this Convention.

...

[Omitted: Article 19 - Transition concerning the Bucharest Declaration]

Part IV - Procedural and final clauses

Article 20 - Validity of the Annexes

Subject to Article 23, the Annexes I to V form integral parts of this Convention.

[Omitted: Article 21 - Existing and supplementary agreements, Article 22 - Conference of the Parties, Article 23 - Amendments to the Convention, Article 24 - Settlement of disputes, Article 25 - Signature, Article 26 - Ratification, acceptance or approval, Article 27 - Entry into force, Article 28 - Accession, participation, Article 29 - Withdrawal, Article 30 - Function of the depositary, Article 31 - Authentic texts, depositary]

...

Annex IPart 1 - Best available techniques

1. The use of the best available techniques shall emphasize the use of non-waste technology, if available.
2. The term "best available techniques" means the latest stage of development (state of the art) of processes, of facilities or of methods of operation which indicate the practical suitability of a particular measure for limiting discharges, emissions and waste. In determining whether a set of processes, facilities and methods of operation constitute the best available techniques in general or individual cases, special consideration shall be given to:
  - (a) comparable processes, facilities or methods of operation which have recently been successfully tried out;
  - (b) technological advances and changes in scientific knowledge and understanding;
  - (c) the economic feasibility of such techniques;
  - (d) time limits for installation in both new and existing plants;
  - (e) the nature and volume of the discharges and emissions concerned.
3. It therefore follows that what is "best available techniques" for a particular process will change with time in the light of technological advances, economic and social factors, as well as changes in scientific knowledge and understanding.
4. If the reduction of discharges and emissions resulting from the use of best available techniques does not lead to environmentally acceptable results, additional measures have to be applied.
5. The term "techniques" includes both the technology used and the way the installation is designed, built, maintained, operated and dismantled.

## Part 2 - Best environmental practice

1. Best environmental practice means the application of the most appropriate combination of sectoral environmental control strategies and measures.
2. In determining what combination of measures constitute best environmental practice, in general or individual cases, particular consideration should be given to:
  - the precautionary principle;
  - the environmental hazard of the product and its production, use and ultimate disposal (principle of responsibility);
  - the substitution by less polluting activities or substances and saving resources including energy (principle of minimising);
  - the scale of use;
  - the potential environmental benefit or penalty of substitute materials or activities;
  - advances and changes in scientific knowledge and understanding;
  - time limits for implementation;
  - social and economic implication.
3. It therefore follows that best environmental practice for a particular source of impacts will change with time in the light of technological advances, economic and social factors, as well as changes in scientific knowledge and understanding.
4. If the reduction of impacts resulting from the use of best environmental practice does not lead to environmentally acceptable results, additional measures have to be applied and best environmental practice redefined.

[Omitted: Annex II - Industrial sectors and hazardous substances, Annex III - General guidance on water quality objectives and criteria, Annex IV - Statute of the International Commission for the Protection of the River Danube, Annex V - Arbitration]

#### **14. Convention on the Protection of the Rhine [Berne, 12 April 1999]\***

[The Contracting Parties]

...

Desiring to work towards the sustainable development of the Rhine ecosystem on the basis of a comprehensive approach, taking into consideration the natural wealth of the river, its banks and alluvial areas,

Desiring to step up their cooperation on conserving and improving the Rhine ecosystem,

Referring to the Convention of 17 March 1992 on the protection and use of transboundary watercourses and international lakes and the Convention of 22 September 1992 on the protection of the marine environment of the north-east Atlantic,

Have agreed as follows:

##### Article 1 - Definitions

For the purposes of this Convention:

- (a) "Rhine" means the Rhine from the outlet of Lake Untersee and, in the Netherlands, the branches Bovenrijn, Bijlands Kanaal, Pannerdensch Kanaal, Ijssel, Nederrijn, Lek, Waal, Boven-Merwede, Beneden-Merwede, Noord, Oude Maas, Nieuwe Maas and Scheur and the Nieuwe Waterweg as far as the base line as specified in Article 5 in connection with Article 11 of the United Nations Convention on the Law of the Sea, the Ketelmeer and the Ijsselmeer;

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\* Official Journal of the European Union L 289, 16.11.2000, p. 31. Parties and/or signatories: European Community, France, Germany, Luxembourg, Netherlands, Switzerland.

- (b) "Commission" means the International Commission for the Protection of the Rhine (ICPR).

Article 2 - Scope

This Convention applies to:

- (a) the Rhine;
- (b) groundwater interacting with the Rhine;
- (c) aquatic and terrestrial ecosystems which interact or could again interact with the Rhine;
- (d) the Rhine catchment area, insofar as its pollution by noxious substances adversely affects the Rhine;
- (e) the Rhine catchment area, insofar as it is of importance for flood prevention and protection along the Rhine.

Article 3 - Aims

The Contracting Parties shall pursue the following aims through this Convention:

1. sustainable development of the Rhine ecosystem, in particular through:
  - (a) maintaining and improving the quality of the Rhine's waters, including the quality of suspended matter, sediments and groundwater, notably by
    - preventing, reducing or eliminating as far as possible pollution caused by noxious substances and by nutrients from point sources (e.g. industry and municipalities) and diffuse sources (e.g. agriculture and traffic) - including that from groundwater - and pollution from shipping,
    - ensuring and improving the safety of installations and preventing incidents and accidents;

...

- (c) maintaining, improving and restoring the natural function of the waters; ensuring that flow management takes account of the natural flow of solid matter and promotes interactions between river, groundwater and alluvial areas; conserving, protecting and reactivating alluvial areas as natural floodplains;
  - (d) conserving, improving and restoring the most natural habitats possible for wild fauna and flora in the water, on the river bed and banks and in adjacent areas, and improving living conditions for fish and restoring their free migration;
  - (e) ensuring environmentally sound and rational management of water resources;
  - (f) taking ecological requirements into account when implementing technical measures to develop the waterway, e.g. for flood protection, shipping or the use of hydroelectric power;
2. the production of drinking water from the waters of the Rhine;
  3. improvement of sediment quality in order that dredged material may be deposited or spread without adversely affecting the environment;
  4. general flood prevention and protection, taking account of ecological requirements;

...

#### Article 4 - Principles

To this end, the Contracting Parties shall be guided by the following principles:

- (a) precautionary principle;
- (b) principle of preventive action;
- (c) principle of rectification, as a priority at source;

- (d) polluter pays principle;
- (e) principle of not increasing damage;
- (f) principle of compensation in the event of major technical measures;
- (g) principle of sustainable development;
- (h) application and development of the state of the art and best environmental practice;
- (i) principle of not transferring environmental pollution from one environment to another.

#### Article 5 - Undertakings by the Contracting Parties

To achieve the aims set out in Article 3, and in the light of the principles set out in Article 4, the Contracting Parties undertake:

1. to step up their cooperation and to inform one another, particularly regarding actions taken in their territory to protect the Rhine;
2. to implement in their territory the international measuring programmes and the studies of the Rhine ecosystem agreed upon by the Commission and to inform the Commission of the results;
3. to carry out analyses with a view to identifying the causes of and parties responsible for pollution;
4. to initiate the autonomous actions they deem necessary in their territory, and in any event ensure that
  - (a) discharging of waste water liable to affect water quality is subject to prior authorisation or to general rules laying down emission limits;
  - (b) discharges of hazardous substances are gradually reduced with a view to complete elimination;
  - (c) compliance with authorisations and general rules is monitored, as are discharges;

- (d) authorisations and general rules are periodically examined and adjusted where substantial improvements in the state of the art so permit or where the state of the receiving medium so necessitates;
  - (e) the risk of pollution from incidents or accidents is reduced as far as possible by regulations, and the requisite measures are taken in the event of an emergency;
  - (f) technical measures liable to have a serious effect on the ecosystem are subject to prior authorisation, along with the necessary conditions, or to general regulations;
5. to initiate the necessary actions in their territory to implement decisions taken by the Commission in accordance with Article 11;
  6. in the event of incidents or accidents that might threaten the quality of the water of the Rhine or in the event of imminent flooding, immediately to inform the Commission and the Contracting Parties liable to be affected, in accordance with the warning and alert plans coordinated by the Commission.

#### Article 6 - Commission

1. To implement this Convention, the Contracting Parties shall pursue their cooperation within the Commission.
2. The Commission shall have legal personality. In the territory of the Contracting Parties it shall, in particular, enjoy the legal capacity conferred on legal persons by domestic law. It shall be represented by its Chairman.
3. Questions of labour legislation and social matters shall be governed by the law of the country in which the Commission has its seat.

[Omitted: Article 7 - Organisation of the Commission]

#### Article 8 - Tasks of the Commission

1. To achieve the aims set out in Article 3 the Commission shall accomplish the following tasks:

- (a) prepare international measuring programmes and studies of the Rhine ecosystem and make use of their results, in cooperation with scientific institutions if necessary;
  - (b) make proposals for individual measures and programmes of measures, where appropriate including economic instruments and taking into account the expected costs;
  - (c) coordinate the Contracting States' warning and alert plans for the Rhine;
  - (d) evaluate the effectiveness of the actions decided upon, notably on the basis of the reports of the Contracting Parties and the results of the measuring programmes and studies of the Rhine ecosystem;
  - (e) carry out any other tasks entrusted to it by the Contracting Parties.
2. To this end, the Commission shall take decisions in accordance with Articles 10 and 11.
  3. The Commission shall submit an annual activity report to the Contracting Parties.
  4. The Commission shall inform the public as to the state of the Rhine and the results of its work. It may draft and publish reports.

[Omitted: Article 9 - Plenary sessions of the Commission, Article 10 - Decision-making in the Commission, Article 11 - Implementation of Commission decisions, Article 12 - Secretariat of the Commission, Article 13 - Distribution of costs, Article 14 - Cooperation with the other States, other organisations and external experts, Article 15 - Working languages, Article 16 - Settlement of disputes, Article 17 - Entry into force, Article 18 - Withdrawal, Article 19 - Repeal and continued application of current law, Article 20 - Original and deposit]

...

Annex

[Omitted: Arbitration]

Protocol of signature

In signing the Convention for the Protection of the Rhine, the heads of delegation in the ICPR agree upon the following points.

...

2. "State of the art" and "best available techniques" are synonymous expressions and, like the expression "best environmental practice", must be understood as defined in the Convention of 17 March 1992 on the protection and use of transboundary watercourses and international lakes (Annexes I and II) and the Convention of 22 September 1992 for the protection of the marine environment of the north-east Atlantic (Appendix I).

...

15. **Tripartite Interim Agreement Between the Republic of Mozambique, the Republic of South Africa and the Kingdom of Swaziland for Co-operation on the Protection and Sustainable Utilisation of the Water Resources of the Incomati and Maputo Watercourses [Johannesburg, 29 August 2002]\***

Preamble

[The Parties]

...

Bearing in mind the principles advocated in the Declaration by the Heads of State or Government of Southern African States "Towards the Southern African Development Community" and the Treaty of the Southern African Development Community signed on 17 August 1992 and the Revised Protocol on Shared Watercourses in the Southern African Development Community signed on 7 August 2000;

...

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\* FAOLEX (FAO legal database online). Parties and/or signatories: Mozambique, South Africa, Swaziland.

Taking into account the modern principles and norms of International Law as reflected in the Convention on the Law of the Non-Navigational Uses of International Watercourses adopted by the General Assembly of the United Nations on 21 May 1997;

Conscious of the mutual advantages of concluding agreements on co-operation on shared watercourses;

Determined to co-operate and seek mutually satisfactory solutions for the needs of the Parties towards water protection and to the sustainable utilization and development of the water resources with a view to improving the standard of living of their populations;

Expressing the common desire to proceed with sustainable development on the basis of Chapter 18 of Agenda 21, adopted by the United Nations Conference on Environment and Development on 14 June 1992;

Recognising that the Parties need to agree on water use in the shared watercourses to enable sustainable development;

Mindful of the fact that good relationships between the people and the governments of the Parties, good neighbourliness and mutual respect, will contribute to the improvement of co-operation on the protection and utilization of waters for the benefit and the welfare of their populations;

Taking into consideration the interim nature of this Agreement;

Hereby agree as follows:

#### Article 1 - Definitions

For the purposes of this Agreement the following terms shall have the meanings ascribed to them hereunder:

"catchment" means an area through which any rainfall will drain into the watercourse through surface flow to a common point;

"emergency situation" means a situation that causes or poses an imminent threat of causing serious harm to the Parties and which results suddenly from natural causes, such as torrential rains, floods, landslides or earthquakes, or from human conduct;

"environmental impact assessment" means a national procedure for evaluating the likely impact of a planned measure on the environment;

"impact" means any effect on the environment caused by an activity; such effects on the environment include effects on human health and safety, flora, fauna, soil, air, water, climate, landscape, socio-economic environment or the interaction among these factors and cultural heritage or socio-economic conditions resulting from alterations to these factors;

"Incomati watercourse" means the system of the Incomati River, which includes the tributaries Mazimechopes, Uanetze, Massintonto, Sabie, Crocodile, Komati Rivers and the estuary;

"Maputo watercourse" means the system of the Maputo River, which includes the tributaries Pongola and Usuthu Rivers and the estuary;

"ministers" means Ministers responsible for the water affairs of the Parties;

"ongoing activity" means any activity that would have been subjected to a decision of a competent authority in accordance with an applicable national procedure if it had been a planned measure;

"Piggs Peak Agreement" means the agreement reached at the Tripartite Ministerial Meeting of Ministers Responsible for Water Affairs, signed in Piggs Peak on 15 February 1991;

"planned measure" means any activity or a major change to an ongoing activity subject to a decision of a competent authority in accordance with applicable national procedures;

"pollution" means any detrimental alteration in the composition or quality of the waters of a shared watercourse, which results directly or indirectly from human conduct;

"Protocol" means the Revised Protocol on Shared Watercourses in the Southern African Development Community signed on 7 August 2000 in Windhoek;

"sustainable development" is development which meets the needs of present generations without compromising future generations to meet their own needs;

"TPTC" means the Tripartite Permanent Technical Committee established by the Agreement between the Government of the Republic of South Africa, the Government of the Kingdom of Swaziland and the Government of the People's Republic of Mozambique relative to the establishment of the Tripartite Permanent Technical Committee, signed in Pretoria on 17 February 1983;

"transboundary impact" means any adverse effect, caused by human conduct, within an area under the jurisdiction of a Party caused by a proposed activity, the physical origin of which is situated wholly or in part within the area under the jurisdiction of another Party;

"watercourse" means a system of surface and groundwaters constituting by virtue of their physical relationship a unitary whole normally flowing into a common terminus such as the sea, lake or aquifer.

#### Article 2 - General objective

This Agreement aims to promote co-operation among the Parties to ensure the protection and sustainable utilisation of the water resources of the Incomati and Maputo watercourses.

#### Article 3 - General principles

For purposes of this Agreement, the general principles of the Protocol shall apply, especially-

- (a) sustainable utilization principle;
- (b) equitable and reasonable utilisation and participation principle;
- (c) prevention principle; and
- (d) co-operation principle.

#### Article 4 - Responsibilities of the Parties

The Parties shall, individually and, where appropriate, jointly, develop and adopt technical, legal, administrative and other reasonable measures in order to-

- (a) prevent, reduce and control pollution of surface and groundwaters, and protect and enhance the quality status of the waters and associated ecosystems for the benefit of present and future generations;
- (b) prevent, eliminate, mitigate and control transboundary impacts;
- (c) co-ordinate management plans and planned measures;
- (d) promote partnership in effective and efficient water use;
- (e) promote the security of relevant water related infrastructures and prevent accidents;
- (f) monitor and mitigate the effects of floods and droughts;
- (g) provide warning of possible floods and implement agreed upon urgent measures during flood situations;
- (h) establish comparable monitoring systems, methods and procedures;
- (i) exchange information on the water resources quality and quantity, and the uses of water;
- (j) promote the implementation of this Agreement according to its objectives and defined principles;
- (k) implement capacity building programmes in accordance with Article 14; and
- (l) co-operate with the SADC organs and other shared watercourse institutions.

#### Article 5 - Shared watercourses institution

1. The joint body for co-operation between the Parties shall be the TPTC.

...

Article 6 - Protection of the environment

1. The Parties shall, individually and, where appropriate, jointly, protect and preserve the aquatic environment of the Incomati and Maputo watercourses, taking into account generally accepted international rules and standards.
2. The Parties shall, individually and, where appropriate, jointly, take all measures to protect and preserve the ecosystems of the Incomati and Maputo watercourses.
3. The Parties shall take all measures necessary to prevent the introduction of species, alien or new, into the Incomati and Maputo watercourses, which may have effects detrimental to the ecosystems of the watercourses resulting in significant harm to other Parties.

Article 7 - Sustainable utilisation

1. The Parties shall be entitled, in their respective territories, to optimal and sustainable utilisation of and benefits from the water resources of the Incomati and Maputo watercourses, taking into account the interests of the other Parties concerned, consistent with adequate protection of the watercourses for the benefit of present and future generations.
2. The Parties shall co-ordinate their management activities by-
  - (a) the exchange of information on their respective experiences and perspectives; and
  - (b) the co-ordination of management plans, programmes and measures.
3. In pursuing the objective of this Article, the Parties shall follow the flow regimes stipulated in Annex I as determined according to Article 9.
4. In further pursuance of the objective of this Article the Parties disclose in Annex II their intentions of developing new projects that fall outside the scope of Annex I during the period of validity of this Agreement.

5. The Parties are committed to develop measures towards improvement of efficiency and rational use of water and its conservation and to promote more efficient water use through adopting better available technology.

#### Article 8 - Water quality and prevention of pollution

1. In order to protect and conserve the water resources of the Incomati and Maputo watercourses, the Parties shall, through resolutions adopted by the TPTC, and, when appropriate, through the co-ordination of management plans, programmes and measures, proceed to-
  - (a) endeavour to develop an evolving classification system for the water resources of the Incomati and Maputo watercourses;
  - (b) classify and state the objectives and criteria in respect of water quality variables to be achieved through the agreed classification system for the water resources;
  - (c) adopt a list of substances the introduction of which, into the water resources of the Incomati and Maputo watercourses, is to be prohibited or limited, investigated or monitored;
  - (d) adopt techniques and practices to prevent, reduce and control the pollution and environmental degradation of the Incomati and Maputo watercourses that may cause significant harm to the other Parties or to their environment, including human health and safety, or to the use of the waters for any beneficial purpose, or to the living resources of the watercourses; and
  - (e) implement a regular monitoring programme, including biological and chemical aspects for the Incomati and Maputo watercourses and report, at the intervals established by the TPTC, on the status and trends of the associated aquatic, marine and riparian ecosystems in relation to the water quality of the said watercourses.
2. Until such time that water quality objectives and criteria are determined, the Parties shall comply with the provisions of the Resolution of the TPTC on Exchange of Information and Water Quality. The Resolution may be reviewed by the TPTC from time to time.

Article 9 - Flow regimes

1. The agreed flow regime of the Incomati watercourse is contained in Annex I, which complements the flow regime as determined in the Piggs Peak Agreement, and the agreed flow regime of the Maputo watercourse is contained in the same Annex.
2. Any abstraction of waters from the Incomati or Maputo watercourses, regardless of the use or geographic destination of such waters, shall be in conformity with the flow regimes of Annex I and relevant provisions of this Agreement and its Annexes.
3. The Parties have considered the following criteria in establishing the flow regimes contained in Annex I:
  - (a) The geographic, hydrological, climatic and other natural characteristics of each watercourse;
  - (b) the need to ensure water of sufficient quantity with acceptable quality to sustain the watercourses and their associated ecosystems;
  - (c) any present and reasonably foreseeable water requirements, including afforestation;
  - (d) existing infrastructure which has the capacity to regulate streamflow of the watercourses; and
  - (e) agreements in force among the Parties.
4. The following short to medium term water requirements of each of the Parties are recognised in particular:
  - (a) The strategic importance to Mozambique of augmenting the water supplies to the city of Maputo and its metropolitan area from one or both of the Incomati and Maputo watercourses;
  - (b) the importance to Swaziland of developing the Lower Usuthu Smallholder Irrigation Project in the Usuthu River catchment; and
  - (c) the importance to South Africa of establishing and developing emerging irrigation farmers in the Incomati River catchment.

5. The additional water requirements of the city of Maputo, for which additional water must be secured, have been reserved in Annex I.

[Omitted: Article 10 - Droughts and floods]

Article 11 - Incidents of accidental pollution and other emergency situations

1. The Parties shall, without delay and by the most expeditious means available, notify other potentially affected Parties, the SADC organs or any other authorized institutions and competent international organisations of any incidents of accidental pollution and other emergency situations originating within their respective territories and shall promptly supply the necessary information to such affected Parties and competent organisations with a view to co-operate in the prevention, mitigation and elimination of the harmful effects of the emergency.
2. The Parties shall, individually and, where appropriate, jointly, develop contingency plans for responding to any incidents of accidental pollution and other emergency situations in co-operation, where appropriate, with other potentially affected Parties and competent international organisations, to take immediately all practicable measures necessitated by the circumstances to prevent, mitigate and eliminate the harmful effects of the emergency.

Article 12 - Exchange of and access to information

1. The Parties shall, within the TPTC, exchange available information and data regarding the hydrological, geohydrological, water quality, meteorological and environmental condition of the Incomati and Maputo watercourses to enable planning, development and management of these shared watercourses.
2. The Parties shall exchange data, information and study reports on the activities that are likely to cause significant transboundary impacts.
3. To enable compliance with subArticle (2), the polluting substances subject to special attention shall be as agreed in the Resolution and regularly reviewed by the TPTC.

4. The Parties shall exchange information and consult each other and if necessary, negotiate the possible effects of planned measures on the condition of the Incomati and Maputo watercourses. The Parties shall employ their best efforts to collect and where appropriate, to process data and information in a manner, which facilitates its utilisation by the other Party to which it is communicated.
5. If a Party is requested by another Party to provide data or any information in subArticles (1) and (2), and that information is not readily available, it shall employ its best efforts to comply with the request but may condition its compliance upon payment by the requesting Party of the reasonable costs of collecting and where appropriate processing such data or information.
6. The Parties shall provide one another, at intervals agreed to by the TPTC, information on the use, quantity and quality of the water resources and the ecological state of the Incomati and Maputo watercourses necessary for the implementation of this Agreement.
7. The Parties shall develop the appropriate measures to ensure that the information is homogeneous, compatible and comparable, as agreed by the TPTC.
8. The Parties shall create the necessary conditions to ensure that, in conformity with applicable domestic law or International Law, information on matters covered by this Agreement is available to whoever makes a reasonable request.

#### Article 13 - Transboundary impacts

1. Planned measures listed in Annex II [sic], regardless of their location, that by themselves or by accumulation with the existing ones, have the potential of a significant transboundary impact on the watercourse, shall not commence before the provisions of Article 4(1) of the Protocol are complied with.
2. Whenever, a planned measure, not listed in Annex II [sic], is likely to cause a significant transboundary impact or any of the Parties expresses concern that such may occur, it shall not commence before the provisions of Article 4(1) of the Protocol are complied with.

3. In case of a planned measure involving significant transboundary impact of substantial magnitude the Parties shall conduct an environmental impact assessment, which takes transboundary impact into account in accordance with procedures determined by the TPTC.
4. Whenever an ongoing activity causes or is likely to cause a significant transboundary impact, which will lead the Party to fail to comply with an obligation under Articles 4, 8 or 9, the national procedures on the subject shall apply and the Parties concerned shall endeavour to address the matter through the co-ordination of management plans, programmes or measures.

[Omitted: Article 14 - Capacity building, Article 15 - Settlement of disputes, Article 16 - Annexes, Article 17 - Existing watercourse agreements, Article 18 - Entry into force, termination and amendments, Article 19 - Depositary of the agreement]

...

#### Annex I - Flow regime

##### Article 1 - Determining criteria

1. Determination of the flow regime is based on the criteria in Article 9(3) of the Agreement.
2. The Parties accord a first priority to supply water for domestic, livestock and industrial use, as well as ecological water requirements as recognised by the TPTC.
3. If, upon review of the hydrology of the system, more water is found to be available in the Incomati or Maputo watercourses than that contemplated in this Annex, the Parties shall give priority to the water uses referred to in subArticle (2), when considering the allocation of the water.
4. Monitoring of the flow regime will be carried out at appropriate hydrometrical stations. The TPTC will determine their location and the conditions of installation and operation.

[Omitted: Article 2 - Incomati watercourse, Article 3 - Maputo watercourse, Article 4 - Utilisation of the Incomati watercourse]

Article 5 - Water requirements of the ecosystems of the Incomati watercourse

1. The Parties acknowledge the need to maintain interim instream flows at various key points in the Incomati watercourse to sustain the ecology of the watercourse including the estuary of the Incomati River.

...

[Omitted: Article 6 - Utilisation of the Maputo watercourse, Article 7 - Water requirements of the ecosystems of the Maputo watercourse, Article 8 - Water conservation, Article 9 - Generation of hydropower, Article 10 - Concluding provisions, Annex II - Reference projects]

Annex III - Transboundary impact

The projects and activities referred to in Article 13(1) of the Agreement are the following:

- (a) Industrial installation for energy production or mining activities which can impact significantly on water quality and quantity;
- (b) pipelines carrying oil or chemical products;
- (c) installations (facilities) for storage of dangerous products;

...

- (g) groundwater abstraction facilities, regardless of the use or destination of the water, above 3,5 million m<sup>3</sup> per year;
- (h) artificial recharging of aquifers with volumes above 3,5 million m<sup>3</sup> per year;

...

- (j) waste water discharges, of urban, industrial, cattle raising or other origin, in which the polluting charge is above 1000 equivalent inhabitants;

...

- (d) deforestation and reforestation works, affecting an area above 500 hectares and that have the potential to increase the sediment production or to increase flood peaks or to decrease the river flow.

[Omitted: Annex IV - Bilateral and trilateral agreements, Annex V - Time frame for the establishment of comprehensive water resource development and water use agreements]

## **16. Framework Agreement on the Sava River Basin [Kranjska Gora, 3 December 2002]\***

[The Parties]

Recognizing the vital importance of trans-boundary co-operation for the Parties aimed towards sustainable development of the Sava River Basin;

...

Being aware of the need to promote sustainable water management by regulating utilization, protection of the waters and aquatic eco-system and protection against the detrimental effects of the waters in the Sava River Basin, taking into consideration the Convention on Cooperation for the Protection and Sustainable Use of the Danube River (Sofia 1994);

Taking into account the great political, economic and social changes that have taken place in the region of the Sava River Basin;

Confirming our commitment to a sustainable development of the region that should be brought about in co-operation with the countries in the region, and with the view to ensure that this Agreement fits, in a coherent way, in accordance with the European Union integration process;

Desiring to develop mutual co-operation on the basis of principles of equal rights, State sovereignty and territorial integrity, good faith and good neighborliness;

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\* FAOLEX (FAO legal database online). Parties and/or signatories: Bosnia and Herzegovina, Croatia, Slovenia, Yugoslavia.

Aware of the ever increasing importance attached to the protection of the environment and natural resources, as well as the need for enhanced co-operation for an effective protection of the Sava River Basin;

Recognizing the great value of the Sava River Basin and its environment and natural assets, for the economic and social well-being and living standards of the citizens;

...

Having in mind that the Sava River Basin is part of the Danube Basin and that several international law regimes established by multilateral instruments of international water law, international environmental law and European Union legislation are applied to water resources of the Danube River Basin;

Wishing to join their efforts on sustainable management of water resources of the Sava River Basin with the efforts of other countries and international institutions and arrangements present in the Danube Basin;

...

Have agreed as follows:

#### Part 1 - General provisions

##### Article 1 - Definitions

For the purposes of this Agreement:

1. "Transboundary Impact" means any adverse effect on the river environment resulting from a change in water regime, caused by human activity and stretching out beyond an area under the jurisdiction of a Party, and which change may affect life and property, safety of facilities, and the aquatic ecosystem concerned.
2. "The Sava River Basin" is the geographical area extended over the territories of the Parties, determined by the watershed limits of the Sava River and its tributaries, which comprises surface and groundwaters, flowing into a common terminus.

3. "Water Regime" comprises quantity and quality conditions of the waters of the Sava River Basin in space and time influenced by human activities or natural changes.

#### Article 2 - Objective of the agreement

1. The Parties shall cooperate in order to achieve the following goals:  
...
  - (b) Establishment of sustainable water management; and
  - (c) Undertaking of measures to prevent or limit hazards, and reduce and eliminate adverse consequences, including those from floods, ice hazards, droughts and incidents involving substances hazardous to water.
2. For the purpose of carrying out the goals stated in Paragraph 1 of this Article, the Parties shall cooperate in the process of the creation and realization of joint plans and development programs of the Sava River Basin and harmonization of their legislation with EU legislation.

#### Part Two - General principles of cooperation

##### Article 3 - General obligation to cooperate

1. The Parties shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit, and good faith in order to attain the goals of the present agreement.
2. The Parties shall cooperate on the basis of, and in accordance with, Directive 2000/60/EC of the EU Parliament and Council of October 23, 2000, Establishing a Framework for Community Activities in the Field of Water Policy (hereinafter: EU Water Framework Directive).

##### Article 4 - Exchange of data and information

Pursuant to Article 3 of this Agreement, the Parties shall, on a regular basis, exchange information on the water regime of the Sava River Basin, the regime of navigation, legislation, organizational structures, and administrative and technical practices.

Article 5 - Cooperation with international organizations

In realization of this Agreement, the Parties shall especially cooperate with:

- (a) The International Commission for Protection of Danube River (hereinafter: ICPDR);
- (b) The Danube Commission;
- (c) The United Nations Economic Commission for Europe (hereinafter: UN/ECE), and
- (d) Institutions of the European Union.

Article 6 - Cooperation with national organizations (authorities or bodies)

1. The Parties agree to nominate organizations (authorities or bodies) competent for realization of this Agreement on the part of the Sava River Basin within their territories.
2. The Parties agree to inform the Chairman of the International Sava River Basin Commission (as established in Article 15 of this Agreement) of the nomination of the organizations (authorities or bodies) stated in paragraph 1 of this Article.

Article 7 - Principle of reasonable and equitable utilization of the waters

1. The Parties are entitled, within their territories, to a reasonable and equitable share of the beneficial uses of the Sava River Basin water resources.
2. Reasonable and equitable share within the meaning of Paragraph 1 of this Article is to be determined in any particular case in light of the relevant factors according to international law.

Article 8 - Transboundary impact

1. The Parties shall agree on how to regulate all issues concerning measures aimed at securing integrity of the water regime in the Sava River Basin and the elimination or reduction of transboundary impacts

on the waters of the other parties caused by economic or other activities.

2. For that purpose, the Parties shall, by separate protocol, regulate the procedures for the issuance of water law acts (licenses, permits and confirmations) for installations and activities that may have a transboundary impact on the integrity of the water regime.

#### Article 9 - No harm rule

The Parties shall, in utilizing waters of the Sava River Basin in their territories, cooperate and take all appropriate measures to prevent causing significant harm to other Party(ies).

#### Part Three - Areas of co-operation

[Omitted: Article 10 - Regime of navigation]

#### Article 11 - Sustainable water management

The Parties agree to cooperate on management of the waters of the Sava River Basin in a sustainable manner, which includes integrated management of surface and groundwater resources, in a manner that shall provide for:

- (a) Water in sufficient quantity and of appropriate quality for the preservation, protection and improvement of aquatic eco-systems (including flora and fauna and eco-systems of natural ponds and wetlands);
- (b) Waters in sufficient quantity and of appropriate quality for navigation and other kinds of use/utilization;
- (c) Protection against detrimental effects of water (flooding, excessive groundwater, erosion and ice hazards);
- (d) Resolution of conflicts of interest caused by different uses and utilizations; and
- (e) Effective control of the water regime.

Article 12 - The Sava River Basin Management Plan

1. The Parties agree to develop joint and/or integrated Plan on the management of the water resources of the Sava River Basin and to cooperate on its preparatory activities.
2. The Sava River Basin Management Plan shall be adopted by the Parties on the proposal of the International Sava River Basin Commission.
3. Cooperation stated in Paragraph 1 of this Article shall be coordinated with activities of the ICPDR.
4. All issues concerning the preparation and realization of the Sava River Basin Management Plan may be regulated with separate protocols.

Article 13 - Extraordinary impacts on the water regime

1. The Parties shall establish a coordinated or joint system of measures, activities, warnings and alarms in the Sava River Basin for extraordinary impacts on the water regime, such as sudden and accidental pollution, discharge of artificial accumulations and retentions caused by collapsing or inappropriate handling, flood, ice, drought, water shortage, and obstruction of navigation.
2. In realization of the obligation in paragraph 1 of this Article, the Parties shall act in accordance with activities undertaken in the framework of The Convention for Protection and Sustainable Use of Danube River and in the scope of the procedures agreed within the ICPDR.

Part Four - Mechanisms of co-operation

Article 14 - Meeting of the Parties

1. The first Meeting of the Parties shall be convened no later than one year after the date of entry into force of this Agreement. Thereafter, an ordinary Meeting of the Parties shall be held at least once every two years, unless otherwise decided by the Parties, or at the written request of any Party.
2. At their Meetings, the Parties shall keep under continuous review the implementation of this Agreement on the basis of reports of the International Sava River Basin Commission, and shall:

- (a) Review the work and operations of the International Sava River Basin Commission and make decisions based on its recommendations;
  - (b) Consider and adopt proposals for protocols and amendments to this agreement; and
  - (c) Consider and undertake any additional action that may be required for the achievement of the purposes of this Agreement.
3. All decisions of the Meeting of the Parties shall be made by consensus.

#### Article 15 - International Sava River Basin Commission

1. For the implementation of this Agreement, the Parties shall establish the International Sava River Basin Commission (hereinafter: Sava Commission).
2. The Sava Commission shall have the international legal capacity necessary for the exercise of its functions.

[Omitted: Article 16 - Functions of the Sava Commission, Article 17 - Financing the Sava Commission, Article 18 - Secretariat, Article 19 - Seat of the Sava Commission, Article 20 - Statute]

#### Article 21 - Monitoring implementation of the Agreement

1. The Parties agree to establish a methodology of permanent monitoring of implementation of the Agreement and activities based upon it.
2. The implementation monitoring methodology will include timely provision of information to stakeholders and the general public by the authorities responsible for implementation of the Agreement.
3. The Parties shall establish an implementation monitoring methodology within two years after the Agreement has entered into force.

Part Five - Dispute settlement

Article 22 - General provisions

1. If a dispute arises between two or more Parties about the interpretation or implementation of this Agreement, they shall seek a solution by negotiation.
2. If the concerned parties are unable to resolve the dispute through negotiation, upon the request of one of the concerned parties, they may jointly seek good services, mediation or conciliation from a third party, or they may agree to refer the dispute to arbitration in accordance with Annex II of this Agreement, or to the International Court of Justice.
3. If, within six months from submitting a request as stated in Paragraph 2 of this Article, the concerned parties are unable to resolve the dispute through negotiation, good services, mediation or conciliation, any Party concerned may request that an independent fact-finding expert committee be established.

[Omitted: Article 23 - Fact-finding expert committee, Article 24 - Role of the Fact-finding expert committee]

Part Six - Final Provisions

[Omitted: Article 25 - Annexes, Article 26 - Amendments to the Agreement, Article 27 - Reservation, Article 28 - Duration and entering into force, Article 29 - Other agreements]

Article 30 - Protocols

1. In implementing this Agreement, the Parties shall, in addition to the protocols referred to in other provisions of this Agreement, conclude other protocols for regulating:

...

- (a) Protection against flood, excessive groundwater, erosion, ice hazards, drought and water shortages;
- (b) Water use/utilization;

- (c) Exploitation of stone, sand, gravel and clay;
  - (d) Protection and improvement of water quality and quantity;
  - (e) Protection of aquatic eco-systems;
  - ...
  - (g) Emergency situations.
2. The Parties may agree to conclude other protocols necessary for the implementation of this Agreement.

[Omitted: Article 31 - Termination and withdrawal, Article 32 - International borders, Article 33 - Depositary]

...

[Omitted: Annex I - Statute of the International Sava River Basin Commission, Annex II - Dispute settlement by arbitration]

## **17. The Convention on the Sustainable Development of Lake Tanganyika [Dar es Salaam, 12 June 2003]\***

### Preamble

...

The "Contracting States";

Conscious of Lake Tanganyika's unique aquatic and other biological diversity and of the Lake's significance for the development of the riparian States;

Recognizing that Lake Tanganyika is a shared heritage of the riparian States;

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\* FAOLEX (FAO legal database online). Parties and/or signatories: Burundi, Congo, Tanzania, Zambia.

Conscious of the threats to the Lake Basin as a result of pollution, sedimentation, over-fishing and other adverse impacts of human activities within the territories of the Contracting States;

Reaffirming that in accordance with principles of international law States have the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies and the responsibility to ensure that activities within their jurisdictions or control do not cause damage to the environment of other States;

Reaffirming further that the conservation of biological diversity is a common concern of humankind and that States are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner;

Recognizing that the riparian States share a common interest in the conservation and equitable utilization of the resources of Lake Tanganyika;

Recognizing that integrated management of the Lake Basin by the Contracting States is essential to ensure its conservation and the sustainable use of its natural resources and to optimize the benefits derived from it by the Contracting States;

Recognizing the necessity of establishing a sustainable legal and institutional framework for co-operative management of the Lake by the Contracting States and the contribution that this would make to strengthening relations between them and to promoting development in the region;

Recalling the principles enunciated in the Declaration on Environment and Development adopted by the United Nations Conference on Environment and Development in 1992, the 1992 Convention on Biological Diversity, and international and regional agreements and instruments relating to shared watercourses;

Have agreed as follows:

Article 1 - Use of terms

For the purposes of the present Convention:

...

"Adverse impact" means any actual or potential detrimental effect on the Lake's environment and any actual or potential consequential detrimental effect on legitimate uses of the Lake, on the health of the people of a Contracting State or on their ability to provide for their health, safety and cultural and economic well-being, that results directly or indirectly from human conduct originating wholly or partly within the territory of a Contracting State or from a vessel or aircraft under its jurisdiction or control, beyond that which is negligible or which has been assessed and determined to be acceptable under this Convention and under any subsequent protocols;

"Authority" means the Lake Tanganyika Authority established under Article 23;

"Basin" means the geographical area bounded by the watershed limits of Lake Tanganyika.

"Bio-chemicals" means unimproved or unmodified chemical compounds, other than deoxyribonucleic acids or ribonucleic acids, formed by the metabolic processes of a living organism.

"Biological diversity" means the variability among living organisms from all sources, including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems;

"Conference of Ministers" means the Conference of Ministers established by Article 24;

"Ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;

"Environment" includes, but is not limited to, the whole or any component of:

- (a) nature, which includes air, water, land, including soils and minerals, energy and living organisms;
- (b) the interaction between the components of nature and between those components and humans; and
- (c) physical, esthetic and cultural qualities or conditions that affect the health and well-being of people;

"Executive Director" means the chief executive and legal representative of the Authority appointed according to Article 26.

...

"Lake Basin" means the whole or any component of the aquatic environment of Lake Tanganyika and those ecosystems and aspects of the environment that are associated with, affect or are dependent on, the aquatic environment of Lake Tanganyika, including the system of surface waters and groundwaters that flow into the Lake from the Contracting States and the land submerged by these waters.

"Lake Tanganyika" means the water-body known as Lake Tanganyika.

"Management Committee" means the Management Committee of the Authority described in Article 25;

"Natural resources" mean any naturally occurring living or non-living component of the environment of actual or potential use or value to humanity, including: air, land, water, soils, minerals, energy, genetic resources, bio-chemicals, organisms or parts of organisms, populations and other biotic components of an ecosystem;

"Operator" means any person, association, public or private body, whether corporate or not, including the State and any of its entities which exercises control over dangerous activities; and "dangerous activity" means any activity listed in Annex II.

"Pollution" means the introduction by humans, directly or indirectly, of substances or energy into the Lake Basin, which results or is likely to result, in hazards to human health, harm to living organisms and ecosystems, damage to amenities or interference with legitimate uses of the Lake, including fishing and navigation;

"Secretariat" means the Secretariat of the Authority described in Article 26;

"Trans-boundary adverse impact" means any adverse impact that extends beyond the territory of the Contracting State in which the physical origin of the adverse impact is situated.