International Waters: Review of Legal and Institutional Frameworks

UNDP-GEF International Waters Project

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I. Introduction

This report discusses the legal and institutional frameworks that apply to twenty-eight (28) international water bodies that were identified as part of the United Nations Development Programme-Global Environment Facility ("UNDP-GEF") *Good Practices and Portfolio Learning in GEF Transboundary Freshwater and Marine Legal and Institutional Frameworks* project.

This three-year multi donor GEF sponsored project is dedicated to facilitating good governance and more effective decision making in international waters through the identification, collection, adaptation and replication of beneficial practices and lessons learned from international experiences.

The project also facilitates dialogue among individuals and organizations engaged in governance within and between freshwater, groundwater and marine international waters with particular emphasis on "South-South" cooperation and learning.

The key measurable benefit of this project is in ensuring that various lessons learned from multi-country experiences, including identification of areas where problems and delays are commonly experienced, are assimilated by various target audiences in a meaningful way. These target audiences include local water managers, governments, and civil society groups, primarily the portfolio of GEF projects.

The project also encourages local participation in the sharing of best practices by diverse stakeholders with a focus on women and youth.

Climate change adaptation knowledge is also incorporated into the learning tools emanating from this project.

The analysis in this report is organized by a common set of eighteen (18) criteria and is intended to provide information that can be used to support further research and analysis, with the ultimate goal of identifying a set of common elements of good governance for transboundary freshwater and marine water bodies as well as groundwater systems.

This report is based on primary materials that establish legal and institutional frameworks, such as international agreements (including treaties and conventions where applicable), protocols or action plans. Where relevant secondary materials were available (primarily for water bodies with more extensive legal frameworks), those secondary materials are identified and referenced as appropriate. The report is based on information available as of June 2010.

Part II of this report identifies and explains the eighteen criteria that are used to describe the legal and institutional frameworks of each of the water bodies discussed in this report.

Part III of this report provides a detailed discussion of the legal and institutional frameworks for each water body identified, organized by global region.

While we have endeavored to provide comprehensive information regarding legal and institutional frameworks, this report is not an exhaustive presentation of all of the available information for each of the water bodies addressed.

As the described frameworks continue to evolve, there may be future revisions of this report, for which supplemental information would be welcome.

This report should also be read in conjunction with a companion report of a lesser number of more detailed case studies which takes a more in depth look at "how" various international waters agreements were negotiated together with how "successful" the implementation of those agreements appears to have been. The detailed cases studies reviewed involve an assessment of the negotiation process involved in developing the agreements, as well as some assessment of how the agreements are being implemented. These case studies were chosen to represent the variety of situations that were reviewed under the UNDP-GEF *Good Practices and Portfolio Learning in GEF Transboundary Freshwater and Marine Legal and Institutional Frameworks* project, emphasize different aspects of collaboration around shared resources, and highlight several projects that had been funded by the GEF. The analysis has been conducted in conjunction with experts knowledgeable in the specific case study through interviews and collaborative development of the case studies.

The authors of this report would be most grateful if readers would bring to their attention any and all errors of commission and/or omission in both reports by directing their comments to Richard Kyle Paisley, Director, Global Transboundary International Waters Governance Initiative at paisley@law.ubc.ca, or to Jennifer Maul at White & Case LLP, at jmaul@whitecase.com. To review the full report online and other details of this project (including the detailed case studies), please go to http://governance-iwlearn.org/.

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II. Evaluation Criteria Overview

The following eighteen (18) criteria, identified in coordination with the Board of Advisors and Steering Committee of the IW Project, were used to standardize the review and reporting on the legal and institutional frameworks of the water bodies studied:

1. **Legal Basis** (i.e. is it based on a Treaty, Memorandum of Understanding etc.);

2. **Member States** (what states are parties to the agreement, are there observer states or groups);

3. **Geographical Scope** (what is covered within the framework);

4. **Legal Personality** (what is the body that implements the framework);

5. **Functions** (what does the framework seek to do);

6. **Organizational Structure** (what are the institutional designs and how do they interact);

7. **Relationships** (i.e. with multilateral, domestic and non-water sectors);

8. **Decision Making** (how are decisions within the institution made);

9. **Dispute Resolution** (is there a specified method for preventing and dealing with disputes among members);

10. **Data Information Sharing, Exchange, and Harmonization** (how do the countries share and exchange data with respect to the shared waters);

11. **Notifications** (how are members notified of changes to the framework);

12. **Funding and Financing** (how are operational costs paid for in both the long and short term);

13. **Benefit Sharing** (how are the benefits of the framework distributed among members);

14. **Compliance and Monitoring** (how do members ensure they are applying the agreement properly, and are there any reporting or evaluation mechanisms);

15. **Participation and the Role of Multiple Stakeholders** (how are civil society, youth and private sector groups engaged);

16. **Dissolution and Termination** (how is the agreement terminated);

17. **Additional Remarks** (any pertinent information that falls outside any of the identified criteria); and

18. **Websites and References** (helpful websites and citations to supporting information).

III. Selected Frameworks

A. Americas

Amazon Basin

1. Legal Basis

The Amazon Basin is governed by two multilateral conventions:

- The Amazon Cooperation Treaty, which was adopted in Brasilia, Brazil on 3 July 1978 and entered into force on 2 August 1980;[1] and

- The Amendment Protocol to the Amazon Cooperation Treaty, which was entered into on 14 December 1998. This amendment created the Amazon Cooperation Treaty Organization ("ACTO").[2]

ACTO has also entered into the following bilateral agreements:

- Memorandum of Understanding between ACTO and the Coordinating Body for the Indigenous Organizations of the Amazon Basin ("COICA"), 25 Oct. 2004, *available at* http://www.otca.org.br/en/programs-projects/index.php?id=1076.

- Memorandum of Understanding between ACTO and the Andean Community, 29 Sept. 2004, *available at* http://www.otca.org.br/en/programs-projects/index.php?id=1057.

- Letter of Understanding Between the Coordinator Intergovernmental Committee of the Countries of the Basin of the Plata and the Amazonian Cooperation Treaty Organization, 30 Aug. 2004, *available at* http://www.otca.org.br/en/programs-projects/index.php?id=49.

- Standard Agreement between the ACTO and the Pan American Health Organization/World Health Organization, *available at* http://www.otca.org.br/en/programs-projects/index.php?id=1154.

- Agreement between ACTO and the Inter-American Development Bank — Strengthening the Joint Regional Capacity for the Sustainable Use of Amazonian Biodiversity, *available at* http://www.otca.org.br/ep/proyetos-programas/index.php?id=1204 (Spanish only).

Certain Member States of ACTO have entered into bilateral agreements, both formal and informal, that govern relations between them in relation to the Amazon Basin:

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[1] Treaty for Amazonian co-operation ("Amazon Cooperation Treaty"), 3 July 1978, *available at* http://www.otca.org.br/en/institucional/index.php?id=29.

[2] Protocol of Amendment of the Amazon Cooperation Treaty ("Protocol"), 14 Dec. 1998, *available at* http://www.otca.org.br/en/institucional/index.php?id=30.

- Brazil and Bolivia: Exchange of Notes Constituting an Agreement for the Construction of a Hydroelectric Plant in Cachuela Esperanza, supplementary to the Agreement on Economic and Technical Cooperation, 2 Aug. 1988, *available at* http://faolex.fao.org/docs/pdf/bi-16184.pdf.

- Brazil and Bolivia: Agreement Concerning the Cachuela Esperanza Hydroelectric Plant, Supplementary to the Agreement on Economic and Technical Cooperation between the Government of the Federative Republic of Brazil and the Government of the Republic of Bolivia, 8 Feb. 1984, *available at* http://faolex.fao.org/docs/pdf/bi-16185.pdf.

- Ecuador and Peru: Declaration and Exchange of Notes Concerning the Termination of the Process of Demarcation of the Peruvian-Ecuadorean Frontier, 22-24 May 1944, *available at* http://mgd.nacse.org/qml/watertreaty/textdocs/international/92.html.

2. Member States

The Member States of the Amazon Cooperation Treaty and the ACTO are Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname, and Venezuela.

3. Geographical Scope

The Amazon River Basin spans an area of 5,870,000 square kilometers, contains nearly one-fifth of the fresh water on the surface of the Earth, and discharges 4.2 million cubic feet of water per second.[3] The Amazon River Basin covers area in the territories of the eight Member States.[4]

4. Legal Personality

The ACTO and a Permanent Secretariat were established in Brasilia, Brazil in March 2003.[5] The Protocol granted ACTO corporate body status and authorized it to enter into agreements with the Member States, non-member states, and other international organizations. The Permanent Secretariat, which is headed by the Secretary General, is empowered to enter into agreements on behalf of the ACTO whenever the Member States unanimously authorize it to do so.[6]

5. Functions

The Amazon Cooperation Treaty is primarily designed to foster the sustainable development of the Amazon River. The Member States "agree[d] to undertake joint actions and efforts to promote the harmonious development of their respective Amazonian territories in such a way that these actions produce equitable and mutually beneficial results and achieve also the preservation of the environment,

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[3] Georges D. Landau, *The Treaty For Amazonian Cooperation: A Bold New Instrument For Development*, 10 GA. J. INT'L. & COMP. L. 463 (1980).

[4] *See* Amazon Cooperation Treaty, art. II.

[5] Amazon Cooperation Treaty Organization Strategic Plan 2004-2012 ("ACTO Strategic Plan"), Oct. 2004, at 15, *available at* http://www.otca.org.br/PDF/Strategic_Plan.pdf. Before the Permanent Secretariat was created, the functions of the Secretariat were performed Pro Tempore by the Member State in whose territory the next meeting of the Amazon Cooperation Council was scheduled to be held. Amazon Cooperation Treaty, art. XXII.

[6] Protocol, arts. I, II (3).

and the conservation and rational utilization of the natural resources of those territories."[7] The Treaty also guarantees freedom of commercial navigation,[8] promotes coordination of health services,[9] as well as coordination in research[10], infrastructure[11], and tourism.[12] Under Article V, the Member States commit to make efforts towards the rational use of water resources. These efforts have included the establishment of a hydrometeorogical database of the Amazon region, strengthening technical cooperation between countries in hydrology and climatology, and encouraging the use of remote sensing.[13]

As detailed in the ACTO 2004-2012 Strategic Plan, ACTO has developed goals for each of the following sectors: water, forests/soils and protected natural areas, biological diversity, bio-technology and biotrade, territory ordering, human settlements and indigenous affairs, social infrastructure, health and education; and transportation, electric power and communication infrastructure. The Water aims are the Integrated Management of Hydro-biological Resources and a standard agreement on measures towards preventing contamination.[14]

In 2005, ACTO, in partnership with the Global Environment Facility ("GEF"), the General Secretariat of the Organization of American States and the United Nations Development Programme, launched the Integrated and Sustainable Management of Transboundary Water Resources in the Amazon River Basin Considering Climate Change Variability and Change Project (the "GEF Amazonas Project"). The GEF Amazonas Project aims to create a shared vision among the ACTO Member States concerning water resources and land use, which will be used to develop a Transboundary Diagnostic Analysis and a Strategic Action Framework Program ("SAP") for work in the Amazon Basin. Pilot projects under the SAP would be concentrated on the responses of the human communities and the ecosystem to climate variability, droughts, floods, and fires within the Amazon Basin. The project is also focused on institutional harmonization and strengthening, capacity building in regards to integrated water management, and forecasting the hydrological impacts from climate change and the anticipated responses to these changes. The project also seeks to encourage public participation in the sustainable management of water resources. This is intended to be achieved through national workshops, attended by universities, government institutions, and civil society organizations, on specific issues in each Member States, with special attention paid to issues affecting women, youth, elderly and the indigenous peoples.[15]

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[7] Amazon Cooperation Treaty, art. I.

[8] Amazon Cooperation Treaty, art. III.

[9] Amazon Cooperation Treaty, art. VIII.

[10] Amazon Cooperation Treaty, art. IX.

[11] Amazon Cooperation Treaty, art. X.

[12] Amazon Cooperation Treaty, art. XIII.

[13] B. Braga, E. Salati, and H. Mattos de Lemos, *Sustainable water-resources development of the Amazon Basin*, *in* MANAGEMENT OF LATIN AMERICAN RIVER BASINS 43 (Asit K. Biswas, Newton V. Cordeiro, Benedito P F Braga, Cecilia Tortajada eds.) (United Nations University Press 1999).

[14] ACTO Strategic Plan, at 24.

[15] GEF Amazonas Project ("GEF Amazonas"), *available at* http://www.otca.info/gefam/index.php?page=HomePage&cat=76 (last viewed on 19 Oct. 2010).

The goals of the GEF Amazonas Project were discussed in the ACTO Strategic Plan. According to the ACTO Strategic Plan, the Project is to be developed and implemented in three stages. The first stage involves institutional strengthening and pilot projects, such as the development of a framework program of strategic responses for major water resources-related environmental problems that affect the region. The second stage will build upon the work completed in the first stage and seek to implement the strategic actions that were identified. The final stage will work towards strengthening the sustainability of the actions taken and consolidating the integration and joint management by the Amazon countries. In developing the management structure, the Strategic Plan encourages the incorporation of the knowledge and practices on water use developed by the regional indigenous populations and recognizing the demand for potable water and basic sanitation needs. The Strategic Plan also encourages the integration of the Amazon biome and human activity in the lower sections of the basin and the upper Andean region into a sustainable system of water resources management.[16]

In addition, ACTO has worked to promote chemical safety in the Amazon Basin, specifically in regards to mercury contamination. In January 2006, ACTO, in partnership with Brazil's Ministry of Environment and with support from the U.S. Department of State, released a Regional Action Plan for the Prevention and Control of Mercury Contamination in Amazon Ecosystems. The Regional Action Plan aims to promote, in a collaborative manner, a new development model for the region that would incorporate proper handling of chemicals, increased use of clean technologies, the sustainable economic development of the production chain for gold, social inclusion, sustainable use of natural resources, and the welfare of communities in the Amazon Basin.[17]

As part of the November 2009 Declaration of the Heads of State of ACTO, the leaders proposed a new Amazonian Strategic Cooperation Agenda that would be based on promoting the sustainable development of the Amazon based on the appropriate balance of economics, environment, health, indigenous peoples, education, science and technology, water resources, infrastructure, commercial navigation, tourism, and communications considerations. In addition, the Amazonian Strategic Cooperation Agenda is intended to identify actions to reduce and monitor deforestation (including preserving biodiversity); strengthen the institutional and political mechanisms available to indigenous peoples; protect the Amazon's water resources; promote food security; coordinate environmental surveillance (especially in frontier areas); further develop ecotourism; promote a science and technology agenda that includes traditional knowledge for the region; have the ACTO Permanent Secretariat participate in international negotiations on issues such as climate change, biodiversity, and forests; and hold ministerial meetings in different relevant sectors.[18]

6. Organizational Structure

The organizational structure of the Amazon Cooperation Treaty is placed under the auspices of the Ministers of Foreign Affairs of the Member States. The Ministers of Foreign Affairs will hold a meeting at the initiative of any of the Member States, if the meeting is supported by four Member States. At the meeting, the Ministers will establish common policy guidelines, evaluate the progress of the Amazon

[16] ACTO Strategic Plan, at 38-41.

[17] Regional Action Plan for the Prevention and Control of Mercury Contamination in Amazon Ecosystems, 27 Jan. 2006, *available at* http://www.otca.org.br/imagens/en/documentos/mercurio_eng.pdf. Mercury, a highly toxic element, can be used to enhance gold recovery during mining.

[18] Declaration of Heads of States on the Amazon Cooperation Treaty Organization ("November 2009 Heads of State Declaration"), 26 Nov. 2009, *available at* http://www.otca.org.br/en/noticia/noticia.php?idNoticia=2739&tipoN=9.

cooperation process, and make relevant decisions that guide the implementation of the Treaty.[19] In addition to the Meetings of the Ministers of Foreign Affairs, a Meeting of the Presidents of the Amazon countries can also be called to serve as a high-level forum to discuss the issues critical to the region.[20] On the ground level, the Amazon Cooperation Treaty and the Protocol provide for the establishment of the Amazon Cooperation Council ("CCA"), the CCA Coordination Commission, and the Permanent Secretariat/Secretary General.[21] The CCA is comprised of high-level diplomatic representatives of the Contracting Parties. The duties of the CCA include: ensuring compliance with the Treaty objectives; carrying out the decisions made at the meetings of the Ministers of Foreign Affairs; recommending convening meetings of the Ministers of Foreign Affairs; and analyzing projects submitted by Member States and assessing their progress.[22]

There are also five coordinators that oversee the different aspects of the Amazon Cooperation Treaty: environment; health; science, technology, and education; infrastructure, tourism, transport, and communication; and indigenous affairs. These coordinators report to the Permanent Secretariat/Secretary General.[23] In addition, the Amazon Cooperation Treaty authorizes the creation of Special Commissions to study specific matters related to the Treaty. These Special Amazon Commissions work with the CAA, the Permanent Secretariat, and relevant national institutions in their sectors of interest. Currently, there are seven Special Amazon Commissions: Health (CESAM); Indigenous Affairs (CEAIA); Environment (CEMAA); Transport, Infrastructure and Communications (CETICAM); Tourism (CETURA); Education (CEEDA); and Science and Technology (CECTA).[24]

In March 2003, the Pro-Tempore Secretariat that had been in place since the Amazon Cooperation Treaty was concluded was replaced by the Permanent Secretariat of the ACTO and a Secretary General.[25] The Member States must elect the ACTO Secretary General by unanimous vote. The establishment of the Permanent Secretariat consolidated the institutional structure of the Amazon Cooperation Treaty. The Permanent Secretariat is responsible for preparing, in consultation with the Member States, the work plan, program of activities, and the budget for ACTO. These items must be approved unanimously by the CCA before they become effective. One of the major goals of the Permanent Secretariat is to increase the use

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[19] Amazon Cooperation Treaty, art. XX; Manuel Picasso Botto, *The Amazon Cooperation Treaty: A mechanism for cooperation and sustainable development*, *in* MANAGEMENT OF LATIN AMERICAN RIVER BASINS 71-72 (Asit K. Biswas, Newton V. Cordeiro, Benedito P F Braga, Cecilia Tortajada eds.) (United Nations University Press 1999).

[20] Meeting of Presidents, *available at* http://www.otca.org.br/en/institucional/index.php?id=31 (last viewed on 19 Oct. 2010).

[21] Amazon Cooperation Treaty Organization Chart ("Organization Chart"), *available at* http://www.otca.org.br/en/organization/index.php?id=102 (last viewed on 19 Oct. 2010).

[22] Amazon Cooperation Treaty, art. XXI.

[23] Organization Chart.

[24] Organization Chart; Amazon Cooperation Treaty, art. XXIV; Special Amazon Commissions, *available at* http://www.otca.org.br/en/institucional/index.php?id=34 (last viewed on 20 Oct. 2010).

[25] Protocol, art. II.

of the Amazon Cooperation Treaty through various projects and decisions made at the Meeting of the Ministers of Foreign Affairs and the CCA.[26]

To implement the projects, the Permanent Secretariat works through technical units on the regional and national level in order to avoid creating any additional permanent bureaucracies. Each country has a Permanent National Commission ("PNC") that is responsible for: applying the provisions of the Amazon Cooperation Treaty in its territory; carrying out the decisions and agreements adopted by the Meetings of Ministers of Foreign Affairs and the CCA; coordinating policies involving sustainable development in the Amazon region; and suggesting relevant policy measures. The PNCs are composed of representatives from relevant governmental agencies in each country—such as the Ministry of Foreign Affairs, the Ministry of Environment, the Ministry of Health, the Ministry of Transportation, the Ministry of Defense, the Ministry of Education, and the Ministry of Planning. The PNCs held their first international meeting in 2004. The PNCs are also being encouraged by the ACTO to take a more proactive role in formulating policies and strategies.[27]

ACTO has also hosted regional meetings concerning Indigenous Affairs, Industrial and Intellectual Property, Science and Technology, Health and Social Protection, and Defense. The impetus for these meetings often occurs as a result of decisions made at the Meetings of the Ministers of Foreign Affairs. These regional meetings aim to bring together important ministers and other representatives from the Member States in order for them to share ideas and encourage collaboration on these respective topics. In addition, the regional meetings often result in a joint declaration from the participants and the development of an agenda of priority issues for the countries to address.[28]

7. Relationships

According to Article XVI, the Amazon Cooperation Treaty shall not "be to the detriment of projects and undertakings executed within their respective territories, according to International Law and fair practice between neighboring and friendly countries." In addition, under Article XIX, the Amazon Cooperation Treaty does not have an effect on any other international treaties in effect between the Member States or any differences that exist between the Member States concerning their limits or territorial rights. The Amazon Cooperation Treaty does not limit the Member States' abilities to conclude bilateral or multilateral agreements, as long as the agreements are not contrary to the aims stated in the Treaty.[29]

The ACTO actively seeks lasting ties with multinational organizations, such as the World Health Organization, United Nations Educational, Scientific and Cultural Organization, the World Bank, the Inter-American Development Bank, the European Union, and the national cooperation agencies of many countries. ACTO has also worked with international non-governmental organizations, such as the International Union Conservation of Nature and the World Wildlife Fund. Since the establishment of the Permanent Secretariat, the ACTO has worked to reinvigorate the treaty structure and strengthen its relationships with United Nations organizations and other specialized agencies. As the ATCO has limited

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[26] ATCO Strategic Plan, at 65.

[27] Amazon Cooperation Treaty, art. XXIII; ACTO Strategic Plan, at 14, 23, 35; Permanent National Commissions, *available at* http://www.otca.org.br/en/institucional/index.php?id=35 (last viewed on 20 Oct. 2010).

[28] ACTO – Other Meetings, *available at* http://www.otca.org.br/en/institucional/index.php?id=1170 (last viewed on 20 Oct. 2010); Georgetown Report, 26 Sept. 2008, *available at* http://www.otca.org.br/en/documentos.php.

[29] Amazon Cooperation Treaty, art. XVIII.

funds, it seeks international partnerships and sponsorships for its projects. And since the Member States each have their own national policies on international cooperation in the Amazon region, the Permanent Secretariat has made a push for increased coordination with national governments on this front in order to avoid conflicts and duplication of effort.[30]

ACTO is also involved in Sala Andes Amazonia, a platform which is designed to foster the sustainable development of the Andes-Amazon region through the promotion of trade and investment in "BioTrade" products. The governing principles for "BioTrade" products are: the conservation of biodiversity, the sustainable use of biodiversity, the fair and equitable sharing of benefits related to the use of biodiversity, socio-economic sustainability, compliance with national and international regulations, respect for the rights of participants involved in BioTrade activities, and clarity with respect to land tenure as well as in regards to the use and access to natural resources and knowledge. For this initiative, ACTO works in partnership with other intergovernmental organizations (such as the United Nations Conference on Trade and Development and the Andean Community), national BioTrade programs, non-profit groups (such as the Union for Ethical BioTrade), and foreign development agencies.[31]

8. Decision Making

All decisions made by the ACTO and CCA must be by the unanimous decision of the Member States. Decisions of the Special Amazon Commissions must be made by the unanimous vote of the participating Member States.[32] While the Permanent Secretariat is empowered to enter into agreements on behalf of ACTO, it can only do so with the unanimous approval from the Member States.[33]

9. Dispute Resolution

The Amazon Cooperation Treaty does not contain any specific provisions on dispute resolution. Instead, the Amazon Cooperation Treaty operates only by consensus for all significant decisions. The Treaty emphasizes the sovereignty of each country, noting that "the exclusive use and utilization of natural resources within their respective territories is a right inherent in the sovereignty of each state and that the exercise of this right shall not be subject to any restrictions other than those arising from International Law."[34] Therefore, a Member State cannot be obligated to undertake any action that it did not approve.

10. Data Information Sharing, Exchange, and Harmonization

The Member States have a duty to "maintain a permanent exchange of information and cooperation among themselves," as well as with other agencies operating in the Amazon River Basin.[35] This sharing of information is reflected by the multiple memoranda of understanding that ACTO has entered into with

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[30] ACTO Strategic Plan, at 10, 76.

[31] *See* Sala Andes Amazonia: Biodiversity for life, *available at* http://www.otca.org.br/salaandesamazonia/index.php?lang=english (last viewed on 20 Oct. 2010).

[32] Amazon Cooperation Treaty, art. XXV.

[33] Protocol, art. II(3).

[34] Amazon Cooperation Treaty, art. IV.

[35] Amazon Cooperation Treaty, art. XV.

other regional or worldwide bodies (such as the Andean Community and the Inter-American Development Bank). The Member States also agreed to exchange information on flora, fauna, and diseases in the Amazonian territory and to make an annual report on the conservation measures adopted.[36]

In addition, the ACTO Bi-Annual Action Plan describes the programs and projects that are underway and is distributed to the Member States to keep them informed of the activities of the Permanent Secretariat. The Action Plan describes the duration of the program or project, estimated costs, and projected sources of funding. The coordinators of active projects must report back to the Permanent Secretariat on established indicators designed to assess the progress towards the achievement of project goals. The Permanent Secretariat will also publish an Annual Report on the progress of the Bi-Annual Action Plan.[37]

The ACTO Strategic Plan, released in October 2004, describes the plans of the Permanent Secretariat from 2004 to 2012 for various projects that are designed to promote sustainable development and to protect the Amazon Basin. The report describes the strategic axes that will be used to guide the ACTO, the programmatic structure of the plan, and operational tools. The Strategic Plan is meant to be used as a planning document that can be modified based on suggestions from the various stakeholders.[38]

Furthermore, in cooperation with the Directorate General for International Cooperation of the Netherlands (DGIS), the German Federal Ministry for Economic Cooperation and Development (BMZ), and the German Organization for Technical Cooperation (GTZ), ACTO established the Amazon Regional Program regarding the sustainable use and conservation of forests and biodiversity in the Amazon Region. The Amazon Regional Program was developed based on the ACTO Strategic Plan and focuses on being a forum for cooperation and communication among the Member States in the areas of forests, biotrade, tourism, indigenous affairs, and institutional strengthening. For example, in terms of forests, the Member States have developed 15 indicators, which correspond to eight criteria, to measure and evaluate the effectiveness of forest management in the Amazon. This evaluation system was implemented by each Member State and involved training programs, information gathering, identifying key stakeholders, and holding regional talks. The Member States are also working towards developing real-time satellite monitoring system of the forest. In addition, in March 2009, ACTO and the United Nations Environment Programme (with support from the University of the Pacific) released a report entitled "Perspectives on the Environment in the Amazon: Amazon GEO." The report, which involved the efforts of 150 scientists and researches, provides a comprehensive review of the economic, ecological, social, political, and geographical status of the Amazon region.[39]

11. Notifications

Project coordinators need to notify the Permanent Secretariat on their success in meeting progress indicators. *See* **Data Information Sharing, Exchange, and Harmonization.**

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[36] Amazon Cooperation Treaty, art. VII.

[37] ACTO Strategic Plan, at 67.

[38] ACTO Strategic Plan, at 9-11.

[39] *See* Programa Regional Amazônia, *available at* http://www.otca.org.br/programaregional/ (last viewed on 20 Oct. 2010) (website only available in Spanish and Portuguese).

12. Funding and Financing

The Amazon Cooperation Treaty has no explicit provision addressing funding and financing. The funding mechanism is unclear, although the Member States are required to contribute funds to the ACTO. According to the Strategic Plan, ACTO is studying alternative mechanisms for funding.[40] In the November 2009 Declaration of the Heads of State of the ACTO, the leaders charged the Permanent Secretariat with reviewing potential sources of funding from the Member States in order to move beyond ACTO's dependence on foreign funds.[41] Many of the project activities are financed with money from international organizations (such as the European Union, various entities of the United Nations, the Inter-American Development Bank, and the Organization of American States).[42]

13. Benefit Sharing

No specific provision

14. Compliance and Monitoring

Each Member State has a Permanent National Commission that is responsible for ensuring that Treaty provisions are carried out. *See* **Organizational Structure**. Additionally, coordinators of active projects are required to report to the Permanent Secretariat on indicators designed to monitor the achievement of the goals of the project. *See* **Data Information Sharing, Exchange, and Harmonization**.

15. Participation and the Role of Multiple Stakeholders

There is no standing meeting for the Ministers of Foreign Affairs (the highest body in the institutional structure). Meetings of the Ministers of Foreign Affairs are only convened at the request of a Member State, with the support of four Member States.[43] Since the Amazon Cooperation Treaty came into force in 1980, there have been ten meetings of the Ministers of Foreign Affairs, the most recent in 2010.[44] The CCA holds annual meetings and special meetings upon the request of a majority of the Member States.[45] Since the Permanent Secretariat was established in 2003, the Amazon Coordination Treaty has gained a more formal institutional structure that encourages more regular participation from the Member States.

When implementing projects, the ACTO invites the participation of multiple stakeholders from both international institutions and local civil society, especially as project partners and sponsors. In the Strategic Plan, the Permanent Secretariat encouraged the active participation of regional and local players—especially indigenous people—in developing Amazon cooperation initiatives. The Permanent

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[40] ACTO Strategic Plan, at 71.

[41] November 2009 Heads of State Declaration.

[42] Botto, *The Amazon Cooperation Treaty: A mechanism for cooperation and sustainable development*, at 82-87.

[43] Amazon Cooperation Treaty, art. XX.

[44] IX Meeting of Ministers of Foreign Affairs of Member Countries of the Amazon Cooperation Treaty Organization, 25 Nov. 2005, *available at* http://www.otca.org.br/en/institucional/index.php?id=1322. *See also* November 2009 Heads of State Declaration.

[45] Amazon Cooperation Treaty, art. XXI.

Secretariat has also stated that it recognizes the value of knowledge and practices that the indigenous people of the Amazon Basin have been developing for hundreds of years.[46]

ACTO also launched a "Teenager Expedition" into the Amazon, which consisted of taking 45 intermediate education level students from the Member States (as well as French Guyana), professors and scientists on a trek along the Amazon River. As part of the expedition, there were seminars and discussions on issues such as the history of the Amazon Basin, its occupation, the problems of the rural and urban populations, indigenous and riparian communities, ecology, as well as sustainable alternatives for the Amazon Basin.[47]

As part of the Amazon Regional Program and its Indigenous Regional Agenda, ACTO, in cooperation with the Amazonian Parliament, the Association of Amazon Universities, and COICA, has organized workshops, with key ministers from the Member States, on issues affecting indigenous peoples in the Amazon. The priority themes of these workshops are Indigenous Peoples in Voluntary Isolation and Initial Contact, Traditional Knowledge, and Indigenous Lands and Territories. The aim is to develop a work agenda for the region around these three priority themes. For example, in terms of Indigenous Peoples in Voluntary Isolation and Initial Contact, the tasks are to protect the indigenous peoples from environmental problems and external influences that could interfere with their culture, livelihood, or security as well as to encourage more effective political and civil participation. The workshops are also intended to bring attention to indigenous issues and to provide a forum for dialogue and interaction between the Member States (such as an exchange of information on government programs for indigenous peoples that are already in place).[48]

16. Dissolution and Termination

The decision to renounce the Amazon Cooperation Treaty must be announced by the departing Member State to the other Member States "at least ninety days prior to formal delivery of the instrument of denunciation" to Brazil. The Treaty will cease to be binding on the Member State denouncing it one year after the delivery of the denunciation instrument to Brazil.[49]

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[46] ACTO Strategic Plan, at 18, 30.

[47] ACTO – Teenager Expedition, *available at* http://www.otca.org.br/en/teenager_exp.php (last viewed on 20 Oct. 2010).

[48] *See* Amazon countries are progressing in the construction of policies for the protection of isolated indigenous peoples, *available at* http://www.otca.org.br/programaregional/index.php?option=com_content&task=view&id=137&Itemid=196 (last viewed on 20 Oct. 2010); ACTO prepares agenda of activities for Indigenous Affairs, *available at* http://www.otca.org.br/programaregional/index.php?option=com_content&task=view&id=133&Itemid=196 (last viewed on 20 Oct. 2010) (websites available in Spanish and Portuguese only). *See also* Georgetown Report, 26 Sept. 2008; Quito Report, 5 June 2009; Paramaribo Report, Aug. 2009, *available at* http://www.otca.org.br/en/documentos.php. The Georgetown Report approved the ACTO's Indigenous Regional Agenda. The Quito Report was issued at the conclusion of the Regional Amazon Workshop on Indigenous Peoples Living in Isolation and Initial Contact. As part of the meeting, the Member States agreed to create a Permanent Subcommission on Indigenous People in Isolation and Initial Contact. The Paramaribo Report summarizes the conclusions from the Regional Workshop on Traditional Knowledge of Indigenous Peoples and Other Tribal Communities of the Amazon Region.

[49] Amazon Cooperation Treaty, art. XXVIII (2).

17. Additional Remarks

ACTO is working to expand "ecotourism" in the Amazon Basin. ACTO's Sustainable Tourism Program, which has been underway since 2007, aims to facilitate dialogue between the different Member States, such as through annual meetings for the Ministers of Tourism or other high-level authorities in the different states and the formation of a Technical Tourism Committee composed of national focal points, in order to achieve integrated and coordinated action across the region. As part of this program, ACTO launched Destination Amazonia Year 2009, a regional campaign of activities to advertise the region (through conferences, fairs, festivals, workshops, road shows, etc.) and to promote the development of sustainable tourism in the Amazon. There are also projects underway to develop infrastructure and capacity-building as it relates to tourism, to further develop the idea of the Amazon as a travel destination, and to train individuals in the Member States to coordinate and undertake activities related to tourism.[50]

Furthermore, in 1989, the Member States established the Amazonian Parliament (PARLAMAZ) – a permanent body composed of the representatives from the democratically-elected Parliaments of the Member States. The Amazonian Parliament, which is headquartered in Caracas, Venezuela, works in close cooperation with ACTO and aims to promote political and parliamentarian exchange in the Amazon Basin. The Amazonian Parliament consists of the Assembly, the Board of Directors, the Executive Secretariat, and the Standing Committees (which include the Commission on Sustainable Development, Ecology and Biodiversity; the Committee on Legal Affairs, Legislative, International Cooperation and Integration; the Committee on Political Affairs, Women, Human Rights and Ethnic People of the Amazon; and the Committee on Cultural, Scientific, Technological and Education Issues).[51]

18. Websites and References

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- GEF Amazonas Project, *available at* http://www.otca.info/gefam/index.php?page=Home Page&cat=76
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- Georges D. Landau, *The Treaty For Amazonian Cooperation: A Bold New Instrument For Development*, 10 GA. J. INT'L. & COMP. L. 463 (1980)
- Manuel Picasso Botto, *The Amazon Cooperation Treaty: A mechanism for cooperation and sustainable development*, *in* MANAGEMENT OF LATIN AMERICAN RIVER BASINS 68-100 (Asit K.

[50] Destination Amazonia Year 2009, *available at* http://www.otca.org.br/destinoamazonia/en/ (last viewed on 20 Oct. 2010).

[51] The website for the Amazonian Parliament is no longer available. This information is from an archived version of the website – Parlamento Amazónico: Qué es el Parlamento Amazónico, *available at* http://web.archive.org/web/20010619143652/www.webmediaven.com/parlamaz/quees.html (last viewed on 20 Oct. 2010) (website available in Spanish only).

Biswas, Newton V. Cordeiro, Benedito P F Braga, Cecilia Tortajada eds.) (United Nations University Press 1999)

Cartagena Convention

1. Legal Basis

The Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region ("Cartagena Convention" or "Convention") was adopted in Cartagena, Colombia on 24 March 1983 and entered into force on 11 October 1986.[52]

The Convention is supplemented by three Protocols:

- Protocol Concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region ("Oil Spills Protocol"), which was also adopted on 24 March 1983 and entered into force on 11 October 1986.[53]

- Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region ("SPAW Protocol"), which was adopted on 18 January 1990 and entered into force on 18 June 2000.[54]

- Protocol Concerning Pollution from Land-Based Sources and Activities to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region ("LBS Protocol"), which was adopted on 6 October 1999 and entered into force on 11 July 2010.[55]

2. Member States

The Contracting Parties to the Cartagena Convention and the Oil Spills Protocol are Antigua and Barbuda, Bahamas, Barbados, Belize, Colombia, Costa Rica, Cuba, Dominica, the Dominican Republic,

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[52] Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region – The Final Act of the Conference of the Plenipotentiaries on the Protection and Development of the Marine Environment of the Wider Caribbean Region ("Cartagena Convention"), 24 Mar. 1983, *available at* http://www.cep.unep.org/cartagena-convention/text-of-the-cartagena-convention; The Caribbean Environment Programme ("CEP")–Cartagena Convention & Protocols, *available at* http://www.cep.unep.org/cartagena-convention (last visited on 6 Dec. 2010).

[53] Protocol Concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region ("Oil Spills Protocol"), 24 Mar. 1983, *available at* http://www.cep.unep.org/meetings-events/general-documents/oil-spills-protocol-en/view; CEP–Cartagena Convention & Protocols.

[54] Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region ("SPAW Protocol"), 18 Jan. 1990, *available at* http://www.cep.unep.org/cartagena-convention/spaw-protocol/spaw-protocol-en.pdf; CEP–Cartagena Convention & Protocols.

[55] Protocol Concerning Pollution from Land-Based Sources and Activities to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region ("LBS Protocol"), 6 Oct. 1999, *available at* http://www.cep.unep.org/cartagena-convention/lbs-protocol/overview-of-the-lbs-protocol/. On June 11, 2010, the Bahamas became the ninth country to ratify the LBS Protocol. Accordingly, under Article 28 of the Cartagena Convention, the LBS Protocol entered into force 30 days after the Bahamas deposited its instrument of ratification. *See* Caribbean Governments Gain New Legal Weapon in Combat Against Marine Pollution, CEP Press Release ("October 14, 2010 CEP Press Release"), 14 Oct. 2010, *available at* http://www.cep.unep.org/press/press-releases/caribbean-governments-gain-new-legal-weapon-in-combat-against-marine-pollution.

France, Grenada, Guatemala, Guyana, Jamaica, Mexico, the Netherlands, Panama, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, United Kingdom, the United States, and Venezuela.[56]

The Contracting Parties of the SPAW Protocol are Barbados, Belize, Colombia, Cuba, the Dominican Republic, France, Guyana, the Netherlands, Panama, Saint Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, the United States, and Venezuela.[57]

The Contracting Parties of the LBS Protocol are Antigua and Barbuda, Bahamas, Belize, France, Guyana, Panama, Saint Lucia, Trinidad and Tobago, and the United States.[58]

3. Geographical Scope

The Cartagena Convention's area of application comprises the Wider Caribbean Region, defined as "the marine environment of the Gulf of Mexico, the Caribbean Sea and the areas of the Atlantic Ocean adjacent thereto, south of 30 deg[rees] north latitude and within 200 nautical miles of the Atlantic coasts of the [Contracting Parties]" ("Convention Area"). Unless specified in the Protocols, the Convention Area does not include the internal waters of the Contracting Parties.[59]

4. Legal Personality

Article 15 of the Cartagena Convention assigns the secretariat functions for the Convention to the United Nations Environment Programme ("UNEP"). The UNEP, which is based in Nairobi, Kenya, is a division of the United Nations authorized to address environmental issues at the regional and international levels. The UNEP-administered Caribbean Environment Programme ("CEP") is one of the agency's Regional Seas Programs. It is managed by the countries comprising the Wider Caribbean Region through the 1981 Caribbean Action Plan, which was the precursor to the Cartagena Convention. The CEP's Secretariat functions are the responsibility of the Caribbean Regional Coordinating Unit ("CAR/RCU"), which is based in Kingston, Jamaica.[60]

5. Functions

The Cartagena Convention imposes general obligations on the Contracting Parties to prevent, reduce, and control pollution in the Convention Area; to promote sound environmental management; and to create

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[56] CEP–Cartagena Convention & Protocols; October 14, 2010 CEP Press Release; Guyana accedes to Cartagena Convention ("Guyana Accession Press Release"), 17 Jun. 2010, *available at* http://www.caribbeanpressreleases.com/articles/7072/1/Guyana-accedes-to-Cartagena-Convention/Page1.html. Honduras and Nicaragua have signed the Cartagena Convention and the Oil Spills Protocol, but they have not yet ratified either document. The European Economic Commission has also signed the Cartagena Convention.

[57] CEP–Cartagena Convention & Protocols; Guyana Accession Press Release. Antigua and Barbuda, Guatemala, Jamaica, Mexico, and the United Kingdom have signed the SPAW Protocol, but they have not yet ratified it.

[58] October 14, 2010 CEP Press Release; CEP–Cartagena Convention & Protocols. Colombia, Costa Rica, the Dominican Republic, and the Netherlands have signed the LBS Protocol, but they have not yet ratified it.

[59] Cartagena Convention, arts. 1, 2(1).

[60] CEP–About Us, *available at* http://www.cep.unep.org/about-us (last visited on 6 Dec. 2010).

additional mechanisms for further cooperation. The Cartagena Convention also obligates the Contracting Parties to take all appropriate measures to prevent, reduce, and control pollution caused by discharges from ships, dumping (from ships, aircraft or manmade structures at sea), land-based sources, sea-based activities, and airborne pollution. The Contracting Parties are further required to take appropriate measures to protect and preserve rare or fragile ecosystems and the habitat of depleted, threatened, or endangered species and to cooperate in response to pollution emergencies (including through the development and promotion of contingency plans). Finally, the Cartagena Convention commits the Contracting Parties to develop technical and other guidelines for use in the planning of major development projects to prevent or minimize potential harmful environmental impacts in the Convention Area. The Contracting Parties must also conduct assessments of the potential effects on the marine environment of those major development projects so that appropriate measures can be taken to prevent substantial pollution or harmful changes to the Convention Area.[61]

Under the Oil Spills Protocol, the Contracting Parties agreed to take all necessary preventative and remedial measures, within their respective capabilities, to protect the Wider Caribbean Region from oil spills by reducing the risk of oil spills and establishing and maintaining response plans. The Oil Spills Protocol provides an array of means to accomplish these objectives, including enacting legislation, preparing contingency plans, identifying and developing response capabilities, and designating an authority to be responsible for implementing the Protocol. The Contracting Parties further committed to provide assistance, within their capabilities, to other Contracting Parties who request help in response to an oil spill.[62]

Under the SPAW Protocol, the Contracting Parties committed to protect and preserve – in a sustainable way – threatened or endangered species and areas of special value within the Convention Area by regulating and, when necessary, prohibiting activities that would have adverse effects on those areas and species. Furthermore, the Contracting Parties agreed to enact certain national measures for the protection of threatened and endangered flora and fauna.[63]

The SPAW Protocol also calls for Contracting Parties to establish Protected Areas to sustain the natural resources of the Wider Caribbean Region and to encourage the ecologically-sound and appropriate use, understanding, and enjoyment of these areas. Protected Areas are intended to conserve, maintain, and restore: "(a) representative types of coastal and marine ecosystems of adequate size to ensure their long-term viability and to maintain biological and genetic diversity; (b) habitats and their associated ecosystems critical to the survival and recovery of endangered, threatened or endemic species of flora or fauna; (c) the productivity of ecosystems and natural resources that provide economic or social benefits

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[61] Cartagena Convention, arts. 4-12.

[62] Oil Spills Protocol, arts. 3, 6. The Annex to the Oil Spills Protocol provisionally applies the Protocol to spills of hazardous substances other than oil until a formal Annex is prepared and enters into force. No such formal annex appears to have been created following the entry into force of the Oil Spills Protocol.

[63] SPAW Protocol, arts. 3, 10, 11. Article 1 of the SPAW Protocol defines "endangered species" as "species or sub-species of fauna and flora, or their populations, that are in danger of extinction throughout all or part of their range and whose survival is unlikely if the factors jeopardizing them continue to operate." "Threatened species" is defined as "species or sub-species of fauna and flora, or their populations: (i) that are likely to become endangered within the foreseeable future through all or part of their range if the factors causing numerical decline or habitat degradation continue to operate; or (ii) that are rare because they are usually localized within restricted geographical areas or habitats or are thinly scattered over a more extensive range and which are potentially or actually subject to decline and possible endangerment or extinction."

and upon which the welfare of local inhabitants is dependent; and (d) areas of special biological, ecological, educational, scientific, historic, cultural, recreational, archaeological, aesthetic, or economic value […]"[64]

Each Contracting Party with jurisdiction over a Protected Area committed to enact protection measures to help achieve the objectives for which the Protected Area was established. These measures include regulation or prohibition of the dumping or discharge of wastes, coastal disposal or discharges causing pollution, passage of ships, fishing, the introduction of non-indigenous species, the exploitation of the sea-bed, and the trade in threatened or endangered flora or fauna, among other protections.[65] Contracting Parties must also adopt a planning and management regime for the Protected Areas and take appropriate measures (such as prohibiting all forms of destruction and the taking, killing, or commercial trade in the species) to protect and recover certain species of endangered or threatened marine and coastal flora and fauna.[66]

Under the LBS Protocol, the Contracting Parties committed to taking appropriate measures to prevent, reduce, and control pollution of the Wider Caribbean Region from land-based sources and activities, through the use of the best practical means available, and in accordance with each country's capabilities. To achieve this aim, the Contracting Parties agreed to develop and implement national, sub-regional, and regional plans. The Contracting Parties also agreed to cooperate in a number of areas, including monitoring activities, research and development of relevant technologies and practices, and exchange of scientific and technical information. The Annexes to the LBS Protocol identify priority source categories and primary pollutants that are of particular concern.[67]

The LBS Protocol further requires the Contracting Parties to develop and adopt guidelines regarding environmental impact assessments. For example, if a Contracting Party has reasonable grounds to believe that a planned land-based activity in its territory will likely generate substantial pollution or significant and harmful changes to the Convention Area, the LBS Protocol requires that Contracting Party to review the potential effects of the activity and to have the relevant government authorities consider that review when deciding whether to permit the activity.[68]

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[64] SPAW Protocol, art. 4(2)(a)-(d).

[65] SPAW Protocol, art. 5. Article 8 of the SPAW Protocol permits the Contracting Parties to enhance the protection of a protected area by establishing a "buffer zone" in which activities are less restricted than in the Protected Area, while still promoting the objectives of the Protected Area. Article 18 of the SPAW Protocol also requires Contracting Parties to provide assistance, at the request of other Contracting Parties, to develop, finance, and implement programs to establish protected areas and species.

[66] SPAW Protocol, arts. 6, 11(1)(a)-(c). The Contracting Parties to the SPAW Protocol adopted lists of threatened and endangered species of marine and coastal flora and fauna. Final Act of the Conference of Plenipotentiaries for the Adoption of the Annexes to the Protocol Concerning Specially Protected Areas and Wildlife in the Wider Caribbean Region, 10-11 June 1991, *available at* http://www.cep.unep.org/cartagena-convention/spaw-protocol/spaw-final-act-resolution-and-appendix.

[67] LBS Protocol, arts. III-V, Annexes I-IV. Under Article I of the LBS Protocol, "land-based sources and activities" are defined as "those sources and activities causing pollution of the Convention area from coastal disposal or from discharges that emanate from rivers, estuaries, coastal establishments, outfall structures, or other sources on the territory of a Contracting Party, including atmospheric deposition originating from sources located on its territory."

[68] LBS Protocol, art. VII.

The CEP has three main sub-programs that function in the Convention Area: the Assessment and Management of Environmental Pollution Program ("AMEP"), the Specially Protected Areas and Wildlife Program ("SPAW"), and the Communication, Education, Training and Awareness Program ("CETA").[69]

- AMEP involves work on assessing and managing environmental pollution, as well as providing regional coordination for the implementation of the Oil Spills and LBS Protocols. It is focused on developing National Programs of Action for the Contracting Parties, environmental monitoring and assessment, integrated watershed management, sewage and wastewater management, integrated waste management, and oil spills planning. In terms of pollution issues, AMEP is concerned with heavy metals, solid waste and marine litter, nutrients, oils (hydrocarbons), persistent organic pollutants and pesticides, radioactive substances, wastewater, sewage and sanitation, and sedimentation and erosion. AMEP is also responsible for implementing certain global environmental agreements (such as the Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities, Agenda 21 (a United Nations-run program concerning sustainable development), and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal) on the regional level.[70]

- The primary activities of the SPAW sub-program are protecting and conserving the Protected Areas and threatened and endangered species in the Wider Caribbean Region; developing guidelines to implement the SPAW Protocol, ensuring the conservation and sustainable use of coastal and marine ecosystems, and promoting sustainable tourism. In terms of marine and coastal issues, SPAW is focused on fisheries, invasive species, marine mammals, migratory birds, marine turtles, marine protected areas and related ecosystems, coral reefs, wetlands and mangroves, and seagrass beds. SPAW objectives also include: significantly increasing the number of national protected areas and species in the region and improving their management; strengthening regional capability in regards to the coordination of information exchange and training and technical assistance for national biodiversity conservation efforts; coordinating activities with the Secretariats of the Convention on Biological Diversity, as well as other biodiversity-related treaties such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Ramsar Convention on Wetlands, the Convention on Migratory Species, and the Western Hemisphere Convention; and helping governments in the Wider Caribbean Region implement better practices in regards to the establishment and management of protected areas, protected species, fragile ecosystems, and sustainable coastal and marine tourism.[71]

- CETA is focused on: strengthening educational systems, with the aim of promoting a greater understanding of the importance of the marine and coastal resources; developing and implementing national and regional technical and managerial training programs to be used by people with responsibility over the use and management of the region's marine and coastal resources; promoting public awareness campaigns by the media, other private sector entities, community-based organizations, and non-governmental organizations that would be intended to show the economic value of the region's marine and coastal resources; improving the CEP

[69] *See* CEP–Homepage, *available at* http://www.cep.unep.org/ (last visited on 6 Dec. 2010).

[70] CEP–AMEP, *available at* http://www.cep.unep.org/about-cep/amep (last viewed on 6 Dec. 2010).

[71] CEP–SPAW, *available at* http://www.cep.unep.org/about-cep/spaw/objectives (last viewed on 6 Dec. 2010).

websites (as well as other networking mechanisms and database developments) in order to increase access to information about the region's marine and coastal resources; distributing information on the CEP's projects and activities; and supporting the CEP's regional subprograms in regards to communication, education, training and awareness information management related to the implementation of the Cartagena Convention and its Protocols, as well as providing assistance concerning data access, information management, and the development and maintenance of a knowledge network.[72]

6. Organizational Structure

Under Article 15 of the Cartagena Convention, the UNEP is designated to carry out the secretariat functions of the Convention. These functions, which are carried out in practice by the CAR/RCU, include: preparing and convening the meetings and conferences for the Contracting Parties; disseminating relevant information to the Contracting Parties (such as information on bilateral or multilateral agreements for the protection of the marine environment in the Convention Area that are signed by any of the Contracting Parties, alerts concerning pollutions emergencies, and measures adopted by the Contracting Parties to implement the Cartagena Convention and its Protocols); performing the tasks assigned by the Protocols; consulting with the Contracting Parties on questions related to the Cartagena Convention and its Protocols; coordinating the implementation of cooperative activities among the Contracting Parties; and establishing relationships with other relevant international bodies.[73] The CAR/RCU is also responsible for providing assistance to the countries in the region, strengthening national and subregional institutions, coordinating international assistance, and fostering technical cooperating among countries.[74] Each Contracting Party is required to designate a representative to serve as its channel of communication with CAR/RCU concerning the Cartagena Convention and its Protocols.[75]

The Contracting Parties must hold ordinary Intergovernmental Meetings once every two years, and may hold extraordinary meetings at any other time with the support of a majority of the Contracting Parties. These meetings are intended to review the implementation of the Cartagena Convention and its Protocols, including, *inter alia*, assessing the state of the environment in the Convention Area, evaluating the measures taken by the Contracting Parties to implement the Convention and its Protocols, and reviewing cooperative activities to be undertaken within the framework of the Convention and its Protocols. The Contracting Parties may also establish working groups, as needed, to consider issues concerning the Convention and its Protocols.[76] In addition, the Contracting Parties approve biennium work plans and budgets at these meetings.[77] A Monitoring Committee and Bureau of Contracting Parties is responsible

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[72] CEP–CETA, *available at* http://www.cep.unep.org/about-cep/ceta/ceta (last viewed on 6 Dec. 2010).

[73] *See also* Cartagena Convention, arts. 3, 11, 16, 17, 18, 22.

[74] UNEP-Caribbean Regional Coordinating Unit, *available at* http://www.cep.unep.org/about-cep/unep-car-rcu/ (last viewed on 6 Dec. 2010).

[75] Cartagena Convention, art. 15(2); *see also* CEP–Member States, *available at* http://www.cep.unep.org/about-cep/member-states/member-states/ (last viewed on 6 Dec. 2010).

[76] Cartagena Convention, arts. 16, 22.

[77] *See, e.g.*, Draft Workplan and Budget for the Caribbean Environment Programme for the Biennium 2010-2011, Fourteenth Intergovernmental Meeting on the Action Plan for the Caribbean Environment Programme and Eleventh Meeting of the Contracting Parties to the Convention for the Protection and Development of the Marine

for supervising program developments and provides policy direction in between the Intergovernmental Meetings.[78]

The Oil Spills Protocol designated the UNEP – through the CAR/RCU and the International Maritime Organization – to assist the Contracting Parties in developing and maintaining their contingency plans, to publicize training courses and programs, to coordinate regional emergency response activities, and to provide a forum for discussion. In addition, the CAR/RCU is responsible for establishing and maintaining liaisons with relevant regional and international organizations and private entities (such as major oil producers, refiners, transporters, etc.); developing an inventory of emergency response equipment, materials and expertise available in the Wider Caribbean Region; distributing information related to preventing and combating oil spills; maintaining means for emergency response communications; promoting research on oil spill-related matters; supporting the Contracting Parties in exchanging information; and preparing relevant reports and performing any other tasks as may be required. Ordinary meetings of the Contracting Parties to the Oil Spills Protocol are held in conjunction with the Intergovernmental Meeting of the Cartagena Convention and are intended to review the operation of the Oil Spills Protocol and to consider special technical arrangements and other measures to improve the Protocol's effectiveness.[79]

The SPAW Protocol established a Scientific and Technical Advisory Committee to advise the Contracting Parties on matters related to the listing of protected areas and species; the management and protection of protected areas and species and their habitats; environmental impact assessments; the establishment of common guidelines and criteria related to protected areas and species; proposals for technical assistance for training, research, education, and management; and any other matters related to the implementation of the SPAW Protocol. Each Contracting Party is entitled to appoint an appropriately qualified scientific expert, who may be accompanied by other appointed experts and advisors, to serve as its representative on the Scientific and Technical Advisory Committee. As with the Oil Spills Protocol, the CAR/RCU is also designated to carry out the secretariat functions for the SPAW Protocol. The SPAW Protocol's ordinary meetings are held in conjunction with the Intergovernmental Meeting of the Cartagena Convention and are intended to review and direct the implementation of the Protocol. The ordinary meetings are also intended to serve as a forum to evaluate the effectiveness of measures adopted regarding the management and protection of areas and species, as well as to monitor and promote the development of networks of protected areas and recovery plans for protected species.[80]

Like the SPAW Protocol, the LBS Protocol establishes a Scientific, Technical, and Advisory Committee to which each Contracting Party may appoint an expert as its representative, who may be accompanied by other designated advisors. The Scientific, Technical, and Advisory Committee will be responsible for, *inter alia*: evaluating the Convention Area in terms of land-based pollution sources and activities; reviewing the effectiveness of the measures that would be taken to implement the Protocol; assisting Contracting Parties in developing programs to implement the Protocol and assessing pollution loads in the Convention Area; advising on the development of common criteria for the prevention, reduction, and

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Environment of the Wider Caribbean Region ("2010-2011 Draft Workplan and Budget"), 6-9 Oct. 2010, *available at* http://www.cep.unep.org/meetings-events/14th-igm/workplan-2010-2011.pdf.

[78] CEP–Convention Bodies, *available at* http://www.cep.unep.org/cartagena-convention/convention-bodies/ (last viewed on 6 Dec. 2010).

[79] Oil Spills Protocol, arts. 9-10.

[80] SPAW Protocol, arts. 20, 22, 23.

control of pollution from land-based sources and activities in the Convention Area; recommending priority measures for scientific and technical research and management; developing relevant programs on environmental education and awareness; and performing other tasks that would be related to the implementation of the Protocol. As with the other Protocols, the LBS Protocol designates the CAR/RCU to carry out its secretariat functions and its ordinary meetings will also be held in conjunction with the Intergovernmental Meeting of the Cartagena Convention.[81]

7. Relationships

In addition to the role played by the CAR/RCU, the Contracting Parties also have the option of using Regional Activity Centres ("RACs") and Regional Activity Networks ("RANs") to coordinate and implement activities related to the Cartagena Convention and its Protocols. The RACs are financially-autonomous organizations with a regional focus that Contracting Parties designate to carry out specific technical functions and activities. There are currently 4 RACs: (1) the Regional Marine Pollution Emergency Information and Training Center for the Wider Caribbean (which supports the Oil Spills Protocol); (2) the Centre of Engineering and Environmental Management of Coasts and Bays (which supports the LBS Protocol); (3) the Institute of Marine Affairs (which also supports the LBS Protocol); and (4) the Regional Activity Centre for Specially Protected Areas and Wildlife (which supports the SPAW Protocol). The RANs are networks of technical institutions (including governmental, intergovernmental, non-governmental, academic, and scientific) and individuals that provide scientific and technical input and expertise to the relevant RACs.[82]

The CAR/RCU has also entered into a Memorandum of Cooperation with the Secretariat of the Convention on Biological Diversity that contains provisions regarding institutional cooperation, exchange of information and experience, coordination of work programs, and joint conservation action between the two international organizations.[83]

8. Decision Making

Generally, substantive decisions under the Cartagena Convention and its Protocols are taken by consensus among the Contracting Parties, although the Contracting Parties have yet to agree on the terms of the decision-making rule.[84] Article 20 of the Cartagena Convention specifies that the Contracting Parties are required to unanimously adopt financial rules and procedural rules to govern their meetings.

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[81] LBS Protocol, arts. XIII-XV.

[82] CEP–Regional Activity Centres & Networks, *available at* http://www.cep.unep.org/about-cep/regional-activity-centres (last viewed on 6 Dec. 2010).

[83] Memorandum of Co-operation between the Secretariat of the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena, 1983) and its Protocols, including the Protocol Concerning Specially Protected Areas and Wildlife (SPAW) and The Secretariat of the Convention on Biological Diversity (CBD) (Nairobi, 1992), 3 Mar. 1997, *available at* http://www.cep.unep.org/cartagena-convention/moc-with-cbd/.

[84] *See* Draft Rules of Procedure & Financial Rules for the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention) Including the Final Report of the Inter-Session Working Group, Fourteenth Intergovernmental Meeting on the Action Plan for the Caribbean Environment Programme and Eleventh Meeting of the Contracting Parties to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region ("Draft Rules of Procedure & Financial Rules"), Rule 41, 28 May 2010, *available at* www.cep.unep.org/meetings-events/14th-igm/unep-depi-car-ig.30.4-

Any amendment to the Cartagena Convention or its Protocols must be approved by a three-fourths majority vote of the Contracting Parties present at a conference of plenipotentiaries. After the amendment is approved, it will be submitted to the Depositary for acceptance by all of the Contracting Parties. Thirty days after three-fourths of the Contracting Parties of the relevant instrument have ratified the amendment, it will enter into force for the Contracting Parties that have accepted it.[85]

To amend an annex, the amendment must be adopted at an Intergovernmental Meeting, or an extraordinary meeting, by a three-fourths majority vote of the Contracting Parties present. If a Contracting Party declines to accept the amendment to an annex, it must to notify the Depositary within ninety days of the adoption of the amendment. The amendment to the annex will then enter into force for all Contracting Parties to the Cartagena Convention or the relevant Protocol(s) that did not submit the required opposition notification. New annexes and amendments to the Annex on Arbitration follow the procedures listed for amendments to the Convention and its Protocols.[86]

9. Dispute Resolution

The Cartagena Convention calls upon the Contracting Parties to settle any disputes concerning the interpretation or application of the Convention or its Protocols through negotiations or other peaceful means. If these means of dispute resolution fail, the parties may agree to submit the dispute to arbitration as set forth in the Annex to the Convention.[87]

According to the Annex to the Cartagena Convention that governs the terms of arbitration, arbitral tribunals shall consist of three members. Each party to the dispute may appoint an arbitrator, and the arbitrators will, by agreement, designate a third arbitrator, who will serve as chairman of the tribunal. The chairman of the tribunal cannot be a national of either of the parties to the dispute. If a party refuses to appoint an arbitrator, or if appointed arbitrators cannot agree on a chairman, the Secretary General of the United Nations can appoint the arbitrator(s) necessary to constitute the tribunal. The arbitral tribunal must render its decision in accordance with international law and the provisions of the Cartagena Convention and the relevant Protocol(s). Decisions are made by majority vote. The tribunal must issue an award within five months of its constitution, unless it requires additional time in which case it may

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eng.-rev.pdf. The draft rules provide two alternative decision-making requirements and the Contracting Parties have yet to come to an agreement on which terms should govern the Convention and its Protocols. Both options require the Contracting Parties to attempt to reach decisions by consensus. But Option 1a requires that decisions on matters of substance be made by consensus and permits decisions on procedure to be made by a three-fourths majority of the Contracting Parties present and voting, while Option 1b allows decisions on both substantive and procedural issues to be made by a three quarters majority if the Contracting Parties are unable to reach a consensus.

[85] Cartagena Convention, art. 18. Under Article 18(1), a conference of plenipotentiaries will be called to consider an amendment to the Cartagena Convention or its Protocol(s) upon the request of a majority of the Contracting Parties.

[86] Cartagena Convention, art. 19. The SPAW and LBS Protocols contain some variations on the process for the adoption of amendments to annexes and new annexes. *See* SPAW Protocol, arts. 11(4), 26; LBS Protocol, art. XVII.

[87] Cartagena Convention, art. 23. A Contracting Party may notify the Depositary that, in relation to any other Contracting Party who accepts the same obligation, it will abide by, without special agreement, the procedures listed in the Annex.

extend the time limit for up to five additional months. The decision of the arbitral tribunal is final and binding upon the parties to the dispute. [88]

10. Data Information Sharing, Exchange, and Harmonization

In Article 13 of the Cartagena Convention, the Contracting Parties agreed to cooperate, both with each other and with relevant international and regional organizations, in "scientific research, monitoring, and the exchange of data and other scientific information relating to the purposes of th[e] Convention." In addition, Article 17 of the SPAW Protocol calls upon the Contracting Parties to develop "scientific, technical and management-oriented research" on protected areas and threatened or endangered species and their habitats. Contracting Parties are also encouraged to consult with one other and with relevant organizations to identify protected areas and specifies and to conduct research and monitoring programs to protect them; to assess the effectiveness of measures enacted to implement management and recovery plans; to exchange information on and coordinate research and monitoring programs; and to standardize the procedures used for collecting, reporting, archiving, and analyzing scientific and technical information. The CAR/RCU is also intended to serve as a forum for collecting, reviewing, and distributing information on relevant studies, publications, and the results of work conducted under the framework of the Cartagena Convention and its Protocols.[89]

The CEP manages and/or contributes to numerous databases related to the marine and coastal environment in the Wider Caribbean Region. The SPAW Species Database, which is hosted and maintained by the CEP, contains both taxonomic information and distribution data on protected species of marine and coastal flora and fauna. Other relevant databases include: the Caribbean Marine Protected Area (MPA) (information on protected coastal areas in 34 countries and territories); the Marine Litter Database; the Global Environment Facility Integrating Watershed and Coastal Areas Management in Caribbean Small Island Developing States Project Databases (GEF-IWCAM); INFOTERRA (the UNEP global environmental information exchange network); and UNEP State of the Environment Reports (SOER) (information on the environmental health of countries and regions).[90] The Contracting Parties also agreed to develop information systems and networks to promote the exchange of information and facilitate the implementation of the LBS Protocol.[91]

11. Notifications

Contracting Parties are obligated to submit information to the CAR/RCU concerning the measures that they have adopted to implement the Cartagena Convention and its Protocols.[92]

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[88] Cartagena Convention, Annex arts. 3-6, 10. According to Article 8 of the Annex, the expenses for the arbitral tribunal are equally divided between the parties to the dispute.

[89] *See* UNEP-Caribbean Regional Coordinating Unit.

[90] *See* CEP–Databases, *available at* http://www.cep.unep.org/publications-and-resources/databases (last viewed on 6 Dec. 2010). Protected species are listed in Annexes I-III to the SPAW Protocol. *See* SPAW Protocol, art. 11(1); Final Act of the Conference of Plenipotentiaries for the Adoption of the Annexes to the Protocol Concerning Specially Protected Areas and Wildlife in the Wider Caribbean Region, Annexes I-III, 10-11 June 1991, *available at* http://www.cep.unep.org/cartagena-convention/spaw-protocol/spaw-final-act-resolution-and-appendix/view.

[91] LBS Protocol, art. VIII.

[92] Cartagena Convention, art. 22; Oil Spills Protocol, art. 4; SPAW Protocol, art. 19; LBS Protocol, art. XII.

In addition, Article 11(2) of the Convention and Article 5 of the Oil Spills Protocol create parallel notification requirements. Article 11(2) of the Cartagena Convention provides: "When a Contracting Party becomes aware of cases in which the Convention area is in imminent danger of being polluted or has been polluted, it shall immediately notify other States likely to be affected by such pollution, as well as the competent international organizations." Similarly, Article 5 of the Oil Spills Protocol requires the Contracting Parties to establish reporting procedures to ensure that oil spills are reported as rapidly as possible. Following an oil spill, a Contracting Party must immediately notify all other Contracting Parties whose interests would likely be affected, the flag State of any ship involved, and the competent international organizations. The Contracting Party must also follow-up with the Contracting States and international organizations regarding the measures taken to minimize or reduce the threat of the pollution.

12. Funding and Financing

The main sources of program funding for the Cartagena Convention and its Protocols are the Global Environment Facility ("GEF"), the Caribbean Trust Fund ("CTF"), and other sources such as the non-member governments that may finance specific projects and activities.[93] The CTF, which consists of voluntary contributions from the Contracting Parties, was established in 1983 to finance the implementation of CEP programs. These voluntary contributions vary widely; in 2009, they ranged from $3,430 (Montserrat and St. Kitts-Nevis) to $13,917 (Guatemala and Panama) to $291,598 (France), with a wide range of values in between.[94] But the CTF constitutes only a fraction of the total program funding. In 2010, the proposed budget was US $16.7 million, with US $1.8 million in contributions from the CTF, US $9.5 million in secured funding from other sources for specific programs and activities, and US $5.4 million that still needed to be mobilized from other sources.[95]

The SPAW and LBS Protocols provide that the UNEP may seek additional funds or other forms of assistance, including voluntary contributions from the Contracting Parties, other governments and governmental agencies, international organizations, non-governmental organizations, the private sector, and individuals.[96] Additional funds have come from GEF projects in the region and from the Swedish International Development Agency, among other sources.[97]

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[93] *See* 2010-2011 Draft Workplan and Budget, ¶ 106, Annex I.

[94] *See* Report of the Meeting, Thirteenth Intergovernmental Meeting on the Action Plan for the Caribbean Environment Program and Tenth Meeting of the Contracting Parties to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, 9-12 Sept. 2008, *available at* http://www.cep.unep.org/meetings-events/5th-lbs-istac/5th_lbs_istac_documents/Information%20 Documents/unep-depi-car-ig.28-4-report-13th-igm-10th-cop.pdf.

[95] 2010-2011 Draft Workplan and Budget, Annex I. The Working Group on the Rules of Procedure and Financial Rules has developed draft financial rules for the Cartagena Convention and its Protocols, but they have not yet been adopted. *See* Draft Rules of Procedure & Financial Rules.

[96] SPAW Protocol, art. 24; LBS Protocol, art. XVI.

[97] 2010-2011 Draft Workplan and Budget, ¶ 106.

13. Benefit Sharing

No specific provision, but the goal of the Cartagena Convention and its Protocols is to improve and protect the marine and coastal environment of the Wider Caribbean Region for the benefit of all the countries and individuals in the region.

14. Compliance and Monitoring

Before the Contracting Parties' biannual meetings, different bodies of the CEP submit reports detailing their activities over the previous two-year period and/or analyzing the effectiveness of programs and activities. For example, in preparation for the 2010 Intergovernmental Meeting, the Steering Committee to the Oil Spills Protocol, the Interim Scientific, Technical, and Advisory Committee to the LBS Protocol, the Scientific and Technical Advisory Committee to the SPAW Protocol, and the Regional Activity Centres, among others, submitted reports.[98] The Executive Secretary of the Cartagena Convention also regularly produces a report on the implementation of the biennial work program for the CEP.[99]

Under Article 13 of the Cartagena Convention, the Contracting Parties agreed to cooperate, both directly and through relevant international and regional organizations, in regards to monitoring programs. The Contracting Parties also committed to developing and coordinating their monitoring programs related to the Convention Area, and to seek to participate in international arrangements concerning pollution monitoring.

Furthermore, under the SPAW Protocol, the Contracting Parties are authorized to consult with each other, and with relevant regional and international organizations, in order to establish monitoring programs concerning protected areas and species (and, along with scientific and technical research, to use these programs to assess the effectiveness of measures undertaken to implement management and recovery plans). The Contracting Parties also committed to exchanging information regarding their monitoring programs.[100]

Article VI of the LBS Protocol also calls upon the Contracting Parties to implement appropriate monitoring programs in order to systematically identify and evaluate patterns and trends concerning the environmental quality of the Convention Area, as well as to analyze the effectiveness of measures undertaken to implement the LBS Protocol. These monitoring programs are supposed to avoid duplicating other programs, especially similar programs in the region that are already being carried out by international organizations.

15. Participation and the Role of Multiple Stakeholders

The Draft Procedural Rules for the Cartagena Convention provide that parties other than the Contracting Parties may participate in meetings, but these other parties cannot be involved in the decision-making process. Non-Contracting Party participants include non-member states, the United Nations and its

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[98] *See* CEP–14th Intergovernmental Meeting, *available at* http://www.cep.unep.org/meetings-events/14th-igm (last viewed on 6 Dec. 2010).

[99] *See e.g.*, Report of the Executive Director of the Cartagena Convention on the Implementation of the 2008-2009 Work Programme of the Caribbean Environment Programme, 27 Sept. 2010, *available at* http://www.cep.unep.org/meetings-events/14th-igm/unep-depi-_car-ig-30_inf-4.pdf.

[100] SPAW Protocol, art. 17(2)-(3).

subsidiary bodies, and any international inter-governmental or non-governmental organization concerned with the protection and development of the marine environment of the Wider Caribbean Region.[101]

In addition to the RACs and RANs (*see* **Relationships**), the CEP has partnered with various sectors of society (such as governments, non-governmental organizations, media, youth groups, the private sector, civil society, and the scientific community) to implement programs and activities under the framework of the Cartagena Convention and its Protocols. Some of these partners include, among others, the Association of Caribbean States, the Canadian International Development Agency, the Caribbean Development Bank, the Economic Commission for Latin America and the Caribbean, the Global Environmental Facility, the Inter-American Development Bank, the Ocean Conservancy, the Ramsar Convention on Wetlands, and the Swedish International Development Cooperation Agency.[102] These project partners provide funding, technical expertise, or other resources. For example, one of the projects in the 2008-2009 biennium work plan involved a regional oil spill exercise and Caribbean workshop to develop a regional cooperation mechanism for responding to oil spills. Project partners who provided technical expertise and coordination support included the Regional Association of Oil and Natural Gas Companies in Latin America and the Caribbean (ARPEL), Clean Caribbean and Americas, Centre of Documentation, Research, and Experimentation on Accidental Water Pollution (Cedre), the International Oil Compensation Fund (IOPC), and the International Tanker Owners Pollution Federation Limited (IOPC).[103]

The CaMPAM Network and Forum, part of the SPAW sub-program, is intended to promote capacity building for the Marine Protected Areas in the Wider Caribbean Region. In addition to the CEP, partners in CaMPAM include the Nature Conservancy, the Environmental Defense Fund, the Gulf and Caribbean Fisheries Institute, and the U.S. National Oceanic and Atmospheric Administration's National Ocean Service and National Marine Fisheries Service. CaMPAM's activities include training of trainers for Marine Protected Area Managers, hosting regional training workshops, operating a small grants fund, promoting sustainable fishing practices and alternative livelihoods for fishermen, exchanging lessons between the Marine Protected Areas, administering the Marine Protected Areas Database, and providing resources for Marine Protected Area Managers.[104]

Article X of the LBS Protocol also relates to participation. It requires the Contracting Parties to "promote public access to relevant information concerning pollution of the Convention Area from land-based sources and activities and the opportunity for public participation in decision-making processes concerning the implementation" of the LBS Protocol. To carry out this task, Article XI of the LBS Protocol charges the Contracting Parties with developing environmental education programs on the need to prevent, reduce, and control pollution of the Convention Area from land-based sources and activities and to train individuals in these tasks.

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[101] Draft Rules of Procedure & Financial Rules, arts. 52-55.

[102] CEP–Partners, *available at* http://www.cep.unep.org/our-partners/ (last viewed on 6 Dec. 2010).

[103] *See* Draft Workplan and Budget for the Caribbean Environment Programme for the Biennium 2008-2009, Thirteenth Intergovernmental Meeting on the Action Plan for the Caribbean Environment Programme and Tenth Meeting of the Contracting Parties to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, 4 Sept. 2008, at 18-20, *available at* http://www.cep.unep.org/meetings-events/13th-igm-1/igm13/IG28-3en.pdf.

[104] CEP–CaMPAM Network and Forum, *available at* http://www.cep.unep.org/about-cep/spaw/campam-network-and-forum-1/ (last viewed on 6 Dec. 2010).

16. Dissolution and Termination

According to Article 29 of the Cartagena Convention, Contracting Parties may denounce the Convention or a Protocol anytime after two years from the date of entry into force of the relevant instrument for the particular Contracting Party. If a Contracting Party denounces the Cartagena Convention, it will also be considered to have denounced all of the Protocols to which it was a party. And a Contracting Party is considered to have denounced the Convention itself if, "upon its denunciation of a protocol, [it] is no longer a Contracting Party to any protocol of th[e] Convention.[105]

17. Additional Remarks

The CEP originated from the 1981 Action Plan for the Caribbean Environment Programme, which was coordinated by the UNEP and adopted by the 22 governments that participated in the first Intergovernmental Meeting. The major components of the Action Plan were: "(a) Environmental Assessment and Management, (b) Education, Training and Development of Human Resources, and (c) Supporting Measures (including institutional and financial arrangements)."[106] The Cartagena Convention was adopted in 1983, providing the CEP with a regional legal framework.

As a complement to the Cartagena Convention and its Protocols, GEF is also conducting numerous projects in the Wider Caribbean Region, four of which are described below. The GEF-Caribbean Large Marine Ecosystem Project, which commenced on 1 May 2009, aims to form a consensus among countries and communities in the region to improve the management and promote the sustainability of shared marine resources through an integrated management approach.[107]

Another GEF partnership project is the Caribbean Regional Fund for Wastewater Management ("CReW"), which GEF seeks to establish jointly with UNEP and the Inter-American Development Bank. The CReW is currently pending internal GEF approval. It seeks to combat the degradation of the Caribbean marine environment caused by the discharge of untreated wastewater by serving as a pilot project on the development and financing of wastewater projects in the region and the promotion of relevant policy reforms.[108]

The 2004 GEF Integrating Watershed and Coastal Area Management in the Small Island Developing States Project is another partnership project sponsored by GEF. The United Nations Development Programme and UNEP are the project implementing agencies, and CAR/RCU and the Caribbean Environmental Health Institute are the project executing agencies. The project is focused on enhancing

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[105] Cartagena Convention, art. 29. Denunciation will take effect 90 days after the date on which the depositary receives written notice of the denunciation from the Contracting Party.

[106] *See* The Caribbean Environment Programme 1981-2006, Twelfth Intergovernmental Meeting on the Action Plan for the Caribbean Environment Programme and the Ninth Meeting of the Contracting Parties to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, 29 Nov. – 2 Dec. 2006, at 1, *available at* http://www.cep.unep.org/meetings-events/12th-igm/12th%20IGM/IG26-inf7en.pdf.

[107] *See* Caribbean LME Project, *available at* http://www.clme.iwlearn.org/ (last viewed on 6 Dec. 2010).

[108] CEP–GEF CReW Project, *available at* http://www.cep.unep.org/gef-crew-caribbean-regional-fund-for-wastewater-management-unep-iadb-gef-partnership-project/ (last viewed on 6 Dec. 2010).

the capacity of participating countries to sustainably manage their aquatic resources and ecosystems and on strengthening integrated freshwater basin-coastal area management.[109]

The fourth GEF project of note is the Reducing Pesticide Runoff to the Caribbean Sea Project ("REPCar"). The REPCar Project is a vehicle through which UNEP and GEF collaborate to mitigate the impact of runoff from pesticide use in Colombia, Costa Rica, and Nicaragua through management practices and specific measures designed to control the use and application of pesticides in agriculture.[110]

18. Websites and References

- Caribbean Environment Programme, *available at* http://www.cep.unep.org/.

- Report of the Meeting, Thirteenth Intergovernmental Meeting of the Action Plan for the Caribbean Environment Programme and Tenth Meeting of the Contracting Parties to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, 12 Sept. 2008, *available at* http://www.cep.unep.org/meetings-events/13th-igm-1/igm13/IG28-4en.pdf.

- Report of the Executive Director of the Cartagena Convention on the Implementation of the 2008-2009 Work Plan of the Caribbean Environment Programme, 27 Sept. 2010, *available at* http://www.cep.unep.org/meetings-events/14th-igm/unep-depi-_car-ig-30_inf-4.pdf.

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- Benedict Sheehy, *International Marine Environment Law: A Case Study in the Wider Caribbean Region*, 16 GEO. INT'L ENVTL. L.REV. 441 (2003-2004).

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- Charlotte de Fontaubert and Tundi Agardy, *Critical Analysis of the SPAW Protocol: The Dilemma of Regional Cooperation*, 30 U. MIAMI INTER-AM. L. REV. 85 (1998-1999).

[109] GEF–IWCAM Project, *available at* http://iwcam.org/ (last viewed on 6 Dec. 2010).

[110] REPCar Project, *available at* http://www.cep.unep.org/repcar (last viewed on 6 Dec. 2010).

Columbia River Basin

1. Legal Basis

The Columbia River Treaty was signed by the United States and Canada on 17 January 1961.[111] But, the Columbia River Treaty was not implemented until three years later, in 1964, when the province of British Columbia in Canada agreed to the Treaty. The final negotiations resulted in: (1) a Protocol to the Columbia River Treaty that clarified and limited the application of certain provisions of the Treaty; (2) an agreement between the Canadian federal government and the province of British Columbia that established and clarified certain rights and obligations; and (3) the sale of the Canada's right under the Columbia River Treaty to certain downstream U.S. power benefits to U.S. electric utilities for a period of 30 years.

The Treaty Relating to Boundary Waters between the United States and Canada is also relevant to the Columbia River Basin.[112] It was signed by the United Kingdom and the United States in 1909, and it set out rules for dispute resolution regarding issues arising from the use, obstruction or diversion of the boundary waters of Canada and the United States.[113] The Boundary Waters Treaty established the International Joint Commission ("IJC"). The IJC is composed of six commissioners, with the United States and Canada each appointing three commissioners.[114]

2. Member States

The Columbia River Treaty was signed by the United States and Canada, the only two countries that border the Columbia River Basin.

3. Geographical Scope

The total area of the Columbia River Basin is 668,400 square kilometers. Approximately 101,900 square kilometers of the Basin (or 15.25%) is in Canada, while 566,500 square kilometers of the Basin (or 84.75%) is in the United States.[115] The Columbia River Basin covers area in the U.S. states of

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[111] Treaty between Canada and the United States of America relating to cooperative development of the water resources of the Columbia River Basin (with Annexes) ("Columbia River Treaty"), 17 Jan. 1961, and exchanges of notes at Washington, 22 Jan. 1964 and at Ottawa, 16 Sept. 1964, 542 U.N.T.S. 244, *available at* http://www.ccrh.org/comm/river/docs/cotreaty.htm.

[112] Treaty between the United States and Great Britain relating to boundary waters between the United States and Canada ("Boundary Waters Treaty"), 11 Jan. 1909, 36 Stat. 2448, *available at* http://www.ijc.org/rel/agree/water.html#text.

[113] The Preliminary Article instructs that boundary waters are defined as "the waters from main shore to main shore of the lakes and rivers connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary." Boundary Waters Treaty, Preliminary Article.

[114] Boundary Waters Treaty, art. VII.

[115] International River Basin Register, Oregon State University Program in Water Conflict Management and Transformation, *available at* http://www.transboundarywaters.orst.edu/publications/register/tables/IRB_northamerica.html (last viewed 6 Oct. 2010).

Washington, Oregon, Idaho, Montana, Nevada, Wyoming and Utah and the Canadian province of British Columbia.

4. Legal Personality

Article XIV of the Columbia River Treaty directs the United States and Canada to each designate an entity or entities which are empowered and charged with the duty to formulate and carry out the operating arrangements necessary to implement the Treaty. The countries may designate more than one entity if desired. The Canadian Entity is British Columbia Hydro and Power Authority and the U.S. Entities are the Administrator of the Bonneville Power Administration (in the U.S. Department of the Interior) and the Division Engineer, North Pacific Division of the U.S. Army Corps of Engineers. The Bonneville Power Administration markets power from federal projects in the U.S. part of the Columbia Basin, while the U.S. Army Corps of Engineers oversees flood control matters and other major civil engineering projects occurring on the Columbia River. The British Columbia Hydro and Power Authority is responsible for the operation of the three Canadian dams required under the Treaty (*see* **Functions**).[116]

The duties of the Entities, pursuant to Article XIV of the Columbia River Treaty, include:

- Coordination of plans and exchange of information relating to facilities to be used in producing and obtaining the benefits contemplated by the Columbia River Treaty;
- Calculation of and arrangements for the delivery of hydroelectric power to which Canada is entitled for providing flood control;
- Calculation of the amounts payable to the United States for standby transmission services;
- Consultation on requests for variations in the operation of the water storage;
- The establishment and operation of a hydrometeorological system;
- Assistance and cooperation with the Permanent Engineering Board (*see* **Data Information Sharing, Exchange, and Harmonization**) in the discharge of its functions;
- Periodic calculation of accounts;
- Preparation of hydroelectric operating plans and flood control operating plans for the Canadian storage, as well as determination of the downstream power benefits to which Canada is entitled;
- Preparation of proposals for Canada to dispose of its downstream power benefits in the United States and the carrying out of any disposal that is authorized or any exchange of dependable hydroelectric capacity and average annual usual hydroelectric energy that is provided for;
- Making appropriate arrangements for delivery to Canada of the downstream power benefits to which Canada is entitled, including such matters as load factors for delivery, times and points of delivery, and calculation of transmission loss; and

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[116] Columbia River Treaty: History and 2014/2024 Review—Bonneville Power Administration ("2014/2024 Review"), Apr. 2008, at 4, 6, *available at* http://www.bpa.gov/Corporate/pubs/Columbia_River_Treaty_Review_-_April_2008.pdf.

- Preparation and implementation of detailed operating plans that may produce results more advantageous to both countries than those that would arise from operation under the Assured Operating Plans (*see* **Functions**).

Lastly, each Entity is authorized to make maintenance curtailments, and must give notice to the other Entity of the reason for the maintenance and the probable duration (except in the case of emergency maintenance).[117]

5. Functions

The focus of the Columbia River Treaty is on hydroelectricity and flood control. There is no direct treatment of other interests such as fish protection, irrigation, and other environmental concerns, but the Treaty allows the U.S. and Canadian Entities to incorporate a broad range of interests into the Detailed Operating Plans that are agreed to prior to each operating year.

i) Requirements of Canada

Under the Columbia River Treaty, Canada was required to construct and operate 15.5 million acre-feet of reservoir storage in the upper Columbia River Basin for power generation and flood control downstream in Canada and the U.S. To achieve this storage, Canada was required to construct the following dams, all located within the province of British Columbia:

- On the Columbia River near Mica Creek, a dam with approximately 7 million acre-feet of storage ("Mica Dam");

- Near the outlet of Arrow Lakes, a dam with approximately 7.1 million acre-feet of storage ("Arrow Dam"); and

- Near Duncan Lake, a dam with approximately 1.,4 million acre-feet ("Duncan Dam").[118]

The Treaty allows Canada substantial flexibility to operate its individual projects as long as the net flow requirement at the U.S. border is met.

ii) Requirements of the United States

The Columbia River Treaty requires the United States to: (1) give Canada one-half of the estimated increase in U.S. downstream power benefits as determined five years in advance (the "Canadian Entitlement") and (2) make a monetary payment for one-half of the value of the estimated future flood damages prevented in the United States during the first 60 years of the Treaty. Instead of receiving an annual payment for the flood control benefits, Canada chose to receive lump sum payments, totaling $64.4 million, for half of the estimated flood damage prevented in the U.S. through the year 2024.[119] For additional information, *see* **Benefit Sharing.**

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[117] Columbia River Treaty, art. XIV.

[118] Columbia River Treaty, art. II.

[119] Columbia River Treaty, arts. IV, V, VI, VII, Annex B.

Additionally, the United States must maintain and operate the hydroelectric facilities constructed on the main arm of the Columbia River in the U.S. in a manner that "makes the most effective use of the improvement in stream flow resulting from operation of the Canadian storage for hydroelectric power generation in the United States of America power system."[120]

Article XII of the Columbia River Treaty also permitted the U.S. to construct the Libby Dam on the Kootenai River[121] in the U.S. state of Montana for flood control purposes.

iii) Planning Mechanisms under the Columbia River Treaty

The Columbia River Treaty required the United States and Canada to prepare annually an Assured Operating Plan ("AOP") for the operation of storage under the Treaty six years in advance of each operating year. The AOP is developed to achieve optimum power and flood control benefits for the United States and Canada, and to define the amount of the Canadian Entitlement to downstream power benefits to be delivered for that year.[122]

The Columbia River Treaty also allows the Entities to develop Detailed Operating Plans ("DOP") for each upcoming year. The goal of the DOP is to determine annually whether there is a plan for operation that may achieve results more advantageous to the United States or Canada than the previously planned AOP.[123] In formulating the DOP, the Entities may take into consideration factors besides hydroelectric power and flood control, such as fish protection, recreation, and the environment.

iv) "Called Upon" Provision for Flood Control Takes Effect in 2024

Absent a new agreement, Article IV (3) of the Columbia River Treaty provides that Canada's duty to provide storage for flood control for the United States will expire in 2024 and will be replaced with "Called Upon" storage by Canada. Under "Called Upon" storage, the U.S. must pay for the operating costs and any losses incurred by Canada when it requests Canada's flood control operations.[124] Thus, beginning in 2024, the U.S. must again begin paying for Canada's flood control storage on an as-needed basis.

6. Organizational Structure

The United States and Canada each designated Entities that are responsible for carrying out the operating arrangements under the Columbia River Treaty. *See* **Legal Personality**. *See also* **Data Information Sharing, Exchange, and Harmonization,** discussing the Permanent Engineering Board's role in monitoring and reporting under the Treaty.

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[120] Columbia River Treaty, art. III.

[121] When referring to its American portions, the river is spelled "Kootenai", while the spelling "Kootenay" is used when referring to the Canadian portions.

[122] Columbia River Treaty, Annex A.

[123] Columbia River Treaty, art. XIV (2)(k).

[124] Columbia River Treaty, art. VI (4).

7. Relationships

i) The International Joint Commission ("IJC")

The IJC assists the governments of Canada and the United States in finding solutions to problems that relate to the many rivers that lie along or flow across the border between the two countries, not just the Columbia River Basin. The IJC was established by the 1909 Boundary Waters Treaty. It is composed of six members—with three appointed by the President of the United States (with the advice and approval of the Senate) and three appointed by Governor in Council of Canada (on the advice of the Prime Minister). The IJC is bound by the Boundary Waters Treaty in its efforts to resolve disputes, and IJC members must act impartially, rather than representing the views of their respective governments. The IJC has the duty to issue authorizations for certain uses of water, while protecting competing interests in accordance with the Boundary Waters Treaty. For example, the IJC may approve applications for dams or canals and can set conditions limiting water levels and flows. Additionally, the IJC investigates water pollution in lakes and rivers along the Canada-United States border when asked to do so by either government.[125]

In addition to its primary role regarding the boundary waters of Canada and the United States, the two governments have also asked the IJC to investigate air pollution problems in the boundary regions. In 1991, the two governments signed the Canada-United States Air Quality Agreement and set up an Air Quality Committee to make reports every two years. The governments also asked the IJC to invite comments on the Air Quality Committee's reports from individuals and groups and to prepare summaries of those views.[126]

The IJC is involved with many other rivers or basins in addition to the Columbia River Basin. The Great Lakes-St. Lawrence River system is also a significant focus for the IJC. Under the Great Lakes Water Quality Agreement, the IJC is tasked with reviewing Remedial Action Plans, which are strategies prepared by Canada and the United States to clean up problem areas and promote sustainable development in the Great Lakes region. In the West, the IJC has established operating conditions for dams on the Kootenai and Osoyoos Rivers (which cross through the U.S. states of Washington, Idaho, and Montana and the province of British Columbia). The IJC has helped establish rules for sharing the benefits of the St. Mary and Milk Rivers in the Canadian provinces of Alberta and Saskatchewan and the U.S. state of Montana. In the East, the IJC regulates dams on the St. Croix River, which flows through the Canadian Province of New Brunswick and the U.S. state of Maine. In the Midwest, the IJC helps regulate the sharing of benefits from the Souris River among the Canadian provinces of Saskatchewan and Manitoba and the U.S. state of North Dakota. The IJC also sets emergency water levels for the Rainy Lake system, which crosses through the U.S. state of Minnesota, as well as the Canadian provinces of Manitoba and Ontario.[127]

ii) Pacific Northwest-Southwest Intertie

The operation of the Canadian dams pursuant to the Columbia River Treaty created additional power in the United States, with a sizeable portion of the Canadian Entitlement being sold to California. Thus, the

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[125] International Joint Commission - Who We Are ("IJC Who We Are"), *available at* http://www.ijc.org/en/background/ijc_cmi_nature.htm (last viewed on 10 Oct. 2010).

[126] IJC, Who We Are.

[127] IJC, Who We Are.

Pacific Northwest-Southwest Intertie, a system of high-voltage transmission lines that carry large amounts of electricity, was built to handle this additional power. The Intertie allowed the Canadian Entitlement to be exported or resold in California, when British Columbia and the Northwestern United States had no need for the additional power.[128]

iii) PNCA Agreement

The Columbia River Treaty also triggered the creation of the U.S. Pacific Northwest Coordination Agreement ("PNCA"), which aims to optimize the operation of the hydropower projects in the Pacific Northwest through improved water flows from Canada. Under the PNCA, most Pacific Northwest hydropower projects operate as though they were owned by one utility—using regional diversity in stream flows and power loads, as well as the ability to optimize all reservoir storage operations to one power load. Sixteen parties, including the U.S. Army Corps of Engineers, the Bonneville Power Administration, and the U.S. Bureau of Reclamation, are members of the PNCA. The PNCA was initially signed in 1964 and has been renewed once in 1997.[129]

8. Decision Making

Decisions are made primarily by the U.S. and Canadian Entities. *See* **Legal Personality**.

9. Dispute Resolution

Article XVI of the Columbia River Treaty provides that a dispute or difference that arises under the Treaty may be referred by either the United States or Canada to the IJC for a decision. If the IJC does not render a decision within three months of the referral, or within such other period as may be agreed upon by the United States and Canada, either country may submit the dispute to arbitration by providing written notice to the other country.

The Columbia River Treaty mandates that arbitration must be by a tribunal composed of a member appointed by Canada, a member appointed by the United States and a member appointed jointly by the United States and Canada who shall be Chairman. If within six weeks of the delivery of a notice of arbitration, either country has failed to appoint its member to the arbitral tribunal, or they are unable to agree upon the member who is to be Chairman, either the United States or Canada may request that the President of the International Court of Justice appoint the member(s). Decisions of the IJC or of an arbitration tribunal (by a majority of members) are binding and definitive on the parties. The United States and Canada may agree, by an exchange of notes, to use alternative procedures for settling differences arising under the Columbia River Treaty, including referring disputes to the International Court of Justice for a decision.[130]

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[128] 2014/2024 Review, at 7.

[129] 2014/2024 Review, at 7. The PNCA is currently referred to as the 1997 Pacific Northwest Coordination Agreement.

[130] Columbia River Treaty, art. XVI.

i) Trail Smelter Case

The Trail Smelter case, though it predated ratification of the Columbia River Treaty, illustrates the IJC's ability to resolve disputes under the Boundary Waters Treaty.[131]

Starting in 1906, Canadian company Consolidated Mining and Smelting Company of Canada, Limited operated a zinc and lead smelter in Trail, British Columbia near the Columbia River, approximately seven miles north of the United States border. In 1925 and 1927, the company built over 400-foot-high stacks on the smelter, which emitted sulfur dioxide. Sulfur dioxide fumes were occasionally carried south to the town of Northport in Washington State, where they caused damage to private farms, orchards, and timberlands. Responding to pressure from Northport residents, the governments of Canada and the United States agreed in 1928 to submit the dispute to the IJC, despite the private nature of the dispute (where both the party causing the harm and the parties being harmed were private citizens.) Article IX of the Boundary Waters Treaty allows Canada or the United States to submit a dispute to the IJC, so that the IJC may investigate the dispute. However, the IJC's conclusions in a case submitted under Article IX are not binding decisions and have no authority over the two governments. The IJC issued a report in 1931 recommending that the smelter pay $350,000 for damages caused up to 1 January 1932 to the citizens in Northport, Washington. The Northport residents were not satisfied and pressed for arbitration.

The United States and Canada subsequently agreed to submit the dispute to binding arbitration. While the parties could have submitted the dispute to the IJC for binding arbitration under Article X of the Boundary Waters Treaty,[132] they opted instead for an *ad hoc* three-member arbitration panel. The tribunal was to "apply the law and practice followed in dealing with [similar] questions in the United States of America as well as international law and practice, and [it] shall give consideration to the desire of the high contracting parties to reach a solution just to all parties concerned."[133] The tribunal issued its final decision in 1941, building upon a prior decision concerning these issues released by the tribunal in 1938. It confirmed the IJC's recommendation that the smelter pay the United States US $350,000 for damages, and it also assessed additional damages in the amount of US $78,000 for damages caused from 1932 until 1937. The tribunal also ruled that the smelter must control its downdrafts and monitor sulfur dioxide so that concentrations in Washington State did not become excessive. Canada accepted the decision and paid the damages. The United States used the money to satisfy the claims of individual property owners in Washington State against the smelter.

10. Data Information Sharing, Exchange, and Harmonization

Much of the data sharing under the Columbia River Treaty is performed by the Permanent Engineering Board.[134] The Columbia River Treaty established the Permanent Engineering Board, consisting of four

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[131] *Trail Smelter Arbitration* (United States v. Canada), 3. R.I.A.A. 1905-1982 (Awards of 16 Apr. 1938 and 11 Mar. 1941), *available at* http://untreaty.un.org/cod/riaa/cases/vol_III/1905-1982.pdf.

[132] Article X of the Boundary Waters Treaty provides that the IJC may issue binding decisions if both the United States and Canada consent, it being understood that on the part of the United States any such action will be by and with the advice and consent of the Senate, and on the part of Canada with the consent of the Governor General in Council. Boundary Waters Treaty, art. X.

[133] Convention for Settlement of Difficulties Arising from Operation of Smelter at Trail, B.C., art. IV, 15 Apr. 1935, *available at* http://untreaty.un.org/cod/riaa/cases/vol_III/1905-1982.pdf.

[134] Columbia River Treaty, art. XV.

members—two appointed by the United States and two appointed by Canada. The Permanent Engineering Board is tasked with the following duties:

- Assemble records of the flows of the Columbia River and the Kootenay River at the Canada-United States boundary;
- Report to the United States and Canada whenever there is substantial deviation from the hydroelectric and flood control operating plans and, if appropriate, include in the report recommendations for remedial action and compensatory adjustments;
- Assist in reconciling differences concerning technical or operational matters that may arise between the U.S. and Canadian Entities;
- Make periodic inspections and require reports from the U.S. and Canadian Entities in order to ensure that the objectives of the Columbia River Treaty are being met;
- Make reports, at least once a year, to the United States and Canada of the results being achieved under the Columbia River Treaty and make special reports concerning any matter which it considers should be brought to the countries' attention; and
- Investigate and report with respect to any other matter that comes within the scope of the Columbia River Treaty, at the request of either the United States or Canada.

The Permanent Engineering Board must comply with directions relating to its administration and procedures that are agreed upon by the United States and Canada.

11. Notifications

The Permanent Engineering Board is responsible for providing certain notifications to the United States and Canada. *See* **Data Information Sharing, Exchange, and Harmonization**.

12. Funding and Financing

With regard to arbitration, the Columbia River Treaty notes that the funding of administrative support for a tribunal and the remuneration and expenses of its members shall be agreed upon by the United States and Canada in an exchange of notes.[135] The Columbia River Treaty contains no further explanation as to cost sharing for operational costs.

With regards to the IJC, the Boundary Waters Treaty, in Article XII, provides that "[t]he salaries and personal expenses of the Commission and of the secretaries shall be paid by their respective Governments, and all reasonable and necessary joint expenses of the Commission, incurred by it, shall be paid in equal [parts by the United States and Canada]."

[135] Columbia River Treaty, art. XVI (5).

13. Benefit Sharing

i) 50/50 Share of Downstream Power Benefits

Article V of the Columbia River Treaty instructs that Canada is entitled to one-half of the downstream power benefits under the Treaty (the Canadian Entitlement). The United States must deliver to Canada, at a point on the Canada-United States boundary near Oliver, British Columbia (or another agreed upon place), the downstream power benefits to which Canada is entitled, less transmission loss. If Canada opts to sell its entitlement to downstream power to United States purchasers, the United States will not deliver this power to Canada.[136]

ii) Payment for Flood Control

For the flood control that Canada provides to the United States, the United States was required to pay Canada US $64.4 million—consisting of US $1,200,000 for the Mica Dam, US $52,100,000 for the Arrow Dam and US $11,100,000 for the Duncan Dam. This money became due when Canada commenced the operation of storage after the completion of the three dams. If full operation of the dams was not commenced within the time specified by the Columbia River Treaty, the payment was to be reduced according to a discount formula set out in the Treaty.[137]

In addition to the flood control discussed above which has already been paid for by the United States, the U.S. Entities may call upon Canada to operate additional storage in the Columbia River Basin in Canada, within the limits of existing facilities, in order to meet flood control needs for the duration of the flood period (referred to as "Called Upon" flood control.) For this "Called Upon" flood control, the United States must pay Canada, for each of the first four flood periods for which a call is made, US $1,875,000 and deliver to Canada, for each and every call made, electric power that is equal to the hydroelectric power lost by Canada as a result of operating the storage to meet the flood control need (with delivery to be made when the loss of hydroelectric power occurs).[138]

The Columbia River Treaty also contains a "Called Upon" flood control provision that will automatically be triggered 60 years after the Treaty's ratification date. After the 60 years, for each flood period where flood control is provided by Canada to the United States upon the request of a U.S. Entity, the United States must pay Canada the operating cost incurred by Canada in providing the flood control and must provide compensation for the economic loss to Canada arising directly from Canada foregoing alternative uses of the storage used to provide the flood control.[139] *See* **Functions.**

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[136] *See* Columbia River Treaty, art. VIII.

[137] Columbia River Treaty, art. VI. *See also*, Columbia River Treaty, arts. II (2), IV.

[138] Columbia River Treaty, arts. IV (2)(b), VI (3).

[139] Columbia River Treaty, arts. IV (3), VI (4).

14. Compliance and Monitoring

The Columbia River Treaty provides that the Permanent Engineering Board shall "make periodic inspections and require reports … from the entities with a view to ensuring that the objectives of the Treaty are being met."[140] *See* **Data Information Sharing, Exchange, and Harmonization**.

15. Participation and the Role of Multiple Stakeholders

i) Public Participation with the IJC

Article XII of the Boundary Waters Treaty requires that the IJC give all interested parties a "convenient opportunity to be heard" on matters under consideration. The IJC invites public participation and advice when it undertakes studies, deals with approval orders, and prepares reports to governments. Citizens, both specialists and non-specialists, serve on IJC boards and task forces. Whenever the IJC is asked to approve a plan for a dam or other structure along the boundary waters, it asks for public comment. The IJC boards that monitor these structures, once built, also hold regular public meetings.[141]

ii) Columbia Basin Trust ("CBT")

The CBT was created in 1995, with the aim to promote the social, economic, and environmental well-being in the Canadian portion of the Columbia River Basin. The CBT was formed pursuant to Canada's Columbia Basin Trust Act and is governed by a 12-member Board of Directors (with all of the directors appointed by the government of the Province of British Columbia and all of whom must reside in the Columbia Basin). The CBT has also established Advisory Committees in the areas of: Social, Economic, and Environmental, Youth and Water. Based on negotiations with the Province of British Columbia and local governments, a binding agreement was reached, which resulted in CAD $276 million to finance the construction of power projects, CAD $45 million to be used as a CBT endowment, and CAD $2 million per year from 1996 to 2010 for operations.[142]

16. Dissolution and Termination

The Columbia River Treaty has no specified end date. But, either the United States or Canada may cancel the Treaty after 60 years (i.e., in 2024), provided that notice is provided ten years in advance. Certain terms of the Columbia River Treaty will continue on during the useful life of the dams, even if the Treaty is terminated. This includes the Called Upon flood control provisions, Libby Dam coordination obligations, and Kootenay River diversion rights. As part of the Called Upon flood control provisions, Canada must provide flood control operation for the United States as long as the need exists and the relevant dam exists, but the United States must pay Canada's operating costs and resulting economic losses. If the Columbia River Treaty is terminated, the Mica, Duncan, Arrow, and Libby Dams will be subject to the Boundary Waters Treaty.[143]

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[140] Columbia River Treaty, art. XV (2)(d).

[141] International Joint Commission—How is the Public Involved with International Joint Commission Activities?, *available at* http://www.ijc.org/rel/agree/water.html#what (last viewed on 10 Oct. 2010); IJC, Who We Are.

[142] Columbia Basin Trust—About Us, *available at* http://www.cbt.org/About_Us/ (last viewed on 10 Oct. 2010). CAD stands for Canadian Dollars.

[143] Columbia River Treaty, art. XIX; *see also* Columbia River Treaty, arts. IV (3), VI (4), VI (5), XII, XIII, XVII.

Upon termination of the Columbia River Treaty, the Canadian Entitlement would cease to exist, and the United States would retain any increases in U.S. downstream power benefits resulting from Canadian storage. But, Canada would also be able to operate its projects to focus more on Canadian power and flood control, as well as other benefits. If the Columbia River Treaty is not terminated in 2024, Canada will continue to operate storage for downstream power and flood control benefits according to the AOPs, and the United States will continue to provide the Canadian Entitlement of half of all downstream power benefits. Flood control will be changed to Called Upon storage in 2024, regardless of whether the Columbia River Treaty is cancelled or not.[144]

17. Additional Remarks

i) Sale of the Canadian Entitlement

Prior to the ratification of the Columbia River Treaty in 1964, a consortium of 37 public and four private utilities in the United States contracted to purchase the Canadian Entitlement for the 30 years following the scheduled completion date of the Mica, Duncan and Arrow Dams, agreeing to pay Canada an upfront lump sum of U.S. $254.4 million. Canada was able to use this money it received upfront to build these dams, as required under the Columbia River Treaty. The sale agreement expired in 2003, after which the Canadian Entitlement was fully delivered to British Columbia.[145]

ii) Future of the Columbia River Treaty

The U.S. and Canadian Entities are reviewing future scenarios regarding the Columbia River Treaty. This joint effort has been named the 2014/2024 Columbia River Treaty Review. The Entities launched the first phase of the review with technical studies designed to establish baseline information of what power and flood control operations might look like after 2024 with and without the Treaty. The Phase 1 Report was published in July 2010 and contains analysis of expected implications on Columbia River operations in the post-2024 context. The Bonneville Power Administration and the U.S. Army Corps of Engineers plan to host public workshops to discuss the initial findings and seek input on the direction for the second phase of studies.[146]

18. Websites and References

- Columbia River Treaty, *available at* http://www.ccrh.org/comm/river/docs/cotreaty.htm.
- Columbia River Treaty: History and 2014/2024 Review—Bonneville Power Administration and U.S. Army Corps of Engineers, *available at* http://www.bpa.gov/Corporate/pubs/ Columbia_River_Treaty_Review_-_April_ 2008.pdf.

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[144] Columbia River Treaty: 2014/2024 Review - Phase 1 Report ("2014/2024 Review – Phase 1"), July 2010, at i-vi, *available at* http://www.bpa.gov/corpo rate/pubs/Phase1Report_7.28.2010.pdf; Columbia River Treaty, art. IV (3).

[145] Canadian Entitlement Purchase Agreement, 13 Aug. 1964, *available at* http://www.ccrh.org/comm/river/docs/ cotreaty.htm. *See also* 2014/2024 Review, at 6; Northwest Power and Conservation Council: Columbia River Treaty – Design and Purposes, *available at* http://www.nwcouncil.org/history/columbiarivertreaty.asp (last viewed on 12 Oct. 2010).

[146] 2014/2024 Review – Phase 1; 2014/2024 Review, at 8.

- Columbia River Treaty: 2014/2024 Review - Phase 1 Report, *available at* http://www.bpa.gov/corporate/pubs/Phase1Report_7.28.2010.pdf.

- The Boundary Waters Treaty of 1909, *available at* http://www.ijc.org/rel/agree/water.html #text.

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- Noah D. Hall, *The Centennial of the Boundary Waters Treaty: A Century of United States-Canadian Transboundary Water Management*, 54 WAYNE L. REV. 1417 (2008)

Guaraní Aquifer System

1. Legal Basis

There is to date no binding legal agreement specifically governing the use of the Guaraní Aquifer System ("GAS"), a transboundary aquifer shared by Argentina, Brazil, Paraguay and Uruguay.[147] Furthermore, of the four countries, only Paraguay has signed the 1997 United Nations ("UN") Convention on the Law of Non-Navigable Uses of International Watercourses (which has not yet entered into force).[148]

However, there are non-binding arrangements relevant to the GAS in place. The GAS Project (otherwise known as the Project for Environmental Protection and Sustainable Development of the Guaraní Aquifer System) was an undertaking by the four countries sharing the resource, the Global Environment Facility ("GEF"), the World Bank, and the Organization of American States ("OAS"). It developed a Declaration of Basic Principles and Action Guidelines, which declared that the Guaraní Aquifer, as a transboundary shared water resource, should be protected from contamination and sustainably managed. At the same time, the countries were called upon to use the aquifer in a manner that did not prejudice the environment or areas outside their territories, to maintain and share technical information, and to generally act in accordance with applicable principles of international law and the relevant international agreements to which they are parties.[149]

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[147] According to the World Bank:

> The beneficiary countries have long-standing experience in collaborating on transboundary water issues, most notably with regard to the Plata River basin which has had a general treaty and an Intergovernmental Committee since the 1960s. In addition, bilateral projects and specific treaties exist with respect to other water systems, such as the Uruguay River (Uruguay and Argentina), and the Paraná River (Brazil and Paraguay). To date, the success of these agreements has been mixed, especially with respect to hydrological allocation and pollution control issues. The countries do recognize, however, the importance of cooperation in transboundary waters issues. The attempt to reach an agreement on groundwater is a historical first and will certainly enhance the dialogue on other waterbodies within the region and may contribute to improved water management at a transboundary level.

World Bank Project Appraisal Document on a Proposed Global Environment Facility Trust Fund Grant in the Amount of SDR 10.8 million (US$13.40 million equivalent) to Argentina, Brazil, Paraguay, and Uruguay for the Environmental Protection and Sustainable Development of the Guarani Aquifer System Project—Report No: 23490-LAC ("WB Project Appraisal"), 17 May 2002, at 9, *available at* http://www.ana.gov.br/guarani/docsbasicos/pad.pdf.

[148] *See* United Nations Treaty Collection: Convention on the Law of the Non-Navigational Uses of International Watercourses, *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSONLINE&tabid=2&mtdsg_no=XXVII-12&chapter=27&lang=en#Participants (last viewed on 30 Dec. 2010).

[149] Proyecto de Declaración de Principios Básicos y Líneas de Acción para el Sistema Acuífero Guaraní, *available at* http://www.ceibal.edu.uy/contenidos/areas_conocimiento/cs_sociales/090419_guarani/declaracion_principios_basicos[1].pdf (last viewed on 30 Dec. 2010) (Spanish only). The GAS Project commenced in June 2002. *See* IW: Learn – Environmental Protection and Sustainable Management of the Guarani Aquifer System ("IW Learn – GAS Project"), *available at* http://iwlearn.net/iw-projects/Fsp_112799467571 (last viewed on 5 Jan. 2011).

In January 2009, the GAS Project issued its Strategic Action Program ("SAP"), which is intended to serve as a short and long-term planning instrument for Argentina, Brazil, Paraguay and Uruguay in regards to the GAS. The purpose of the SAP is to promote coordinated and sustainable groundwater management, while also respecting the countries' national sovereignty over the aquifer.[150] In addition, as part of the SAP, the GAS countries stated that would use the La Plata River Basin Treaty as the legal basis for actions relating to the GAS.[151]

2. Member States

The countries that share the aquifer and participate in the SAP are Argentina, Brazil, Paraguay, and Uruguay. Those countries are also members of MERCOSUR – the Southern Common Market.

3. Geographical Scope

The Guaraní Aquifer System, named after the Guaraní Indigenous Nation, is one of the largest groundwater reservoirs in the world. The GAS was previously known as the Botucatu Aquifer in Brazil, the Tacuarembó Aquifer in Uruguay and Argentina, and the Misiones Aquifer in Paraguay. According to the World Bank:

> The Guaraní Aquifer System extends from the central-west region of Brazil into Paraguay and the southeastern and southern regions of Brazil, and into northeastern Argentina and central and western Uruguay…It has an estimated total surface area of approximately 1.2 million square kilometers (839,800 km2 in Brazil, 225,500 km2 in Argentina, 71,700 km2 in Paraguay, and 45,000 km2 in Uruguay). The portion within Brazil encompasses about two-thirds of the total areal extent of the System, and includes parts of eight Brazilian states—an area equal to that of England, France and Spain combined. An estimated fifteen million people live within the aquifer's area of surface influence.[152]

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[150] Guaraní Aquifer – Strategic Action Program, Project for Environmental Protection and Sustainable Development of the Guaraní Aquifer System ("GAS SAP"), Jan. 2009, at 28, *available at* http://iwlearn.net/iw-projects/Fsp_1127 99467571/reports/strategic-action-program/view.

[151] GAS SAP, at 23. The La Plata River Basin includes the Paraguay River, the Paraná River, and the Uruguary River and encompasses southern Brazil, southeast Bolivia, a large part of Uruguay, all of Paraguay, and parts of central and northern Argentina. In 1969, Argentina, Bolivia, Brazil, Paraguay, and Uruguay signed the La Plata Basin Treaty as the main legal instrument for the La Plata River Basin. Under the La Plata Basin Treaty, the Intergovernmental Coordinating Committee functions as the principal coordinating mechanism. *See* OAS – Department of Sustainable Development: Sustainable Management of the Water Resources of the La Plata Basin with respect to the Effects of Climate Variability and Change, *available at* http://www.oas.org/dsd/WaterResources/ projects/LaPlata_NEW_eng.asp (last viewed on 4 Jan. 2010).

[152] WB Project Appraisal, at 6.

4. Legal Personality

The General Secretariat of the GAS Project is located in Montevideo, Uruguay. To support the implementation of the SAP, a GAS Liason Unit was established in Uruguay.[153] The SAP does not refer to legal personality.

5. Functions

The GAS Project's seven components included:

i. Expansion and consolidation of the scientific and technical knowledge base regarding the GAS. According to the World Bank, the purpose was to develop a "sound scientific and technical basis for the determination of the priority transboundary issues and associated strategic remedial actions for the protection of the [GAS]."[154]

ii. Joint development and implementation of a GAS Management Framework. This component was considered the "core" of the project, responsible for providing an "agreed technical, institutional, financial, and legal framework for the management" of the GAS, including "(i) harmonization and enhancement of data gathering networks, (ii) creation of a data management system serving the [GAS], (iii) development of joint institutional arrangements for the management of the [GAS], and (iv) formulation of strategic actions leading to the integration and optimization of development initiatives and proposals within the [GAS] region."[155]

iii. Enhancement of public and stakeholder participation, communication and education. This component provided for "the practical involvement of stakeholders in decision-making affecting the [GAS] through both formal and informal educational and informational programming." The project also had a Guaraní Aquifer System Citizens' Fund to provide cost-sharing funding to non-governmental organizations ("NGOs") and academic institutions.[156]

iv. Evaluation and monitoring of the project and dissemination of project results. This component involved the tracking of agreed indicators, including the GEF – International Waters ("GEF-IW") process, stress reduction, and environmental status indicators, and the implementation of a monitoring and evaluation system to oversee and evaluate the Project's progress and to disseminate the Project results.[157]

v. Development of regionally-appropriate groundwater management and mitigation measures in identified critical areas. The objective of this component was to develop practical mechanisms and mitigation measures in response to problems in certain hot spots and "to develop and test

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[153] GAS SAP, at 23.

[154] WB Project Appraisal, at 12.

[155] WB Project Appraisal, at 12.

[156] WB Project Appraisal, at 12.

[157] WB Project Appraisal, at 12.

effective means and costs of quantifying, analyzing, managing, and remediating the impacts of known threats" affecting specific areas in the GAS.[158]

vi. Assessment of geothermal energy potential. The objective of this component was to "quantify and determine the potential value of the [GAS] as a source of 'clean' geothermal energy and to communicate this assessment and appropriate guidelines" to stakeholders, including the energy ministries of the participating countries.[159]

vii. Project coordination and management. This component included activities to be carried out by the GAS General Secretariat and "the operational activities of the coordinating and executing units" in the participating countries.[160] For more information, *see* **Organizational Structure**.

In regards to the SAP, its general objective is "to consolidate the process of coordinated and sustainable groundwater management for the [GAS] in each of the participating countries, based upon the original [GAS Project]".[161] The countries, at both the national and regional levels, are supposed to pursue a coherent set of strategic actions to accomplish this objective, and to take such actions as needed to confront current and potential problems facing the GAS. And while focused on improving cooperation and coordination between the countries, the SAP also reaffirmed that resource management is a sovereign responsibility. In addition, the SAP promotes the exchange of information and the sharing of successful groundwater-management experiences.[162]

6. Organizational Structure

i) GAS Project

The Project Steering Committee ("PSC") was the highest-level decision-making body for the GAS Project's execution phase. The PSC consisted of three representatives (from the national agencies responsible for foreign affairs, water resources, and the environment) from each GAS country, who served as National Coordinators. The PSC met at least twice a year. Representatives from the World Bank, the OAS, the GEF implementing agencies, and donor countries and agencies could be invited to attend the meetings of the PSC. A Coordination Group ("CG"), consisting of a National Technical Coordinator from each country, was responsible for overseeing the technical part of the GAS Project, as well as providing guidance to the General Secretariat and the Project Coordinator. The National Technical Coordinators headed the countries' National Project Executing Units ("NPEU").[163]

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[158] WB Project Appraisal, at 12.

[159] WB Project Appraisal, at 12-13.

[160] WB Project Appraisal, at 13.

[161] GAS SAP, at 29.

[162] GAS SAP, at 29.

[163] WB Project Appraisal, at 22-23. For more information on the Organizational Structure, *see also* Paticipación, *available at* http://www.sg-guarani.org/index/site/proyecto/pto002.php (Spanish only) (last viewed on 4 Jan. 2011).

The General Secretariat served as liaison between the NPEUs and the OAS and the World Bank, and managed the day-to-day operations of the GAS Project. The General Secretariat was headed by a Project Coordinator. The General Secretariat was responsible for overseeing the technical quality of the GAS Project; preparing documents and reports; supporting the World Bank's monitoring, evaluation and reporting; drafting a Transboundary Diagnostic Analysis and the SAP; promoting the exchange of information, including inputs from stakeholders; publicizing the concerns of indigenous peoples and other community groups; and participating in regional coordination opportunities with other programs being executed in the region.[164]

The OAS was the Executing Agency for the GAS Project. In addition to the OAS, there were the NPEUs in each of the countries, which were headed by the National Technical Coordinators. The NPEUs were responsible for overseeing project execution, providing oversight over the Project's tasks, promoting the exchange of information, and encouraging inputs from stakeholders (especially in regards to indigenous people and other community groups). The following agencies in each country functioned as local executing agencies: Argentina – Subsecreteriat for Water Resources; Brazil – National Water Agency; Paraguay – Secretariat for the Environment; and Uruguay – National Directorate for Hydrography.[165]

ii) The SAP

The SAP calls for a Regional Cooperation Council ("RCC") to be created. The RCC, similarly to the PSC, consists of representatives from the ministries representing foreign affairs, national water resources, and environmental management in the four GAS countries. The NPEUs would become National Management Units and serve as inter-institutional bodies focused on water resources management. Technical Committees were institutionalized and are intended to provide support regarding the development of management instruments during the implementation of the SAP. In addition, the SAP calls for additional committees to be established – the Information System Committee (under the responsibility of Argentina), the Monitoring and Modeling Committee (under the responsibility of Brazil), the Capacity Building and Dissemination Committee (under the responsibility of Paraguay), and the Group for Promotion of Local Management (under the responsibility of Uruguay). In addition, the SAP made each country responsible for a Pilot Project. A GAS Liaison Unit, located in Montevideo, Uruguay, was also created to provide general support for SAP implementation, including disseminating information between the different committees and the decision-making and coordination bodies.[166]

7. Relationships

The GAS Project involved the four GAS countries, GEF, the World Bank, the OAS, and the International Atomic Energy Agency ("IAEA").[167] In formulating the SAP, in addition to Argentina, Brazil, Paraguay and Uruguay, the World Bank (as the Implementing Agency), GEF (for financial support), the OAS (as

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[164] WB Project Appraisal, at 23-24.

[165] WB Project Appraisal, at 23-24.

[166] GAS SAP, at 23-24.

[167] Sustainable Groundwater Management Lessons from Practice: The Guarani Aquifer Initiative for Transboundary Groundwater Management, The World Bank Global Water Partnership Associate Program, Sept. 2006, at 1, *available at* http://siteresources.worldbank.org/INTWRD/Resources/GWMATE_English_CP9.pdf.

the Executing Agency), the IAEA (as a cooperating agency), and Germany's Federal Institute for Geosciences and Natural Resources (BGR) (as a cooperating agency) were involved.[168]

In addition, the GAS Project is dependent on international donor collaboration and funds to operate. *See* **Funding and Financing**.

8. Decision Making

The SAP calls on the countries to develop, by consensus, a coherent set of strategic actions in regards to the coordinated and sustainable groundwater management of the GAS.[169]

9. Dispute Resolution

The GEF Trust Fund Grant Agreement (*see* **Funding and Financing**) provided that any dispute arising out of, or related to, the Trust Fund Grant Agreement that could not otherwise be settled should be resolved by arbitration in accordance with the UNCITRAL Arbitration Rules.[170]

The SAP does not provide specific details regarding dispute resolution among the four countries.

10. Data Information Sharing, Exchange, and Harmonization

See **Functions** and **Organizational Structure**.

11. Notifications

The GAS Project components included the evaluation and monitoring of the Project and dissemination of the Project results. *See* **Functions.**

12. Funding and Financing

The GAS Project's budget was approximately US $26.7 million, of which approximately US $13.4 million was contributed by GEF and US $12.1 million by the four GAS countries. The IAEA, OAS, the Netherlands/World Bank Cooperation Project, and the German Geological Survey contributed,

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[168] *See* GAS SAP, at Responsible and Participating Institutions.

[169] GAS SAP, at 29.

[170] Global Environment Facility Trust Fund Grant Agreement (Environmental Protection and Sustainable Development of the Guarani Aquifer System Project) between General Secretariat of the Organization of American States and International Bank for Reconstruction and Development acting as an Implementing Agency of the Global Environment Facility ("Trust Fund Agreement"), 23 July 2002, at sec. 6.01, *available at* http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/LCR/2004/12/15/1E14CE9FF8A3A8AE85256F03001626B1/1_0/Rendered/PDF/1E14CE9FF8A3A8AE85256F03001626B1.pdf.

collectively, approximately US $1.2 million.[171] According to the IAEA, its contribution to the Project was to assist the GAS Project in developing analytical techniques for isotope hydrology.[172]

In July 2002, the World Bank and the OAS concluded the GEF Trust Fund Grant Agreement for the GAS Project, which stipulates the grant's terms. Pursuant to this agreement, OAS entered into separate participation agreements with the four GAS countries. The participation agreements detailed each country's role in the execution of the GAS Project.[173] Part of the GEF Trust Fund Grant was used to establish a Guaraní Citizenship Fund, which was intended to support civil society activities in the GAS region (including promoting communication, public participation, and environmental education related to groundwater).[174]

In addition, a grant from the World Bank and the Netherlands Water Partnership Program was used to establish the Guaraní Universities Fund, which provided financial support to regional universities and promoted capacity building activities in regards to the environmental and social aspects of the GAS.[175]

In regards to the implementation of the SAP, US $180,000 was budgeted for the first stage of the implementation process, to be funded in equal amounts by Argentina and Brazil. Uruguay agreed to provide support for the GAS Liaison Unit.[176]

13. Benefit Sharing

No specific provision

14. Compliance and Monitoring

The GAS Project envisioned a "comprehensive Operational Monitoring and Evaluation System" to ensure supervision and assessment of outcomes, including the tracking of GEF-IW indicators. The monitoring systems were coordinated centrally within the General Secretariat, in coordination with the NPEUs who conducted monitoring at the local levels.[177]

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[171] Presentation by Luiz Amore—Information to Support Sustainable Water Management: From Local to Global Levels, 15-18 Sep. 2003, at 21, *available at* http://www.mtm-conference.nl/mtm4/docs/Sh_Amore.pdf.

[172] More specifically, the IAEA aimed to enhance scientific knowledge by defining key hydrodynamic features of the aquifer; assessing water quality; improving analysis of groundwater age, origin, evolution, geothermal character, etc.; assembling a comprehensive, multilateral database to be shared among the four countries; and supporting the training and participation of experts. *See* Guarding the Guarani: Improving Management of South America's Precious Groundwater, *available at* http://www.iaea.org/Publications/Booklets/Ssp/guarani.html (last viewed on 30 Dec. 2010).

[173] Trust Fund Agreement, at sec. 3.04.

[174] *See* GAS SAP, at 52-56.

[175] *See* GAS SAP, at 47-51.

[176] GAS SAP, at 23.

[177] *See* WB Project Appraisal, at 27-28.

The GAS Monitoring Network is responsible for conducting certain quality and quantity measurements on 180 wells. According to the SAP, the GAS Monitoring Network should perform its work using existing national and local capabilities, and follow monitoring recommendations made by environmental control organizations and water supply companies. In addition, under the SAP, a Monitoring and Modeling Committee was established, consisting of academics and representatives of water resources institutions from each of the GAS countries. Brazil was charged with coordinating the committee. The main functions of the committee are: "to draw up an annual program of workshops and meetings; to negotiate with well-monitoring institutions and make data available to the GAS Monitoring Network; to provide technical support for selection of wells, sampling protocols and schedules."[178]

15. Participation and the Role of Multiple Stakeholders

The World Bank has noted that national and sub-national governments of the participating countries, as well as "the population in the [GAS] region, local communities, NGOs, and academic institutions interested in sustainable groundwater use in the region—have been, and continue to be, involved in the project design and institutional arrangements for project implementation."[179] The GAS Project design provided for NGO, individual, private sector, and indigenous community involvement through the NPEUs.[180] Also, a Guaraní Citizens' Fund (*see* **Functions** and **Funding and Financing**) was established to support small projects implemented by NGOs (including community-based public education and awareness campaigns). Other project components, including expansion of the knowledge base, development of monitoring systems, and capacity-building, have involved the region's academic community.[181]

In response to the adoption of the SAP, meetings were held in the GAS countries, which included the participation of both public and private stakeholders, that focused on proposals and technical legal measures designed to increase the effectiveness of the GAS legal framework.[182]

See also **Functions** and **Organizational Structure**.

16. Dissolution and Termination

The GAS Project officially ended in January 2009, with the issuance of the SAP.[183] But, work continues under the SAP, which does not contain a termination date.

17. Additional Remarks

N/A

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[178] GAS SAP, at 134.

[179] WB Project Appraisal, at 25.

[180] *See* WB Project Appraisal, at 26-27. The World Bank also worked into its component on stakeholder participation a specific "Indigenous Peoples Strategy."

[181] WB Project Appraisal, at 27.

[182] GAS SAP, at 109.

[183] *See* IW Learn – GAS Project.

18. Websites and References

- IW: Learn – Environmental Protection and Sustainable Management of the Guaraní Aquifer System, *available at* http://iwlearn.net/iw-projects/Fsp_112799467571.

- Secretaría General—Proyecto Sistema Acuifero Guaraní, *available at* www.sg-guarani.org (Spanish only).

- Agéncia Nacional de Aguas—Projeto Aqüifero Guaraní, *available at* http://www.ana.gov.br/guarani/index.htm (Portuguese only).

- Lilian del Castillio-Laborde, Emerging Legal Principles for Transboundary Aquifers and the South American Guaraní Aquifer, *available at* http://www.inweb.gr/twm4/abs/DEL%20CASTILLO%20LABORDE%20Lilian2.pdf.

- Sustainable Groundwater Management Lessons from Practice: The Guaraní Aquifer Initiative for Transboundary Groundwater Management, The World Bank Global Water Partnership Associate Program, Sept. 2006, *available at* http://siteresources.worldbank.org/INTWRD/Resources/GWMATE_English_CP9.pdf.

- Antonion Herman Benjamín, Cláudia Lima Marques, and Catherine Tinker, *The Water Giant Awakes: An Overview of Water Law in Brazil*, 83 TEX. L. REV. 2185 (2004).

International Commission for the Conservation of Atlantic Tunas (ICCAT)

1. Legal Basis

The International Commission for the Conservation of Atlantic Tunas ("ICCAT" or the "Commission") is a regional fisheries management organization ("RFMO") established by the Convention for the Conservation of Atlantic Tunas (the "Convention"), prepared and adopted at a Conference of Plenipotentiaries in Rio de Janeiro, Brazil in 1966. The Convention entered into force in 1969.[184]

2. Member States

ICCAT has 48 Contracting Parties: Albania, Algeria, Angola, Barbados, Belize, Brazil, Canada, Cape Verde, China, Côte d'Ivoire, Croatia, Egypt, Equatorial Guinea, European Community, France (St. Pierre & Miquelon), Gabon, Ghana, Guatemala, Guinea, Honduras, Iceland, Japan, South Korea, Libya, Mauritania, Mexico, Morocco, Namibia, Nicaragua, Nigeria, Norway, Panama, Philippines, Russia, Senegal, Sierra Leone, South Africa, St. Tome and Principe, St. Vincent and the Grenadines, Syria, Trinidad and Tobago, Tunisia, Turkey, United Kingdom (Overseas Territories), United States, Uruguay, Vanuatu and Venezuela.[185]

Pursuant to Article XIV of the Convention, the Convention remains open for signature by the government of any state which is a member of the United Nations ("UN") or any of the UN's specialized agencies. Instruments of ratification or approval are to be deposited with the Director-General of the Food and Agriculture Organization of the United Nations ("FAO").

Article XIV(4) of the Convention also permits "any inter-governmental economic integration organization constituted by States that have transferred to it competence over the matters governed by th[e] Convention, including the competence to enter into treaties in respect of those matters" to sign and/or adhere to the Convention.[186] Upon the deposit of formal confirmation or adherence, any such organization will be considered a full Contracting Party; however, that organization's member states shall thereby cease to be separate parties to the Convention, and are to transit a formal notification to that effect to the Director-General of the FAO.[187]

In addition, pursuant to the 2003 Recommendation by ICCAT on Criteria for Attaining the Status of Cooperating Non-Contracting Party, Entity or Fishing Entity in ICCAT, the Commission will also grant

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[184] ICCAT: Introduction, *available at* http://iccat.int/en/introduction.htm (last viewed on 29 Nov. 2010); International Convention for the Conservation of Atlantic Tunas ("Convention"), art. III(1), 14 May 1966, *available at* http://www.iccat.int/Documents/Commission/BasicTexts.pdf.

[185] ICCAT: Contracting Parties, *available at* http://www.iccat.int/en/contracting.htm (last viewed on 29 Nov. 2010).

[186] *See also* Protocol adopted by the Conference of Plenipotentiaries of the States Parties to the International Convention for the Conservation of Atlantic Tunas ("Paris Protocol"), art. XIV(4), 10 July 1984, *available at* http://www.iccat.int/Documents/Commission/BasicTexts.pdf.

[187] Convention, art. XIV(5)-(6).

the special status of "Cooperator" to interested parties, a status which bestows many of the same rights and obligations as enjoyed by the Contracting Parties.[188]

3. Geographical Scope

The Convention applies to "all waters of the Atlantic Ocean, including the adjacent Seas."[189]

4. Legal Personality

ICCAT is an intergovernmental organization responsible for the conservation of tunas and tuna-like species in the Atlantic Ocean and adjacent waters.[190]

Pursuant to a 1971 agreement between ICCAT and Spain, the Commission's permanent seat is located in Madrid, and the Spanish Government has recognized ICCAT's juridical personality and its capacity to enter into contracts, to purchase and dispose of personal property and real estate, and to initiate legal action.[191] In addition, the Spanish Government has recognized the inviolability of the Commission's premises and its correspondence, agreed not to impede the passage to or from the Seat of persons having official functions to perform therein or otherwise invited by ICCAT, accorded jurisdictional immunity and immunity from execution to the Commission's property and assets, and exempted the Commission from all taxes.[192] The Spanish Government has also recognized the diplomatic privileges and immunities of the ICCAT Chairman and Vice-Chairmen, as well as for the representatives of the Contracting Parties attending meetings of the Commission or its subsidiary bodies.[193]

5. Functions

ICCAT is committed to maintaining tuna populations at levels which permit the maximum sustainable catch for food and other purposes and ensure the effective exploitation of those fishes in a manner consistent with that catch.[194] In order to carry out the objectives of the Convention, ICCAT monitors and studies the populations of approximately thirty fish species, including Atlantic bluefin, skipjack, yellowfin, albacore, bigeye tuna, swordfish, blue marlin, various mackerals and Atlantic bonito. To do so, ICCAT oversees and coordinates research on various aspects of Atlantic tuna fisheries with an eye to

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[188] ICCAT: Becoming a Member, *available at* http://www.iccat.int/en/membership.htm (last viewed on 29 Nov. 2010).

[189] Convention, art. I. S*ee also* ICCAT: Convention Area, *available at* http://iccat.int/en/convarea.htm (last viewed on 29 Nov. 2010).

[190] ICCAT: Introduction.

[191] Agreement on Seat between the Spanish State and the International Commission for the Conservation of Atlantic Tunas ("Seat Agreement"), Preamble, art. 1, 29 Mar. 1971, *available at* http://www.iccat.int/Documents/ Commission/BasicTexts.pdf.

[192] Seat Agreement, arts. 5-6, 8, 10-13

[193] Seat Agreement, art. 15(1).

[194] Convention, art. Preamble, IV(2).

the effects of fishing on stock abundance.[195] Such studies include "research on the abundance, biometry and ecology of the fishes; the oceanography of their environment; and the effects of natural and human factors upon their abundance."[196]

Article IV(1) of the Convention specifically authorizes ICCAT to utilize the technical and scientific services and information provided by the Contracting Parties and other public and private institutions in carrying out its tasks, and permits the Commission, where possible, to supplement such research with its own studies.

Pursuant to Article VIII(1)(a) of the Convention, the Commission is empowered, "on the basis of scientific evidence, [to] make recommendations designed to maintain the populations of tuna and tuna-like fishes that may be taken in the Convention area at levels which will permit the maximum sustainable catch." For a description of the procedures ICCAT follows in enacting recommendations, *see* **Decision Making.**

For example, at its 2009 meeting in Recife, Brazil, ICCAT announced the adoption of further measures in regards to bluefin tuna stocks, including: reduction of the total allowable catch from 22,000 to 13,500 tons for 2010; further reductions in fishing capacity and the number of authorized joint fishing operations; and shortening of the fishing season for purse seiners to one month each year. ICCAT scientists also agreed, as a precautionary measure, to re-evaluate bluefin tuna stocks in 2010, and to suspend fishing completely if a serious risk of stock collapse were detected.[197]

6. Organizational Structure

Each Contracting Party to the Convention may be represented on the Commission by no more than three delegates, who in turn may be supported by experts and advisors.[198]

Regular meetings of the Commission occur once every two years. At each meeting ICCAT elects a Chairman and a first and second Vice Chairman to administer the procedural aspects of its meetings. Those elected may not serve more than two consecutive terms. Special meetings may also be called at the request of a majority of the Contracting Parties or by decision of the Council. Except as otherwise

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[195] ICCAT: Introduction. ICCAT also compiles statistics on other fish species caught during tuna fishing (i.e., bycatch).

[196] Convention, art. IV(1).

[197] ICCAT Fortifies its Management of Bluefin Tuna Fisheries, 2009 Annual ICCAT Meeting Press Release, 16 Nov. 2009, at 1, *available at* http://www.iccat.int/Documents/Meetings/COMM2009/PressReleaseCom2009-ENG.pdf; Fisheries: Commission Welcomes ICCAT's Decisive Action to Save Bluefin Tuna and Other Marine Species, European Commission Press Release, 16 Nov. 2009, *available at* http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1720&format=HTML&aged=0&language=EN&guiLanguage=en. *See also* Report of the Inter-Sessional Meeting of the Compliance Committee, 24-26 Feb. 2010, *available at* http://www.iccat.int/Documents/Meetings/Docs/2010_COC_BFT_FINAL_ENG.pdf.

[198] Convention, art. III(2); ICCAT Rules of Procedure, Rule 1, *available at* http://www.iccat.int/Documents/Commission/ BasicTexts.pdf.

provided, decisions of the Commission are made by majority vote, with each Contracting Party entitled to one vote. Two-thirds of the Contracting Parties present constitutes a quorum.[199]

In addition to the Commission, the Convention also provides for a Council, which consists of the Chairman and Vice-Chairmen of the Commission, along with the representatives of between four and eight of the Contracting Parties (other than the Contracting Parties of which the Chairman and Vice-Chairmen are nationals).[200] The Council, which meets at least once in between regular meetings of the Commission, determines the work to be carried out by ICCAT's staff. The Council's decisions are communicated to the Executive Secretary of the Commission.[201] Council members are elected at each regular Commission meeting, and with the elections, the Commission is to give "due consideration to the geographic, tuna fishing and tuna processing interests of the Contracting Parties," as well as to "the equal right of the Contracting Parties to be represented on the Council."[202]

The Executive Secretary is appointed by the Commission and oversees ICCAT's day-to-day administration and staff. As directed by the Commission, the Executive Secretary is authorized to: (a) coordinate programs of investigation by the Contracting Parties; (b) prepare budget estimates for the Commission; (c) account for and disburse funds of the Commission in accordance with its budget; (d) arrange for cooperation with other international organizations; (e) prepare the collection and analysis of data necessary to accomplish the Commission's work, particularly data relating to the current and maximum sustainable catch of tuna stocks; and (f) prepare for approval by the Commission of scientific, administrative and other reports of the Commission and its subsidiary bodies.[203] The Executive Secretary is also charged, in consultation with the Chairman, with preparing the provisional agenda for each regular meeting of the Commission, according to the procedures set forth in Rule 8 of the Rules of Procedure.

The Convention also provides for the establishment of several Panels to carry out the Convention's objectives, with the Panels grouped by species and/or geographic area. Individual Panels: (a) are responsible for collecting and reviewing scientific information relating to the species or geographic area under their purview; (b) may propose recommendations to the Commission for joint action by the Contracting Parties on the basis of their scientific investigations; and (c) may recommend to the Commission studies and investigations, or coordination of such studies and investigations among Contracting Parties, that are necessary to obtain information relating to their mandates.[204]

The Commission is charged with establishing individual Panels, which hold regular meetings in conjunction with the regular meetings of the Commission. Membership on any particular Panel is open to all Contracting Parties who wish to join, upon written notification to the Chairman of the Commission. Each Contracting Party may be represented on a Panel by its delegates or alternates, as assisted by experts

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[199] Convention, art. III; ICCAT Rules of Procedure, Rules 2, 3, 6, 9.

[200] Convention, art. V(1). If the number of Contracting Parties exceeds forty, the Commission is authorized to elect a further two Contracting Parties to be represented on the Council. *See also* ICCAT Rules of Procedure, Rule 11(1).

[201] Convention, art. V(2); ICCAT Rules of Procedure, Rule 11(3).

[202] Convention, art. V(1).

[203] Convention, art. VII. *See also* ICCAT Financial Regulations, Reg. 2-3, *available at* http://www.iccat.int/Documents/Commission/BasicTexts.pdf.

[204] Convention, art. VI.

or advisers.[205] Currently, four such Panels have been established: Tropical Tunas (yellowfin, bigeye and skipjack); Northern Temperate Tunas (albacore and Atlantic bluefin); Southern temperate tunas (albacore and southern bluefin); and Other Species (swordfish, billfishes and small tunas).[206]

ICCAT has also established two standing committees. The first, the Standing Committee on Finance and Administration, is responsible for advising the Commission on matters relating to the Executive Secretary and staff, the budget of the Commission, the time and place of meetings of the Commission and Commission publications. In addition, ICCAT has established a Standing Committee on Research and Statistics ("SCRS"), which develops and recommends to the Commission policies and procedures relating to the collection, compilation, analysis and dissemination of fishery statistics for the Convention area, and reviews the Commission's various research programs. Any Contracting Party may join either standing committee.[207]

As noted in the ICCAT Field Manual, "[p]ractically all of the Commission's scientific work and data collection efforts are accomplished by the Contracting Parties themselves. The Secretariat's role is more of being a focal point for data collation/assimilation and coordinating access by scientists to the common databases."[208]

7. Relationships

Article XI(1) of the Convention specifically contemplates a "working relationship" between the Commission and the FAO. To that end, in 1973, ICCAT and the FAO entered into an agreement to "ensure cooperation . . . by consultation, coordination of effort, mutual assistance and joint action in fields of common interest."[209] Pursuant to that agreement, ICCAT is entitled to send observers to sessions of the FAO Committee on Fisheries and its subsidiary bodies, to sessions of the FAO Conference and Council and other meetings of the FAO which deal with matters relating to the conservation and management of the living resources of the sea. In turn, the FAO is entitled to send representatives to all meetings of ICCAT and its subsidiary bodies.[210] The agreement further endorses the "fullest exchange of information and documents concerning matters of common interest," close and regular cooperation and consultation, and, where possible, arrangements for joint action between ICCAT and the FAO.[211]

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[205] ICCAT Rules of Procedure, Rule 12; Convention, art. VI.

[206] ICCAT: Organization, *available at* http://www.iccat.int/en/organization.htm (last viewed on 29 Nov. 2010).

[207] ICCAT Rules of Procedure, Rule 13. Reporting to the SCRS are several species groups, which review available fishery data and carry out stock assessments for species of interest to the Commission. Specific groups include: tropical tunas; albacore; bluefin tuna; billfishes; swordfish; sharks; small tunas; and southern bluefin tuna. ICCAT: Standing Committee on Research and Statistics (SCRS), *available at* http://www.iccat.int/en/SCRS.htm (last viewed on 29 Nov. 2010).

[208] ICCAT Field Manual, 25 Jan. 2006, at Sec. 1.1, *available at* http://www.iccat.int/Documents/SCRS/Manual/CH1/CH1-ENG.pdf.

[209] Agreement Between the Food and Agriculture Organization of the United Nations and the International Commission for the Conservation of Atlantic Tunas ("FAO Agreement"), art. 1, 26 Nov. 1973, *available at* http://www.iccat.int/Documents/Commission/BasicTexts.pdf.

[210] FAO Agreement, art. 2.

[211] FAO Agreement, arts. 3-6.

The Convention also explicitly endorses cooperation between the Commission and other international fisheries commissions and relevant scientific organizations, and authorizes the Commission to enter into agreements with such organizations.[212] It also authorizes the Commission to invite any appropriate international organization or any government that is a member of the UN or any of the UN's specialized agencies to send observers to meetings of the Commission and its subsidiary bodies. Such observers may address the meeting and otherwise participate in its work, but may not vote.[213]

8. Decision Making

ICCAT decisions are taken by a majority of the members of the Commission, except as provided by Article VIII(1)(b) of the Convention, with each Contracting Party entitled to one vote.[214] Article VIII(1)(b)(i) of the Convention provides that recommendations must be made with the approval of at least two-thirds of all of Contracting Parties when they are made upon the initiative of the Commission when there is already an appropriate Panel in place. Otherwise, Article VIII(1)(b) authorizes recommendations to be made based upon the proposal of the relevant Panel(s) or upon Commission initiative when there is no appropriate panel in place.

ICCAT recommendations become effective for all Contracting Parties six months after notification by the Commission, subject to the provisions of Article VIII(3).[215] Pursuant to that article, any Contracting Party member of a Panel (or, in the case of recommendations made on the initiative of the Commission, any Contracting Party) may object to a recommendation within the six-month notification period; should such an objection be made, the recommendation will not become effective for a further sixty days. Once an objection is made, any other Contracting Party may likewise object, either within the sixty-day period or within forty-five days of the last objection, whichever is later. The recommendation in question will then become effective upon the expiration of the extended period(s) for objection, except for those Contracting Parties that have objected.[216]

In the event that less than one-fourth of the Contracting Parties object, those Contracting Parties will be provided with a further sixty-day period to reaffirm their objections; upon the expiration of that further period, the recommendation shall become effective, except with respect to those Contracting Parties who reaffirm their objections.[217]

In the event that more than one-fourth but less than a majority of the Contracting Parties object, the recommendation shall become effective, except with respect to those Contracting Parties who have objected.[218]

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[212] Convention, art. XI(2).

[213] Convention, art. XI(3); ICCAT Rules of Procedure, Rule 5.

[214] Convention, arts. III(3),VIII(1)(b); ICCAT Rules of Procedure, Rule 9(1)-(2). Article XIII sets forth procedures for amending the Convention, which requires the approval of three-fourths of the Contracting Parties.

[215] Convention, art. VIII(2).

[216] Convention, art. VIII(3)(a)-(c).

[217] Convention, art. VIII(3)(d)-(e).

[218] Convention, art. VIII(3)(f).

If a majority of Contracting Parties object, the recommendation does not become effective.[219]

Any Contracting Party may withdraw an objection to a recommendation at any time. The recommendation will then become effective with respect to that Contracting Party if it is already in effect, or at such time as it becomes effective pursuant to the terms of Article VIII. The Commission will notify the Contracting Parties upon receipt of each objection (as well as any withdrawals) and the entry into force of any recommendation.[220]

Under Rule 9(8) of the Procedural Rules, in "cases of special necessity, where a decision cannot be deferred until the next meeting of the Commission," a matter may be decided between regular meetings by intersessional vote (either electronically or via other means of written communication).

9. Dispute Resolution

The Convention does not discuss dispute resolution. But, the Seat Agreement between ICCAT and Spain does include provisions concerning the settlement of differences. Under Article 25 of the Seat Agreement, ICCAT, in cooperation with the Spanish Ministry of Foreign Affairs, agreed to take measures to provide for the suitable settlement of disputes involving ICCAT officials who enjoy immunity. In addition, under Article 26 of the Seat Agreement, conflicts concerning the application of the Seat Agreement, which cannot be resolved by negotiations, will be submitted to a three-person arbitral panel for final settlement.

10. Data Information Sharing, Exchange, and Harmonization

Every two years, ICCAT submits a report on its work and findings, which is transmitted by the Executive Secretary to all Contracting Parties of the Commission, the FAO and any government or international organization invited to send observers to the meeting. The Council, Panels and other subsidiary bodies of ICCAT also adopt reports at the end of each meeting, which are then submitted to the appropriate parent body.[221]

Generally speaking, ICCAT collects two main types of data. Fishery independent data includes research vessel surveys and other studies, such as those conducted with tagging programs.[222] But, ICCAT generally relies on fishery-dependent data sources, such as logbooks, observer programs, port sampling, factory/market sampling and international trade (import/export) statistics.[223]

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[219] Convention, art. VIII(3)(g).

[220] Convention, art. VIII(4)-(5).

[221] ICCAT Rules of Procedure, Rule 15. The reports are available on the ICCAT website. *See e.g.*, ICCAT Biennial Reports, *available at* http://www.iccat.int/en/pubs_biennial.htm (last viewed on 29 Nov. 2010).

[222] ICCAT Field Manual, at Sec. 1.2. Tunas and billfishes are tagged in order to learn more about their movements, migrations, stock structure, growth, population size, mortality, schooling behavior, and physiology. Tagging is also used to study the effects of fishing patterns on the fish and fisheries. Currently, ICCAT has developed a cooperative tagging program in the Atlantic Ocean and adjacent seas, through which various countries are participating. ICCAT: Tagging, *available at* http://www.iccat.int/en/Tag-Desc.htm (last viewed on 29 Nov. 2010).

[223] ICCAT Field Manual, at Sec. 1.2.

ICCAT also maintains a number of statistical databases, which contain data on fleet characterization (number and type of fishing vessels); nominal catch (by species, region, gear, flag); catch and effort (fishing fleet, time, gear and time and area strata); and fish size (size samples and catch-at-size estimates).[224]

11. Notifications

See **Data Information Sharing, Exchange, and Harmonization.**

12. Funding and Financing

The Commission is charged with adopting a budget for the two years that follow each regular meeting. The Council reviews the second half of the biennial budget at its regular meeting between Commission meetings, and may reapportion amounts in the budget for the second year within the total budget approved by the Commission.[225] In accounting for the expenditures of the Commission, the Financial Regulations authorize the establishment of a General Fund, a Working Capital Fund and such trust funds as are necessary.[226] The total budget for 2009 was 2,714,756 euros.[227]

Each Contracting Party is obligated to contribute annually to the ICCAT budget, in an amount calculated according to a scheme provided for in the Financial Regulations, as modified by the Madrid Protocol.[228] Individual appropriations are determined in part by "each Contracting Party's fixed basic fees for Commission and Panel membership" and in part by taking into account "the total round weight of catch and net weight of canned products of Atlantic tuna and tuna-like fishes and the degree of economic development of the Contracting Parties."[229] For the purposes of the latter calculation, each ICCAT member is assigned to one of four groups, depending on the respective sizes of its GNP and catch.[230] The

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[224] ICCAT: Access to ICCAT Statistical Databases, *available at* http://www.iccat.int/en/accesingdb.htm (last viewed on 29 Nov. 2010); ICCAT Field Manual, at Sec. 1.3.

[225] Convention, art. X(1), X(3).

[226] *See* ICCAT Financial Regulations, Reg. 5-8. ICCAT has also established a voluntary Assistance Fund in order to support data collection efforts involving species managed by the Commission in developing countries. *See* Resolution by ICCAT on Improvements in Data Collection and Quality Assurance (Rec. 03-21), 19 Dec. 2003, *available at* http://www.iccat.int/Documents%5CRecs%5Ccompendiopdf-e%5C2003-21-e.pdf.

[227] ICCAT: Finances, *available at* http://www.iccat.int/en/finances.htm (last viewed on 29 Nov 2010).

[228] Convention, art. X(2). *See* Protocol adopted by the Conference of Plenipotentiaries of the Contracting Parties to the International Convention for the Conservation of Atlantic Tunas ("Madrid Protocol"), art. 1, 5 June 1992, *available at* http://www.iccat.int/Documents/Commission/BasicTexts.pdf.

[229] Convention, art. X(2); ICCAT Financial Regulations, Reg. 4(1)(a) (providing that "each Contracting Party shall contribute annually to the Budget of the Commission an amount equivalent to US$ 1,000 for the Commission membership and an amount equivalent to US$ 1,000 for each panel membership").

[230] ICCAT Financial Regulations, Reg. 4(1)(b)(i) ("Group A: members defined as developed market economies by the appropriate United Nations economic organizations. Group B: members not included in Group A whose GNP per capita exceeds [US $2,000] (adjusted to 1991 dollar values) and whose combined round weight of catch and net weight of canned products of Atlantic tuna and tuna-like fishes exceeds [5,000 tons]. Group C: whose GNP per capita exceeds [US $2,000] or whose combined round weight of catch and net weight of canned products of Atlantic tuna and tuna-like fishes exceeds [5,000 tons]. Group D: members not included in groups A, B and C."); ICCAT

scheme of annual contributions is established and may be modified only by the agreement of the Contracting Parties present and voting. The Executive Secretary notifies each Contracting Party of its yearly assessment.[231]

The Commission is also authorized to finance appropriations for any financial period from voluntary contributions from any of the Contracting Parties or from other sources, including income that accrues to the Commission.[232]

The Commission may suspend the voting rights of any Contracting Party whose arrears are greater or equal to the amount due from the preceding two years.[233]

13. Benefit Sharing

ICCAT, under Article VIII(1)(a) of the Convention, can issue recommendations involving Total Allowable Catch ("TAC") limits, as well as catch limits for individual Contracting Parties. For example, from 2010-2012, the TAC for South Atlantic Swordfish is 15,000 tons in each year. In 2010, the catch limits for the Contracting Parties are: 5,282 tons (European Community); 3,666 tons (Brazil); 1,168 tons (Namibia); 1,165 tons (Uruguay); 932 tons (South Africa); 901 tons (Japan); 459 tons (Chinese Taipei); 389 tons (Senegal); 263 tons (China); 125 tons (Côte d'Ivoire and Belize); 100 tons (United States, Angola, Ghana, and St. Tome and Principe); 50 tons (Philippines and South Korea); and 25 tons (United Kingdom).[234] In 2009, ICCAT also adopted recommendations concerning TAC limits for Bigeye Tuna, North Atlantic Swordfish, Mediterranean Swordfish (prohibiting all fishing in October and November), North Atlantic Albacore, Eastern Atlantic and Mediterranean Bluefin Tuna, and Thresher Sharks (prohibiting trade in the stock).[235]

Financial Regulations, Reg. 4(1)(b)(ii) (assigning 0.25 percent of the total budget to each member of Group D; 1.0 percent of the total budget to each member of Group C; 3.0 percent of the total budget to each member of Group B; and assigning the remaining budget to the members of Group A).

[231] Convention, art. X(2), X(4).

[232] ICCAT Financial Regulations, Reg. 4(6).

[233] Convention, art. X(8); ICCAT Rules of Procedure, Rule 9(20).

[234] Recommendation by ICCAT on South Atlantic Swordfish Catch Limits (Rec. 09-03), 2009, *available at* http://www.iccat.int/Documents%5CRecs%5Ccompendiopdf-e%5C2009-03-e.pdf.

[235] *See* Recommendation by ICCAT to Amend the Recommendation by ICCAT on a Multi-Year Conservation and Management Program for Bigeye Tuna (Rec. 09-01), 2009, *available at* http://www.iccat.int/Documents/Recs/compendiopdf-e/2009-01-e.pdf; Supplemental Recommendation by ICCAT to Amend the Rebuilding Program for North Atlantic Swordfish (Rec. 09-02), 2009, *available at* http://www.iccat.int/Documents/Recs/compendiopdf-e/2009-02-e.pdf; Recommendation by ICCAT for a Management Framework for the Sustainable Exploitation of Mediterranean Swordfish and Replacing ICCAT Recommendation 08-03 (Rec. 09-04), 2009, *available at* http://www.iccat.int/Documents/Recs/compendiopdf-e/2009-04-e.pdf; Recommendation by ICCAT to Establish a Rebuilding Program on North Atlantic Albacore (Rec. 09-05), 2009, *available at* http://www.iccat.int/Documents/Recs/compendiopdf-e/2009-05-e.pdf; Recommendation by ICCAT Amending Recommendation 08-05 to Establish a Multi-Annual Recovery Plan for Bluefin Tuna in the Eastern Atlantic and Mediterranean (Rec. 09-06), 2009, *available at* http://www.iccat.int/Documents/Recs/compendiopdf-e/2009-06-e.pdf; and Recommendation by ICCAT on the Conservation of Thresher Sharks Caught in Association with Fisheries in the ICCAT Convention Area (Rec. 09-07), 2009, *available at* http://www.iccat.int/Documents/Recs/compendiopdf-e/2009-07-e.pdf.

14. Compliance and Monitoring

Pursuant to Article IX(1) of the Convention, each Contracting Party agrees to "take all action necessary to ensure the enforcement of the Convention" and to "transmit to the Commission . . . a statement of the action taken by it for these purposes."

The Contracting Parties also agreed to furnish to the Commission any available statistical, biological and other scientific information necessary for the Commission to carry out its functions under the Convention, or, if unable to obtain and/or furnish such information, to allow the Commission (through the Contracting Parties) to obtain the necessary information on a voluntary basis directly from companies and individual fishermen.[236]

The Contracting Parties have also agreed to collaborate with each other in implementing the Convention, including on measures to "set up a system of international enforcement to be applied to the Convention area."[237]

ICCAT has adopted a number of resolutions and recommendations that require the Contracting Parties to report various types of information, such as vessel lists and compliance reports, in order to ensure that the ICCAT recommendations are being adequately implemented. For example, ICCAT members are obligated to inspect all tuna fishing vessels in their ports, including those of non-ICCAT members, and report violations of the recommendations to the Commission.[238] If a non-member ship is found to have fish that are managed by ICCAT on board, that ship is not supposed to land or transship those fish unless it can prove that they were caught outside the Convention area or in compliance with ICCAT rules.[239]

To facilitate the assimilation of information and to assist in answering questions regarding ICCAT regulations, the Commission has created a Department of Compliance.[240]

Pursuant to various resolutions and recommendations, ICCAT maintains a number of databases, including:

- ICCAT Record of Vessels over 20m (the so-called "white list" which lists vessels over 20 meters authorized to fish for tuna or tuna-like species in the Convention area);[241]

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[236] Convention, art. IX(2).

[237] Convention, art. IX(3).

[238] Recommendation by ICCAT for a Revised ICCAT Port Inspection Scheme (Rec. 97-10), 13 June 1998, *available at* http://www.iccat.int/Documents/Recs/compendiopdf-e/1997-10-e.pdf.

[239] Recommendation by ICCAT Concerning the Ban on Landings and Transhipments of Vessels from Non-Contracting Parties Identified as Having Committed a Serious Infringement (Rec. 98-11), 21 June 1999, *available at* http://www.iccat.int/Documents/Recs/compendiopdf-e/1998-11-e.pdf.

[240] *See* ICCAT: Staff, *available at* http://www.iccat.int/en/staff2.htm#Compl (last viewed on 29 Nov. 2010).

[241] Recommendation by ICCAT Concerning the Establishment of an ICCAT Record of Vessels 20 Meters in Length Overall or Greater Authorized to Operate in the Convention Area (Rec. 09-08), 2009, *available at* http://www.iccat.int/Documents/Recs/compendiopdf-e/2009-08-e.pdf.

- ICCAT Record of Carrier Vessels (lists vessels authorized to receive transshipments of tuna and tuna-like species in the Convention area from large-scale tuna longline vessels);[242]

- ICCAT Record of BFT Catching Vessels (lists vessels authorized to fish actively for bluefin tuna in the eastern Atlantic and Mediterranean Sea);[243]

- ICCAT Record of BFT Other Vessels (lists all other fishing vessels authorized to operate for bluefin tuna in the eastern Atlantic and Mediterranean Sea);[244]

- ICCAT Record of BFT Farming Facilities (lists facilities authorized to operate for farming of bluefin tuna caught in the Convention area);[245]

- ICCAT Record of BFT Traps (lists traps authorized to fish east Atlantic and Mediterranean bluefin tuna);[246]

- ICCAT Record of Ports (lists ports designated by Contracting Parties in which transshipment and landing of bluefin tuna is authorized);[247]

- ICCAT Record of Joint Fishing Operations (lists joint fishing operations, i.e., "any operation between two or more catching vessels flying the flag of different flag States [Contracting Parties] where the catch of one catching vessel is attributed to one or more other catching vessels in accordance with an allocation key").[248]

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[242] Recommendation by ICCAT Establishing a Programme for Transhipment (Rec. 06-11), 2006, *available at* http://www.iccat.int/Documents/Recs/compendiopdf-e/2006-11-e.pdf. In addition, in 2006, ICCAT established a Regional Observer Programme ("ROP") for At-Sea Transhipments, pursuant to which all transshipments must take place in port unless properly monitored under the ROP. *See* ICCAT: Regional Observer Programme for At-Sea Transhipments, *available at* http://www.iccat.int/en/ROP.htm (last viewed on 29 Nov. 2010).

[243] Recommendation Amending the Recommendation by ICCAT to Establish a Multi-Annual Recovery Plan for Bluefin Tuna in the Eastern Atlantic and Mediterranean (Rec. 08-05) ("Bluefin Rec. 08-05"), 2008, *available at* http://www.iccat.int/Documents/Recs/compendiopdf-e/2008-05-e.pdf.

[244] Bluefin Rec. 08-05. In addition, in 2008, ICCAT established a Regional Observer Programme for Bluefin Tuna, pursuant to which all purse seiners over 24 meters during the annual fishing season, all purse seiners involved in joint fishing operations, and all transfers of bluefin tuna to cages and all harvest of fish from cages would be subject to monitoring. *See* ICCAT: Regional Observer Programme for Bluefin Tuna, *available at* http://www.iccat.int/en/ROPbft.htm (last viewed on 29 Nov. 2010).

[245] Recommendation by ICCAT Concerning Bluefin Tuna Farming (Rec. 06-07), 2006, *available at* http://www.iccat.int/Documents/Recs/compendiopdf-e/2006-07-e.pdf.

[246] Bluefin Rec. 08-05.

[247] Bluefin Rec. 08-05.

[248] Bluefin Rec. 08-05.

ICCAT also maintains an IUU Vessel List (the so-called "black list"), which contains a list of vessels presumed to have engaged in illegal, unreported and unregulated fishing activities in the Convention area.[249]

In addition to the above databases, ICCAT can also utilize non-discriminatory trade-restrictive measures to combat IUU fishing.[250] Using reports from the Contracting Parties on the source of their tuna imports, ICCAT can identify those Contracting Parties that have failed to discharge their obligations, as well as non-member states that have undermined ICCAT conservation measures. It then may recommend that the Contracting Parties adopt non-discriminatory trade-restrictive measures against those identified states.[251]

ICCAT has also established two compliance bodies. The Conservation and Management Measures Compliance Committee "reviews all aspects of compliance with ICCAT conservation and management measures in the ICCAT Convention Area, with particular reference to compliance with such measures by ICCAT Contracting Parties."[252] The Permanent Working Group for the Improvement of ICCAT Statistics and Conservation Measures "obtains, compiles and reviews all available information for the fishing activities of *non*-Contracting Parties, for species under the purview of ICCAT, including details on the type, flag and name of vessels and reported or estimated catches by species and area."[253]

15. Participation and the Role of Multiple Stakeholders

See **Relationships**.

16. Dissolution and Termination

Pursuant to Article XII of the Convention, the Convention will remain in force until such time as a majority of the Contracting Parties agree to terminate it. A Contracting Party may withdraw from the Convention by submitting written notification to the Director-General of the FAO. The withdrawal will take effect on December 31 of the following year. Other Contracting Parties may also withdraw from the Convention at the same time if they submit written notification to the Director-General of the FAO within a month of receiving notice of the original withdrawal (but no later than April 1 of that year).

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[249] Recommendation by ICCAT Further Amending the Recommendation by ICCAT to Establish a List of Vessels Presumed to Have Carried out Illegal, Unreported and Unregulated Fishing Activities in the ICCAT Convention Area (Rec. 09-10), 2009, *available at* http://www.iccat.int/Documents/Recs/compendiopdf-e/2009-10-e.pdf.

[250] *See* Christine Goepp Towberman, *Fishing for a Solution: The Role of the United States in Preventing Collapse of the Eastern Atlantic Bluefin Fishery*, 38 ENVTL. L. REP. NEWS & ANALYSIS 10102, 10108-09 (2008); Christopher J. Carr and Harry N. Scheiber, *Dealing with a Resource Crisis: Regulatory Regimes for Managing the World's Marine Fisheries*, 21 STAN. ENVTL. L.J. 45, 73-74 (2002); Patrick A. Nickler, *A Tragedy of the Commons in Coastal Fisheries: Contending Prescriptions for Conservation, and the Case of the Atlantic Bluefin Tuna*, 26 B.C. ENVTL. AFF. L. REV. 549, 557-58 (1999).

[251] Recommendation by ICCAT Concerning Trade Measures (Rec. 06-13), 2006, *available at* http://www.iccat.int/Documents/Recs/compendiopdf-e/2006-13-e.pdf.

[252] ICCAT: Organization.

[253] ICCAT: Organization.

17. Additional Remarks

At its 2007 annual meeting in Antalya, Turkey, the Commission appointed three independent experts with knowledge of international fisheries instruments, management and science to conduct a performance review of ICCAT. The independent panel's recommendations were provided to a newly formed Working Group on the Future of ICCAT, which is concerned with efforts to improve the Commission's efficacy and efficiency.[254] ICCAT members have also taken part in joint meetings of other tuna RFMOs, in an effort to harmonize and standardize the way those organizations assess and manage fisheries.[255]

18. Websites and References

The International Commission for the Conservation of Atlantic Tunas, *available at* www.iccat.int.

ICCAT Field Manual, *available at* http://www.iccat.int/en/ICCATManual.htm.

ICCAT: Report for Biennial Period, 2008-09, Part II (2009) – Vol. 1 (2009), *available at* http://www.iccat.int/Documents/BienRep/REP_EN_08-09_II_1.pdf.

ICCAT: Report of the Independent Performance Review of ICCAT, 2009, *available at* http://www.iccat.int/Documents/Other/PERFORM_%20REV_TRI_LINGUAL.pdf.

Christopher J. Carr and Harry N. Scheiber, *Dealing with a Resource Crisis: Regulatory Regimes for Managing the World's Marine Fisheries*, 21 STAN. ENVTL. L.J. 45 (2002).

Elizabeth DeLone, *Improving the Management of the Atlantic Tuna: The Duty to Strengthen the ICCAT in Light of the 1995 Straddling Stocks Agreement*, 6 N.Y.U. ENVTL. L.J. 656 (1998).

Patrick A. Nickler, *A Tragedy of the Commons in Coastal Fisheries: Contending Prescriptions for Conservation, and the Case of the Atlantic Bluefin Tuna*, 26 B.C. Envtl. Aff. L. Rev. 549 (1999).

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Jon Van Steenis, *Pirates as Poachers: International Fisheries Law and the Bluefin Tuna*, 29 CAP. U. L. REV. 659 (2001).

[254] ICCAT, Report for Biennial Period, 2008-09, Part I (2008) – Vol. 1 (2008), at 8-9, 40, *available at* http://www.iccat.int/Documents/BienRep/REP_EN_08-09_I_1.pdf.

[255] ICCAT fortifies its management of bluefin tuna fisheries, 2009 Annual ICCAT Meeting Press Release, 16 Nov. 2009, *available at* http://www.iccat.int/Documents/Meetings/COMM2009/PressReleaseCom2009-ENG.pdf.

Joint (Fisheries) Development Zone between Jamaica and Colombia

1. Legal Basis

The Maritime Delimitation Treaty between Jamaica and the Republic of Colombia ("Maritime Delimitation Treaty") was signed on 12 November 1993 in Kingston, Jamaica and came into force on 14 March 1994 when Jamaica and Colombia exchanged the instruments of ratification.[256]

2. Member States

The Member States are Jamaica and Colombia.

3. Geographical Scope

The maritime boundary between Jamaica and Colombia is constituted by geodesic lines drawn between the following points: Point 1, Latitude (North) 14º 29' 37", Longitude (West) 78º 38' 00"; Point 2, Latitude (North) 14º 15' 00", Longitude (West) 78º 19' 30"; Point 3, Latitude (North) 14º 05' 00", Longitude (West) 77º 40' 00"; Point 4, Latitude (North) 14º 44' 10", Longitude (West) 74º 30' 50". From point 4, the delimitation line continues by a geodesic line in the direction to another point with the coordinates 15º 02' 00" North, 73º 27' 30" West, until the delimitation line between Colombia and Haiti is intercepted by the delimitation line to be decided between Jamaica and Haiti.[257]

Within this area is "The Joint Regime Area," in which Jamaica and Colombia agreed to establish "a zone of joint management, control, exploration and exploitation of the living and non-living resources." The Joint Regime Area is bounded by the following coordinates: Point 1, Latitude (North) 16º 04' 15", Longitude (West) 79º 50' 32"; Point 2, Latitude (North) 16º 04' 15", Longitude (West) 79º 29' 20"; Point 3, Latitude (North) 16º 10' 10", Longitude (West) 79º 29' 20"; Point 4, Latitude (North) 16º 10' 10", Longitude (West) 79º 16' 40"; Point 5, Latitude (North) 16º 04' 15", Longitude (West) 79º 16' 40"; Point 6, Latitude (North) 16º 04' 15", Longitude (West) 78º 25' 50"; Point 7, Latitude (North) 15º 36' 00", Longitude (West) 78º 25' 50"; Point 8, Latitude (North) 15º 36' 00", Longitude (West) 78º 38' 00"; Point 9, Latitude (North) 14º 29' 37", Longitude (West) 78º 38' 00"; Point 10, Latitude (North) 15º 30' 10", Longitude (West) 79º 56' 00"; Point 11, Latitude (North) 15º 46' 00", Longitude (West) 80º 03' 55". The Joint Regime Area then proceeds along the arc of 12 nautical miles, which is centered at 15º 47' 50" North, 79º 51' 20" West, to the coordinate at 15º 58' 40" North, 79º 56' 40" West and then is closed by a geodesic line to Point 1. The Joint Regime Area specifically excludes the maritime areas around the cays of Serranilla Banks and around the cays of Bajo Nuevo.[258]

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[256] Maritime Delimitation Treaty between Jamaica and the Republic of Colombia ("Maritime Delimitation Treaty"), 12 Nov. 1993, *available at* http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/JAM-COL1993MD.PDF. *See also* Decreto 1330 de 1994 [Colombia decree implementing the Maritime Delimitation Treaty], 27 June 1994, *available at* www.presidencia.gov.co/prensa_new/decretoslinea/1994/junio/27/dec1330271994.doc (Spanish only).

[257] Maritime Delimitation Treaty, art. 1.

[258] Maritime Delimitation Treaty, art. 3(1); *see also* Limits in the Seas: Jamaica's Maritime Claims and Boundaries—U.S. Department of State, Office of Ocean Affairs, Bureau of Oceans and International Environmental and Scientific Affiars, No. 125, 5 Feb. 2004, at 9, *available at* http://www.state.gov/documents/organization/57677.pdf.

4. Legal Personality

Under Article 4 of the Maritime Delimitation Treaty, Jamaica and Colombia agreed to establish a Joint Commission for the purposes of implementing the provisions of the Maritime Delimitation Treaty. For more information on the Joint Commission, s*ee* **Functions** and **Organizational Structure**.

5. Functions

According to Article 4(1) of the Maritime Delimitation Treaty, the Joint Commission "shall elaborate the modalities for the implementation and carrying out" of the following activities:

- The exploration and economic exploitation of natural resources in the waters and seabed of the Joint Regime Area;
- The establishment and use of artificial islands, installations and structures;
- Marine scientific research;
- The protection of the marine environment;
- The conservation of living resources; and
- Other measures as authorized by the Maritime Delimitation Treaty or as agreed upon by Colombia and Jamaica to ensure enforcement and compliance with the Maritime Delimitation Treaty.[259]

Additionally, where hydrocarbon or natural gas deposits are discovered on both sides of the delimitation line, the resources shall be distributed so that both Colombia and Jamaica receive an amount proportional to the amount of the resource found on each side of the line.[260]

The Member States also agreed not to authorize third states and international organizations to carry out the above listed activities, unless acting pursuant to certain arrangements (such as leases, licenses, joint ventures, and technical assistance programs) concluded with either Colombia or Jamaica to achieve the objective of the Maritime Delimitation Treaty. The Joint Commission may adopt measures that ensure that nationals and vessels of third states comply with regulations adopted by the Member States for implementing the Maritime Delimitation Treaty. For activities relating to the exploitation and exploration of non-living resources, marine scientific research, and protection of the marine environment, Colombia and Jamaica agreed to carry them out on a joint basis, as agreed upon by both of them.[261]

6. Organizational Structure

The Joint Commission consists of one representative from each Member State, who may be assisted by other advisers as necessary. Colombia and Jamaica retain jurisdiction over their respective nationals and

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[259] Maritime Delimitation Treaty, art. 3(2).

[260] Maritime Delimitation Treaty, art. 2.

[261] Maritime Delimitation Treaty, art. 3(2)-3(4), 3(6).

vessels flying its flag, as well as vessels over which it exercises management and control under international law.[262]

7. Relationships

Jamaica and Colombia can regulate the activities of other states and international organizations in the Joint Regime Area. *See* **Functions.**

8. Decision Making

Conclusions of the Joint Commission are adopted by consensus and are considered to be non-binding recommendations to the Member States. When the conclusions of the Joint Commission are adopted by the Member States, they become binding.[263]

9. Dispute Resolution

Under Article 7 of the Maritime Delimitation Treaty, any dispute between Colombia and Jamaica on the interpretation or application of the Maritime Delimitation Treaty is to be settled by means of peaceful settlement in accordance with international law.

When one Member State alleges that the other Member State has breached or is breaching the provisions of the Maritime Delimitation Treaty or measures adopted for its implementation, the Member State alleging the breach shall bring it to the attention of the other Member State. Both Member States will consult with each other and attempt to reach a settlement within 14 days. Furthermore, when Colombia or Jamaica receives notice that it is alleged to have breached or is breaching the Maritime Delimitation Treaty, it is obligated to ensure that the complained of activities do not reoccur or are discontinued.[264]

10. Data Information Sharing, Exchange, and Harmonization

No specific provision

11. Notifications

When one Member State alleges that the other Member State has breached the agreement, it should bring the breach to the attention of the other Member State. *See* **Dispute Resolution.**

12. Funding and Financing

No specific provision

13. Benefit Sharing

No specific provision

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[262] Maritime Delimitation Treaty, arts. 4(2), 3(5).

[263] Maritime Delimitation Treaty, art. 4(3).

[264] Maritime Delimitation Treaty, art. 3(5).

14. Compliance and Monitoring

No specific provision

15. Participation and the Role of Multiple Stakeholders

No specific provision

16. Dissolution and Termination

No specific provision

17. Additional Remarks

N/A

18. Websites and References

- Maritime Delimitation Treaty between Jamaica and the Republic of Colombia, 12 Nov. 1993, *available at* http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/JAM-COL1993MD.PDF

- Decreto 1330 de 1994 [Colombia decree implementing the Treaty], 27 June 1994, *available at* www.presidencia.gov.co/prensa_new/decretoslinea/1994/junio/27/dec1330271994.doc (Spanish only).

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- Chang-Wee Lee and Chanho Park, Joint Marine Scientific Research in Intermediate/Provisional Zones between Korea and Japan, at 10-11, *available at* http://www.scj.go.jp/en/sca/pdf/7th_weepark.pdf.

Rio Grande/Rio Bravo

1. Legal Basis

There are two main applicable international treaties. The first is the Boundary Convention ("1889 Convention"), which was signed in Washington, D.C., United States on 1 March 1889, and entered into force on 24 December 1890. The Boundary Convention established the International Boundary Commission ("IBC") to apply the rules in the 1884 Convention between the United States and Mexico, and was later modified by the Banco Convention of 20 March 1905 to retain the Rio Grande and the Colorado River as the international boundary.[265]

The second is the Treaty Relating to the Utilization of the Waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, to the Gulf of Mexico (the "Water Treaty") (which was signed in Washington, D.C. on 3 February 1944) and the Supplementary Protocol (which was signed in Washington, D.C. on 14 November 1944). The Water Treaty came into force on 8 November 1945 by the exchange of ratifications between the United States and Mexico.[266] The Water Treaty distributed the waters in the international segment of the Rio Grande from Fort Quitman, Texas to the Gulf of Mexico. The Water Treaty authorized Mexico and the United States to construct, operate, and maintain dams on the main channel of the Rio Grande. The Water Treaty also changed the name of the IBC to the International Boundary And Water Commission ("IBWC") and, under Article 3, directed the IBWC to give preferential attention to border sanitation problems.

Additional bilateral treaties that are relevant to the Rio Grande (Rio Bravo) include the following:

- The Treaty of 2 February 1848, which established the United States-Mexico international boundary, and the Treaty of 30 December 1853, which modified the boundary to where it exists today.[267]

- The Convention of 29 July 1882, which established another temporary commission to resurvey and place additional monuments along the western land boundary from El Paso, Texas, United States/Ciudad Juárez, Chihuahua, Mexico to San Diego, California, United States/Tijuana, Baja California, Mexico.[268]

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[265] Convention to Avoid the Difficulties Occasioned by Reason of the Changes Which Take Place in the Beds of the Rio Grande and Colorado Rivers ("Boundary Convention"), 1 Mar. 1889, *available at* http://www.ibwc.gov/Files/TREATY_OF_1889.pdf.

[266] Treaty Relating to the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, and supplementary protocols ("Water Treaty"), 3 Feb. 1944 and 14 Nov. 1944, *available at* http://www.ibwc.gov/Files/1944Treaty.pdf.

[267] Treaty between the United States of America and the Mexican Republic—Peace, Friendship, Limits, and Settlement, 2 Feb. 1848, *available at* http://www.ibwc.gov/Files/Treaty_of_1848.pdf.

[268] Convention between the United States of America and the United States of Mexico Providing for an International Boundary Survey to Relocate the Existing Frontier Line Between the Two Countries West of the Rio Grande, 29 July 1882, *available at* http://www.ibwc.gov/Files/TREATY_OF_1882.pdf.

- The Convention of 12 November 1884, which established the rules for determining the location of the boundary when the meandering rivers transferred tracts of land from one bank of the river to the other.[269]

- The Convention of 21 May 1906 ("1906 Convention"), which provided for the distribution between the United States and Mexico of the waters of the Rio Grande above Fort Quitman, Texas to the El Paso-Juárez Valley. The 1906 Convention allotted to Mexico 60,000 acre-feet annually of the waters of the Rio Grande to be delivered in accordance with a monthly schedule at the headgate to Mexico's Acequia Madre just above Juárez, Chihuahua. To facilitate such deliveries, the United States constructed, at its expense, the Elephant Butte Dam in U.S. territory. The 1906 Convention also provides that in case of extraordinary drought or serious accident to the irrigation system in the United States, the amount of water delivered to the Mexican Canal shall be diminished in the same proportion as the water delivered to lands under the irrigation system in the United States downstream of the Elephant Butte Dam.[270]

- The Convention of 1 February 1933, through which Mexico and the United States agreed to jointly construct, operate, and maintain, through the IBC, the Rio Grande Rectification Project, which straightened, stabilized, and shortened the river boundary in the El Paso-Juárez area.[271]

- The Chamizal Convention of 29 August 1963, which resolved the 100 year-old Chamizal Boundary Dispute at El Paso, Texas, United States/Ciudad Juárez, Chihuahua, Mexico. The IBWC relocated and placed concrete lines on 4.4 miles of the channel of the Rio Grande in order to transfer 437 acres of land to Mexico.[272]

- The Treaty of 23 November 1970 ("1970 Treaty"), which resolved all the pending boundary differences between Mexico and the United States and maintained the Rio Grande and the Colorado River as the international boundary. The 1970 Treaty established procedures to avoid the loss or gain of territory by either Mexico or the United States incident to future changes in the course of the river. The 1970 Treaty charges the IBWC with carrying out its provisions.[273]

2. Member States

The Member States of the IBWC are Mexico and the United States.

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[269] Convention between the United States of America and the United States of Mexico Touching the International Boundary Line Where It Follows the Bed of the Rio Colorado, 12 Nov. 1884, *available at* http://www.ibwc.gov/Files/TREATY_OF_1884.pdf.

[270] Convention Providing for the Equitable Distribution of the Waters of the Rio Grande for Irrigation Purposes ("1906 Convention"), 21 May 1906, *available at* http://www.ibwc.gov/Files/1906Conv.pdf.

[271] Convention for the Rectification of the Rio Grande (Rio Bravo del Norte) in the El Paso-Juarez Valley, 1 Feb. 1933, *available at* http://www.ibwc.gov/Files/TREATY_OF_1933.pdf.

[272] Convention between the United States of America and Mexico on Boundary Solution of the Problem of the Chamizal, 29 Aug. 1963, *available at* http://www.ibwc.gov/Files/ChamizalConvention1963.pdf.

[273] Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary Between the United States of America and Mexico, 23 Nov. 1970, *available at* http://www.ibwc.gov/Files/1970_Treaty.pdf.

3. Geographical Scope

The Rio Grande (Rio Bravo) has its origin at the Continental Divide in the San Juan Mountains of southern Colorado in the United States and cuts through the middle of New Mexico to the junction of Texas and Chihuahua, where it serves as the international boundary between Mexico and the United States. The river extends for 1,885 miles, ultimately flowing into the Gulf of Mexico, and the river and its tributaries drain a land area of 182,200 square miles.[274] According to Article 2 of the Water Treaty, the jurisdiction of the IBWC extends to the border sections of the Rio Grande (Rio Bravo) and the Colorado River, the land boundary between the United States and Mexico, and works located upon their common boundary. Each Member State, however, retains jurisdiction over the works in its territory.

4. Legal Personality

The Water Treaty grants the IBWC the status of an international body. The IBWC consists of a Mexican and a United States Section, each headed by an Engineer Commissioner. The Commissioners and their staff possess certain diplomatic privileges and immunities. In addition, materials and equipment to be used for the construction, operation, and maintenance of works constructed through the IBWC do not need to pay import or export customs duties.[275]

The IBWC replaced the IBC that was established under the 1889 Convention. The responsibilities of the IBC were generally limited to resolving boundary problems. The Water Treaty extended the 1889 Convention indefinitely and broadened the scope of the IBWC to include water issues. According to the Water Treaty, the IBWC retained the duties and powers of the former IBC by the 1889 Convention, as well as other treaties and agreements in force between the United States and Mexico.[276]

5. Functions

The IBWC is responsible for applying the boundary and water treaties between the United States and Mexico, including to:

- Undertake investigations, and develop plans for joint boundary and water works;
- Construct, operate, and maintain the joint boundary and water works, including international storage dams, reservoirs, and hydroelectric power plants (as well as stream-gauging stations which provide the hydrographical data used to determine the national ownership of the waters);
- Implement other rights and obligations assumed by the United States and Mexico in the 1889 Convention and the Water Treaty, especially in regards to improving border sanitation and other water quality problems, demarcating the land boundary, using levees and floodways projects to

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[274] Monitoring the Water Quality of the Nation's Large Rivers, NASQAN National Stream Quality Accounting Network—United States Geological Survey, *available at* http://water.usgs.gov/nasqan/docs/riogrndfact/riogrndfact sheet.html (last viewed on 19 Jan. 2011).

[275] Water Treaty, art. 2; Stefano Burchi and Melvin Spreij, FAO Legal Office, Institutions for International Freshwater Management ("Burchi and Spreij Report"), 2003, at 33, *available at* http://webworld.unesco.org/water/wwap/pccp/cd/pdf/legal_tools/institutions_for_int_freshwater_management_2.pdf

[276] Water Treaty, art. 2; Burchi and Spreij Report, at 33.

protect the land along the rivers, and preserving the Rio Grande and the Colorado River as the international boundary;

- Report to the United States and Mexico on such matters as deemed necessary or as requested by them; and

- Resolve disputes between the United States and Mexico regarding the interpretation or application of the Water Treaty.[277]

6. Organizational Structure

The IBWC is an international body composed of the United States Section and the Mexican Section, each headed by an Engineer Commissioner appointed by the respective president of each country. Each Section is administered independently of the other. The United States Section of the International Boundary and Water Commission ("USIBWC") is a federal government agency and is headquartered in El Paso, Texas. The USIBWC operates under the foreign policy guidance of the U.S. Department of State. The Mexican Section is under the administrative supervision of the Mexican Ministry of Foreign Relations and is headquartered in Ciudad Juárez, Chihuahua, Mexico.[278]

In addition, each Section includes at least of two principal engineers, a legal adviser, a secretary, plus other staff as the Section requires. The Water Treaty does not discuss the frequency of meetings between the Commissioners. While the proceedings of the IBWC are governed by the 1889 Convention, the IBWC has also developed internal procedural rules and regulations.[279]

The USIBWC is comprised of the Executives Offices of the Commissioner (including the Office of the Legal Advisor, the Foreign Affairs Office, the Washington DC Liaison Office, the Public Affairs Office, the Human Resources Office, and the Compliance Programs Office) and an Operations Department, Engineering Department, and Administration Department. The Operations Department, which is headed by the Principal Engineer of Operations and had eight field offices, is responsible for providing technical and policy advice and ensuring that all of the operations and maintenance activities performed are consistent with treaty requirements. For example, among other responsibilities, it manages 20,000 acres of floodplains and 500 miles of levees, oversees half of the boundary monuments and markers, and performs the water accounting to determine, jointly with the Mexican Section, the ownership of the Rio Grande and the Colorado River waters. The Engineering Department, which is headed by the Principal Engineer of Engineering, is also responsible for providing technical and policy advice, as well as administering the engineering, environmental management, and geographic information system functions of the USIBWC (such as conducting water qualify monitoring and hydraulic studies). The Administration Department, which is headed by a Chief Administrative Office, provides administrative

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[277] Burchi and Spreij Report, at 34-35.

[278] Water Treaty, art. 2; Burchi and Spreij Report, at 34; International Boundary & Water Commission – United States Section, *available at* http://www.ibwc.gov/home.html (last viewed on 19 Jan. 2011); Comisión Internacional de Límites y Aguas Entre México y Los Estados Unidos Sección Mexicana, *available at* http://www.sre.gob.mx/cila/ (last viewed on 19 Jan. 2011) (Spanish only).

[279] Burchi and Spreij Report, at 34; Water Treaty, art. 2.

support for the entire USIBWC through its acquisitions, budget and financial services, information management, and general services divisions.[280]

The Mexico Section is formally known as the Comisión Internacional de Límites y Aguas Entre México y los Estados Unidos Sección Mexicana ("CILA"). CILA's mandate is to coordinate with the USIBWC to better the living conditions of those who currently depend on the Rio Grande (Rio Bravo) and to ensure that the river will continue to be a water resource for future generations.[281] The National Commission on Water is in charge of regulating and administering the water studies. The headquarter offices of CILA are located in Ciudad Juárez, but the Mexican government has established additional offices along the border in Tijuana, Mexicali, Nogales, Acuña, Reynosa and Nuevo Laredo.[282] The Mexico Section is led by a Director General who works out of the Ciudad Juárez office. In addition, each office also has principal engineers who perform the studies on the river's water pursuant to CILA's mandate.[283]

7. Relationships

The U.S. and Mexican Commissioners are in continuous contact. *See* **Functions.**

8. Decision Making

Implementation by the IBWC of provisions of treaties and other international agreements frequently requires specific agreements by the IBWC for the planning, construction, operation, cost sharing, and maintenance of joint works. These decisions of the IBWC are categorized as "Minutes," which contain recommendations to the United States and Mexico. Minutes are recorded in Spanish and English and are submitted to the governments of the United States and Mexico within three days of being signed. Except where the specific approval of the governments is required by treaty, the Minutes are considered to be approved as long as they are not disapproved by the governments within thirty days. Once approved, the Minutes enter into force as binding obligations on both Mexico and the United States. There are more than 300 binding Minutes.[284]

The Commissioners may also submit recommendations for new projects to their respective governments in order to try to resolve new, or anticipated, boundary or water problems. The United States and Mexican governments, as well as state or local authorities, may also propose a project to the IBWC through their respective Sections. The IBWC will then conduct a joint investigation, and publish the

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[280] International Boundary & Water Commission – United States Section: U.S. IBWC Organizational Structure, *available at* http://www.ibwc.gov/Organization/organization.html (last viewed on 19 Jan. 2011).

[281] *See* Comisión Internacional de Límites y Aguas Entre México y los Estados Unidos Sección Mexicana – Misión y Visión, *available at* http://portal.sre.gob.mx/cilanorte/index.php?option=displaypage&Itemid=59&op=page&SubMenu= (last viewed on 3 Feb. 2011) (Spanish only).

[282] Comisión Internacional de Límites y Aguas Entre México y los Estados Unidos Sección Mexicana – Nuestras Representaciones, *available at* http://portal.sre.gob.mx/cilanorte/index.php?option=displaypage&Itemid=62&op=page&SubMenu= (last viewed on 3 Feb. 2011) (Spanish only).

[283] *See* Comisión Internacional de Límites y Aguas Entre México y los Estados Unidos Sección Mexicana – Historia, *available at* http://portal.sre.gob.mx/cilanorte/index.php?option=displaypage&Itemid=54&op=page&SubMenu= (last viewed on 3 Feb. 2011) (Spanish only).

[284] Burchi and Spreij Report, at 34; Minutes between the United States and Mexican Sections of the IBWC, *available at* http://www.ibwc.gov/Treaties_Minutes/Minutes.html (last viewed on 19 Jan. 2011).

results in a joint report by the Principal Engineers of the United States and Mexican Sections. If the investigation concludes that a project is needed, feasible, and can be justified as an international project, the IBWC can endorse the conclusions of the investigation in a Minute and recommend the project to the United States and Mexican governments. If the project is authorized and funded by both the United States and Mexico, the countries will each work, according to an approved agreement, on their portion of the project through their respective Sections and under the supervisions of the IBWC.[285]

9. Dispute Resolution

The IBWC is tasked with settling the differences that occur between the United States and Mexico concerning the interpretation or application of the Water Treaty, subject to the approval of both countries. In the event that the Commissioners cannot reach an agreement, the Sections will inform their respective governments in order for discussions to commence through diplomatic channels so that the United States and Mexico, where appropriate, can reach an agreement on settling the dispute.[286]

10. Data Information Sharing, Exchange, and Harmonization

Data on water flow and reservoir condition are collected and updated daily on the IBWC website.[287] The collated stream gauging record and records of waters in storage, rainfall and evaporation stations and of the measurements of the quality of waters are published annually in the *Flow of the Rio Grande and Tributaries and Related Data*, an IBWC bulletin.[288] Data on water quality and quantity is also available on IBWC's Geographic Information System.[289]

11. Notifications

The IBWC submits to the United States and Mexico an annual report on its activities.[290]

12. Funding and Financing

The United States and Mexican Sections each maintain their own staff, and each Member State funds the cost of the operation of its Section.

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[285] International Boundary & Water Commission – United States Section: The International Boundary and Water Commission, Its Mission, Organization and Procedure for Solution of Boundary and Water Problems ("IBWC – About Us"), *available at* http://www.ibwc.gov/About_Us/About_Us.html (last viewed on 19 Jan. 2011).

[286] Burchi and Spreij Report, at 35.

[287] International Boundary & Water Commission – United States Section: Rio Grande Basin Conditions, *available at* http://www.ibwc.gov/Water_Data/Reports/RG_Flow_data.html (last viewed on 19 Jan. 2011).

[288] *See* IBWC Water Resources, *available at* http://www.ibwc.gov/wad/water_resources.htm (last viewed on 19 Jan. 2011).

[289] International Boundary & Water Commission – United States Section: Geographic Information System (GIS) Program, *available at* http://www.ibwc.gov/GIS_Maps/GIS_Program.html (last viewed on 19 Jan. 2011).

[290] *See, e.g.*, International Boundary and Water Commission United States and Mexico – 2006 Annual Report, *available at* http://www.ibwc.gov/Files/2006_Annual_report.pdf.

Unless they have reached an agreement specifying otherwise, the United States and Mexico generally share the costs of projects concerning the mutual control and utilization of boundary river waters in proportion to their respective benefits derived. But for projects involving man-made works or operations in one Member State that is causing, or threatening to cause, damage in the other country, the Member State where the problem originated is responsible for the cost of the project.[291] For more information on projects, *see* **Decision Making**.

13. Benefit Sharing

Under the 1906 Convention, the United States—barring extraordinary drought or serious accidents to the United States irrigation system—had agreed to deliver 60,000 acre-feet of water annually to Mexico from the Rio Grande at the Acequia Madre head works.[292]

Article 4 of the Water Treaty allocates between the United States and Mexico the waters of the Rio Grande (Rio Bravo) between Fort Quitman, Texas, United States and the Gulf of Mexico. Mexico receives:

(a) All of the waters reaching the main channel of the Rio Grande (Rio Bravo) from the San Juan and Alamo Rivers, including the return flow from the lands irrigated from the latter two rivers.

(b) One-half of the flow in the main channel of the Rio Grande (Rio Bravo) below the lowest major international storage dam, so far as said flow is not specifically allocated under this Treaty to either of the two countries.

(c) Two-thirds of the flow reaching the main channel of the Rio Grande (Rio Bravo) from the Conchos, San Diego, San Rodrigo, Escondido and Salado Rivers and the Las Vacas Arroyo.

(d) One-half of all other flows not otherwise allotted by this Article occurring in the main channel of the Rio Grande (Rio Bravo), including the contributions from all the unmeasured tributaries, which are those not named in this Article, between Fort Quitman and the lower major international storage dam.

The United States receives:

(a) All of the waters reaching the main channel of the Rio Grande (Rio Bravo) from the Pecos and Devils Rivers, Goodenough Spring, and Alamito, Terlingua, San Felipe and Pinto Creeks.

(b) One-half of the flow in the main channel of the Rio Grande (Rio Bravo) below the lowest major international storage dam, so far as said flow is not specifically allotted under this Treaty to either of the two countries.

(c) One-third of the flow reaching the main channel of the Rio Grande (Rio Bravo) from the Conchos, San Diego, San Rodrigo, Escondido and Salado Rivers and the Las Vacas Arroyo, provided that this third shall not be less, as an average amount in cycles of five consecutive years, than 350,000 acre-feet (431,721,000 cubic meters) annually. The United States shall not acquire any right by the use of the waters of the tributaries named in this subparagraph, in excess of the

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[291] IBWC – About Us.

[292] 1906 Convention, art. I-II.

said 350,000 acre-feet (431,721,000 cubic meters) annually, except the right to use one-third of the flow reaching the Rio Grande (Rio Bravo) from said tributaries, although such one-third may be in excess of that amount.[293]

(d) One-half of all other flows not otherwise allotted by this Article occurring in the main channel of the Rio Grande (Rio Bravo), including the contributions from all the unmeasured tributaries, which are those not named in this Article, between Fort Quitman and the lowest major international storage dam.

Furthermore, under Article 10 of the Water Treaty, the United States agrees, barring extraordinary drought or serious accident to the United States irrigation system, to provide to Mexico a guaranteed annual quantity of 1,500,000 acre-feet (1,850,234,000) from the Colorado River. In addition, if the Colorado River has a surplus of water in excess of Mexico's guaranteed allocation and the supply needs in the United States, the United States agrees to deliver additional water from the Colorado River to Mexico, up to a maximum annual quantity of 1,700,000 acre-feet (2,096,000 cubic meters).

14. Compliance and Monitoring

The IBWC monitors ownership in waters stored at the international dams, and this data is available on the IBWC's website. The IBWC determines ownership in the reservoirs on a weekly basis. The IBWC also oversees the collection of field data, the exchange of data between the United States and Mexico, and the computation of national ownership on a weekly basis.[294]

15. Participation and the Role of Multiple Stakeholders

The USIBWC has established five Citizens' Forums in order to promote the sharing of information about USIBWC activities with the general public in relevant areas of the United States. The five Citizens' Forums are: (1) South Bay Citizens' Forum (established in 2002 for the public in San Diego County, California), (2) Colorado River Citizens' Forum (established in 2003 for the public in Yuma County, Arizona and Imperial County, California); (3) Southeast Arizona Citizens' Forum (established in 2005 for the public in Southeast Arizona); (4) Rio Grande Citizens Forum (established in 1999 for the public between Percha Dam, New Mexico and Fort Quitman, Texas); and (5) Lower Rio Grande Citizens' Forum (established in 2003 for the public in the Lower Rio Grande Valley of Texas).[295]

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[293] Article 4 of the Water Treaty also provides that: "In the event of extraordinary drought or serious accident to the hydraulic systems on the measured Mexican tributaries, making it difficult for Mexico to make available the run-off of 350,000 acre-feet (431,721,000 cubic meters) annually, allotted…to the United States as the minimum contribution from the aforesaid Mexico tributaries, any deficiencies existing at the end of the aforesaid five-year cycle shall be made up in the following five-year cycle with water from the said measured tributaries."

[294] *See* The International Boundary & Water Commission, United States Section: Updated Rio Grande National Ownership of Waters Stored at The International Amistad and Falcon Dams, *available at* http://www.ibwc.gov/wad/storage.htm (last viewed on 19 Jan. 2011).

[295] *See* San Diego (South Bay International Wastewater Treatment Plant SBIWTP), *available at* http://www.ibwc.gov/Citizens_Forums/CF_SBIWTP.html (last viewed on 27 Jan. 2011); Colorado River Citizens' Forum Meeting, *available at* http://www.ibwc.gov/Citizens_Forums/CF_Colorado.html (last viewed on 27 Jan. 2011); Southeast Arizona Citizens' Forum Meeting, *available at* http://www.ibwc.gov/Citizens_Forums/CF_SE_AZ.html (last viewed on 27 Jan. 2011); Upper Rio Grande (Southern New Mexico & West Texas) Citizen's Forum Meetings, *available at* http://www.ibwc.gov/Citizens_Forums/CF_URG.html (last viewed on 27 Jan. 2011); Lower Rio

Both Sections make a range of information and documents publicly available on their websites. For example, CILA's website includes a directory of contact information for the staff at all of the Mexican office locations and regularly posts press releases to keep the public updated on developments concerning the IBWC.[296]

16. Dissolution and Termination

According to Article 28, the Water Treaty "shall continue in force until terminated by another Treaty concluded for that purpose between the two Governments."

17. Additional Remarks

N/A

18. Websites and References

- International Boundary and Water Commission – Mexican Section, *available at* http://www.sre.gob.mx/cila/.
- International Boundary and Water Commission – United States Section, *available at* http://www.ibwc.state.gov/.
- Monitoring the Water Quality of the Nation's Large Rivers, NASQAN National Stream Quality Accounting Network—United States Geological Survey, *available at* http://water.usgs.gov/nasqan/docs/riogrndfact/riogrndfactsheet.html.
- Helen Ingram and David R. White, *International Boundary and Water Commission: An Institutional Mismatch for Resolving Transboundary Water Problems*, 33 NAT. RESOURCES J. 153 (1993).
- Stephen P. Mumme, *The Background and Significance of Minute 261 of the International Boundary and Water Commission*, 11 Cal. W. Int'l L.J. 223 (1981).
- Stephen P. Mumme and Scott T. Moore, *Agency Autonomy in Transboundary Resource Management: The United States Section of the International Boundary and Water Commission, United States and Mexico*, 30 NAT. RESOURCES J. 661 (1990).
- *International Boundary and Water Commission: Two Alternatives for Improving Wastewater Treatment at the United States-Mexico Border*, United States Government Accountability Office, 24 Apr. 2008, *available at* http://www.gao.gov/new.items/d08595r.pdf.

Grande Citizens' Forum Meetings, *available at* http://www.ibwc.gov/Citizens_Forums/CF_Lower_RG.html (last viewed on 27 Jan. 2011).

[296] *See generally* Comisión Internacional de Límites y Aguas Entre México y los Estados Unidos Sección Mexicana – Prensa, *available at* http://www.sre.gob.mx/cila/ (last viewed on 3 Feb. 2011).

B. Europe

Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution

1. Legal Basis

The Convention for the Protection of the Mediterranean Sea Against Pollution was signed on 16 February 1976 in Barcelona, Spain, and entered into force on 12 February 1978.[297] This agreement was amended in June 1995, and renamed the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean ("Barcelona Convention"); the amended version entered into force on 9 July 2004.[298]

The Contracting Parties to the Barcelona Convention have adopted seven protocols within the Convention framework. The five protocols that have entered into force are: (i) Protocol for the Prevention of Pollution in the Mediterranean Sea by Dumping from Ships and Aircraft ("Dumping Protocol") (entered into force on 12 February 1978, but amendments adopted in 1995 have not yet entered into force); (ii) Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea ("Emergency Protocol") (entered into force on 17 March 2004, replacing a previous agreement in force since 12 February 1978); (iii) Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities ("Land-Based Sources Protocol") (entered into force on 11 May 2008, replacing a previous agreement in force since 17 June 1983); (iv) Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean ("Specially Protected Areas and Biodiversity Protocol") (entered into force 12 December 1999, replacing a previous agreement in force since 23 March 1986); and (v) Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal ("Hazardous Wastes Protocol") (entered into force on 19 January 2008).[299]

The Contracting Parties have also adopted the Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil ("Offshore Protocol") (adopted on 14 October 1994) and the Protocol on Integrated Coastal Zone Management in the Mediterranean ("Integrated Coastal Zone Management Protocol") (adopted 21 January 2008).[300] But, to date, few countries have ratified these protocols, and they are not yet in force.

The Barcelona Convention was born out of an intergovernmental congress initiated by the United Nations Environment Program ("UNEP") in 1975. The congress participants adopted recommendations for joint

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[297] Convention for the Protection of the Mediterranean Sea Against Pollution, 1 ("Barcelona Convention (1976)"), 16 Feb. 1976, *available at* http://195.97.36.231/dbases/webdocs/BCP/BC76_Eng.pdf.

[298] Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean ("Barcelona Convention, as amended"), 10 June 1995, *available at* http://195.97.36.231/dbases/webdocs/BCP/bc95_Eng_p.pdf.

[299] Mediterranean Action Plan for the Barcelona Convention: Protocols ("MAP – Protocols"), *available at* http://www.unepmap.org/index.php?module=content2&catid=001001001 (last viewed on 1 Dec. 2010). Not all of the Contracting Parties to the Barcelona Convention have signed or ratified all of the Protocols that are currently in force. *See* **Member States**.

[300] MAP – Protocols.

action and requests for further UNEP assistance.[301] This resolution came to be known as the Mediterranean Action Plan ("MAP I"). The scope of practical actions taken jointly under the auspices of the Barcelona Convention and its Protocols is referred to as the "MAP Program." The MAP Program is part of the UNEP's Regional Seas Program. MAP I was replaced on 10 June 1995 by the second Mediterranean Action Plan ("MAP II").[302]

2. Member States

The Contracting Parties of the Barcelona Convention are Albania, Algeria, Bosnia and Herzegovina, Croatia, Cyprus, the European Union ("EU"), Egypt, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Montenegro, Morocco, Slovenia, Spain, Syria, Tunisia, and Turkey.[303] Furthermore, the amended Treaty of the European Union grants the EU exclusive competence in the area of "conservation of marine biological resources under the common fisheries policy."[304]

With the exception of Montenegro, all of the Contracting Parties to the Barcelona Convention are also members of the Dumping Protocol. Algeria, Bosnia and Herzegovina, Greece, Israel, Lebanon, and Libya have not accepted the 1995 amendments to the Dumping Protocol.

The Contracting Parties to the current (2002) Emergency Protocol are Croatia, Cyprus, the EU, France, Greece, Malta, Monaco, Montenegro, Slovenia, Spain, Syria, and Turkey. In addition, Albania, Algeria, Bosnia and Herzegovina, Egypt, Israel, Italy, Lebanon, Libya, Morocco, and Tunisia were members of the 1995 Emergency Protocol, but have not yet ratified the current Emergency Protocol.

All of the Contracting Parties to the Barcelona Convention are members of the Land-Based Sources Protocol. But, Algeria, Bosnia and Herzegovina, Egypt, Lebanon, and Libya have not accepted the 1996 amendments to the Land-Based Sources Protocol.

The Contracting Parties to the current (1995) Specially Protected Areas and Biodiversity Protocol are Albania, Algeria, Croatia, Cyprus, the EU, Egypt, France, Italy, Lebanon, Malta, Monaco, Montenegro, Morocco, Slovenia, Spain, Syria, Tunisia, and Turkey. Bosnia and Herzegovina, Greece, Israel, and Libya were members of the 1982 Specially Protected Areas Protocol, but they have not yet ratified the current Specially Protected Areas and Biodiversity Protocol.

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[301] Report of the Intergovernmental Meeting on the Protection of the Mediterranean, 11 Feb. 1975, Annex: Action Plan ("MAP I"), *available at* http://195.97.36.231/acrobatfiles/75WG2_5_Eng.pdf.

[302] Report of the Ninth Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea Against Pollution and Its Protocols, 8 June 1995, at Annex IX: Action Plan for the Protection of the Marine Environment and the Sustainable Development of the Coastal Areas of the Mediterranean (MAP Phase II) ("MAP II"), Annex XI: Barcelona Resolution on the Environment and Sustainable Development in the Mediterranean Basin (adopting MAP II), *available at* http://195.97.36.231/acrobatfiles/95IG5_16_Eng.pdf.

[303] Status of Signatures and Ratifications of the Barcelona Convention and its Protocols ("Status of Signatures and Ratifications"), *available at* http://195.97.36.231/dbases/webdocs/BCP/StatusOf SignaturesAndRatifications.doc. Bosnia and Herzegovina has not accepted the 1995 amendments to the Barcelona Convention, and Lebanon's acceptance of the amendments is pending notification from the Depositary country (Spain).

[304] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, 13 Dec. 2007, entered into force on 1 Dec. 2009, art. 2 B(1)(d), *available at* http://bookshop.europa.eu/is-bin/INTERSHOP.enfinity/WFS/EU-Bookshop-Site/en_GB/-/EUR/ViewPublication-Start?PublicationKey=FXAC07306.

Albania, Malta, Montenegro, Morocco, Tunisia, and Turkey are the only countries that have ratified the Hazardous Wastes Protocol.

Albania, Cyprus, Libya, Morocco, and Tunisia have ratified the Offshore Protocol. Albania, the EU, France, Slovenia, and Spain have ratified the Integrated Coastal Zone Management Protocol. Both the Offshore Protocol and the Integrated Coastal Zone Management Protocol are not yet in force.[305]

3. Geographical Scope

The Barcelona Convention covers the Mediterranean Sea, including its gulfs and seas (other than the Black Sea), bounded to the west by the Straits of Gibraltar.[306] According to Article 1(2) of the amended Barcelona Convention, any Contracting Party is permitted to extend the Barcelona Convention's application within its own territory. In addition, various Protocols also extend the Barcelona Convention's geographic coverage to include: the land that is drained into the Mediterranean Sea Area (the hydrologic basin); the waters on the landward side of the area's boundaries and extending, in the case of watercourses, up to the freshwater limit; any waters, including marshes and ground waters, communicating with the Mediterranean Sea; the seabed and subsoil; and the coastal areas, including wetlands, designated by the Contracting Parties.[307]

Moreover, the Land-Based Sources Protocol applies to polluting discharges, from anywhere within the territory of the Contracting Parties, into the atmosphere, so long as a hazardous amount of the substance "could be transported to the Mediterranean Sea Area under prevailing meteorological conditions."[308] Furthermore, the Integrated Coastal Zone Management Protocol (which is not yet in force) would cover the "coastal zone," which is defined to cover ecological and resource systems involving marine, land, and human interaction. This zone would expressly include territorial seas, while the landward boundary would remain subject to each Contracting Party's discretion.[309]

4. Legal Personality

The Contracting Parties agreed that the UNEP would act as Secretariat of the Barcelona Convention. The UNEP acts through the Mediterranean Action Plan Coordinating Unit, based in Athens, Greece. Greece accords the Secretariat diplomatic status.[310] *See* **Organizational Structure.**

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[305] For information on the membership in all of the Protocols, *see* Status of Signatures and Ratifications.

[306] Barcelona Convention (1976), art. 1(1) (extending coverage westward to the meridian passing through the Cape Spartel lighthouse, and limited by a boundary extending between the Mehmetcik and Kumkale lighthouses at the south end of the Straits of the Dardanelles, below the Black Sea).

[307] Land-Based Sources Protocol, art. 3; Specially Protected Areas and Biodiversity Protocol, art. 2; Offshore Protocol, art. 2(1) (not yet entered into force).

[308] Land-Based Sources Protocol, art. 4(1)(b), Annex III – art. 1.

[309] *See* Integrated Coastal Zone Management Protocol, arts. 2(e), 3(1), and 3(2).

[310] Barcelona Convention (1976), art. 13; Barcelona Convention, as amended, art. 13; *see* Mediterranean Action Plan for the Barcelona Convention: Structure ("MAP – Structure"), *available at* http://www.unepmap.org/index.php?module=content2&catid=001017 (last viewed on 1 Dec. 2010).

5. Functions

The functions of the Barcelona Convention structure, which includes the Protocols, are described in the MAP II. These include: integration of environmental priorities and economic development in national policy; assessment, prevention, and elimination of pollution; conservation of nature, landscapes and sites of ecological or cultural value; and broadening both public awareness of threats to the Mediterranean and public participation in conservation and remedial measures.[311]

Under Article 2(a) of the Barcelona Convention, as amended, "pollution" is defined to mean "the introduction by man, directly or indirectly, of substances or energy into the marine environment . . . which results, or is likely to result, in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of seawater and reduction of amenities."

6. Organizational Structure

A network of international, regional, and national entities facilitates the functions envisioned by the Barcelona Convention and its Protocols.[312] The roles and coordination of these entities were reinvigorated by the Contracting Parties in 2008.[313]

- Meeting of the Contracting Parties: The Contracting Parties meet at least biannually to, among other things: (i) review national inventories of marine pollution; (ii) review progress on implementing the Barcelona Convention, its Protocols, and recommendations adopted by the Contracting Parties; (iii) consider amendments to the Barcelona Convention, its Protocols, and annexes; (iv) establish additional working groups as needed; and (v) approve a budget.[314]

- Secretariat: The Barcelona Convention and certain Protocols designate the UNEP, as the Secretariat, to perform various roles relevant to their implementation, including to: (i) advise concerning the development of national legislation or policy and international rules implementing the Barcelona Convention and its Protocols;[315] (ii) monitor implementation by the Contracting Parties;[316] (iii) coordinate with other international bodies and act as repository of other relevant agreements entered into by any of the Contracting Parties;[317] (iv) represent the Barcelona

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[311] MAP II, Annex IX, at 2-22.

[312] *See generally*, MAP – Structure; *see also* MAP II, Annex IX, at 24-25.

[313] *See* Report of the 15th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and Its Protocols, ("15th Meeting Report"), 18 Jan. 2008, Annex V, Decision IG 17/5: Governance paper ("Decision IG 17/5"), at 141-177, *available at* http://195.97.36.231/acrobatfiles/08IG17_10_eng.pdf.

[314] Barcelona Convention, as amended, art. 18.

[315] *See, e.g.*, Barcelona Convention, as amended, art. 14(2); Land-Based Sources Protocol, arts. 6(3), 15; Specially Protected Areas and Biodiversity Protocol, arts. 9(4)(b)-(c), 25; Offshore Protocol, art. 23(1); Integrated Coastal Zone Management Protocol, art. 27(2).

[316] *See, e.g.*, Barcelona Convention, as amended, art. 17(vi); Hazardous Wastes Protocol, art. 13.

[317] *See, e.g.*, Barcelona Convention, as amended, arts. 3(2), 17(viii); *see also* Hazardous Wastes Protocol, art. 9(8).

Convention to the public and non-governmental organizations ("NGOs");[318] (v) disseminate information among the Contracting Parties, including lessons learned in implementation;[319] (vi) coordinate meetings and reports of the Contracting Parties;[320] and (vii) advise regarding financial arrangements for the Barcelona Convention.[321] The Secretariat is also generally responsible for coordinating the implementation of the Specially Protected Areas and Biodiversity Protocol and the Integrated Coastal Zone Management Protocol (which is not yet in force).[322]

- Bureau: According to Article 19 of the amended Barcelona Convention, the Contracting Parties are directly represented on an ongoing basis by six rotating members of the Bureau. In anticipation of the Meeting of the Contracting Parties, the Bureau regularly consults with and advises the Secretariat based on status reports prepared by the Secretariat.[323]

- MED POL and the Regional Activity Centres: As part of MAP I, the Contracting Parties authorized the UNEP Programme for the Assessment and Control of Marine Pollution in the Mediterranean ("MED POL"). Through MED POL, UNEP monitors and studies pollution in the Mediterranean Sea area, and facilitates National Action Plans to prevent and remedy pollution as part of the Contracting Parties' implementation of the Dumping Protocol, the Land-Based Sources Protocol, and the Hazardous Wastes Protocol.[324] Several Regional Activity Centres

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[318] *See, e.g.*, Barcelona Convention, as amended, art. 17(iv); Integrated Coastal Zone Management Protocol, art. 32.

[319] *See, e.g.*, Barcelona Convention, as amended, arts. 9(2), 23(2), Annex A – art. 2(2); Dumping Protocol, arts. 8, 9; Specially Protected Areas and Biodiversity Protocol, art. 9(4)(c); Offshore Protocol, arts. 6(4), 14(3), 20(2), 21(b), 25; Hazardous Wastes Protocol, arts. 4, 8(2), 9(6), 9(7), 11; Land-Based Sources Protocol, art. 13; Integrated Coastal Zone Management Protocol, arts. 8(2)(c), 18, 24(2).

[320] Barcelona Convention, as amended, arts. 17(i)-(ii), 21(2), 22(1).

[321] Barcelona Convention, as amended, art. 24(2).

[322] Specially Protected Areas and Biodiversity Protocol, art. 25; Integrated Coastal Zone Management Protocol, art. 32. The Integrated Coastal Zone Management Protocol specifically authorizes the Secretariat, as requested, to coordinate programs to increase public awareness, scientific research, exchange of scientific information and best practices, coastal management strategies, and technology transfers to developing countries. Integrated Coastal Zone Management Protocol, arts. 15(2), 16(2), 25, 26, 27(1), 28.

[323] *See, e.g.*, Report of the Meeting of the Bureau of the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols, 18 Mar. 2009, *available at* http://195.97.36.231/acrobatfiles/09BUR68_4_eng.pdf; *see also* Progress Report by the Secretariat on Activities Carried Out Since the Last Meeting of the Bureau (Madrid, Spain, September 2008) and Specific Issues (July 2008 – December 2008) ("January 2009 Progress Report to the Bureau"), 15 Jan. 2009, *available at* http://195.97.36.231/acrobatfiles/09BUR68_3_eng.pdf.

[324] *See* MAP I, Introduction, at 2-3; Mediterranean Action Plan for the Barcelona Convention: MED POL, *available at* http://www.unepmap.org/index.php?module=content2&catid=001017003 (last viewed on 1 Dec. 2010); Report of the 16th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols ("16th Meeting Report"), Annex II, Decision IG 19/5 (and Annex and Appendices): Mandates of the Components of MAP ("Decision IG 19/5"), Annex at 48, 24 Nov. 2009, *available at* http://195.97.36.231/acrobatfiles/09IG19_8_Eng.pdf; *see also* 15th Meeting Report, Annex V, Decision IG 17/7(and Annex): Operational Document of MED POL Phase IV (2006-2013), at 181-221.

("RACs") have also been created to support implementation of the MAP.[325] Some RACs are administered by, or report to, national agencies. One is administered by an NGO. One is administered by a specialized agency of the United Nations These RACs provide:

- Data collection and modeling of the relationship between the environment and development;[326]
- Planning of integrated coastal management and training of local bodies;[327]
- Management plans for protected species, monitoring tools, data sharing among specialists and other organizations, and public awareness of biodiversity issues;[328]
- Communication services and technical support to the Secretariat and other entities associated with the Barcelona Convention and related public awareness projects;[329]
- Development and dissemination of clean technology through research, training, and expert exchange;[330]
- Assistance to states to prevent and respond to marine pollution emergencies;[331] and
- Protection and sustainable development of historic sites approved by the Contracting Parties.[332]

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[325] *See* MAP II, Annex IX, at 102; 16th Meeting Report, Annex II, Decision IG 19/5 at 45, *et seq.*; MAP – Structure: Regional Activity Centres, *available at* http://www.unepmap.org/index.php?module=content2&catid=001017004 (last viewed on 1 Dec. 2010).

[326] *See* Blue Plan RAC: Introduction, *available at* http://www.planbleu.org/methodologie/introduction.html (last viewed on 1 Dec. 2010).

[327] *See* Priority Actions Programme RAC: About PAP, *available at* http://www.pap-thecoastcentre.org/about.php?blob_id=13&lang=en (last viewed on 1 Dec. 2010). *See also* Integrated Coastal Zone Management Protocol, arts. 2(d), 15(2), 17, 30, 32.

[328] *See* Specially Protected Areas RAC: Missions, *available at* http://www.rac-spa.org/index.php?option=com_content&task=view&id=80&Itemid=135. *See also* Specially Protected Areas and Biodiversity Protocol, arts. 9, 11(7), 20-22, 25.

[329] *See* MAP – Structure: Regional Activity Centres.

[330] *See* Cleaner Production RAC: Goals, *available at* http://www.cprac.org/ eng/01_objectius.htm (last viewed on 1 Dec. 201).

[331] *See* Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea: About REMPEC, *available at* http://www.rempec.org/about.asp (last viewed on 1 Dec. 2010). *See also* Emergency Protocol, arts. 4(3), 7-12, 16-17; Offshore Protocol, arts. 18, 26.

[332] The Programme for the Protection of Coastal Historic Sites, which provides these services, was not established as a RAC, but has a similar working partnership with the MAP Program. *See* UNEP Regional Report, Mediterranean Region, sec. 1.4.5.8, *available at* http://www.unep.org/regionalseas/programmes/unpro/mediterranean/instruments/r_ profile_med.pdf (last viewed on 1 Dec. 2010).

- Executive Coordination Panel: In 2008, the Contracting Parties agreed to establish an Executive Coordination Panel chaired by the Secretariat and made up of the directors of MED POL and the RACs. This body meets quarterly to coordinate their operation and to improve accountability to the Contracting Parties.[333]

- National Focal Points: Each Contracting Party has established a National Focal Point that is responsible for domestic implementation of the MAP goals. Representatives of the National Focal Points consult with the Secretariat between Meetings of the Contracting Parties to review output of working groups commissioned by the Contracting Parties and to draft decisions for the Contracting Parties' adoption.[334] The Contracting Parties also approved a role for National Focal Points to coordinate directly with MED POL and the RACs.[335]

- Mediterranean Commission on Sustainable Development: In 1996, the Contracting Parties established a Mediterranean Commission on Sustainable Development ("MCSD").[336] The MCSD includes representatives of the 22 Contracting Parties, as well as 21 additional members representing local authorities, businesses, the scientific community, NGOs, and intergovernmental organizations. Three additional members are selected for expertise specific to the topical focus of the MCSD during its term. The MCSD provides input to the Contracting Parties regarding the alignment of the MAP activities with sustainable development goals and makes proposals within the MAP framework.[337] The MCSD facilitated adoption in 2005 of a Mediterranean Strategy for Sustainable Development ("MSSD") and assists individual Contracting Parties in developing a National Strategy for Sustainable Development.[338]

7. Relationships

In 1995, the EU established the Euro-Med Partnership for engaging the countries of the Mediterranean basin. In 2008, the partners (27 EU member states and 16 countries from the southern Mediterranean, Africa and the Middle East) re-launched the framework as the Union for the Mediterranean, with a focus on projects concerning the economy, the environment, energy, health, migration and culture. The Union

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[333] 15th Meeting Report, Annex V, Decision IG 17/5, at 146; *see, e.g.*, Reports of the Meetings of the Executive Coordination Panel during the 2008-2009 Biennium, *available at* http://195.97.36.231/acrobatfiles/09IG19_Inf9_Eng.pdf; *see also* Audit Report, 3 June 2009, at 6, *available at* http://195.97.36.231/acrobatfiles/09BUR69_Inf7_eng.pdf.

[334] MAP – Structure: Regional Activity Centres; MAP II, at para. 28; *see, e.g.*, Report of the Meeting of MAP Focal Points, 28 Aug. 2009, *available at* http://195.97.36.231/acrobatfiles/09WG337_20_eng.pdf.

[335] *See* 15th Meeting Report, Annex V, Decision IG 17/5, at 141, 159-173; *see also* Integrated Coastal Zone Management Protocol, art. 30.

[336] *See* MAP – Structure: MCSD, *available at* http://www.unepmap.org/index.php?catid=001017002&module=content2 (last viewed 1 Dec. 2010).

[337] *See* 15th Meeting Report, Annex V, Decision IG 17/5, at 175.

[338] *See* Mediterranean Strategy for Sustainable Development, 27 June 2005, *available at* http://195.97.36.231/dbases/acrobatfiles/05IG16_7_eng.pdf; *see also* 15th Meeting Report, Annex V, Decision IG 17/17: MSSD Implementation Plan and Annex, at 353-376; January 2009 Progress Report to the Bureau, at 18-24.

for the Mediterranean also has a secretariat, which is based in Barcelona, Spain.[339] EU legislation ties all financial assistance to its Mediterranean neighbors to the agreements made within this framework.[340]

In 2005, the Union for the Mediterranean (then Euro-Med) adopted a five-year work program, which committed to implementing the MSSD that was established under the Barcelona Convention. The partnership agreed to share lessons learned about sustainable development in the Baltic Sea and Black Sea across the Mediterranean. The partnership further agreed to develop a "road map for de-polluting the Mediterranean by 2020…using inter alia the MSSD and the UNEP Mediterranean Action Plan…while providing adequate financial and technical assistance to this end."[341] The European Commission ("EC") Environment Directorate-General has taken on these goals under its Horizon 2020 initiative.[342]

Meanwhile, the Contracting Parties have tasked MED POL with improving coordination of the MAP Program with the EU member states' implementation of the Water Framework Directive, the Marine Strategy Directive, and the Horizon 2020 initiative. The EC has also dedicated a special consultant to coordinate the EC's Horizon 2020 initiative with the MAP Program.[343]

In addition, the European Investment Bank ("EIB") has agreed to finance bankable projects that address particularly severe pollution in coastal areas identified by the Secretariat. The EIB's Mediterranean Hot Spot Investment Program involves Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, the Palestine Authority, Syria and Tunisia.[344]

The Global Environment Facility ("GEF") also provides significant financing for the implementation of the Barcelona Convention goals. *See* **Funding and Financing**. For example, the Strategic Partnership for the Mediterranean Large Marine Ecosystem ("SP for the Med LME"), with financial support from GEF and other partners and the involvement of the Contracting Parties, regional and international organizations, and NGOs, aims to provide a coordinated and strategic approach for the policy, legal and institutional reforms in order to reverse the degradation of the Mediterranean ecosystem, including its

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[339] European Union: Euro-Mediterranean Partnership (EUROMED), *available at* http://eeas.europa.eu/euromed/index_en.htm (last viewed on 10 Dec. 2010); *see also* Europa: Barcelona Declaration and Euro-Mediterranean partnership, *available at* http://europa.eu/legislation_summaries/external_relations/relations_with_third_countries/mediterranean_partner_countries/r15001_en.htm (last viewed on 10 Dec. 2010).

[340] Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006, art. 13, *available at* http://ec.europa.eu/world/enp/pdf/oj_l310_en.pdf.

[341] Euromed, Five Year Work Programme, Nov. 2005, sub-para. 8(j), *available at* http://ec.europa.eu/external_relations/euromed/summit1105/five_years_en.pdf.

[342] *See* EC Environment - Horizon 2020: De-polluting the Mediterranean Sea by 2020 – The Initiative, *available at* http://ec.europa.eu/environment/enlarg/med/initiative_en.htm (last viewed 10 Dec. 2010); *see also* Communication from the Commission to the Council and the European Parliament; Establishing an Environment Strategy for the Mediterranean, 5 Sept. 2006, at 5-6, *available at* http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0475:FIN:EN:PDF.

[343] *See* 15th Meeting Report, Annex V, Decision IG 17/7, Annex at 203; 16th Meeting Report, Annex I, Marrakesh Declaration, at 4; Report of the Meeting of MAP Focal Points, at 7.

[344] European Investment Bank, Final Report: Horizon 2020 – Elaboration of a Mediterranean Hot Spot Investment Programme (MeHSIP), Jan. 2008, at 9-10, *available at* http://www.eib.org/attachments/country/femip_horizon_2020_en.pdf.

coastal habitats and biodiversity. Project partners include: the Mediterranean Action Plan Coordinating Unit, the RAC for Cleaner Production, the RAC for Specially Protected Areas, the Priority Actions Programme RAC, United Nations Educational, Scientific and Cultural Organization International Hydrological Programme, the World Wildlife Fund Mediterranean Programme Office, Global Water Partnership – Mediterranean, Mediterranean Information Office for Environment, Culture and Sustainable Development, MED POL, the World Bank, the United Nations Industrial Development Organization, and the Food and Agriculture Organization of the United Nations. SP for the Med LME is currently the largest project in the history of the Mediterranean. A Transboundary Diagnostic Analysis identified 101 hotspots of environmental concern, and two Strategic Action Programs have been adopted that propose remedial actions to reduce land-based sources of marine pollution and to protect biodiversity and habitats. Projects under SP for the Med LME are scheduled to be carried out in Albania, Algeria, Bosnia and Herzegovina, Croatia, Egypt, Lebanon, Libya, Morocco, Montenegro, Syria, Tunisia, and Turkey, as well as with the Palestinian Authority. SP for the Med LME, over its five-year course, intends to foster a long-term partnership for joint planning and financing in the region; improve environmental conditions in 15% of the hotspots; promote more sustainable use of coastal resources through integrated water resource management, integrated coastal zone management, and aquifer management; reduce pollution from land-based sources through the use of technology; and promote more sustainable use of fishery resources.[345]

8. Decision Making

The Meeting of the Contracting Parties is the decision-making body under the Barcelona Convention and the MAP. Meetings take place at least biannually. Two-thirds of the Contracting Parties constitute a quorum, and substantive decisions require a two-thirds majority of the Contracting Parties present who vote or abstain. Secret ballots are permitted. A Contracting Party who is more than 24 months in arrears with its contributions to the budget is not permitted to vote unless the Meeting of the Contracting Parties concludes that the arrears are due to circumstances beyond that Contracting Party's control. Besides binding decisions, the Contracting Parties also adopt "recommendations" concerning the implementation of the Barcelona Convention, its Protocols, and the MAP Program generally.[346]

The Secretariat plays a large role in decision making under the Barcelona Convention. The Secretariat prepares reports for the National Focal Points and the Bureau, which, in turn, with the assistance of the Secretariat, prepare draft decisions for consideration at the Meeting of the Contracting Parties. The Contracting Parties may only consider substantive decisions that are supported by a report from the Executive Director of the Secretariat on the administrative and financial implications of those decisions.[347]

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[345] Mediterranean Action Plan for the Barcelona Convention: Strategic Partnership for the Mediterranean LME, *available at* http://www.unepmap.org/index.php?module=content2&catid=001024 (last viewed on 10 Dec. 2010).

[346] *See* Barcelona Convention, as amended, art. 18; United Nations Environment Programme: Rules of Procedure for meetings and conferences of the Contracting Parties to the Convention for the Protection of the Mediterranuan Sea against Pollution and its related Protocols ("Rules of Procedure"), rules 30, 42(2.A), 43, 45, *available at* http://195.97.36.231/Acrobatfiles/MAPDocAcrobatfiles/Rules_of_Procedure_Eng.pdf.

[347] Rules of Procedure, rule 16. *See, e.g.*, Report of the Meeting of the MAP Focal Points, at 7-15; Report of the Meeting of the Bureau of the Contracting Parties, 29 June 2009, Annex III, at 3, *available at* http://195.97.36.231/acrobatfiles/09BUR69_5_eng.pdf.

9. Dispute Resolution

The Contracting Parties are obligated to seek a peaceful settlement of disputes concerning the interpretation or application of the Barcelona Convention or its Protocols. If the parties to the dispute cannot settle the dispute, they can, upon common agreement, submit the dispute to arbitration.[348] The Barcelona Convention proposes an ad hoc arbitration procedure by which a three-person tribunal will decide disputes, according to the rules of international law and, in particular, the Barcelona Convention and the relevant Protocol(s). The arbitral tribunal will make its decision based on majority vote and may, at the request of one of the parties to the dispute, recommend interim protective measures. The award of the arbitral tribunal is final and binding.[349]

Under Article 12 of the Land-Based Sources Protocol, a Contracting Party whose interests are likely to be prejudiced by land-based pollution originating from the territory of another Contracting Party may require the Contracting Parties to the Land-Based Sources Protocol to address the matter at the Meeting of the Contracting Parties. In addition, Article 14(3) of the Integrated Coastal Zone Management Protocol (which is not yet in force) addresses disputes other than inter-state disputes, providing that "[m]ediation or conciliation procedures and a right of administrative or legal recourse should be available to any stakeholder challenging decisions, acts or omissions, subject to the participation provisions established by the Parties with respect to plans, programmes or projects concerning the coastal zone."

10. Data Information Sharing, Exchange, and Harmonization

Under Article 4(3)(d) of the Barcelona Convention, as amended, the Contracting Parties are called upon to promote cooperation among themselves in regards to environmental impact assessment procedures for activities under their jurisdiction that are likely to have a significant adverse effect on the marine environment of other Contracting Parties or other areas beyond their national jurisdiction. This cooperation is to be achieved through notification, exchange of information and consultation.

In addition, the Protocols require the Contracting Parties to share specific information relevant to their subject matters.

- The Dumping Protocol requires each Contracting Party to report dumping permits issued and the actual dumping that occurs. *See* **Compliance and Monitoring**. The Dumping Protocol also provides that each Contracting Party shall, if it considers it appropriate, report suspicions of illegal dumping to other concerned Parties.[350]

- The Emergency Protocol obliges its Contracting Parties to exchange information, through the RAC in Malta, about domestic regulations, responsible authorities, and best practices regarding the prevention of pollution and emergency response. The Emergency Protocol further requires Contracting Parties to warn the nearest coastal state (and other Parties likely to be affected) of incidents that may result in pollution. Contracting Parties must also inform each other of their

[348] Barcelona Convention, as amended, art. 28.

[349] Barcelona Convention, as amended, Appendix A, arts. 3, 4, 5, 6, 7. Each of the parties to a dispute selects an arbitrator, and then those two party-appointed arbitrators reach agreement on the appointment of a third arbitrator, who will serve as the chairman of the tribunal. If an arbitrator(s) cannot be selected, the Secretary-General of the United Nations, following certain procedures, will appoint the arbitrator(s).

[350] Dumping Protocol, arts. 12, 14.

planned response to a pollution incident.[351] The Offshore Protocol (which is not yet in force) would require Contracting Parties to ensure that persons on offshore installations follow similar procedures.[352]

- The Hazardous Wastes Protocol requires its Contracting Parties to report to the Secretariat, as soon as possible, information relating to illegal traffic in hazardous waste. Contracting Parties must also share annual statistics on waste generation and transfer.[353]

- The Specially Protected Areas and Biodiversity Protocol calls upon Contracting Parties to regularly exchange information about the characteristics of protected areas and species and to communicate, at the earliest opportunity, information on any situation that might endanger protected ecosystems.[354]

- The Integrated Coastal Zone Management Protocol (which is not yet in force) would require Contracting Parties to assess and report the status of coastal erosion and to share information about major natural disasters.[355]

Under Article 13 of the Barcelona Convention, as amended, the Contracting Parties undertake "as far as possible to cooperate…in the fields of science and technology and to exchange data as well as other scientific information for the purpose of this Convention" and further agree to cooperate in the development and sharing of clean production technology. The Protocols elaborate the required cooperation in their respective domains. For example, according to Article 7(f) of the Emergency Protocol, the Contracting Parties are obligated to share information about "new ways in which pollution of the sea by oil and hazardous and noxious substances may be avoided, new measures for combating pollution, new developments in the technology of conducting monitoring and the development of research programmes." Article 9 of the Land-Based Sources Protocol requires cooperation in "research on inputs, pathways and effects of pollutants and on the development of new methods for their treatment, reduction or elimination, as well as the development of clean production processes to this effect." Under Article 20 of the Specially Protected Areas and Biodiversity Protocol, the Contracting Parties are called upon to coordinate, to the extent possible, their research and monitoring of protected areas and species. Article 8 of the Hazardous Wastes Protocol mandates cooperation in the development and implementation of clean production methods. Furthermore, Article 22 of the Offshore Protocol and Article 25(2) of the Integrated Coastal Zone Management Protocol (which are not yet in force) call for the cooperation in the research of new technology and emergency procedures and in the research on integrated coastal zone management, respectively. The MED POL and RACs participate in research coordination, information generation, and information sharing. *See* **Organization Structure**.

The Protocols expressly provide that progress and lessons learned in implementation will be shared at regular meetings of their respective Contracting Parties.[356] The Contracting Parties have also begun to coordinate national library resources related to marine science.[357]

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[351] Emergency Protocol, arts. 7, 9, 10.

[352] Offshore Protocol, art. 17; *see also* Offshore Protocol, art. 16 (requiring application of the Emergency Protocol).

[353] Hazardous Waste Protocol, arts. 8(2), 9(6).

[354] Specially Protected Areas and Biodiversity Protocol, art. 21(1)-(2).

[355] Integrated Coastal Zone Management, arts. 23(4), 24(2).

In 1996, the Contracting Parties and the EU commissioned the development of a data coordinating structure, which led to the Euro Mediterranean (Water) Information System ("EMWIS").[358] The decision-making and operational structure of EMWIS is independent of the Barcelona Convention structure, but its objectives include developing national water information systems and efforts to transfer know-how in the water sector.[359]

Article 4 of the Barcelona Convention, as amended, also establishes principles to harmonize domestic environmental policies, including the precautionary principle,[360] the "polluter pays" principle,[361] and a technology-based approach considerate of sustainable development needs.[362] To facilitate such harmonization, Article 14(2) of the Barcelona Convention, as amended, suggests that the Secretariat may assist Contracting Parties in drafting environmental legislation that is in compliance with the Barcelona Convention and its Protocols. The Protocols generally establish or call for the development of baseline measures to be implemented in national regulations, but do not require absolute harmonization of law.[363]

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[356] *See* Dumping Protocol, art. 14(2); Emergency Protocol, art. 18(2); Land-Based Sources Protocol, arts. 13, 14(2); Specially Protected Areas and Biodiversity Protocol, art. 26(2); Offshore Protocol, art. 25; Hazardous Wastes Protocol, art. 11; *cf.* Integrated Coastal Zone Management Protocol, art. 33 (requiring Parties at regular meetings "to consider the efficiency of the measures adopted").

[357] *See* European Association of Aquatic Science Libraries and Information Centres (EURASLIC); Mediterranean Special Interest Group: Report of the First Workshop/Meeting of the Mediterranean Marine and Aquatic Science Libraries and Information Centres Network, Marine Science Institute of Andalusia (CSIC), Cadiz Spain, 17-18 Nov. 2008, *available at* http://195.97.36.231/dbases/MedLibs/Final_Report_Cadiz.pdf.

[358] The Euro-Mediterranean Conference on water management held in Marseilles (containing decisions adopted by the Ministers and Heads of delegation), 25-26 Nov. 1996, *available at* http://www.ufm-water.net/download/DCL_Marseille1996_en.pdf; Euro Mediterranean (Water) Information System on know-how in the water sector – HANDY GUIDE, 16 May 2000, at 2, *available at* http://www.semide.net/media_server/files/q/r/handy_guide.pdf.

[359] *See* EMWIS: Decision-Making level, *available at* http://www.semide.net/overview/fol226852/fol720468 (last viewed on 15 Dec. 2010); EMWIS: Operational level, *available at* http://www.semide.net/overview/fol226852/fol335117 (last viewed on 15 Dec. 2010); EMWIS: Orientations, 22 Aug. 2006, *available at* http://www.semide.net/overview/fol350157/doc064667.

[360] *See, e.g.*, 16th Meeting Report, Annex I, Marrakesh Declaration, at 3; Dumping Protocol, Annex III, para. B(9); Emergency Protocol, Preamble; Hazardous Wastes Protocol, art. 8(3); Specially Protected Areas and Biodiversity Protocol, Preamble. *See also* 16th Meeting Report, Annex III, Five-Year Programme of Work 2010-2014, Appendix 1, at 4.

[361] *See, e.g.*, Offshore Protocol, art. 27; 15th Meeting Report, Annex V, Decision IG 17/4 (and Appendix): Guidelines for the Determination of Liability and Compensation for Damage Resulting from Pollution of the Marine Environment in the Mediterranean Sea Area ("Decision IG 17/4"), at 136, para. 9.

[362] *See, e.g.*, Emergency Protocol, Preamble; Land-Based Sources Protocol, arts. 7(2)-(3), and Annex IV; Offshore Protocol, art. 3.

[363] *See, e.g.*, Dumping Protocol, arts. 11, 13; Land-Based Sources Protocol, arts. 6, 7 and Annex II; Offshore Protocol, arts. 10, 23(2); Specially Protected Areas and Biodiversity Protocol, arts. 16, 27; Emergency Protocol, art. 20; Integrated Coastal Zone Management Protocol, arts. 4(3), 8(2)(a).

The Barcelona Convention and certain Protocols promote harmonization by requiring technical assistance to developing countries.[364]

11. Notifications

Article 6(4) of the Offshore Protocol (which is not yet in force) requires notification of the other Contracting Parties, through a registry at the Secretariat, when authorizing exploration or exploitation of the Mediterranean Sea area.

Under Article 6(4) of the Hazardous Wastes Protocol (which has not been widely ratified), a Contracting Party permitting the export or import of hazardous waste must notify and receive approval of the state through whose waters the waste would be transported.

Article 29 of the Integrated Coastal Zone Management Protocol (which is not yet in force) obligates the Contracting Parties to "cooperate by means of notification, exchange of information and consultation" when proposed plans "are likely to have a significant adverse effect on the coastal zones" of other parties.

12. Funding and Financing

The Meeting of the Contracting Parties biannually approves a Programme Budget.[365] The MAP Program is primarily funded by the Contracting Parties' contributions to the Mediterranean Trust Fund ("MTF"), of which the UNEP is the trustee.[366] The Contracting Parties' relative contribution levels derive from the United Nations assessment scale.[367]

The Contracting Parties approved expenditures over 2010-2011 of approximately 15.7 million euros. Total administrative and operating costs are projected to be approximately $5.2 million euros in both 2010 and 2011. The Contracting Parties also agreed to establish an operating reserve of 15% of annual expenditures. The Contracting Parties expect to fund 40% of the total budget through contributions to the MTF, with France, Spain and Italy being the largest donors. The in-kind contributions of the countries hosting the Secretariat and RACs will fund another 40% of the budget. The UNEP, the World Health Organization, and the International Atomic Energy Agency will also provide about 2% of the budget through in-kind and cash contributions. The EC will directly contribute approximately 4% to the Barcelona Convention budget, and GEF will contribute another 2%. Drawdown on and interest from the revolving fund is expected to provide another 4%. The 2010 budget nevertheless foresees a 1.4 million euro shortfall (over 8% of the total budget), which the Secretariat expects to raise from these and other donors.[368]

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[364] *See* Barcelona Convention, as amended, art. 13(3); Land-Based Sources Protocol, art. 10; Specially Protected Areas and Biodiversity Protocol, art. 22; Offshore Protocol, art. 24; Hazardous Waste Protocol, art. 10; *see also* Emergency Protocol, art. 13(4); Integrated Coastal Zone Management Protocol, art. 26.

[365] Barcelona Convention, as amended, art. 18(2)(vii).

[366] *See* 16th Meeting Report, Annex III, Decision IG 19/17 (and Appendices): Decision on the adoption of the Five-Year Programme of Work and Programme Budget for the 2010-2011 biennium ("Decision IG 19/17"), at 1.

[367] *See* Barcelona Convention, as amended, art. 24(2); MAP II, Annex IX, sec. III(2); Audit Report, at 3.

[368] 16th Meeting Report, Annex III, Decision IG 19/17, at 1, Appendix 2, at 21-22, Appendix 3, at 65-79.

Besides the direct contributions to the Barcelona Convention budget, GEF also committed to a 5-year funding program (from 2008 to 2013) of over US $12.5 million for regional activities under the SP for the Med LME. *See* **Relationships.** SP for the Med LME also receives partnership funding from other international and private organizations. The GEF project includes a separate Investment Fund to finance implementation of technologies and methodologies to reduce pollution (particularly wastewater) and to manage biodiversity. GEF has committed up to US $85 million to this Investment Fund, and expects to receive additional contributions from other donors.[369]

13. Benefit Sharing

The goal of the Barcelona Convention, its Protocols, and the MAP is to improve the environment in the Mediterranean area for the benefit of all the countries and individuals in the region.

14. Compliance and Monitoring

The Contracting Parties have set up mechanisms concerning the monitoring and enforcement of compliance with their obligations under the Barcelona Convention and its Protocols. Certain Protocols establish independent means for monitoring compliance.

Compliance Committee: In 2008, the Contracting Parties established a Compliance Committee[370] to consider, among other things, "actual or potential non-compliance by individual Parties with the provisions of the Convention and its Protocols."[371] The Compliance Committee consists of seven representatives of different Contracting Parties, on a rotating basis.[372] The Compliance Committee sees its role as "to facilitate implementation and compliance with obligations under the Barcelona Convention, taking into account the special situation of each of the Contracting Parties, in particular those which are developing countries."[373] The Compliance Committee will consider reports of non-compliance from one Contracting Party regarding another Contracting Party, inquiries from a Contracting Party regarding its own compliance efforts, and referrals from the Secretariat based on its national assessments, and will also, on its own, evaluate the biannual reports submitted by the Contracting Parties.[374] The Compliance Committee must report its findings to the Contracting Parties, but may not apply sanctions. Instead, it

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[369] GEF, Project Executive Summary of the Investment Fund for the Mediterranean Sea Large Marine Ecosystem Partnership, 21 Mar. 2007, at 4-5, 12, *available at* http://195.97.36.231/dbases/webdocs/GEF/InvestmentFund_ExecutiveSummary.doc; Partnership Investment Fund Brief on a Proposed Grant from the Global Environment Facility Trust Fund in the Amount of USD 30 Million for the First Tranche of a GEF USD 85 Million Investment Fund for the Mediterranean Sea Large Marine Ecosystem Partnership, 28 April 2006, *available at* http://195.97.36.231/dbases/webdocs/GEF/InvestmentFund_ProjectBrief.doc.

[370] *See generally*, 15th Meeting Report, Annex V, Decision IG 17/2: Procedures and mechanisms on compliance under the Barcelona Convention and its Protocols ("Decision IG 17/2"), at 21-27; 16th Meeting Report, Annex II, Decision IG 19/1 (including Annexes): Rules of Procedure for the Compliance Committee and its work during 2010-2011 biennium ("Decision IG 19/1"), at 1-12.

[371] 15th Meeting Report, Annex V, Decision IG 17/2, at para 17(a).

[372] 15th Meeting Report, Annex V, Decision IG 17/2, at paras. 3, 7, 9.

[373] *See* Report of the Compliance Committee to the 16th Meeting of the Contracting Parties, 24 Oct. 2009, at 1, para. 3, *available at* http://195.97.36.231/acrobatfiles/09IG19_7_Eng.pdf.

[374] 16th Meeting Report, at paras. 18, 23; *see also* 16th Meeting Report, Annex II, Decision IG 19/1.

may take steps to facilitate compliance, such as requesting an action plan and interim progress reports. The Compliance Committee will not act without consensus, except as a last resort. The Meeting of the Contracting Parties may act on the Compliance Committee's report with further facilitative steps, including capacity building, and may publicize the conclusion that a Contracting Party is not observing its obligations. In cases deemed to be of serious, ongoing or repeated non-compliance, the Contracting Parties are obligated to consider and undertake any action that may be needed to achieve the purposes of the Barcelona Convention and the Protocols.[375]

Uniform Reporting Format and Effectiveness Indicators: Each Contracting Party is obligated to report to the Meeting of the Contracting Parties its progress on implementing the Barcelona Convention, its Protocols, and the adopted recommendations – including the effectiveness of measures undertaken.[376] The Contracting Parties, in 2008, adopted a uniform and comprehensive reporting format, and online reporting systems are being developed. In 2009, the Contracting Parties provisionally adopted quantitative indicators concerning the effective implementation of the Barcelona Convention and its Protocols.[377]

Mutual Verification by the Contracting Parties: Article 13 of the Hazardous Wastes Protocol calls upon the Secretariat of the Barcelona Convention to verify the compliance of a Contracting Party with the Hazardous Wastes Protocol at the request of any other Contracting Party. In addition, Article 14 of the Dumping Protocol requires the Contracting Parties to review, at each ordinary meeting, the permits issued by each Contracting Party and the dumping that occurred in the interim.

Domestic Liability and Compensation Regimes for Damage Resulting from Pollution of the Marine Environment: Article 16 of the Barcelona Convention, as amended, addresses compliance of private actors, as well as of the Contracting Parties, by obliging the Contracting Parties to "cooperate in the formulation and adoption of appropriate rules and procedures for the determination of liability and compensation for damage resulting from pollution of the marine environment in the Mediterranean Sea Area." In 2008, the Contracting Parties adopted Guidelines for such regimes and have since issued a uniform questionnaire to regularly evaluate the liability regime of each Contracting Party.[378] The Guidelines do not provide for "subsidiary liability" of the Contracting Parties, but the Explanatory Text to the Guidelines recommends broad liability for private actors.[379] The Explanatory Text clarifies that a

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[375] 15 Meeting Report, Annex V, Decision IG 17/2, at paras. 32, 33, 34(c); 16th Meeting Report, Annex II, Decision IG 19/1, at Annex I, Rule 21(1).

[376] Barcelona Convention, as amended, art. 26. *See also* Land-Based Sources Protocol, art. 13.

[377] 15th Meeting Report, Annex V, Decision IG 17/3: Format for the Implementation of the Barcelona Convention and its Protocols, at 29-131; 16th Meeting Report, Annex II, Decision IG 19/4: Testing MAP Effectiveness Indicators, at 31-43.

[378] 15th Meeting Report, Annex V, Decision IG 17/4, at 133; 16th Meeting Report, Annex II, Decision IG 19/3: Implementation of and reporting on Guidelines for the determination of Liability and Compensation for damages resulting from pollution of the Marine Environment in the Mediterranean Sea Area ("Decision IG 19/3"), at Annex I, 17-26.

[379] *See* 15th Meeting Report, Annex V, Devision IG 17/4, at para. 2; 15th Ordinary Meeting, Explanatory Text to Draft Guidelines on Liability and Compensation for Damage Resulting from Pollution of the Marine Environment in the Mediterranean Sea Area ("Guidelines Explanatory Text"), 14 Dec. 2007, at 14, *available at* http://195.97.36.231/acrobatfiles/08IG17_Inf11_eng.pdf (stating the Convention supports liability for "all activities which could cause environmental damage," including for "thermally or physically induced disturbances to the environment," "harmful impacts on the living and distribution patterns of marine fauna and the peaceful enjoyment

regime satisfying the obligation of the Barcelona Convention must contain more stringent provisions than instruments already in force, but suggests that "non-EU Contracting Parties should consider adopting national legislation mirroring as far as possible the provisions of the [EU Environmental Liability] Directive."[380]

Legally Binding Measures and Timetables under the Land-Based Sources Protocol: Article 5 of the Land-Based Sources Protocol obligates the Contracting Parties to adopt national and regional plans to eliminate pollution from land-based sources and activities and specifies that those plans must contain legally binding measures and timetables for implementation. In November 2009, the Contracting Parties adopted three regional plans with binding targets for waste water treatment and the use of certain pollutants. Mandatory deadlines to reduce and eliminate certain chemicals, pesticides, and pollutants that originate from land-based industrial activity and agriculture entered into force in June 2010, with certain concrete measures required to be implemented between 2015 and 2019.[381]

15. Participation and the Role of Multiple Stakeholders

The Barcelona Convention and its Protocols expressly provide for significant involvement of multiple stakeholders.[382] The Contracting Parties included as an objective within MAP II "to mobilize and ensure the participation and involvement of major actors concerned (local and provincial communities, economic and social groups, consumers, etc)."[383] As the entity responsible for maintaining relations and coordinating activities with international organizations and NGOs, the Secretariat is ultimately responsible, under MAP II, to ensure that these organizations have appropriate access to information concerning MAP, and actively participate in MAP activities.[384]

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by coastal inhabitants and tourists of beach amenities due to intense water ripple activity as a result of speeding boats and large ships," and "noise pollution").

[380] Guidelines Explanatory Text, at 14, 28.

[381] 16th Meeting Report, Annex II, Decision IG 19/7 (including Annex and Appendices): Regional Plan on the reduction of BOD_5 from urban waste water, at 69-76; Decision IG 19/8 (including Annex and Appendices): Regional Plan on the elimination of Aldrin, Chlordane, Dieldrin, Endrin, Heptachlor, Mirex and Toxaphene in the framework of the implementation plan of Article 15 of the lBS Protocol, at 77-82; Decision IG 19/9 (including Annex and Appendices): Regional plan on the phasing out of DDT in the framework of the implementation of Article 15 of the LBC protocol, at 83-87*; see* A turning point for pollution phase-out in the Mediterranean: Mandatory deadlines and actions enter into force, United Nations Environment Programme Mediterranean Action Plan for the Barcelona Convention, 16 June 2010, *available at* http://www.unepmap.org/index.php?module=news&action=detail&id=93.

[382] *See* MAP/Civil Society Cooperation Assessment, 26 Jan. 2009, at 15 (Annex 1), *available at* http://195.97.36.231/acrobatfiles/09BUR68_Inf3_eng.pdf. For example, the Integrated Coastal Zone Management Protocol (which has not yet entered into force) obliges the Contracting Parties to take "the necessary measures to ensure the appropriate involvement" of the public, nongovernmental organizations, local authorities, "social actors," "territorial communities," and "economic operators." *See* Integrated Coastal Zone Management Protocol, Preamble and arts. 3(3), 6(d), 7(1)(c), 12(1), 14(1)-(2), 15(1)-(3), 16(4), 18(2), 24(3), 30, 32(2).

[383] MAP II, Annex IX, at 22.

[384] MAP II, Annex IX, at 22; *see also* 15th Meeting Report, Annex V, Decision IG 17/5, at 148.

The organizational structure of the Barcelona Convention also provides for the involvement of multiple stakeholders. For example, the majority of delegates to the MCSD represent non-state actors.[385] There was extensive stakeholder involvement in the development, in 2005, of the MSSD by the MCSD. *See* **Organizational Structure and Relationships**. Also, private citizens, other than civil servants, may serve as members of the Compliance Committee.[386] In addition, representatives of international organizations and NGOs regularly attend and may contribute to the Meetings of the Contracting Parties and the interim meetings of the National Focal Points.[387]

In addition, approximately 80 NGOs partnered with the MAP Program in 2008.[388] In November 2009, with the input of NGO representatives, the Contracting Parties adopted a formal procedure for the involvement of civil society, with a focus on NGOs in particular. The procedure includes criteria for the accreditation of partner NGOs, a code of conduct detailing the rights and responsibilities of NGO partners, and provides a process for the resolution of disputes between NGOs and MAP bodies.[389] In the 2010-2011 biennium budget, the Contracting Parties approved 105,000 euros to promote "NGO participation in MAP decision making process."[390] The new procedure for involvement of civil society does not address cooperation with the private sector.

16. Dissolution and Termination

The Barcelona Convention contains no provision for its dissolution. However, according to Article 34 of the Barcelona Convention, as amended, Contracting Parties may withdraw from the Barcelona Convention by submitting written notification to the Depositary (Spain). Any Contracting Party that withdraws from the Barcelona Convention is considered to have withdrawn from all Protocols to which it was a Contracting Party, and withdrawal from all the Protocols constitutes withdrawal from the Barcelona Convention.

17. Additional Remarks

The Contracting Parties have broadened the scope of their cooperation over time in several ways. First, the geographic coverage of their agreements has been extended under certain Protocols. *See* **Geographic Scope**. Second, the objectives of their cooperation have grown, from "prevent[ion], abate[ment], and combat" of pollution in the Mediterranean area,[391] to "eliminat[ion]" of pollution and "enhance[ment] of the marine environment…to contribute towards its sustainable development."[392] This wider goal

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[385] *See* 15th Meeting Report, Annex V, Decision IG 17/5.

[386] 15th Meeting Report, Annex V, Decision IG 17/2, at para. 8.

[387] *See, e.g.*, 15th Meeting Report, at 1; Report of the Meeting of the MAP Focal Points, 28 Aug. 2009, at 1, *available at* http://195.97.36.231/acrobatfiles/09WG337_20_eng.pdf.

[388] *See* MAP/Civil Society Cooperation Assessment at 11.

[389] 16th Meeting Report, Annex II, Decision IG 19/6 (including Annexes and Appendix): MAP/Civil society cooperation and partnership, at 59-68.

[390] 16th Meeting Report, Annex III, Decision IG 19/17, at 26.

[391] Barcelona Convention (1976), art. 4.

[392] Barcelona Convention, as amended, art. 4(1).

incorporates a new emphasis on "protect[ion] and preserv[ation of] biological diversity."[393] In addition, the Contracting Parties now foresee cooperation on matters involving risk to coastal development, including natural disasters and climate change.[394]

18. Websites and References

- United Nations Environment Programme, Mediterranean Action Plan for the Barcelona Convention Website, *available at* http://www.unepmap.org.

- Euro-Mediterranean Information System on know-how in the Water sector, *available at* http://www.semide.net.

- Report of the 16th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols, 3-5 November 2009, *available at* http://195.97.36.231/acrobatfiles/09IG19_8_Eng.pdf.

- State of the Environment and Development in the Mediterranean – 2009, UNEP and MAP, *available at* http://www.planbleu.org/publications/SoED2009_EN.pdf.

- Evangelos Raftopoulos, *The Barcelona Convention System for the Protection of the Mediterranean Sea against Pollution: An International Trust at Work*, 7 J. ESTUARINE & COASTAL L. 27 (1992).

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- Tullio Scovazzi, *The Mediterranean Guidelines for the Determination of Environmental Liability and Compensation: The Negotiations for the Instrument and the Question of Damage That Can Be Compensated*, MAX PLANCK Y.B. U.N. L. 183 (2009).

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[393] Barcelona Convention, as amended, art. 10; *see generally*, Specially Protected Areas and Biodiversity Protocol.

[394] *See* Integrated Coastal Zone Management Protocol, art. 22; 16th Ordinary Report, Annex I, Marrakesh Declaration, at 3.

Black Sea

1. Legal Basis

In 1992, the riparian states of the Black Sea participated in the Diplomatic Conference on the Protection of the Black Sea Against Pollution. Out of this conference came the Convention on the Protection of the Black Sea Against Pollution (the "Bucharest Convention")—the primary legal document that comprises the regional framework for the environmental protection of the Black Sea.[395] In addition to the Bucharest Convention itself (which went into effect on 15 January 1994), there are four protocols and five resolutions.[396]

i) Protocols

- Protocol on Protection of the Black Sea Marine Environment Against Pollution From Land Based Sources ("LBS Protocol");[397]
- Protocol on Cooperation in Combating Pollution of the Black Sea Marine Environment by Oil and other Harmful Substances in Emergency Situations;[398]
- Protocol on the Protection of the Black Sea Marine Environment Against Pollution by Dumping;[399] and
- Protocol on Black Sea Biodiversity and Landscape Conservation ("Biodiversity Protocol") (which has not yet been ratified by all of the Contracting Parties).[400]

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[395] Convention on the Protection of the Black Sea Against Pollution ("Bucharest Convention"), 21 Apr. 1992, *available at* http://www.blacksea-commission.org/_convention-fulltext.asp.

[396] *See* Protocols to the Convention on the Protection of the Black Sea Against Pollution ("Protocols"), *available at* http://www.blacksea-commission.org/_convention-protocols.asp; Bucharest Convention, Final Act—Resolutions 1-5.

[397] Protocol on the Protection of the Marine Environment of the Black Sea from Land Based Sources and Activities ("LBS Protocol"), 21 Apr. 1992, *available at* http://www.blacksea-commission.org/_convention-protocols.asp. A revised version ("Revised LBS Protocol") was signed in April 2009, ratified by Georgia on 24 September 2009, and is pending ratification by the other Contracting Parties. The Revised LBS Protocol is available at: http://www.blacksea-commission.org/_od_LBSAProtocol.asp.

[398] Protocol on Cooperation in Combating Pollution of the Black Sea Marine Environment by Oil and other Harmful Substances in Emergency Situations, 21 Apr. 1992, *available at* http://www.blacksea-commission.org/_convention-protocols.asp. In addition to adopting this protocol as part of the Bucharest Convention, the Contracting Parties also agreed to adopt the Black Sea Contingency Plan to help respond to marine pollution incidents that may affect the Black Sea environment. *See* Black Sea Contingency Plan, *available at* http://www.blacksea-commission.org/_table-legal-docs.asp. The Contracting Parties also made maps that show possible sources of pollution in the area, environmentally sensitive areas and priorities for protection publicly available. *See* Annex 2 of the Black Sea Contingency Plan, *available at* http://www.blacksea-commission.org/_table-legal-docs.asp.

[399] Protocol on the Protection of the Black Sea Marine Environment Against Pollution by Dumping, 21 Apr. 1992, *available at* http://www.blacksea-commission.org/_convention-protocols.asp.

ii) Resolutions[401]

- Resolution 1: Elaboration of a Protocol concerning transboundary movement of hazardous wastes and cooperation in combating illegal traffic thereof;
- Resolution 2: Establishment of cooperation with Danube States for promoting the objectives of the Convention on the Protection of the Black Sea Against Pollution;
- Resolution 3: Cooperation with intergovernmental organizations;
- Resolution 4: Institutional arrangements related to the Convention on the Protection of the Black Sea against Pollution; and
- Resolution 5: Initiation of action within the International Maritime Organization concerning prevention of pollution from ships which belong to countries not signatory to the Convention.

The Bucharest Convention established a Commission on the Protection of the Black Sea Against Pollution (the "Commission") to help realize the goals articulated in the Bucharest Convention and its Protocols.[402]

2. Member States

The Contracting Parties to the Bucharest Convention are Bulgaria, Georgia, Romania, Russia, Turkey, and Ukraine. These countries represent all of the Black Sea riparian states.

3. Geographical Scope

The Commission has a specific mandate to promote the implementation of the Bucharest Convention for the protection of the Black Sea, which is located in southeast Europe. The Bucharest Convention applies to the Black Sea proper (including the territorial sea and exclusive economic zones of the Contracting Parties).[403] There is no authority over inland waterways that may have an effect on the Black Sea.[404] However, the revised LBS Protocol and the Biodiversity Protocol have a different geographical scope.[405]

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[400] Black Sea Biodiversity and Landscape Conservation Protocol to the Convention on the Protection of the Black Sea Against Pollution, *available at* http://www.blacksea-commission.org/_convention-protocols-biodiversity.asp. Ratified by Turkey (12 Aug. 2004), Bulgaria (13 Oct. 2004), Ukraine (22 Feb. 2007), and Georgia (22 Sep. 2009), the Protocol is pending ratification by Russia and Romania.

[401] Bucharest Convention, Final Act—Resolutions 1-5.

[402] Bucharest Convention, art. XVII.

[403] Bucharest Convention, arts. I, XVIII(1).

[404] *See* Draft Memorandum of Understanding between the International Commission for the Protection of the Black Sea (ICPBS) and the International Commission for the Protection of the Danube River (ICPDR) on common strategic Goals ("ICPBS-ICPDR MOU"), 26 Nov. 2001, *available at* http://www.blacksea-commission.org/_od-mou-icpdr.asp.

[405] The Article III of the Revised LBS Protocol establishes the following scope: "a) The marine environment of the Black Sea, b) Coastal areas of the Black Sea, including brackish waters, coastal waters, marshes, and coastal

4. Legal Personality

The Commission is granted "such legal capacity as may be necessary for the exercise of its functions."[406] The Bucharest Convention also called for the creation of a permanent Secretariat to be established to assist the Commission in attaining the goals of the Bucharest Convention.[407]

5. Functions

Under Article XVIII of the Bucharest Convention, the functions of the Commission are to:

- Promote the implementation of the Bucharest Convention;
- Make recommendations on measures needed to achieve the goals of the Bucharest Convention;
- Recommend amendments to the Bucharest Convention and to the Protocols;
- Elaborate criteria concerning the prevention, reduction, and control of pollution in the marine environment, and recommend measures to achieve this;
- Promote the adoption by the Contracting Parties of additional measures to protect the Black Sea marine environment, including through the dissemination of relevant scientific, technical, and statistical information and the encouragement of scientific and technical research;
- Cooperate with competent international organizations;
- Consider any questions raised by a Contracting Party; and
- Perform any other function as declared in the Bucharest Convention or as unanimously decided upon by the Contracting Parties.

In addition, the Contracting Parties first adopted the Strategic Action Plan for the Rehabilitation and Protection of the Black Sea ("BSSAP") in 1996, which was later amended in 2002.[408] Further revisions to the BSSAP were adopted by the Contracting Parties at the 2009 Ministerial/Diplomatic Conference in Sofia, Bulgaria.[409] In the BSSAP (both the 1996 and 2009 versions), the Contracting Parties elaborated on the goals and objectives that were laid out in the Bucharest Convention. Much of the BSSAP was focused on how best to establish working relationships between the national frameworks of the Contracting Parties, outside states, and other groups that would be important in achieving the goals set out

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lagoons, and c) Ground waters communicating with the Black Sea." Article III of the Biodiversity Protocol includes the Black Sea proper (as identified in art. I of the Bucharest Convention), the Sea of Azov, and coastal zones designated by the Contracting Parties (including wetlands).

[406] Bucharest Convention, art. XVII(10).

[407] Bucharest Convention, art. XVII(6).

[408] *See* Strategic Action Plan for the Rehabilitation and the Protection of the Black Sea (1996) ("1996 BSSAP"), 30-31 Oct. 1996 (amended 22-26 June 2002), *available at* http://www.blacksea-commission.org/_bssap1996.asp.

[409] *See* Strategic Action Plan for the Environmental Protection and Rehabilitation of the Black Sea ("2009 BSSAP"), 17 Apr. 2009, *available at* http://www.blacksea-commission.org/_bssap2009.asp.

in the Bucharest Convention. The 2009 BSSAP also formulated clear ecosystem quality objectives, corresponding targets (short-, mid- and long-term) to be achieved, and indicators of success.

The 1996 BSSAP obligated the Commission to initially establish seven Advisory Groups ("AGs") and seven Regional Activity Centers ("RACs") that would focus on topics deemed to be a priority under the Bucharest Convention and the 1996 BSSAP. The AGs and corresponding RACs include:

- An Advisory Group on the Environmental Safety Aspects of Shipping, supported by the Activity Centre in Varna, Bulgaria;
- An Advisory Group on Pollution Monitoring and Assessment, supported by the Activity Centre in Odessa, Ukraine;
- An Advisory Group on Control of Pollution from Land Based Sources, supported by the Activity Centre in Istanbul, Turkey;
- An Advisory Group on the Development of Common Methodologies for Integrated Coastal Zone Management, supported by the Activity Centre in Krasnodar, Russia;
- An Advisory Group on the Conservation of Biological Diversity, supported by the Activity Centre in Batumi, Georgia;
- An Advisory Group on Fisheries and other Marine Living Resources, supported by the Activity Centre in Constanta, Romania; and
- An Advisory Group on Information and Data Exchange, supported by the Secretariat.[410]

The 2009 BSSAP contains a number of points for the Contracting Parties to agree on in order to better implement the BSSAP and to improve the functioning of the various components of the Commission.[411] Generally, the new plan calls for:

- Establishing Inter-Ministerial Coordination committees to help with the integration of the BSSAP's objectives into national laws;
- Appointing or nominating National Focal Points to coordinate the BSSAP implementation;
- Further developing or incorporating into the National BSSAPs the objectives contained in the updated BSSAP;
- Ensuring expert support for the Commission's AGs; and
- Nominating national institutions to provide data and information to the Commission focal points and to the Commission.

[410] 1996 BSSAP, sec. II.

[411] For additional details on the specific objectives and policy areas, *see* BSSAP 2009, at sec. 3.

6. Organizational Structure

The Commission is composed of one representative appointed by each Contracting Party to the Bucharest Convention. This representative can be accompanied at Commission meetings by alternates, advisers, and experts. The Chairmanship of the Commission is held by each Contracting Party, in English alphabetical order, for a one year term. While serving his term, the Chairman cannot also serve as representative for his Contracting Party.[412]

The Commission is obligated to meet at least once a year, with extraordinary meetings able to be convened by the Chairman at the request of any Contracting Party. At these meetings, the members of the Commission review the implementation of the Bucharest Convention, its Protocols, and the BSSAP and adopt an annual working program and budget.[413]

The Bucharest Convention also created a permanent Secretariat to assist the Commission. The members of the Commission nominate the Secretariat's Executive Director and other officials. The Executive Director, in turn, may appoint technical staff, according to the Rules of Procedure adopted by the Commission. The staff of the Secretariat must be made up of nationals from all of the Contracting Parties. The headquarters of the Commission and permanent Secretariat are in Istanbul, Turkey.[414]

The Commission's operational documents are currently under revision and in a process of update and amendment.

7. Relationships

The 1996 BSSAP also called for the Commission and all of the Contracting Parties individually to encourage and pursue coordination among various regional bodies, non-governmental organizations ("NGOs"), the United Nations and other agencies regarding the sustainable development of the Black Sea region. One group identified in the BSSAPs is the Organization of Black Sea Economic Cooperation ("BSEC"). BSEC includes all of the Contracting Parties of the Bucharest Convention, as well as many other non-coastal states from the Black Sea region. BSEC was created to increase economic cooperation among the states of the wider Black Sea region. [415]

In addition to the BSSAPs, a joint task force (known as the DABLAS task force) was established in 2001 with the specific goal of coordinating the protection of the water and water-related ecosystems of the Danube River Basin and the Black Sea Basin (as the Danube empties into the Black Sea).[416] The Commission, with the help of the United Nations Environment Programme ("UNEP") and the United

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[412] Bucharest Convention, art. XVII.

[413] Bucharest Convention, arts. XVII(4), XIX. *See also* The Commission on the Protection of the Black Sea Against Pollution, *available at* http://www.blacksea-commission.org/_commission.asp (last viewed on 11 Jan. 2011).

[414] Bucharest Convention, art. XVII.

[415] Organization of the Black Sea Economic Cooperation ("BSEC"), *available at* http://www.bsec-organization.org/Pages/homepage.aspx (last viewed on 11 Jan. 2011)

[416] *See* The DABLAS Task Force, *available at* http://ec.europa.eu/environment/enlarg/dablas/index_en.htm (last viewed on 11 Jan. 2011). For additional information on DABLAS activities, *see* http://www.blacksea-commission.org/_dablas.asp (last viewed on 11 Jan. 2011).

Nations Development Programme ("UNDP")/Global Eenvironment Facility ("GEF"), has also drafted a Memorandum of Understanding with the International Commission for the Protection of the Danube River ("ICPDR") to agree on common goals for protection of the two water systems.[417]

As a result of the accession of Romania and Bulgaria to the European Union ("EU") and Turkey also being a candidate for EU accession, the European Commission obtained observer status to the Bucharest Convention.[418] The European Union is considered an "important partner of the Black Sea Commission, and provides substantial contribution to the protection of the Black Sea."[419] In 2008, the Ministers of Foreign Affairs of the EU countries and the countries of the wider Black Sea region issued a joint statement to initiate the Black Sea Synergy cooperation. The Black Sea Synergy is intended to encourage greater involvement by the EU in the Black Sea and to increase regional cooperation.[420]

Furthermore, there were also a number of foreign states and representatives of other interested bodies who attended the 1992 Diplomatic Conference as observers. These observers were from Armenia, Greece, Moldova, Yugoslavia (former), the Danube Commission, UNEP, the International Maritime Organization, the World Health Organization, the Intergovernmental Oceanographic Commission, the World Meteorological Organization, and UNDP.[421]

8. Decision Making

The Commission's decisions and recommendations must be adopted unanimously by the Contracting Parties, including decisions on all financial matters (taking into account the recommendations of the Commission) and when to assign other tasks to the Commission.[422] The Contracting Parties must take certain actions by consensus – such as changing the location of the headquarters and adopting amendments to the Bucharest Convention or its Protocols (including the Annexes).[423]

The Contracting Parties may amend the Bucharest Convention. Any Contracting Party may propose an amendment to either the Bucharest Convention or its Protocols. An amendment "shall be adopted by consensus at a Diplomatic Conference of the Contracting Parties to be convened within 90 days after the circulation of the proposed amendment by the depositary."[424] The amendments enter into force 30 days

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[417] ICPBS-ICPDR MOU.

[418] European Commission: Black Sea Synergy—A New Regional Cooperation Initiative, 11 Apr. 2007, *available at* http://ec.europa.eu/world/enp/pdf/com07_160_en.pdf.

[419]Ahmet Kideys, Presentation on the Implementation of the Bucharest Convention: Revision of major documents by the Contracting Parties—DABLAS Task Force Meeting, 28-29 Oct. 2008, *available at* http://ec.europa.eu/environment/enlarg/dablas/pdf/docum/2008/2_kideys_bucharest.pdf.

[420] Joint Statement of the Ministers of Foreign Affairs of the countries of the European Union and of the wider Black Sea area, 14 Feb. 2008, *available at* http://www.eeas.europa.eu/blacksea/doc/joint_statement_blacksea_en.pdf.

[421] Bucharest Convention, Final Act.

[422] Bucharest Convention, arts. XVII(5), XVIII(8), XXIII.

[423] Bucharest Convention, arts. XVII, XX(4), XXI.

[424] Bucharest Convention, art. XX(4). Romania serves as the depositary for the Bucharest Convention. Bucharest Convention, art. XXVIII (4).

after the depositary has received notifications of acceptance of these amendments from all of the Contracting Parties.[425]

9. Dispute Resolution

Under Article XXV of the Bucharest Convention, any dispute between the Contracting Parties concerning the interpretation and implementation of the Bucharest Convention is to be resolved through negotiations, or any other peaceful means chosen by the parties in dispute.

10. Data Information Sharing, Exchange, and Harmonization

One of the AGs called for in the 1996 BSSAP is an advisory group that is focused solely on information and data exchange. *See* **Functions.**

11. Notifications

Notifications regarding amendment proposals, acceptance of proposals, ratification of the Bucharest Convention and additional protocols, and denunciations are sent through a depositary (Romania), and then transmitted to each Contracting Party through diplomatic channels.[426]

12. Funding and Financing

The Bucharest Convention provides that the "contracting states shall decide upon all financial matters on the basis of unanimity, taking into account the recommendations of the Commission."[427]

In the 1996 BSSAP, the Contracting Parties established a set of principles, policies and actions to help achieve the goals set by the Bucharest Convention. One section of the 1996 BSSAP addressed financing issues, stating that funding for the actions may be provided through public funding from the Contracting Parties and from grants and loans.[428]

The 1996 BSSAP called for each Contracting Party to individually draft a national strategic action plan to implement the policies and actions contained in the 1996 BSSAP. Additionally, the 1996 BSSAP included the requirement to provide specific funding information in each Contracting Party's National Black Sea Strategic Action Plans.[429] This same requirement is also contained in the 2009 BSSAP. The 2009 BSSAP also specifically identifies international assistance as playing an important financial role in implementing the Black Sea environmental policy. The new plan calls for greater coordination regarding international donations at both the national and international levels.[430]

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[425] Bucharest Convention, art. XX(5).

[426] Bucharest Convention, arts. XX, XXVI, XXVIII, XXX.

[427] Bucharest Convention, art. XXIII.

[428] 1996 BSSAP, at sec. V.

[429] 1996 BSSAP, at sec. IV.

[430] 2009 BSSAP, at sec. 5.1-5.2.

There was also a call to determine the feasibility of a Black Sea Environmental Fund by 2000. The source of this funding was to be provided through national laws adopted by the Contracting Parties. This national funding could be supplemented by funding from the international community. The fund was intended to finance the Commission, as well as the development of projects and proposals.[431] However, establishment of the fund did not occur, and in the Commission's 2002 Implementation Report (*see* **Compliance and Monitoring**), it was mentioned that such a fund was not a feasible source of financing.[432]

13. Benefit Sharing

Article III of the Bucharest Convention provides that all of the Contracting Parties are to take part in the Bucharest Convention "on the basis of full equality of rights and duties…."

14. Compliance and Monitoring

The Commission is also tasked with preparing reports at regular intervals, annually and every five years, on the implementation of the BSSAPs. A five-yearly report (1996-2000) was approved by the Commission in 2002, and the following five-yearly report (2001-2006/7) was approved by the Commission in April 2009.[433]

In addition to the Commission, the DABLAS task force is involved in reviewing the implementation of projects under its purview.[434]

15. Participation and the Role of Multiple Stakeholders

The DABLAS Task Force, in addition to being under the auspices of the European Commission, has partnerships with several states, financial institutions, NGOs and regional groups. Examples include the World Bank, the European Bank for Reconstruction and Development, the Council of Europe Development Bank, UNDP, GEF, Austria, Hungary, and Slovenia.[435]

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[431] 1996 BSSAP, at sec. V.

[432] The Black Sea Commission, Implementation of the Strategic Action Plan for the Rehabilitation and Protection of the Black Sea 1996-2001 ("2002 Implementation Report"), 2002, at VII(B), *available at* http://www.blacksea-commission.org/_publ-BSSAPIMPL2002.asp.

[433] 2002 Implementation Report; The Black Sea Commission, Implementation of the Strategic Action Plan for the Rehabilitation and Protection of the Black Sea 2002-2007 ("2009 Implementation Report"), 2009, *available at* http://www.blacksea-commission.org/_publ-BSSAPIMPL2009.asp.

[434] *See e.g.*, Meeting Report – Eighth Meeting of the DABLAS Task Force, 17 Nov. 2009, *available at* http://ec.europa.eu/environment/enlarg/dablas/pdf/docum/minutes171109.pdf.

[435] For a full list of the partners, *see* DABLAS Task Force Website, Partners, *available at* http://ec.europa.eu/environment/enlarg/dablas/partners_en.htm (last viewed on 5 Jan. 2011); DABLAS Task Force Website, Bilateral Donors, *available at* http://ec.europa.eu/environment/enlarg/dablas/partners_bilateral_en.htm (last viewed on 5 Jan. 2011).

16. Dissolution and Termination

Five years after the Bucharest Convention has been in force, any Contracting Party may, by written notification, denounce the Bucharest Convention. The denouncement takes effect on 31 December of the year in which notification of the denouncement was received.[436]

17. Additional Remarks

In April 2009, the ministers of the Contracting Parties met in Sofia, Bulgaria. Some issues on the agenda included:

- Proposed amendments to the Bucharest Convention;
- Revisions to the LBS Protocol;
- The adoption of the Biodiversity Protocol;
- Adoption of the 2009 Implementation Report and the State of the Environment Report 2001-2006/7; and
- Adoptions of the 2009 BSSAP.[437]

18. Websites and References

- The Commission on the Protection of the Black Sea Against Pollution, *available at* http://www.blacksea-commission.org/main.asp.
- Black Sea Economic Cooperation, *available at* http://www.bsec-organization.org/Pages/homepage.aspx.
- Black Sea Forum, *available at* http://www.blackseaforum.org/.
- Black Sea NGO Network, *available at* http://www.bseanetwork.org/links.html.
- DABLAS Task Force, *available at* http://ec.europa.eu/environment/enlarg/dablas/index_en.htm.
- United Nations, International Agreements involving Black Sea States, *available at* http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/black_sea.htm.

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[436] Bucharest Convention, art. XXX.

[437] *See* The Meeting of the Ministers of Environment / Diplomatic Conference of the Contracting Parties to the Convention on the Protection of the Black Sea Against Pollution, *available at* http://www.blacksea-commission.org/_minmeetingsofia2009-agenda.asp (last viewed on 5 Jan. 2011).

Caspian Sea

1. Legal Basis

The littoral states of the Caspian Sea signed the Framework Convention for the Protection of the Marine Environment of the Caspian Sea ("Tehran Convention") on 4 November 2003.[438] The Tehran Convention is the main legal document providing a coordinating framework among the riparian states for protecting the Caspian Sea environment, and the first legally binding regional agreement signed by all five littoral states.[439] The Tehran Convention came into force on 12 August 2006, after ratification by all of the signatory states.[440] Negotiations between the Member States concerning the legal status of the Caspian Sea have not been finalized yet. Four protocols are currently under development, and have been assigned priority by the Member States:

- Protocol for the Protection of the Caspian Sea Against Pollution from Land-Based Sources and Activities;
- Protocol on Regional Preparedness, Response and Co-operation in Combating Oil Pollution Incidents;
- Protocol on Environmental Impact Assessment in a Transboundary Context; and
- Protocol on the Conservation of Biological Diversity.[441]

2. Member States

The Caspian littoral states, all of whom have signed and ratified the Tehran Convention, are: Azerbaijan, the Islamic Republic of Iran, Kazakhstan, the Russian Federation and Turkmenistan.[442]

3. Geographical Scope

The Tehran Convention applies to the "marine environment of the Caspian Sea, taking into account its water level fluctuations, and pollution from land based sources."[443] Pursuant to the Strategic Action Programme ("SAP") originally drafted and approved at the Tehran Steering Committee Meeting where the Tehran Convention was adopted, the scope also extends, in addition to the Caspian Sea proper, to "the

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[438] Framework Convention for the Protection of the Marine Environment of the Caspian Sea ("Tehran Convention"), 4 Nov. 2003, *available at* http://www.caspianenvironment.org/newsite/Convention-FrameworkConvention Text.htm.

[439] Tehran Convention – History of the Convention ("History of the Convention"), *available at* http://www.tehranconvention.org/spip.php?article1 (last viewed on 16 Nov. 2010).

[440] Tehran Convention, arts. 31, 33; Entry of the Framework Convention into Force, *available at* http://www.caspianenvironment.org/newsite/Convention-EntryIntoForce.htm (last viewed on 23 Nov. 2010).

[441] History of the Convention.

[442] Tehran Convention, Introduction.

[443] Tehran Convention, Introduction, art. 3.

coastal areas up to 100 km inland."[444] The SAP further provides that should there be activities that impact the environment of the Caspian Sea beyond this 100 km delineation that require intervention, the identification and prioritization of those activities would also fall within the scope of the Tehran Convention and the SAP.[445]

4. Legal Personality

The Member States have created a governing body, the Conference of the Parties (the "Conference" or "COP"), for the purpose of applying the Tehran Convention and an administrative body, the Secretariat, to assist with that task.[446]

5. Functions

As identified in the Tehran Convention, the functions of the Conference include:

- Reviewing the content and implementation of the Tehran Convention, its protocols and the Action Plan;
- Considering and adopting additional protocols or amendments to the Tehran Convention or its protocols, and adopting and amending the annexes to the Tehran Convention and its protocols;
- Receiving and considering reports submitted by the Member States and reviewing and evaluating the state of the marine environment, in particular the state of pollution and its effects;
- Considering reports prepared by the Secretariat on matters relating to the Tehran Convention;
- Where appropriate, seeking the technical and financial assistance of relevant international bodies and scientific institutions for the purposes of implementing the objectives of the Tehran Convention;
- Establishing such subsidiary bodies as may be necessary for implementing the Tehran Convention and its protocols;
- Appointing the Executive Secretary of the Tehran Convention and other personnel as necessary; and
- Performing such other functions as necessary to achieve the objectives of the Tehran Convention.[447]

The functions of the Secretariat include:

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[444] Strategic Action Programme for the Caspian Sea, as approved at the Tehran Steering Committee Meeting ("SAP"), 5 Nov. 2003, at art 1.2, *available at* http://www.caspianenvironment.org/reports/SAP_eng.doc.

[445] SAP, art. 1.2.

[446] Tehran Convention, art. 22.

[447] Tehran Convention, art. 22(10)(a)-(i).

- Arranging for and servicing meetings of the Conference and its subsidiary bodies;
- Preparing and transmitting to the Member States notifications, reports and other relevant information;
- Considering enquiries from the Member States and consulting with them on matters relating to the implementation of the Tehran Convention and its protocols;
- Preparing and transmitting reports on matters relating to the implementation of the Tehran Convention and its protocols;
- Establishing, maintaining the database of and disseminating the national laws of the Member States and the international laws relevant to the protection of the Caspian Sea;
- Arranging, upon the request of any Member State, for the provision of technical assistance and advice for the effective implementation of the Tehran Convention and its protocols;
- Carrying out functions as may be established under the protocols to the Tehran Convention;
- Cooperating, as appropriate, with relevant regional and international organizations and programs; and
- Performing such other functions as may be determined by the Conference.[448]

6. Organizational Structure

The Conference is made up of one representative from each Member State. The Tehran Convention directs that the Conference must meet at regular intervals as determined at the initial meeting of the Conference.[449] Meetings of the Conference are held in the territories of the Member States, on the basis of rotation in alphabetical order (in English) or at the location of the Secretariat.[450]

The Tehran Convention also created a Secretariat to assist with administrative tasks and other functions. The Secretariat is headed by an Executive Secretary and also consists of any additional necessary personnel.[451] The Executive Secretary and the other Secretariat personnel are appointed by the Conference.[452]

7. Relationships

Prior to the signing of the Tehran Convention, the littoral states of the Caspian Sea had a long-running relationship with the United Nations Development Programme ("UNDP"), the World Bank, and the

[448] Tehran Convention, art. 23(4)(a)-(h).

[449] Tehran Convention, art. 22(1)-(3).

[450] Tehran Convention, art. 22(5).

[451] Tehran Convention, art. 23.

[452] Tehran Convention, art. 22(10)(h).

United Nations Environment Programme ("UNEP"). In 1995, those agencies instituted a Joint Mission to assess the environmental problems of the region, the social and economic impacts of these problems and the commitment of the Caspian coastal countries to cooperate in protecting the environment of the Caspian region, with the assistance of the international community. The Joint Mission recommended strengthening the institutional, legal and regulatory frameworks concerning the Caspian Sea. In addition, as a result of the Joint Mission, the Caspian Environment Programme ("CEP"), with funding from the Global Environment Facility ("GEF"), was launched to serve as a comprehensive strategy for the protection and management of the Caspian environment.[453]

The first phase of the CEP (from 1995 to 2002) focused on developing a regional coordination mechanism for sustainable development and managing the Caspian environment, completing a Transboundary Diagnostic Analysis of priority environmental issues, and developing a SAP and adopting National Caspian Action Plans. The second phase of the CEP (from 2003 to 2007) was geared towards implementing the SAP in the areas of Biodiversity, Fisheries, Invasive Species, Coastal Development and Persistent Toxic Substances; further developing the regional coordination mechanisms; strengthening the environmental legal and policy framework (with one of the goals being the entry into force of the Tehran Convention); and implementing small-scale investments, coastal community sustainable development projects and public awareness campaigns. The CEP is still ongoing.[454]

At the second Conference of the Parties in November 2008, the Member States adopted the Strategic Convention Action Programme ("SCAP") as a comprehensive, long-term agenda and a framework for the implementation of the Tehran Convention and its future protocols over a period of ten years.[455] The SCAP consists largely of an update of the SAP developed under the CEP, adapted to the needs and priorities of the Tehran Convention. The Member States have stated their intentions to implement the SCAP through their National Caspian Action Plans.[456]

8. Decision Making

Decisions made by the Conference must be unanimous.[457]

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[453] Global Environment Facility – Project Proposal (Caspian Part II), 20 Dec. 1999, at 3-6, *available at* www.thegef.org/gef/sites/thegef.org/files/repository/Part_II_Caspian.doc.

[454] Strategic Action Programme (SAP) for the Caspian Sea – Updated October 2006 ("Updated SAP"), at Introduction, *available at* http://www.caspianenvironment.org/autoindex/index.php?dir=NewSite/DocCenter/MajDoc/Updated%20SAP. *See generally*, Caspian Environment Programme, *available at* http://www.caspianenvironment.org/newsite/ index.htm (last viewed on 24 Nov. 2010). The international partners of the CEP are the European Union ("EU"), GEF, the United Nations Office for Project Services ("UNOPS"), the UNDP, the UNEP, and the World Bank.

[455] Report of the Meeting, Framework Convention for the Protection of the Marine Environment of the Caspian Sea – Conference of the Parties, Second Meeting Tehran, Iran 10-12 November 2008 ("COP II Final Report"), 12 Dec. 2008, at 2, *available at* http://www.tehranconvention.org/spip.php?article5.

[456] *See* Caspian Water Quality Monitoring and Action Plan for Areas of Pollution Concern – Regional Pollution Action Plan ("Regional Pollution Action Plan"), Aug. 2009, at 7-8, *available at* http://caspianmap.org/assets/Uploads/RPAP%202009%2010%2012_eng%20complete%20PDF.pdf.

[457] Tehran Convention, art. 22(8).

9. Dispute Resolution

Any dispute arising between the Member States regarding the "application or interpretation of the provisions" of the Tehran Convention will be "settle[d] by consultations, negotiations or by any other peaceful means of their own choice."[458]

10. Data Information Sharing, Exchange, and Harmonization

The Tehran Convention contains a number of articles dealing specifically with the exchange of information among the Member States, cooperation on environmental policies and harmonization of national laws.[459] The Member States are directed to harmonize their national laws and to work together in order to develop specific rules and standards designed to protect the environment of the Caspian Sea, including to jointly develop an action plan to help implement the objectives of the Tehran Convention. The Member States are called upon to: (a) collect and exchange data concerning the sources of pollution in the Caspian Sea; (b) develop programs to monitor water quality and quantity; (c) develop contingency plans for pollution emergencies; (d) implement emission and discharge limits; (e) establish water quality objectives and criteria; and (f) develop harmonized programs to reduce pollution loads from municipal and industrial points, as well as from diffuse sources.[460] The Member States are also to cooperate on research and development concerning techniques for the prevention, control and reduction of pollution in the Caspian Sea. The information gathered, and any resulting reports, are exchanged among the Member States through the Secretariat. The Member States, in conjunction with the Secretariat, are to endeavor provide public access to this information and to the action plans developed by the Member States.[461]

11. Notifications

The Tehran Convention requires that each Member State submits, at regular intervals determined by the Conference, "reports on measures adopted for the implementation of the provisions" of the Tehran Convention.[462]

Additionally, each Member State is required to provide an environmental impact assessment for any potential activity impacting the Caspian. The UNEP and the CEP have developed guidelines for preparing and implementing these environmental impact assessments.[463] The results from each assessment must be disseminated to the other Member States.

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[458] Tehran Convention, art 30.

[459] *See generally* Tehran Convention, arts. 18-21.

[460] Tehran Convention, art. 18.

[461] Tehran Convention, arts. 20, 21.

[462] Tehran Convention, art. 27.

[463] Tehran Convention, art. 17; Guidelines on Environmental Impact Assessment in a Transboundary Context in the Caspian Sea Region: Step by Step Procedures, Dec. 2003, at 8, *available at* http://www.unep.ch/roe/publications/publications_roe/caspian_guidelines.pdf.

12. Funding and Financing

The Tehran Convention required the Member States to agree upon and set financial rules at the first meeting of the Conference.[464] At the First Conference of the Parties in May 2007, or COP I, the Conference adopted a set of financial rules establishing a Trust Fund, to be run by a Trustee designated by the Conference, to fund the implementation of the Tehran Convention and the activities of the Secretariat.[465] The Trust Fund will be funded by direct contributions from the Member States on an equal share basis, and allows additional funds to be voluntarily deposited by any individual Member State. The Financial Rules also permit states that are not parties to the Tehran Convention, as well as nongovernmental and intergovernmental organizations, to make contributions to the Trust Fund.[466]

Budget proposals are prepared by the Secretariat and submitted to the Conference for approval or revision.[467] The Financial Rules dictate specific time limits on preparing budgets and reporting, as well as specific provisions for terminating or amending the terms of the Trust Fund.[468]

13. Benefit Sharing

No specific provision

14. Compliance and Monitoring

Each Member State is required to "designate a National Authority to coordinate implementation of the provisions" of the Tehran Convention.[469]

The Tehran Convention requires the Member States to identify pollutants and their parameters that need to be monitored regularly and to carry out assessments of the environmental conditions of the Caspian Sea, as well as of the effectiveness of measures taken to implement the Tehran Convention.[470] The Tehran Convention states that the Member States "shall endeavour to establish and implement individual and/or joint programmes for monitoring environmental conditions of the Caspian Sea."[471] Each Member State has also prepared and implemented a National Caspian Action Plan, which addresses the commitments made by the Member States under the SAP of the CEP and also partly under the Tehran

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[464] Tehran Convention, art. 22(9).

[465] Financial Rules for the Administration of the Trust Fund for the Framework Convention for the Protection of the Marine Environment of the Caspian Sea ("Financial Rules"), 25 May 2007, *available at* http://www.caspianenvironment.org/newsite/Convention-COPI.htm.

[466] Financial Rules, Rule 4(c).

[467] Financial Rules, Rules 8-9; *see, e.g.*, COP II Final Report, at 3.

[468] *See generally* Financial Rules.

[469] Tehran Convention, art. 26(1).

[470] Tehran Convention, art. 19.

[471] Tehran Convention, art. 19(1); *see also* Tehran Convention, art. 28.

Convention.[472] Furthermore, National Convention Action Plans are being developed to specifically address the obligations of the Member States under the Tehran Convention.[473] *See also* **Data Information Sharing, Exchange, and Harmonization; Functions**.

15. Participation and the Role of Multiple Stakeholders

Additional groups have been involved in the meetings of the Conference. At the Second Conference of Parties, held in November 2008, participants included: the Food and Agriculture Organization of the United Nations, the International Maritime Organization, the World Bank, the Commission on the Protection of the Black Sea Against Pollution, and the CaspianMap project of the EU/TACIS (Technical Aid to the Commonwealth of Independent States) programme.[474]

16. Dissolution and Termination

No specific provision

17. Additional Remarks

The CEP is a regional umbrella program developed with the help of the international community for the five Caspian littoral states. With an overall goal of environmentally sustainable development and management of the Caspian environment, one of the objectives of the CEP was to establish the SAP. The SAP is a regional policy framework that describes the principles of environmental management and cooperation, acknowledges challenges confronting the sustainable integrated management of the Caspian Sea environment, establishes regionally agreed upon Environmental Quality Objectives, and defines a set of targets, interventions and indicators designed to meet these objectives. The SAP identifies four areas of concern that are in need of national action and regional cooperation: fisheries development, biological diversity protection, pollution monitoring and control, and sustainable development of coastal areas.[475] The SCAP was developed on the basis of the SAP and adopted by the second Conference of the Parties in 2008. *See* **Relationships.**

18. Websites and References

- Tehran Convention Website, *available at* http://www.tehranconvention.org/.
- Caspian Environment Programme, *available at* http://www.caspianenvironment.org/newsite/index.htm.

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[472] *See, e.g.*, National Caspian Action Plan of Azerbaijan Republic, 2003, *available at* http://www.caspianenvironment.org/report_technical.htm (last viewed on 24 Nov. 2010).

[473] *See* Regional Pollution Action Plan, at 8.

[474] *See* COP II Final Report, Annex 6 – List of Participants. A number of other entities, including UNOPS, UNDP, GEF, the International Petroleum Industry Environmental Conservation Associations, CASPCOM (Coordinating Committee on hydrometeorology and pollution monitoring of the Caspian Sea), the EU, and British Petroleum attended COP I in May 2007. *See* Report of the Meeting, Framework Convention for the Protection of the Marine Environment of the Caspian Sea – Conference of the Parties, First Meeting Baku, Azerbaijan 23-25 May 2007 – List of Participation, *available at* http://www.tehranconvention.org/cop1/List_observers.doc.

[475] Updated SAP, at Introduction, sec. 4.3.

- Strategic Action Programme (SAP) for the Caspian Sea – Updated October 2006, *available at* http://www.caspianenvironment.org/autoindex/index.php?dir=NewSite/DocCenter/MajDoc/Updated%20SAP.

- Caspian Water Quality Monitoring and Action Plan for Areas of Pollution Concern – Regional Pollution Action Plan, Aug. 2009, *available at* http://caspianmap.org/assets/Uploads/RPAP%202009%2010%2012_eng%20complete%20PDF.pdf.

- Framework Convention for the Protection of the Marine Environment of the Caspian Sea – Strategic Convention Action Programme, *available at* http://www.tehranconvention.org/cop2/Annex%202%20SCAP%20eng.pdf.

- Global Environment Facility – Project Proposal (Caspian Part II), 20 Dec. 1999, *available at* www.thegef.org/gef/sites/thegef.org/files/repository/Part_II_Caspian.doc.

- UNEP Regional Seas Programme – Caspian Sea, *available at* http://www.unep.org/regionalseas/programmes/independent/caspian/default.asp.

Danube River Basin

1. Legal Basis

The Danube River Basin has been governed by multilateral agreements and various forms of international administration almost continuously since 1856.[476] The history of bilateral treaties governing the basin stretches back even further.[477] These historical treaties and agreements largely focused on improving navigation, flood control, hydro power, and commerce along the region's waterways.

Currently, the non-navigational use of waterways in the Danube River Basin is governed by the Convention on Cooperation for the Protection and Sustainable Use of the Danube (the "Convention" or "DRPC"), signed on 29 June 1994 in Sofia, Bulgaria.[478] The DRPC, which entered into force in October 1998, is the overall legal instrument for cooperation and transboundary water management in the Danube River Basin, with the main objective of ensuring that the surface waters and groundwater within the Danube River Basin are managed and used on a sustainable and equitable basis.[479] To accomplish these objectives, the DRPC established the International Commission for the Protection of the Danube River ("ICPDR" or "Commission").[480]

Overall, the DRPC was an outgrowth of earlier commitments made by the riparian states to address the region's environmental problems. These commitments began with the 1985 Bucharest Declaration, which committed the states to developing an integrated water management system. Six years later, further commitments were made to strengthen cooperation in the basin through the Environmental Programme for the Danube River Basin ("EPDRB"), a program requiring each state to adopt or define uniform monitoring systems, laws on liability for cross-border pollution, rules for the protection of wetland environments, and guidelines for the conservation of areas of ecological or aesthetic importance or value. The EPDRB also required the development and maintenance of a Strategic Action Plan

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[476] *See Jurisdiction of the European Commission of the Danube Between Galatz and Baila*, 1927 P.C.I.J. (ser. B) No. 14 (detailing the history of the European Commission of the Danube established by the Treaty of Paris in 1856 to govern the lower portion of the Danube River); Stephen Gorove, *Internationalization of the Danube: A Lesson in History*, 8 J. PUB. L. 125, 129-34 (1959) (describing the evolution of the European Commission of the Danube prior to World War I and the subsequent creation of two post-war Danube Commissions). Significant multilateral agreements governing the waters of the Danube over the last century have included: the Convention Instituting the Definitive Statute of the Danube, 23 June 1921 (17 A.J.I.L. (Supp.) 13 (1921)); the Convention Regarding the Regime of Navigation on the Danube, 18 Aug. 1948 (English text begins at 32 U.N.T.S. 197); and the Convention Concerning Fishing in the Waters of the Danube, 29 Jan. 1958, Bulg.-Rom.-U.S.S.R.-Yugo. (English text begins at 339 U.N.T.S. 58).

[477] *See* Josef L. Kunz, *The Danube Regime and the Belgrade Conference*, 43 AM. J. INT'L L. 104, 104 (1949) (referencing early bilateral treaties concerning the Danube River Basin that date back more than three centuries).

[478] Convention on Cooperation for the Protection and Sustainable Use of the Danube River ("DRPC"), 29 June 1994, *available at* http://www.icpdr.org/icpdr-files/6787. Navigation on the Danube River is governed by the separate Danube Commission established by the Convention Regarding the Regime of Navigation on the Danube, 18 Aug. 1948, *available at* http://www.danubecommission.org/index.php/en_US/convention.

[479] ICPDR: The Convention, *available at* http://www.icpdr.org/icpdr-pages/drpc.htm (last viewed on 2 Nov. 2010).

[480] DRPC, art. 18(1).

("SAP") listing concrete measures and short-term goals. When this plan was completed, the newly-established ICPDR was entrusted with its implementation.[481]

In addition to the ICPDR, states in the Danube River Basin are also signatories to the Ramsar Convention on Wetlands,[482] the Epsoo Convention,[483] the U.N. Convention on the Protection and Use of Transboundary Watercourses and International Lakes,[484] the European Agreement on Main Inland Waterways of International Importance (AGN),[485] and the European Union ("EU") Water Framework Directive ("WFD").[486]

2. Member States

The DRPC and ICPDR Contracting Parties are Austria, Bosnia-Herzegovina, Bulgaria, Croatia, the Czech Republic, Germany, Hungary, Moldova, Montenegro, Romania, Serbia, the Slovak Republic, Slovenia, and Ukraine. The EU is also a Contracting Party of the DRPC and ICPDR. In addition, countries in the catchment area of the Danube River Basin that cooperate with the ICPDR under the EU Water Framework Directive include Albania, Italy, Macedonia, Poland, and Switzerland.[487]

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[481] *See*, ICPDR: Short History of Cooperation, *available at* http://www.icpdr.org/icpdr-pages/history_of_cooperation.htm (last viewed on 1 Nov. 2010). *See also* DRPC, art. 19.

[482] Convention on Wetlands of International Importance Especially as Waterfowl Habitat, 2 Feb. 1971, *available at* http://www.ramsar.org/cda/en/ramsar-documents-texts-convention-on/main/ramsar/1-31-38%5E20671_4000_0__. Contracting Parties to the Ramsar Convention on Wetlands, *available at* http://www.ramsar.org/cda/ramsar/display/main/main.jsp?zn=ramsar&cp=1-36-123^23808_4000_0__ (last viewed on 1 Nov. 2010).

[483] U.N. Convention on Environmental Impact Assessment in a Transboundary Context, 25 Feb. 1991, *available at* http://www.unece.org/env/eia/documents/legaltexts/conventiontextenglish.pdf. With the exception of Bosnia-Herzegovina and Moldova, all current members of the ICPDR are also members of the Epsoo Convention. *See* Epsoo Convention Contracting Parties, *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-4&chapter=27&lang=en (last viewed on 1 Nov. 2010).

[484] U.N. Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 17 Mar. 1992, *available at* http://www.unece.org/env/water/pdf/watercon.pdf. Except for Serbia, all current members of the ICPDR are also members of this convention.

[485] European Agreement on Main Inland Waterways of International Importance, 19 Jan. 1996, *available at* http://www.unece.org/trans/conventn/agn.pdf.

[486] Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, *available at* http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:327:0001:0072:EN:PDF.

[487] *See* ICPDR: Contracting Parties, *available at* http://www.icpdr.org/icpdr-pages/contracting_parties.htm (last viewed on 2 Nov. 2010).

3. Geographical Scope

The Danube River Basin is shared by nineteen countries, covering approximately 801,463 square kilometers. The Danube River Basin extends from the origination of the Danube River in Germany to the Romanian and Ukrainian shores along the Danube Delta and the Black Sea.[488]

4. Legal Personality

The DRPC established the ICPDR to implement the Convention's objectives and provisions, with the Convention providing that the Contracting Parties "shall cooperate in the framework" of the ICPDR.[489] Article 18 and Annex IV (the Statute of the ICPDR) of the DRPC establish the structures and procedures of the Commission. The Statute of the ICPDR specifically sets forth the ICPDR's legal capacity and representation, giving it "such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes in accordance with the law applicable at the headquarters of its Secretariat."[490] Headquartered in Vienna, Austria, the ICPDR is recognized to have the legal capacity "(a) to contract; (b) to acquire and dispose of immovable and movable property; (c) to institute or respond to legal proceedings; and (d) to take such other action as may be necessary or useful for its purposes and activities."[491] The ICPDR is represented by its President, with representation further determined by the ICPDR's rules of procedure.[492]

5. Functions

The ICPDR is tasked with implementing the DRPC and its goals generally include: protecting the Danube Basin's water resources for future generations by preserving the natural balance of those waters, addressing risks from toxic chemicals, preventing the environmental and ecological damages caused by floods, and maintaining the heath and sustainability of the region's river systems.[493] To accomplish these goals, the ICPDR has initiated or supported the following basin-wide programs and projects:

- The Danube Pollution Reduction Programme (1997-1999): An outgrowth of the original United Nations Development Programme ("UNDP") – Global Environment Facility ("GEF") efforts in connection with the ratification of the DRPC and the creation of the ICPDR, this UNDP-GEF supported program involved several studies into water pollution problems across the basin. The information from these studies was used to set priorities for addressing pollution problems in the region. This included dividing the basin into specific sub-river basins for the region and creating

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[488] ICPDR: Countries of the Danube River Basin, *available at* http://www.icpdr.org/icpdr-pages/countries.htm (last viewed on 2 Nov. 2010); ICPDR: River Basin, *available at* http://www.icpdr.org/icpdr-pages/river_basin.htm (last viewed on 2 Nov. 2010).

[489] DRPC, art. 18(1).

[490] DRPC, Annex IV, art. 10(1).

[491] Agreement between the International Commission for the Protection of the Danube River and the Republic of Austria regarding the Headquarters of the International Commission for the Protection of the Danube River, art. 2, 1 Nov. 2001, *available at* http://www.icpdr.org/icpdr-files/6872.

[492] DRPC, Annex IV, art. 10(2).

[493] ICPDR: About Us, *available at* http://www.icpdr.org/icpdr-pages/about_us.htm (last viewed on 2 Nov. 2010).

a comprehensive ICPDR information system cataloging: information related to pollution problems; local projects addressing those problems; and potential sources of financing for such projects.[494]

- The Joint Action Programme ("JAP") (2001-2005): This program outlined steps to be taken from 2001-2005 to achieve the environmental objectives outlined in the Convention. As part of the JAP, countries invested more than 4.404 billion euros in large-scale measures intended for pollution reduction, wetland conservation, restoring the ecosystem, and sustainable environmental management. The JAP Final Report was produced in 2006.[495]

- The Danube Regional Project ("DRP") (2002-2006): The UNDP-GEF launched the five-year DRP for "Strengthening the Implementation Capacities for Nutrient Reduction and Transboundary Cooperation in the Danube River Basin." This project, carried out in two phases, was intended to complement the activities of the ICPDR. The first phase was focused on basin-wide capacity-building with "particular attention to the development and implementation of policies for pollution reduction, effective legal and economic instruments, mechanisms for monitoring and evaluation, the creation of inter-ministerial committees as well as the development of programmes for public participation and NGO strengthening." The second phase was intended to "set up institutional and legal instruments at the national and regional level to assure nutrient reduction and sustainable management of water bodies and ecological resources, involving all stakeholders and building up adequate monitoring and information systems."[496]

- The Joint Danube Surveys ("JDS"): In 2001, the ICPDR initiated a survey (JDS1) to analyze the water quality and ecological status of the Danube River in order to "improve the validity and comparability of water quality data received from its regular monitoring programme (Trans-National Monitoring Network)." This survey was followed by a second survey (JDS2) to "produce comparable and reliable information on water quality for the entire Danube and many of its tributaries." The results were to be used to determine what measures would need to be taken to comply with EU law by 2015 and to implement the DRPC. [497]

- The Flood Action Programme ("FAP"): Developed in 2004 in the wake of the extensive damage caused by floods to the Danube River Basin in 2002, the ICPDR has developed and started to implement a comprehensive plan concerning flood prevention, protection, and warning across the

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[494] *See* Danube River Basin Pollution Reduction Programme Report, Programme Coordination Unit UNDP/GEF Assistance, June 1999, *available at* http://www.icpdr.org/icpdr-files/8221.

[495] *See* ICPDR: Joint Action Programme, *available at* http://www.icpdr.org/icpdr-pages/jap.htm (last viewed on 2 Nov. 2010); ICPDR - Joint Action Programme: Final Implementation Report, 14 Nov. 2007, *available at* http://www.icpdr.org/icpdr-files/15042.

[496] *See* UNDP-GEF Danube Regional Project: Why the Project?, *available at* http://www.undp-drp.org/drp/project_why_the_project.html (last viewed on 2 Nov. 2010).

[497] *See* ICPDR: JDS1, *available at* http://www.icpdr.org/icpdr-pages/jds.htm (last viewed on 2 Nov. 2010); ICPDR: JDS2, *available at* http://www.icpdr.org/icpdr-pages/jds2.htm (last viewed on 2 Nov. 2010).

basin.[498] By the end of 2009, the ICPDR had adopted seventeen flood action plans for all of the sub-basins in the Danube catchment area that are based on 45 national planning documents.[499]

- The Danube River Basin Management Plan (2009): This comprehensive management plan "outlines concrete measures to be implemented by the year 2015 to improve the environmental condition of the Danube and its tributaries."[500] The DRPC Contracting Parties nominated the ICPDR as the coordinating body for the development of a comprehensive management plan using the EU Water Framework Directive principles. The DRBM Plan will be updated every six years, according to EU legislation.[501] The plan, finalized in December 2009, was adopted at the 16 February 2010 Ministerial Meeting. Specific plan measures include:

> reduction of organic and nutrient pollution, offsetting environmentally detrimental effects of man-made structural changes to the river, improvements to urban wastewater systems, the introduction of Phosphate-free detergents in all markets and effective risk management of accidental pollution. Further, measures to restore river continuity for fish migration as well as the reconnection of wetlands will be tackled. The plan takes a source-to-sea approach and addresses key requirements of the European Union Water Framework Directive.[502]

- Educational Programs: The ICPDR also works to educate the general public about the threats to the Danube River Basin and ways for the public to get involved. These educational programs include the establishment of an International Danube Day to "pay tribute to the vital role the Danube and its tributaries play in people's lives" and the creation of the Danube Box, a teaching toolkit to "give local schoolchildren a greater understanding of the river, the threats posed to the river, and the need to preserve water resources."[503]

Several separate initiatives address specific sub-regions of the Danube River Basin. These include:

- The Bioindicators Study: A collaborative July 2000 study, funded by governments of Germany and Austria, and in cooperation with local authorities, to investigate and analyze the accumulation

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[498] *See* ICPDR: Floods, *available at* http://www.icpdr.org/icpdr-pages/floods.htm (last viewed on 2 Nov. 2010); ICPDR - Flood Action Programme: Action Programme for Sustainable Flood Protection in the Danube River Basin, 14 Dec. 2004, *available at* http://www.icpdr.org/icpdr-files/8115.

[499] *See* ICPDR: Flood Action Plans, *available at* http://www.icpdr.org/icpdr-pages/flood_action_plans.htm (last viewed on 2 Nov. 2010).

[500] ICPDR: Ministerial Meeting 2010 Danube Basin: Shared waters – joint responsibilities ("ICPDR 2010 Ministerial Meeting"), *available at* http://www.icpdr.org/icpdr-pages/mm2010.htm (last viewed on 2 Nov. 2010).

[501] *See* ICPDR: River Basin Management, *available at* http://www.icpdr.org/icpdr-pages/river_basin_management.htm (last viewed on 2 Nov. 2010).

[502] ICPDR 2010 Ministerial Meeting. The plan was officially adopted in the Danube Declaration, which reaffirmed the Danube countries' commitment to transboundary cooperation and sustainable water resource management.

[503] *See* ICPDR: Danube Day, *available at* http://www.icpdr.org/icpdr-pages/danube_day.htm (last viewed on 2 Nov. 2010); ICPDR: Danube Box—"Danube goes School", *available at* http://www.icpdr.org/icpdr-pages/danube_box.htm (last viewed on 2 Nov. 2010).

and impact of certain micropollutants in the area of the Danube that was impacted by the Kosovo conflict.[504]

- The Danube Black Sea Task Force ("DABLAS"): DABLAS was established in November 2001 in response to a European Commission Communication outlining environmental problems in and priorities for the Danube-Black Sea Region.[505] The task force includes representatives of countries in the region, the ICPDR Secretariat, other interested EU member states, the European Commission, international financing institutions, and other organizations and parties, including civil society. The overall goal is to develop financing mechanisms for pollution reduction and ecosystem rehabilitation in the wider Black Sea region.[506]

- The Tisza Investigation: An international expedition conducted, under the supervision of ICPDR, as a follow-up to JDS1. Specifically, the efforts were intended to investigate the sub-region's water quality and pollution levels after cyanide and heavy metal pollution incidents occurred on the Szamos and Tisza rivers in February and March 2000. The survey was financed by the EU, Germany and with contributions from countries on the Tisza Basin, a sub-region of the Danube River Basin.[507]

- The Tisza River Basin Management Plan: In 2004, the countries of the Tisza River Basin signed a Memorandum of Understanding agreeing to "co-operate more closely in the framework of the ICPDR in order to produce a Tisza River Basin Management Plan by 2009 aiming at the objectives set by the EU Water Framework Directive as implemented through the [DRPC] and the ICPDR Flood action Programme and thereby complementing the efforts of the ICPDR."[508] As a first step towards drafting the plan, a comprehensive Tisza Analysis Report was prepared, with financial support from the EU, in 2007.[509] The first summary document of the Plan was introduced at the 16 February 2010 Ministerial Meeting. Representatives from Hungary, Romania, Serbia, Slovakia, and Ukraine adopted the "Ministerial Statement towards the

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[504] *See* ICPDR: Bioindicators Study, *available at* http://www.icpdr.org/icpdr-pages/item20050412145020.htm (last viewed on 2 Nov. 2010). The study was a follow-up to the United Nations Environment Programme ("UNEP")/U.N. Office for the Coordination of Humanitarian Affairs ("OCHA") Balkan Task Force Mission that investigated the environmental impacts of the Kosovo conflict in Former Republic of Yugoslavia in 1999.

[505] Communication from the Commission – Environmental co-operation in the Danube – Black Sea Region, Commission of the European Communities, 30 Oct. 2001, *available at* http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0615:FIN:EN:PDF.

[506] *See* ICPDR: DABLAS, *available at* http://www.icpdr.org/icpdr-pages/dablas.htm (last viewed on 2 Nov. 2010); European Commission: The DABLAS Task Force, *available at* http://ec.europa.eu/environment/enlarg/dablas/index_en.htm (last viewed on 2 Nov. 2010).

[507] *See* ICPDR: Tisza Investigation, *available at* http://www.icpdr.org/icpdr-pages/tisza_investigation.htm (last viewed on 2 Nov. 2010).

[508] Towards a River Basin Management Plan for the Tisza river supporting sustainable development of the region – Memorandum of Understanding, 13 Dec. 2004, *available at* http://www.icpdr.org/wim07-mysql/download.php?itemid=8200&field=file1.

[509] *See* ICPDR: Tisar 2007, *available at* http://www.icpdr.org/icpdr-pages/tisar_2007.htm (last viewed on 2 Nov. 2010).

development and implementation of a River Basin Management Plan for the Tisza River Basin." A final Plan is intended be presented to the ICPDR Heads of Delegation by the end of 2010.[510]

- The UNDP-GEF Tisza Medium-Size Project ("MSP"): Though organized under the umbrella of the ICPDR, this project—focused on wetlands and flood plain restoration and management in the Tisza River Basin—is also supported and funded by the beneficiary countries, the UNDP, the UNEP, and the European Commission.[511] This initiative includes of a series of smaller projects, including the Bodrog Project (mitigating the consequences of floods in the Bodrog river basin),[512] the Upper Tisza Project (demonstrating cost effective measures to address the main environmental concerns in the area around two polluted villages in the upper Tisza region),[513] and the Integrated Land Development Project (building upon and spreading lessons learned for integrated land management in the Tisza region).[514] Overall, the MSP is intended to work towards the development of an Integrated River Management Plan.[515]

In addition to the programs and projects listed above, the ICPDR conducts much of its work through relationships with other organizations. *See* **Relationships**.

6. Organizational Structure

The ICPDR is comprised of delegations from each of the Contracting Parties to the DRPC. Each Contracting Party can send a maximum of five delegates to the Commission, and technical experts for special matters when necessary. The ICPDR is led by the Chair of the Commission, which rotates among the Contracting Parties in English alphabetical order. The Chair's delegation nominates one of its members to become the Commission's President.[516]

The expert bodies of the ICPDR include a Standing Working Group and Expert Groups, consisting of delegates and experts nominated by the ICPDR.[517] The technical work of the ICPDR is carried out by

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[510] *See* ICPDR: Draft Tisza River Management Plan, *available at* http://www.icpdr.org/icpdr-pages/item2010062 1095910.htm (last viewed on 2 Nov. 2010) (also providing links to the draft Plan).

[511] *See* UNDP: UNDP-GEF Medium-Size Project (MSP): Integrating multiple benefits of wetlands and floodplains into improved transboundary management for the Tisza River Basin, at 6, *available at* http://www.carpathianconvention.org/NR/rdonlyres/F69F79F1-B3A4-45B4-A79D-CD847F95B094/0/UNDPGEF projectTiszaRiver.pdf.

[512] *See* ICPDR: Bodrog Project, *available at* http://www.icpdr.org/icpdr-pages/bodrog_kick_off_meeting.htm (last viewed on 2 Nov. 2010).

[513] *See* ICPDR: Upper Tisza Project, *available at* http://www.icpdr.org/icpdr-pages/ukraine_kick_off_meeting.htm (last viewed on 2 Nov. 2010).

[514] *See* ICPDR: Integrated Land Development Project, *available at* http://www.icpdr.org/icpdr-pages/integrated_land_development.htm (last viewed on 2 Nov. 2010).

[515] *See* ICPDR: UNDP/GEF Tisza MSP, *available at* http://www.icpdr.org/icpdr-pages/tisza_undp_gef.htm (last viewed on 2 Nov. 2010).

[516] DRPC, Annex IV, art. 1(1), 2(1).

[517] DRPC, Annex IV, art. 6(1)-(3). The Standing Working Group coordinates and provides guidance to the other expert groups in between ordinary meetings of the ICPDR.

such Expert Groups, as well as by *ad hoc* Expert Groups that address specific questions and support the work of the other Expert Groups or ICPDR bodies upon request. Current Expert Groups include the Expert Group on River Basin Management ("RBM EG"), the Pressures and Measures Expert Group ("PM EG"), the Monitoring and Assessment Expert Group ("MA EG"), the Expert Group on Flood Protection ("FLOOD EG"), the Information Management and Geographical Information System Expert Group ("IM + GIS EF"), the Public Participation Expert Group ("PP EG"), and the *ad hoc* Strategic Expert Group ("S EG").[518]

The overall work of the ICPDR is administered by its Permanent Secretariat, which is headquartered in Vienna, Austria. The ICPDR appoints an Executive Secretary, and there are also provisions for the appointment of additional personnel. The Executive Secretary is entrusted to "perform the functions that are necessary for the administration of [the DRPC] and for the work of the [ICPDR]" as well as other tasks entrusted to the officer by the ICPDR.[519]

7. Relationships

The ICPDR has strong and continuing relationships with both UNDP-GEF and the European Commission. *See* **Functions.** The ICPDR has also developed formal and informal relationships with other international organizations and corporate partners to further its mission, including with the Danube Commission (which governs navigation on the Danube River) with regard to their mutual responsibilities regarding environmental protection and inland navigation,[520] and with the Institute of Freshwater Ecology and Inland Fisheries of Leibniz, Germany and the Institute for Water Quality and Waste Management at the Technical University of Vienna regarding specific Danube River Basin research projects.[521]

The ICPDR also established, in 2008, a "Friends of the Danube" program that seeks to foster beneficial relationships with local businesses in order to help preserve and protect the environment of the Danube River Basin. Members of this program are required to provide, at a minimum, a "partnership donation" of 25,000 euros and to work towards the responsible use of water in their own business operations. Current Business Friends of the Danube include the Coca-Cola Company, Coca-Cola Hellenic, ORF, and Borealis.[522]

In addition to these relationships, nineteen organizations have been granted observer status with the ICPDR, including the Black Sea Commission, the Central Dredging Association, the Danube Environmental Forum, the Danube Commission, the Danube Tourist Commission, the European Anglers

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[518] *See* ICPDR: Expert Groups, *available at* http://www.icpdr.org/icpdr-pages/expert_groups.htm (last viewed on 2 Nov. 2010).

[519] DRPC, Annex IV, art. 7(1)-(4).

[520] *See, e.g.*, Joint Statement on Guiding Principles for the Development of Inland Navigation and Environmental Protection in the Danube River Basin, 2007, *available at* http://www.danubecommission.org/uploads/doc/72/Joint%20Statement/EN/Joint_Statement_FINAL.pdf.

[521] *See* ICPDR: daNUbs, *available at* http://www.icpdr.org/icpdr-pages/danubs.htm (last viewed on 2 Nov. 2010); ICPDR: MONERIS, *available at* http://www.icpdr.org/icpdr-pages/item20080506172727.htm (last viewed on 2 Nov. 2010).

[522] ICPDR: Business Friends of the Danube, *available at* http://www.icpdr.org/icpdr-pages/business_friends_of_the_danube.htm (last viewed on 2 Nov. 2010).

Alliance, the European Barge Union, the European Water Association, Friends of Nature International, the Global Water Partnership, the International Association for Danube Research, the International Association of Water Supply Companies in the Danube River Catchment Area, the International Hydrological Programme of the UNESCO, the International Sava River Basin Commission, the Ramsar Convention on Wetlands, the Regional Environmental Center for Central and Eastern Europe, VGB PowerTech e.V., Via Donau, and the World Wide Fund for Nature – Danube-Carpathian Programme.[523] These organizations are entitled to receive certain information from the ICPDR and to participate in various meetings, programs, and projects carried out under the DRPC, but they are not permitted to take part in the Commission decision-making process.[524]

8. Decision Making

ICPDR meetings are held once a year, with extraordinary meetings convened by the President on the request of at least three delegations.[525] Each ICPDR delegation has one vote, with special rules for EU voting. An ICPDR quorum exists when delegations of two-thirds of the Contracting Parties are present.[526] ICPDR decisions and recommendations are adopted by consensus. If efforts are exhausted and consensus is still not reached, the ICPDR can adopt decisions or recommendations (except for decisions with financial implications) by a four-fifths majority of the delegations present and voting, unless otherwise provided by the Convention. Each decision is binding on the first day of the eleventh month following its adoption for "all Contracting Parties that voted for it and have not within that period notified the Executive Secretary that they are unable to accept" the decision.[527]

9. Dispute Resolution

The DRPC provides that in the event of disputes between two or more Contracting Parties regarding the interpretation or application of the Convention, they shall seek resolution through negotiation or any other means acceptable to the parties to the dispute, with assistance of the ICPDR, if appropriate. If such efforts are not successful in resolving the dispute within a reasonable time (but not more than twelve months from notifying the ICPDR of the dispute), the dispute is submitted for compulsory decision either to the International Court of Justice ("ICJ") or to private arbitration, subject to the arbitration procedures set forth in Annex V to the DRPC.[528]

The DRPC gives the Contracting Parties the option to declare their acceptance of one or both means of dispute settlement (ICJ or arbitration) in advance. If all parties to the dispute have accepted both means of dispute settlement, the dispute will be submitted to the ICJ, unless the parties agree otherwise. Where

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[523] ICPDR: Observers, *available at* http://www.icpdr.org/icpdr-pages/observers.htm (last viewed on 2 Nov. 2010).

[524] ICPDR - Guidelines for Participants with Consultative Status and for Observers to the ICPDR, 26 Apr. 2005, at sec. 3.1, 4.1, *available at* http://www.icpdr.org/icpdr-files/9144.

[525] DRPC, Annex IV, art. 3(1)-(2).

[526] DRPC, Annex IV, art. 4(1)-(3).

[527] DRPC, Annex IV, art. 5; *see also* DRPC, art. 22 ("Conference of the Parties"), pursuant to which Contracting Parties review policy issues and DRPC implementation and may adopt recommendations or decisions. As provided by this article, decisions with financial implications may *only* be adopted by consensus.

[528] DRPC, art. 24(1)-(2)(a).

parties to the dispute have not accepted the same means of dispute settlement, the dispute is submitted to arbitration. If a Contracting Party fails to declare its preference, it is considered to have accepted arbitration.[529]

10. Data Information Sharing, Exchange, and Harmonization

The Contracting Parties to the DRPC are required to report to the ICPDR on issues necessary for the ICPDR to comply with its tasks. Reports involve a variety of data and information, including on other bilateral or multilateral agreements affecting the Danube, information on Contracting Parties' laws and regulations concerning the protection and water management of the river, communication concerning the domestic implementation of ICPDR decisions, designation of competent institutions for cooperation in the framework, and communication on planned activities likely to cause transboundary impacts.[530]

Similarly, as required by the ICPDR, the Contracting Parties are required to share with the other Contracting Parties any "reasonably available data" relating to: (a) the environmental conditions within the catchment area of the Danube River Basin; (b) the experience gained from the application of best techniques and results of research; (c) emission and monitoring data; (d) measures taken and planned to address transboundary impacts; (e) regulations for the discharge of waste water; and (f) accidents that involve substances hazardous to water. Additionally, the Contracting Parties are also required to exchange information on regulations to harmonize emission limits. Moreover, provision is made to enable a Contracting Party to request data not available from another Contracting Party, on the condition that the requesting Contracting Party agrees to pay reasonable charges for collecting and processing such data or information. The objectives of the DRPC are also promoted by the facilitating the exchange of "best available techniques" via promotion and commercial exchange, technical assistance, and joint training programs.[531]

In addition, the DRPC requires that the Contracting Parties make available all information concerning the state or quality of the river environment "to any natural or legal person, with payment of reasonable charges, in response to any reasonable request."[532] At the same time, the DRPC includes provisions for the protection of certain information and data, including personal data, industrial and commercial secrets and information affecting public or national security.[533]

The DRPC also establishes obligations for coordinated or joint communication, warning and alarm systems and obligations to consult on "ways and means of harmonising domestic communication, warning and alarm systems and emergency plans."[534] In this regard, Contracting Parties must supply competent authorities or points of contact for emergency events, including accidental pollution or critical water conditions such as floods and ice-hazards. Competent authorities identifying increases in hazardous

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[529] DRPC, art. 24(2)(b)-(e).

[530] DRPC, art. 10.

[531] DRPC, art. 12(1)-(4).

[532] DRPC, art. 14(1).

[533] DRPC, arts. 12(5)-(6), 13, 14(3).

[534] DRPC, art. 16(1).

substances or floods or forecasts of ice-hazards are obligated to inform downstream states along the Danube River.[535]

Overall, information sharing, exchange, and harmonization have been primary objectives of the ICPDR from its inception. In particular, the establishment of uniform standards for data collection and exchange has been a prime focus of the Contracting Parties since the beginning of the Danube Pollution Reduction Programme in 1992. There are also joint data collection and survey efforts and a technical body—the Information Management and Geographical Information System Expert Group—which is charged with maintaining the overall data information system.[536] *See* **Functions** and **Organizational Structure**.

11. Notifications

In addition to the communication requirements detailed above (*see* **Data Information Sharing, Exchange, and Harmonization**), the DRPC requires certain notifications or communications from the Contracting Parties in connection with: their inability to accept decisions adopted by the ICPDR or the Conference of Parties; proposals to amend the DRPC or any amendment's acceptance or ratification; disputes among Contracting Parties; or a Contracting Party's withdrawal from the Convention.[537]

The DRPC provides that Contracting Parties shall, at the request of one or more concerned Contracting Parties, enter into consultations on certain planned activities likely to cause transboundary impacts. The relevant competent authorities must wait for the results of such consultations prior to making a decision on the planned activities, unless the consultations are not finalized after a year or the activities are required by pending danger.[538]

12. Funding and Financing

The Statute of the ICPDR specifies that the Contracting Parties to the DRPC (excluding the European Union, for which there is a ceiling contribution towards administrative costs) are expected to contribute to the budgets of the ICPDR in equal parts, unless there is unanimous agreement to the contrary. Contracting Parties are further expected to pay their own costs of participation and the costs of monitoring and assessment undertaken in their territories.[539]

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[535] DRPC, art. 16(2)-(4).

[536] *See* ICPDR - Terms of Reference of the ad hoc Information Management and Geographical Information System Expert Group (ad hoc IM+GIS EG) of the ICPDR, 11 Dec. 2006, at sec. 2, *available at* http://www.icpdr.org/icpdr-files/9237 ("The overall objective of the ad hoc IM+GIS EG is to support ICPDR activities related to the operation and further development of the ICPDR information system. It comprises control over the development, implementation, testing and maintenance of a common Danube River Basin Geographical Information System (DRB GIS).").

[537] DRPC, arts. 22(5), 23(1), 23(4)-5), 24(2)(a), 29.

[538] DRPC, art. 11.

[539] DRPC, Annex IV, art. 11(3)-(6).

Much of the ICPDR's work on particular projects is also subsidized and financially managed by the UNDP-GEF,[540] the EU,[541] the World Bank,[542] and other public[543] and private partners.[544] *See* **Functions** and **Relationships**.

13. Benefit Sharing

No specific provision, although the DRPC does provide for several forms of cooperation, including consultations and joint activities, the exchange of information and technical assistance. *See* **Functions** and **Data Information Sharing, Exchange, and Harmonization**. The DRPC also obligates the Contracting Parties to establish "complementary or joint programmes of scientific or technical research" and to transmit to the ICPDR the results of such research (access to which is open for public authorities) and relevant parts of other programs or scientific and technical research.[545] Finally, the DRPC obligates Contracting Parties to provide mutual assistance on requests to facilitate compliance with the Convention's obligations, particularly where a critical situation of river conditions may arise.[546]

14. Compliance and Monitoring

The DRPC has several provisions on monitoring, including requiring the Contracting Parties to monitor the progress of joint action programs and the establishment of periodic progress reviews in the context of

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[540] *See, e.g.,* UNOPS: Danube River Basin Project, *available at* http://www.unops.org/SiteCollectionDocuments/Factsheets/English/Success%20Stories/GBL_PJFS_Danube_EN.pdf. *See also* ICPDR - 15 Years of Managing the Danube River Basin, 3, 12, *available at* http://www.icpdr.org/icpdr-files/14831 (explaining the importance of international donors like the UNDP-GEF and noting that the Danube River Basin was reportedly the "site of the first 'IW regional programme' ever funded by the GEF in 1992.").

[541] *See, e.g.,* Danube Watch – The ICPDR Joint Action Programme, Feb. 2007, at 23, *available at* http://www.icpdr.org/wim07-mysql/download.php?itemid=13797&field=file1.

[542] *See, e.g.,* The World Bank: Black Sea and Danube Basin GEF Partnership, *available at* http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/EXTECAREGTOPENVIRONMENT/EXTBLACKSEA/0,,menuPK:634978~pagePK:64168427~piPK:64168435~theSitePK:634972,00.html (last viewed on 2 Nov. 2010).

[543] *See, e.g.,* ICPDR - 15 Years of Managing the Danube River Basin at 13 (noting the contributions of more than 174 nongovernmental organizations through the Danube Environmental Forum ("DEF")); U.N. Information Service - Alcoa Foundation Assists in Cleaning up the Danube, 26 Apr. 2004, *available at* http://www.unis.unvienna.org/unis/pressrels/2004/unisinf8.html.

[544] *See, e.g.,* ICPDR - ICPDR Principles for Cooperation and Relations with Business and Industry, 1 June 2005, *available at* http://www.icpdr.org/icpdr-files/9197. *See also* ICPDR - Memorandum of Understanding for a Partnership to Conserve & Protect the Danube River & Danube River Basin, 1 June 2005, *available at* http://www.icpdr.org/icpdr-files/9198 (providing the terms of agreement for the partnership between the ICPDR and two branches of the Coca-Cola Company).

[545] DRPC, art. 15.

[546] DRPC, art. 17.

emissions,[547] and requirements in connection with domestic activities to cooperate in monitoring and assessment by:

- Harmoni[zing] or mak[ing] 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[ing] concerted or joint monitoring systems applying stationary or mobile measurement devices, communication and data processing facilities;

- Elaborat[ing] and implement[ing] 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[ing] 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);

- Elaborat[ing] inventories on relevant point sources including the pollutants discharged (emission inventories) and estimate[ing] the water pollution from non-point sources taking into account Annex II, Part 2; [and]

- Review[ing] these documents according to the actual state.[548]

Additionally, the Contracting Parties are obligated "to agree upon monitoring points, river quality characteristics and pollution parameters" to be evaluated regularly.[549]

The Secretariat is required to monitor all programs and activities of the ICPDR and to produce a comprehensive report each year for review by the Contracting Parties. The Secretariat in turn is authorized to rely on entrusted experts to evaluate program results.[550] For particular programs, however, additional oversight may be exercised by programs partners. *See* **Functions** and **Funding and Financing**.

15. Participation and the Role of Multiple Stakeholders

No specific provision, although ICPDR programs and projects often utilize multiple public and private stakeholders in determining policy priorities and implementing specific programs. *See* **Functions** and **Relationships.**

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[547] DRPC, art. 8(4).

[548] DRPC, art. 9(1).

[549] DRPC, art. 9(2).

[550] DRPC, Annex IV, arts. 8-9.

16. Dissolution and Termination

There is no specific provision related to the overall dissolution or termination of the DRPC or the ICPDR. But, any Contracting Party may withdraw from the Convention once it has been a member for five years and provides notice of withdrawal a year in advance.[551]

17. Additional Remarks

N/A

18. Websites and References

- The ICPDR, *available at* http://www.icpdr.org/.
- The UNDP-GEF Danube Regional Project, *available at* http://www.undp-drp.org/.
- The Danube Commission, *available at* http://www.danubecommission.org/.
- Joanne Linnerooth-Bayer and Susan Murcott, *Danube River Basin: International Cooperation or Sustainable Development*, 36 NAT. RESOURCES J. 521 (1996).
- Chris Hudson, *The Role of International Environmental Law in the Protection of the Danube River Basin: The Baia Mare Cyanide Spill*, 12 COLO. J. INT'L ENVTL. L. & POL'Y 367 (2001).
- Alistair S. Rieu-Clarke, *Overview of Stakeholder Participation – What Current Practice and Future Challenges? – Case Study of the Danube Basin*, 18 COLO. J. INT'L ENVTL. L. & POL'Y 611 (2007).
- Libor Jansky, Masahiro Murakami, Nevelina I. Pachova, The Danube: Environmental Monitoring of an International River (United Nations University Press 2004).
- Groundwater in International Law: Compilation of Treaties and Other Legal Instruments (Stefano Burchi, Kerstin Mechlem eds. 2005, FAO/UNESCO), parts III(ii)(b)(13) and III(iii)(19), *available at* http://www.fao.org/docrep/ 008/y5739e/y5739e00.htm.

[551] DRPC, art. 29.

Franco-Swiss Genevese Aquifer

1. Legal Basis

The Convention on the Protection, Utilization, Recharge and Monitoring of Franco-Swiss Genevese Aquifer (Convention relative à la protection, à l'utilisation, à la réalimenation et au suivi de la nappe souterraine franco-suisse du Genevois, "Convention") was signed between France (the Community of the Annemassienne Region, the Community of the Genevois Rural Districts, and the Rural District of Viry) and Switzerland (the Republic and Canton of Geneva) on 18 December 2007 in Geneva, Switzerland and went into effect on 1 January 2008.[552]

2. Member States

The Member States are France (the Community of the Annemassienne Region, the Community of the Genevois Rural Districts, and the Rural District of Viry) and Switzerland (the Republic and Canton of Geneva).

3. Geographical Scope

The Genevese Aquifer extends over 19 kilometers underneath the southern extremity of Lake Geneva and the Rhône River across the border between France and Switzerland. The width of the aquifer varies between 1 and 3.5 kilometers. An average of 15-17 million cubic meters of water are extracted annually from the subterranean aquifer by the Swiss and the French.[553]

4. Legal Personality

The Genevese Aquifer Management Commission ("Commission") is comprised of three Swiss and three French members designated by the Council of State of the Republic and Canton of Geneva and by the Community of the Annemassienne Region, the Community of the Genevois Rural Districts, and the Rural District of Viry respectively.[554] The Commission is co-headed by a member with deliberative powers designated by each delegation. The sub-prefect of Saint-Julien-en-Genevois, representing the French State, is a member of the Commission in a consultative capacity. Technicians designated by each party and specializing in water matters can be appointed, in a consultative capacity, by the Commission.[555]

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[552] Convention relative à la protection, à l'utilisation, à la réalimenation et au suivi de la nappe souterraine franco-suisse du Genevois ("Franco-Swiss Genevese Aquifer Convention"), 18 Dec. 2007, *available at* http://www.unece.org/env/water/meetings/legal_board/2010/annexes_groundwater_paper/Arrangement_French_Swiss.pdf (French only).

[553] Bernard J. Wohlwend, *An Overview of Groundwater in International Law – A Case Study: The Franco-Swiss Genevese Aquifer*, Workshop III on Harmonization of Diverging Interests in the Use of Shared Water Resources, 17-19 Dec. 2002, at 2, *available at* http://www.bjwconsult.com/The%20Genevese%20Aquifer.pdf.

[554] Franco-Swiss Genevese Aquifer Convention, preamble, art. 1.1.

[555] Franco-Swiss Genevese Aquifer Convention, art. 1.2, 1.3, 1.4.

5. Functions

The Genevese Aquifer Management Commission is obligated to propose an annual aquifer utilization program that takes into account the needs of various users. The Commission may propose measures to protect the waters in the aquifer or to remedy causes of pollution. The Commission also gives its technical opinion on the construction of new extraction works on the aquifer and on the modification of existing equipment. In addition, the Commission audits construction and operation costs for the purposes of cost sharing.[556]

The Commission maintains an inventory of all recharge equipment and existing extraction works, which is updated yearly and provided to the parties. The inventory details the terms and conditions governing the waterworks, including authorized extraction volume, installed power and protected perimeters.[557] All waterworks are equipped with a device that records the volume of water extracted from the aquifer and the Commission periodically records the volumes in a register. It is the users' responsibility to gauge volumes regularly and to conform to legislation. All waterworks are also equipped with a device that records variations in the water-level of the aquifer, and these recordings are required to be made available to the parties on demand.[558]

The Commission issues a technical opinion on every new waterworks or equipment, as well as any modification to existing waterworks and equipment. The respective Member State, subject to the provisions of the Convention, then makes a decision on the projects. The Commission oversees the construction of new equipment until it becomes operational.[559]

The water from the aquifer is analyzed based on criteria used by the Member States. The Commission establishes fixed intervals for when analyses of the water extracted from the aquifer are to be made, the results of which are then exchanged and recorded. Water injected into the aquifer is subject to the same type of analysis as are the waters of the Arve.[560]

The Member States are also obligated to maintain a monitoring network, installed by local authorities, to warn of accidental pollution that may affect the quality of water in the aquifer. In the case of an emergency, Member States must take appropriate protection measures in the event of a pollution warning.[561]

6. Organizational Structure

The Commission designates representatives, as necessary and on an equal basis, who are authorized to control the volume of water extracted from the aquifer by various users. The Commission meets

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[556] Franco-Swiss Genevese Aquifer Convention, art. 2.

[557] Franco-Swiss Genevese Aquifer Convention, art. 4.

[558] Franco-Swiss Genevese Aquifer Convention, arts. 6, 7.

[559] Franco-Swiss Genevese Aquifer Convention, art. 5.

[560] Franco-Swiss Genevese Aquifer Convention, art. 16. The Arve is a tributary of the Rhône and flows through both France and Switzerland.

[561] Franco-Swiss Genevese Aquifer Convention, art. 17.

periodically, at least once a year, and upon the request of either of its Member State delegations, alternatively in Geneva or in one of the other communities that are party to the Convention. The conclusions of the Commission's meetings are published in a joint report. The services of the secretariat are assumed by the Aquifer Service for the Geneva State and by the Community of the Annemassienne Region for the French Party.[562] For more information on the Commission, *see* **Legal Personality.**

7. Relationships

Swiss and French authorities jointly control and protect the resource in their respectively territories. The Commission also works with local authorities to maintain a pollution monitoring network.[563] Users of the aquifer also work with the Commission by providing their estimated volume of extractions at the beginning of each year and reporting data from extractions at the end of the year.[564]

8. Decision Making

The respective authorities in the Member States make independent decisions, within their competence, regarding new projects.[565] *See* **Functions.**

9. Dispute Resolution

Any dispute relating to the Convention is to be submitted to the Franco-Genevese Regional Committee for conciliation. If a settlement cannot be reached, the dispute is to be referred to the Franco-Swiss Consultative Commission for Problems of Neighborliness. Any matter relating to the interpretation of the Convention shall be resolved in accordance with Swiss law.[566]

10. Data Information Sharing, Exchange, and Harmonization

The Commission maintains an inventory of all waterworks and equipment, which is available to both Member States.[567] Additionally, the volume of water extracted is to be recorded periodically and provided to the members of the Commission. The Commission also maintains a record of water level variations of the aquifer, which is available to the parties on demand.[568] Each user or group of users of the aquifer also informs the Commission of their estimated volume of extractions from the aquifer at the beginning of each year and their actual usage at the end of the year.[569]

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[562] Franco-Swiss Genevese Aquifer Convention, art. 3.2-3.5.

[563] Franco-Swiss Genevese Aquifer Convention, arts. 10.1, 17.

[564] Franco-Swiss Genevese Aquifer Convention, arts. 9.1, 10.3.

[565] Franco-Swiss Genevese Aquifer Convention, art. 5.2.

[566] Franco-Swiss Genevese Aquifer Convention, art. 20.

[567] Franco-Swiss Genevese Aquifer Convention, art. 4.

[568] Franco-Swiss Genevese Aquifer Convention, arts. 6.2, 7.2.

[569] Franco-Swiss Genevese Aquifer Convention, arts. 9.1, 10.3.

11. Notifications

The Commission issue joint reports that are distributed to the Member States. *See* **Organizational Structure**; *see also* **Data Information Sharing, Exchange, and Harmonization**.

12. Funding and Financing

Each Member State assumes for itself the operational costs of the Commission.[570] Investment expenditures and operating costs, including maintenance and repairs, insurance and taxes, labor, and purchasing of materials, are determined annually, based on a formula established by the Commission.[571]

The French share of the artificial recharge costs is to be calculated yearly from the 1st of November to the 31st of October. The annual French contribution for the operation of the artificial recharge installation is based on the percentage of water extracted by French users out of the total volume extracted. However, in the event that French users extract less than 70% of their reserved water volume, the French contribution will be based on 70% of the reserved water volume, rather than the lesser amount actually extracted.[572] At the end of each year, Industrial Services of Geneva will prepare a detailed accounting. Once ratified by the Genevese State, Industrial Services of Geneva will send the invoice for the French users' recharge share to the French parties.[573]

13. Benefit Sharing

French users are entitled to an amount from the aquifer not to exceed 5 million cubic meters per annum, including 2 million cubic meters that are not included in calculating the percentage of water extracted by French users for cost-sharing purposes. If necessary, dispensations to the 5 million cubic meters limit can be accepted by the Commission after consultations with the operator.[574]

14. Compliance and Monitoring

All waterworks are equipped with a device that monitors the volume of water extracted from the aquifer, and these records are kept by the Commission. However, it is the user's responsibility to comply with relevant legislation and to regularly gauge the volume of water extracted.[575] *See* **Functions.**

15. Participation and the Role of Multiple Stakeholders

Each user or group of users is obligated to inform the Commission of their estimated volume of extraction from the aquifer for the next twelve months. The operator then takes into account the total reserved water volume in managing the recharge operations. Each user is entitled to a 20% extraction margin with

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[570] Franco-Swiss Genevese Aquifer Convention, art. 3.1.

[571] Franco-Swiss Genevese Aquifer Convention, arts. 12-13.

[572] Franco-Swiss Genevese Aquifer Convention, arts. 11, 14.

[573] Franco-Swiss Genevese Aquifer Convention, art. 15.

[574] Franco-Swiss Genevese Aquifer Convention, art. 8.

[575] Franco-Swiss Genevese Aquifer Convention, art. 7.

respect to its reserved water volume. Extractions in excess of the 20% margin are to be reported to Geneva, permitting Geneva to take certain measures as needed. In case of a quantitative management problem with the water, Geneva will enlist the assistance of the Commission in arbitrating the matter.[576]

16. Dissolution and Termination

The Convention applies for a thirty year period, after which it can be renewed only once, with joint agreement, for a period of three years. Either Member State may request at any time the opening of negotiations to modify or supplement the Convention. Such negotiations are to begin within six months of the request.[577]

17. Additional Remarks

The Convention replaced the Arrangement on the Protection, Utilization and Recharge of the Franco-Swiss Genevese Aquifer, which had been in effect since 1978.[578]

18. Websites and References

- Convention relative à la protection, à l'utilisation, à la réalimenation et au suivi de la nappe souterraine franco-suisse du Genevois, 18 Dec. 2007, *available at* http://www.unece.org/env/water/meetings/legal_board/2010/annexes_groundwater_paper/Arrangement_French_Swiss.pdf.

- Bernard J. Wohlwend, *An Overview of Groundwater in International Law – A Case Study: The Franco-Swiss Genevese Aquifer*, Workshop III on Harmonization of Diverging Interests in the Use of Shared Water Resources, 17-19 Dec. 2002, *available at* http://www.bjwconsult.com/The%20Genevese%20Aquifer.pdf.

[576] Franco-Swiss Genevese Aquifer Convention, art. 9.

[577] Franco-Swiss Genevese Aquifer Convention, art. 19.

[578] *See* Francio-Swiss Genevese Aquifer Convention, preamble.

The Rhine

1. Legal Basis

The Convention on the Protection of the Rhine (the "Convention") was opened for signature at Berne, Switzerland on 12 April 1999 and entered into force on 1 January 2003.[579]

2. Member States

The Contracting Parties to the Convention and the members of the International Commission for the Protection of the Rhine ("ICPR") are Switzerland, France, Germany, Luxembourg, the Netherlands, and the European Community (which is represented by the European Commission Environment Directorate-General). In addition, Belgium, Liechtenstein and Austria, in which parts of the Rhine watershed are located, have observer status and possess the same rights in the Rhine Coordination Committee as the members of the ICPR.[580] A small part of Italy is also included in the Rhine watershed.

3. Geographical Scope

Under Article 2, the Convention applies to the Rhine; groundwater, aquatic and territorial ecosystems interacting with the Rhine; and the Rhine catchment area (in regards to pollution affecting the Rhine and flood prevention and protection). Article 1 of the Convention defines the "Rhine" to be "the Rhine from the outlet of Lake Untersee and, in the Netherlands, the branches Bovenrijn, Bijlands Kanall, Pannerdensch Kanaal, Ijssel, Nederrijn, Lek, Waal, Boven-Merweded, Noord, Oude Maas, Nieuwe Mass 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."

4. Legal Personality

Pursuant to Article 6.2 of the Convention, the ICPR is granted legal personality. While in the territory of the Contracting Parties, the ICPR is represented by its Chairman and enjoys the legal capacity conferred on legal persons by domestic law.

5. Functions

According to its Preamble, the goal of the Convention is, through the use of a comprehensive approach, to increase multilateral cooperation in the sustainable development of the Rhine's ecosystem. As specified in Article 3, the aims of the Convention include:

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[579] The Convention on the Protection of the Rhine ("Convention"), 12 Apr. 1999, *available at* http://www.iksr.org/fileadmin/user_upload/Dokumente_en/convention_on_tthe_protection_of__the_rhine.pdf. The Convention repealed the Agreement of 29 April 1963 concerning the International Commission for the Protection of the Rhine against Pollution; the Additional Agreement of 3 December 1976 to the Agreement of 29 April 1963 concerning the International Commission for the Protection of the Rhine against Pollution; and the Convention of 3 December 1976 for the protection of the Rhine against chemical pollution. However, the decisions, recommendations, limit values, and other arrangements adopted under these previous agreements continue to apply, unless expressly repealed. Convention, art. 19.

[580] ICPR – Parties, *available at* http://www.iksr.org/index.php?id=119&L=3 (last viewed on 19 Nov. 2010); ICPR – Observers – States, *available at* http://www.iksr.org/index.php?id=156&L=3 (last viewed on 19 Nov. 2010).

- Maintaining and improving the quality of the Rhine's waters (including the quality of the suspended matter, sediments, and groundwater) through the prevention, reduction, or elimination of pollution caused by noxious substances, nutrients from point sources (such as industry and municipalities), diffuse sources (such as agriculture and traffic), and shipping, as well as to ensure the safety of installations and to prevent accidents;

- Protecting species diversity and populations of organisms, and reducing the contamination of organisms from pollution;

- Maintaining, improving, and restoring the natural function of the Rhine's waters, ensuring proper flow management, as well as conserving and protecting the alluvial areas (low-lying river meadows characterized by floods and low water) along the Rhine as natural floodplains;

- Conserving and improving natural habitats for wild fauna and flora, and restoring free migration for fish;

- Ensuring the environmentally sound management of water resources;

- Taking ecological requirements into account when developing the waterway (such as for flood protection, shipping, or hydroelectric power);

- Producing drinking water from the Rhine;

- Improving sediment quality (so that dredged material could be deposited or spread and not adversely affect the environment);

- Instituting general flood prevention and protection, which incorporates ecological requirements; and

- Coordinating with other projects to protect the North Sea (as the Rhine empties into the North Sea).

In addition under Article 5, the Contracting Parties agreed to:

- Increase their cooperation and inform each other in regards to actions taken to protect the Rhine;

- Implement, in their respective territories, international measuring programs and studies of the Rhine ecosystem agreed upon by the ICPR, and inform the ICPR of the results;

- Conduct studies to identify the causes of and the parties responsible for pollution;

- For actions undertaken in each Contracting Party's territory, ensure that the discharge of waste water, which could affect water quality, receives prior authorization or is subject to general rules on emission limits; discharges of hazardous substances are gradually reduced; discharges and compliance with authorizations and general rules are monitored; the authorizations and general rules are periodically reviewed; the risk of pollution from accidents is reduced through the use of regulations and measures are in the place to be used in case of emergency; and technical measures, which could have a serious effect on the ecosystem, receive prior authorization or are subject to general regulations;

- Undertake actions in their territories to implement the decisions of the ICPR; and

- In cases of imminent flooding or accidents that could threaten the water quality of the Rhine, immediately inform the ICPR and the other Contracting Parties who could be affected, according to the established warning and alert plans.

In implementing the Convention, the Contracting Parties, under Article 4, pledged to be guided by the following principles: the precautionary principle; the principle of preventive action; the principle of rectification; the polluter pays principle; the principle of not increasing damage; the principle of compensation for major technical measures; the principle of sustainable development; the application and development of the state of the art and best environmental practices; and the principle of not transferring environmental pollution from one environment to another.

Under Article 8, the ICPR is responsible for: (a) preparing international measuring programs and studies of the Rhine ecosystem and using the results of these analyses, including cooperating with scientific institutions if needed; (b) making proposals for action, while considering the expected costs and including economic instruments where appropriate; (c) coordinating the Contracting Parties' Rhine warning and alert plans; (d) evaluating the effectiveness of actions taken, based on the Contracting Parties' reports and the results of the measuring programs and the studies of the Rhine ecosystem; (e) submitting an annual activity report to the Contracting Parties; (f) informing the public about the condition of the Rhine and the results of its works; and (g) carrying out any other tasks as assigned by the Contracting Parties.

In January 2001, the Contracting Parties adopted "Rhine 2020" – a sustainable development program that details objectives and measures for a Rhine protection policy.[581] Core parts of the Rhine 2020 program include:

- The implementation of Rhine habitat patch connectivity (i.e., maintaining, upgrading and linking habitat types along the Rhine from Lake Constance, at the northern foot of the Alps, to the North Sea). The ICPR program includes actions to: (a) preserve freely flowing river sections; (b) restore river dynamics; (c) allow a more varied design of the structure of river banks and bottom; (d) open old alluvial areas to the river; (e) shift to more extensive agriculture in the floodplain; (f) remove obstacles to the migration of river fauna; and (g) reconnect old river branches and torrents.[582] The goal is to reconnect the eight different habitats along the Rhine and to provide ecological continuity to the Rhine ecosystem.[583]

- The Salmon 2020 program, which aims at creating an almost stable wild salmon population in the Rhine ecosystem by 2020. This program builds upon the ICPR's Salmon 2000 initiative which assisted natural salmon reproduction in several Rhine tributaries. The goals of Salmon 2020 are: (a) 7,000-21,000 upstream migrating salmon in the Rhine; (b) free upstream migration of salmon

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[581] *See* ICPR – Rhine 2020 – Program on the sustainable development of the Rhine, *available at* http://www.iksr.org/ index.php?id=30&L=3 (last viewed on 19 Nov. 2010).

[582] ICPR - Habitat patch connectivity, *available at* http://www.iksr.org/index.php?id=71&L=3 (last viewed 21 Oct. 2010).

[583] The eight different habitats along the Rhine are: (1) aquatic and amphibious waters; (2) natural alluvial waters; (3) swamps, reeds and tall herbaceous vegetation; (4) greenland; (5) siccous biotopes; (6) alluvial woods in the present overbank area; (7) forests in the former floodplains; (8) as well as other habitats that are important for species protection. *See* ICPR – Habitats, *available at* http://www.iksr.org/index.php?id=132&L=3 (last viewed on 21 Oct. 2010).

as far as Basel, Switzerland; (c) self-sustaining salmon stocking; and (d) the return of wild salmon from the ocean by 2020 and their natural reproduction.[584]

- The improvement of flood mitigation, through the implementation of the Action Plan on Floods. In response to the floods of the Rhine in 1993 and 1995, the ICPR, under the old treaty regime, adopted the Action Plan on Floods at a Conference of Ministers on 22 January 1998 in order to improve flood protection and to enhance the floodplains of the Rhine. The Action Plan on Floods is scheduled to be undertaken in phrases and to be implemented by all of the Rhine bordering countries by 2020, at a projected cost of 12 billion euros. The first phase was completed in 2005. The objectives for 2020 are to: (a) reduce damage risks by 25%; (b) reduce by up to 70 centimeters the extreme flood stages downstream of the impounded sections; (c) warn the populations living in the immediate vicinity or near the Rhine of the flood dangers by drafting maps of the flood dangers and pointing out the areas of risk; and (d) prolong the period of flood forecasting in order to avoid potential damages.[585]

- Improving water quality. The ICPR is focused on reducing micro-pollutants (synthetic organic substances used in daily life – such as residues of pharmaceuticals and cleaning products) and agricultural pollutants and nutrients that seep into the water. The water quality of the Rhine will be evaluated against target values and environmental quality standards.[586]

- Groundwater protection. Targets in this area include: (a) protecting groundwater from the infiltration of polluted Rhine water (as well as protecting the Rhine against polluted groundwater); (b) maintaining the dynamic relationship between running waters and groundwater, especially in the floodplain; (c) protecting, improving and restoring the groundwater; (d) restoring the balance between groundwater extraction and recharge; (e) enhancing rainwater seepage and infiltration, without causing damage; (f) improving the soil ecosystem through the restoration of natural floodplain dynamics; (g) accounting for the vulnerability of groundwater, as well as the aquifer in potable water protection areas, when new surfaces are subjected to industrial or commercial use; (h) maintaining high levels of security when stocking and transporting water polluting substances; and (i) protecting groundwater when flooded gravel pits are used in the floodplain of the Rhine.[587]

- Continual monitoring of the Rhine (from Switzerland to the Netherlands), including biological monitoring and the classification of plants and animals. When an accident does occur along the Rhine or one of its major tributaries (or large amounts of hazardous substances flow into the river), the Warning and Alarm Plan is to be applied. Approved by the ICPR, the Warning and Alarm Plan is intended to alert downstream users of serious water pollution events. The Warning and Alarm Plan also provides a forum for the Contracting Parties to exchange information,

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[584] ICPR – Salmon 2020, *available at* http://www.iksr.org/index.php?id=124&L=3 (last viewed on 21 Oct. 2010).

[585] ICPR – Action Plan on Floods, *available at* http://www.iksr.org/index.php?id=123&L=3 (last viewed on 21 Oct. 2010).

[586] ICPR – Water Quality, *available at* http://www.iksr.org/index.php?id=17&L=3 (last viewed on 21 Oct. 2010).

[587] ICPR – Groundwater Targets, *available at* http://www.iksr.org/index.php?id=137&L=3 (last viewed on 21 Oct. 2010).

gathered by monitoring stations along the river, on water pollution levels.[588] For more information, *see* **Data Information Sharing, Exchange, and Harmonization** and **Notifications.**

6. Organizational Structure

Under Article 7 of the Convention, the ICPR is composed of delegations appointed by its Contracting Parties, with each delegation serving as chair and appointing the presiding Chairman for three years in turn. The ICPR has drafted rules of procedure and financial regulations to govern its operation.[589]

Since 1972, the Conference of Ministers (composed of the ministers from the Contracting Parties who are in charge of water protection) has met periodically to determine commitments for the Contracting Parties and tasks for the ICPR to undertake. The decisions of the Conference of Ministers are binding on the Contracting Parties. The most recent conference was in Bonn, Germany in 2007.[590]

The ICPR holds one Plenary Assembly a year in which it prepares resolutions to be passed by the Ministers in the Contracting Parties who are in charge of the Rhine. Extra sessions can be convened by the Chairman, or at the request of any two delegations. Although the Chairman proposes the agenda for the meeting, each Contracting Party has the right to include any item it wants to discuss on the agenda.[591]

The Rhine Coordination Committee, which is held annually with the Plenary Assembly, coordinates the tasks of the ICPR and decides on the establishment of various project groups. A Strategy Group, in turn, prepares decisions to be adopted by the Plenary Assembly and the Rhine Coordination Committee. The Strategy Group is also responsible for: (a) preparing solutions for budget and staff issues; (b) coordinating, managing and overseeing the ICPR's work – for example, activities related to Rhine 2020, the European Water Framework Directive, and the European Community Flood Management Directive, as well as reports to the Plenary Assembly, Rhine Coordination Committee, and working groups; and (c) facilitating public relations and information exchange.[592]

Various working groups and expert groups handle technical questions related to the management of the Rhine. There are currently groups addressing floods, water quality/emissions, ecology, data management,

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[588] ICPR – Monitoring of the state, *available at* http://www.iksr.org/index.php?id=80&L=3 (last viewed on 21 Oct. 2010); *see also* ICPR – Warning and Alarm Plan Rhine ("Warning and Alarm Plan"), *available at* http://www.iksr.org/index.php?id=86&L=3 (last viewed on 21 Oct. 2010); ICPR - International Warning and Alarm Plan Rhine ("Warning and Alarm Plane"), 1 Jul. 2009, *available at* http://www.iksr.org/fileadmin/user_upload/Dokumente_en/International_Warning-_and_Alarm_Plan.pdf.

[589] The Contracting Parties assume the role of chair in the order the countries were listed in the preamble of the Convention (Germany, France, Luxembourg, the Netherlands, Switzerland, and then the European Community).

[590] ICPR – Conference of ministers, *available at* http://www.iksr.org/index.php?id=27&L=3 (last viewed on 21 Oct. 2010).

[591] Convention, art. 9; Rules of procedure and financial regulations of the ICPR ("Procedural Rules"), art. 1, 30 June 2010, *available at* http://www.iksr.org/fileadmin/user_upload/Dokumente_en/Gesch%C3%A4fts-_und_Finanzordnung_IKSR-EN_30.06.10.pdf.

[592] ICPR – Mandate for the Strategy Group SG, *available at* http://www.iksr.org/index.php?id= 229&L=3 (last viewed on 21 Oct. 2010); *see also* ICPR – Organisation, *available at* http://www.iksr.org/index. php?id=155&L=3 (last viewed on 21 Oct. 2010). A little Strategy Group (SG-K) has also been established to assist in the work and decisions of the Strategy Group, *see* http://www.iksr.org/index.php?id=223&L=3 (last viewed on 21 Oct. 2010).

and an integrated economic approach.[593] In addition, the ICPR has also established a project group on micro-pollutants that is charged with developing, by the end of 2010, a comprehensive strategy for reducing micro-pollutants from urban wastewater and other sources in the Rhine and its tributaries through improved knowledge on emissions, eco-toxicological reactions and suitable treatment methods.[594]

The international secretariat of the ICPR is headquartered in Koblenz, Germany. The secretariat provides support services to the Chairman, Plenary Assembly, and the Rhine Coordination Committee. The secretariat is also responsible for public relations efforts and serves as the point of contact for experts and other interested parties. The secretariat is headed by an Executive Secretary appointed for a four year term with the option of renewal. The Executive Secretary is appointed by the Chairman and approved by the ICPR on the recommendation of the Dutch delegation and a selection committee.[595]

7. Relationships

Article 14 of the Convention specifically obligates the ICPR to cooperate with other intergovernmental organizations. The ICPR is also authorized to recognize states, intergovernmental organizations, and non-governmental organizations as observers. Observers can submit relevant information to the ICPR and be invited to participate in ICPR meetings. In addition, the ICPR is supposed to exchange information with nongovernmental organizations working in relevant areas and, when making decisions likely to have an important impact on these organizations, to consult with them and inform them once a decision has been made.

Certain European Union directives and regulations affecting watersheds also impact the work of the ICPR. For example, the 2000 European Water Framework Directive establishes a framework for implementing comprehensive water protection in the various European river districts, requiring, among other mandates, all European water bodies to achieve good status by 2015 and to employ transboundary, integrated assessment techniques to manage rivers and maintain good ecological and chemical status. The Rhine 2020 is intended to satisfy the relevant requirements of the European Water Framework Directive for the Rhine watershed.[596] In addition, the European Community Flood Management Directive calls for flood risk assessments to be completed by 2012, draft maps by 2013, and flood management

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[593] ICPR – Mandate for the working group Floods (H), *available at* http://www.iksr.org/index.php?id=227&L=3 (last viewed on 21 Oct. 2010); ICPR – Mandate for the working group Water Quality/Emissions (S), *available at* http://www.iksr.org/index.php?id=226&L=3 (last viewed on 21 Oct. 2010); ICPR – Mandate for the working group Ecology (B), *available at* http://www.iksr.org/index.php?id=225&L=3 (last viewed on 21 Oct. 2010); ICPR – Mandate of the expert group Data Management (GIS) and Mandate of the expert group Integrated Economical Approach (E), *available at* http://www.iksr.org/index.php?id=224&L=3 (last viewed on 21 Oct. 2010).

[594] ICPR strategy on micro-pollutions: Mandate for the MIKRO project group, *available at* http://www.iksr.org/index.php?id=228&L=3 (last viewed on 21 Oct. 2010).

[595] Procedural Rules, art. 6; ICPR – Secretariat, *available at* http://www.iksr.org/index.php? id=120&L=3 (last viewed on 21 Oct. 2010).

[596] ICPR – European Water Framework Directive, *available at* http://www.iksr.org/index.php?id=111&L=3; ICPR – Targets and principles of the Water Framework Directive, *available at* http://www.iksr.org/index.php?id=148&L=3 (last viewed on 21 Oct. 2010); ICPR – Implementation of the Water Framework Directive, *available at* http://www.iksr.org/index.php?id=166&L=3 (last viewed on 21 Oct. 2010). For more information on the European Water Framework Directive, *see* http://ec.europa.eu/environment/water/water-framework/index_en.html (last viewed on 21 Oct. 2010).

plans by 2015 for all international river basin districts.[597] The ICPR has already drafted an Action Plan for Floods for the Rhine. *See* **Functions.**

8. Decision Making

Under Article 10 of the Convention, decisions of the ICPR must be approved by a unanimous vote – with each Contracting Party possessing one vote. A vote will still be considered unanimous if one delegation (not including the European Community) abstains. For decisions involving individual measures falling within the competency of the European Community, the European Community may vote with 4 votes (representing the number of countries that are both Contracting Parties of the Convention and of the European Community). But, the European Community may not vote in cases where those Contracting Parties vote, and vice versa.

9. Dispute Resolution

Pursuant to Article 16 of the Convention, any dispute between the Contracting Parties regarding the interpretation or application of the Convention should be resolved by negotiation or another form of dispute settlement. If the dispute persists, it will, upon the request of one of the parties to the dispute, be referred to arbitration.

An annex to the Convention sets forth the applicable arbitration procedures, which will be used unless the parties to the dispute agree otherwise. Under the terms of the annex, the arbitral tribunal will consist of three members, one appointed by each party and a chair to be agreed upon by the two party-appointed arbitrators. Following certain procedures and timeframes, the President of the International Court of Justice is authorized to select the arbitrators for the panel if the parties to the dispute or the party-selected arbitrators are unable to select their required arbitrator(s). The tribunal is to base its decisions on the provisions of the Convention and the rules of international law. Both procedural and substantive decisions may be made by majority vote of the arbitral tribunal and are binding. Each party will be responsible for the costs of its appointed arbitrator and will equally share the costs of the tribunal.[598]

10. Data Information Sharing, Exchange, and Harmonization

Under Article 5(1) of the Convention, the Contracting Parties agreed to cooperate and inform one another of actions taken in their territory to protect the Rhine. In addition, under Article 5(2), the Contracting Parties have also committed to implementing international monitoring programs and studies of the Rhine ecosystem in their territories and to inform the ICPR of the results of those studies and programs.

The ICPR relies on the data collection and monitoring efforts of the Contracting Parties. For example, the Warning and Alarm Plan allows the ICPR to gather information on water pollution levels collected by monitoring stations along the river, with more than 100 substances monitored. For more information on the Warning and Alarm Plan, *see* **Notifications.** In addition, the Rhine 2020 program contains numerous targets designed to improve the health and ecological balance of the Rhine, and which call upon the Contracting Parties to work in collaboration in order to meet the stated goals of the program. *See* **Functions**.

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[597] ICPR – Floods directive, *available at* http://www.iksr.org/index.php?id=110&L=3 (last visited 21 Oct. 2010).

[598] Convention, Annex – Arbitration. There are also special procedural rules when Switzerland, which is not a member of the European Community, is a party to a dispute.

In addition, as required by the European Water Framework Directive, an Internationally Coordinated Management Plan for the International River Basin District of the Rhine (Part A) was released in December 2009. The report contains a discussion, as it pertains to the Rhine, of: (a) human activities and stresses; (b) a register of protection areas; (c) surveillance networks and results of surveillance programs; (d) environmental objectives and adjustments; (e) economic analysis; (f) summary of the program of measures; (g) a list of the program and management plans; (h) as well as other relevant items. There are also coordinated reports for the areas of operation in the Rhine international river basin district (the Alpenrhein/Bodensee, High Rhine, Upper Rhine, Neckar, Main, Middle Rhine, Mosel/Saar, Niederrhein, and the Delta Rhine), as well as national management plans for Switzerland, Liechtenstein, Austria, France, Germany (broken down by different regions in the country), Luxembourg, Belgium, and the Netherlands.[599] For additional information on the European Water Framework Directive, *see* **Relationships.**

11. Notifications

Under Article 5(6) of the Convention, the Contracting Parties must immediately inform the ICPR and other potentially affected Contracting Parties when there is an accident that threatens the water quality of the Rhine or in the event of imminent flooding. The Warning and Alarm Plan provides procedures for identifying, countering and mitigating pollution. The International Main Alert Centers ("IHWZ") along the Rhine are supposed to issue warnings in cases of water pollution if the amount or concentration of the pollutants could potentially have a detrimental impact on the Rhine's water quality or water supply or raise a high level of public interest. A search report will be issued when it is necessary to find, in a particular incident, the entity that is polluting the Rhine. In addition, the IHWZ will also release information on the status of Rhine, such as notifying countries bordering the Rhine if certain target values are exceeded. A report on all the warnings, information, and search reports for each year is made available on the ICPR's website.[600]

There are seven IHWZ, which are located in Basel, Switzerland; Strasbourg, France; Karlsruhe, Germany; Wiesbaden, Germany; Koblenz, Germany; Düsseldorf, Germany; and Arnhem, the Netherlands. In the event of an accident, the IHWZ in whose territory the incident occurs is responsible for preparing the initial report. Reports are immediately delivered to the regional and national warning authorities. The responding water center also faxes the report to the downstream IHWZ and the secretariat as rapidly as possible. (If the location of the accident is not clearly identified, the report is also sent to upstream IHWZ) After the danger has passed, an "all clear" signal will be issued to all IHWZ who received the initial report, as well as to the ICPR secretariat.[601]

Under Article 8(3) of the Convention, the ICPR is required to submit an annual activity report to its Contracting Parties. The Contracting Parties are also required, according to Article 11(3), to report regularly to the ICPR concerning: (a) legislative, regulatory and other measures that are taken to implement the Convention and the ICPR's decisions; (b) the results of those measures; and (c) any problems arising in their implementation.

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[599] ICPR – Management Plan, *available at* http://www.iksr.org/index.php?id=171&L=3 (last visited 21 Oct. 2010). The Internationally Coordinated Management Plan for the Rhine is available at: http://www.iksr.org/fileadmin/user_upload/Dokumente_en/Inventory_Parts/bwp_endversion-en_komplett.pdf.

[600] Warning and Alarm Plan.

[601] Warning and Alarm Plan.

12. Funding and Financing

According to Article 13 of the Convention, each Contracting Party is responsible for the costs associated with its representation in the ICPR and for studies and other actions it undertakes within its territory. The distribution of the annual operating budget costs between the Contracting Parties is set forth in Article 9 of the ICPR's Procedural Rules. Switzerland's share of the budget is 12% and the European Community's share is 2.5%. The remaining 85.5% share is divided between Germany (32.5%), France (32.5%), Luxembourg (2.5%), and the Netherlands (32.5%).

The Executive Secretary is responsible for drafting the annual budget and managing the ICPR's income and expenditures. Prior to the Plenary Assembly, the Executive Secretary submits to the Contracting Parties' delegations: the draft budget for the next year, the non-binding budgetary planning for the following three years, and an annual statement of the accounts from the past year. The Plenary Assembly adopts the budget for the next year. Afterwards, the Executive Secretary notifies each Contracting Party of the amount of its required contribution, with payment due by February 15. If a Contracting Party does not timely pay its contribution and this has a detrimental impact on the budget, the ICPR has the authority to charge the delinquent Contracting Party, in its assessed contribution for the following year, for the deficit it caused. The ICPR is also empowered to establish a reserve fund equal to 10% of the budget. During the course of a year, if the ICPR is confronted with new or higher than anticipated expenses, a supplementary budget may be drawn up and additional expenses covered by the reserve fund or additional supplementary contributions from the Contracting Parties. The ICPR also employs two auditors to manage bookkeeping.[602]

13. Benefit Sharing

Through programs adopted by the ICPR and decisions implemented by the Contracting Parties, the Contracting Parties are obligated to undertake certain measures in regards to the Rhine. But, the aim of the Convention is to promote the sustainable development of the Rhine ecosystem for the benefit of all.

14. Compliance and Monitoring

Under Article 11 of the Convention, the ICPR conveys to its Contracting Parties directives on measures that are to be implemented by individual states in their territories. The ICPR maintains a list of these decisions, which is updated on an annual basis. The ICPR may impose timetables for implementation and/or require other forms of coordination. The Contracting Parties must also report regularly to the ICPR on: (a) the legislative, regulatory and other measures taken to implement the Convention and the ICPR's decisions; (b) the results of these measures; and (c) any problems arising from their implementation. If a Contracting Party cannot implement a decision, it must inform the ICPR and detail the reasons why it was unable to comply. In certain situations, the ICPR may assist a Contracting Party in implementing its directives.

15. Participation and the Role of Multiple Stakeholders

Under Article 14, the ICPR may recognize as observers, states and other intergovernmental and nongovernmental organizations who work in related fields. Observers are allowed to submit relevant information and reports to the ICPR, but not to vote. The ICPR is also allowed to consult relevant experts. Pursuant to Article 8 of the Procedural Rules, observer status is granted in part on the basis of a

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[602] Procedural Rules, arts. 6.6, 10.

non-governmental organization's specific technical or scientific knowledge and acceptance of the Convention's targets and basic principles. *See also* **Relationships.** Observer organizations include, among other organizations, Greenpeace International, the European Chemical Industry Council, the European Union of National Associations of Water Suppliers and Waste Water Services, the International Commission of the Meuse, and the Oslo and Paris Commissions for the protection and conservation of the North-East Atlantic.[603]

Although meetings of the Plenary Assembly and other ICPR meetings and their correspondence and documents are not public according to Procedural Rule 11, the ICPR occasionally makes documents publicly available on its website.

16. Dissolution and Termination

Under Article 18, a Contracting Party may withdraw from the Convention by submitting a written declaration to Switzerland, the Convention's depositary. This withdrawal takes effect at the end of the year following the submission.

17. Additional Remarks

On 11 July 1950, based upon an initiative by the Netherlands, the first conference of the "International Commission for the Protection of the Rhine against Pollution" was held. The conference aimed to provide a forum for the discussion of issues related to the pollution and restoration of the Rhine and had Switzerland, France, Luxembourg, Germany, and the Netherlands in attendance. In 1963, Switzerland, France, Luxembourg, Germany, and the Netherlands signed the Berne Convention and officially established the International Commission on the Protection of the Rhine against Pollution (with the European Economic Community becoming a party to the convention in 1976). Also in 1976, the Contracting Parties signed the Convention on the Protection of the Rhine against Chemical Pollution and the Convention on the Protection of the Rhine against Chloride Pollution (which contained a supplementary agreement signed in 1991). In addition, in response to the Sandoz chemical spill in the Rhine in November 1986, the Contracting Parties established the Rhine Action Programme ("RAP"). The RAP, a precursor to Rhine 2020, was designed to rehabilitate the river by 2000.[604] The program's goals were to: (a) return fauna species, such as salmon, to the Rhine; (b) continue drinking water production; and (c) reduce the pollutant contents of river sediments. The ICPR established concrete targets and measures for compliance. [605] In 1998, the 12th meeting of the Conference of Ministers, the text of the current Convention was adopted, which replaced the above-mentioned international agreements governing the Rhine (even though the decisions, recommendations, limit values, and other arrangements adopted under these previous agreements still apply, unless they were expressly repealed).[606]

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[603] NGO Nongovernmental organisations with an observer status to the ICPR, *available at* http://www.iksr.org/index.php?id=121&L=3 (last viewed on 21 Oct. 2010)*;* Intergovernmental organisations with an observer status to the ICPR, 11 Mar. 2009, *available at* http://www.iksr.org/index.php?id=157&L=3 (last viewed on 21 Oct. 2010).

[604] ICPR – History, *available at* http://www.iksr.org/index.php?id=154&L=3 (last viewed on 22 Nov. 2010).

[605] *See* Upstream: Outcome of the Rhine Action Programme, 2003, *available at* http://www.iksr.org/fileadmin/user_upload/Volltextsuche_incl/Dokumente_en/Brochures_en/apr_iksr_engl.pdf.

[606] ICPR – History; Convention, art. 19.

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C. Africa

Abidjan Convention

1. Legal Basis

The Convention for the Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region ("Abidjan Convention") was signed on 23 March 1981 in Abidjan, Côte d'Ivoire and went into effect on 5 August 1984.[607]

In addition, the Contracting Parties adopted the Protocol Concerning Co-operation in Combating Pollution in Cases of Emergency in the Western and Central African Region ("Protocol")[608] and the Action Plan for the Protection and Development of the Marine Environment and Coastal Areas of the West and Central African Region ("Action Plan").[609] In 2008, the Contracting Parties agreed to amend the title of the Abidjan Convention and the Protocol to: "Convention for Cooperation in the Protection, Management and Development of the Marine and Coastal Environment of the Atlantic Coast of the West, Central and Southern Africa Region and Protocol concerning Cooperation in Combating Pollution in Cases of Emergency."[610]

2. Member States

The Contracting Parties that have ratified the Abidjan Convention are Benin, Cameroon, the Republic of the Congo, Côte d'Ivoire, Gabon, Gambia, Ghana, Guinea, Liberia, Nigeria, Senegal, Sierra Leone, South Africa and Togo.

Angola, Cape Verde, the Democratic Republic of the Congo, Equatorial Guinea, Guinea-Bissau, Mauritania, Namibia, and Sao Tome and Principe are located in the Abidjan Convention area, but have not yet ratified the Convention. As part of a revitalization program for the Abidjan Convention, one of the focuses is on persuading these countries (through high-level delegation visits and support from the

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[607] Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region, 23 Mar. 1981, *available at* http://www.unep.org/AbidjanConvention/The_Convention/Protocols/Convention_Text.asp.

[608] Abidjan Protocol Concerning Co-operation in Combating Pollution in Cases of Emergency, 23 Mar. 1981, *available at* http://www.unep.org/AbidjanConvention/The_Convention/Protocols/Protocol_Pollution.asp.

[609] Action Plan for the Protection and Development of the Marine Environment and Coastal Areas of the West and Central African Region, 23 Mar. 1981, *available at* http://www.unep.org/AbidjanConvention/docs/Action_Plan_English.pdf.

[610] Report of the First Extraordinary Meeting of the Contracting Parties to the Abidjan Convention – Decision on the Revitalization of the Abidjan Convention ("2008 Extraordinary Meeting Report"), 23 Apr. 2009, at 20, *available at* http://www.unep.org/AbidjanConvention/docs/Final_Abidjan_Convention_Report_of_the_Extraordinary_Ministerial_Meeting_June_2008.pdf.

Secretariat) to ratify and accede to the Abidjan Convention.[611] Relevant institutions are also allowed to accede to the Abidjan Convention.[612]

3. Geographical Scope

Under Article 1 of the Abidjan Convention, the geographical scope of the Abidjan Convention (i.e., the Convention area) is the marine environment, coastal zones, and related inland waters within the jurisdiction of the Contracting Parties of the West and Central African region. According to Article 5 of the Action Plan, the geographic limitation for the Action Plan of the marine environment and coastal areas to be considered as part of the region will be identified by the Contracting Parties concerned on an ad hoc basis depending on the type of activities to be carried out. At the Fifth Meeting of the Contracting Parties in March 2000, the geographical scope of the Abidjan Convention was expanded to enable the participation of South Africa.[613]

In addition, as part of efforts to revitalize the Abidjan Convention, stakeholders proposed expanding the scope of the Convention to include the exclusive economic zones of the Contracting Parties and to define the term "marine environment" in order to accommodate current and emerging marine environmental issues.[614] The Contracting Parties did not adopt these recommendations, but agreed to amend Article 1 of the Abidjan Convention to read: "This Convention shall cover the marine environment, coastal zones and related inland waters falling within the jurisdictions of the States of the West, Central and Southern African region, from Mauritania to South Africa, which have become contracting parties to this convention."[615]

4. Legal Personality

Under Article 16 of the Abidjan Convention, the United Nations Environment Programme ("UNEP") is designated as the Secretariat of the Abidjan Convention. The UNEP, which is based in Nairobi, Kenya, is a division of the United Nations authorized to address environmental issues at the regional and international levels. The UNEP has established a Joint Secretariat for the Abidjan and Nairobi Conventions. The Nairobi Convention is the Convention for the Protection, Management, and Development of the Marine and Coastal Environment of the Eastern African Region. The Secretariat for the Abidjan Convention is in the process of being transferred from Nairobi, Kenya to Côte d'Ivoire, even

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[611] 2008 Extraordinary Meeting Report, at 20.

[612] Report of the Fifth Meeting of the Contracting Parties to the Convention for Cooperation in the Protection, Management and Development of the Marine and Coastal Environment of the West and Central African Region ("Fifth Conference of Parties Meeting Report"), 6 July 2000, at 21, *available at* http://www.unep.org/Abidjan Convention/docs/COP5englishversion.pdf.

[613] *See* Fifth Conference of Parties Meeting Report, at 21.

[614] Report of the Stakeholders Meeting on the Revitalization of the Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region ("2008 Stakeholders Report"), 24 Apr. 2008, at 9, *available at* http://www.unep.org/AbidjanConvention/docs/Report%20of%20the%20 Stakeholders%20meeting%20on%20the%20Revitalization%20of%20the%20Abidjan%20Convention%20April%20 2008%20Dakar.pdf.

[615] 2008 Extraordinary Meeting Report, at 20.

though the UNEP will continue as the Secretariat.[616] The move to Côte d'Ivoire is part of a shift away from full UNEP support to greater ownership of the Abidjan Convention by the Contracting Parties.

5. Functions

In Article 4, the Abidjan Convention obligates the Contracting Parties to take all appropriate measures to prevent, reduce, combat, and control pollution and to ensure the sound environmental management of natural resources in the Convention area. To meet their obligations, the Contracting Parties are called upon to cooperate with relevant international, regional, and sub-regional organizations to establish and adopt recommended practices, procedures, and measures designed to fight pollution. These initiatives should be supported by the national laws.

The Abidjan Convention, in Articles 5 through 11, focuses on: pollution from normal or accidental discharge from ships; pollution caused by dumping from ships and aircraft; pollution caused by discharge from rivers, estuaries, coastal establishments, and outfalls, or emanating from any other sources on the Contracting Parties' territories; pollution from activities relating to the exploration and exploitation of the sea-bed; pollution from or through the atmosphere; and coastal erosion caused by human activity, such as land reclamation and coastal engineering. In addition, the Contracting Parties are called upon to work towards establishing protected areas for fragile ecosystems and endangered species and controlling activities likely to have adverse effects on endangered species, ecosystems, or biological processes.

With the assistance of relevant international and regional organizations, the Contracting Parties, under Article 14, are required to cooperate with each other in the fields of scientific research, monitoring, and the assessment of pollution in the Convention area. In addition, for any planning activity concerning projects within the Contracting Parties' territory (particularly in the coastal areas), the Contracting Parties, according to Article 13, should conduct an assessment of the potential environmental effects for any activity that may cause substantial pollution or significant and harmful changes to the Convention area.

There are also three large marine ecosystems on the Atlantic coast of Africa that are part of the UNEP Regional Seas Programme, and a framework for projects funded by the Global Environment Facility: the Canary Current Large Marine Ecosystem ("LME"), the Guinea Current LME, and the Benguela Current LME.[617] The projects in the Canary Current (the nutrient-rich up-welling of deep cold oceanic waters off the Canary Islands west of Morocco and the Western Sahara) are focused on protecting the ecosystem from degradation from over-fishing and pollution. The projects in the Guinea Current (the water from the Bijagos Archipelago in Guinea-Bissau to Cape Lopez in Gabon) are designed to improve the sustainability of the fisheries and to reduce land and sea-based pollution. The projects in the Benguela Current (the mineral-rich coastal up-swelling from Luanda in Angola to the Cape of Good Hope in South Africa) are concentrated on implementing integrated, sustainable management and use of resources. Both the Guinea Current LME and the Benguela Current LME have produced Strategic Action Programs, which contain specific steps to promote the sustainable management of those water systems.[618] In

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[616] *See* 2008 Extraordinary Meeting Report, at 20-21.

[617] Abidjan Convention - Large Marine Ecosystem Projects, *available at* http://www.unep.org/AbidjanConvention/The_Convention/Institutional_Structure/LMEs.asp (last viewed on 4 Nov. 2010).

[618] *See* Strategic Action Programme – Integrated Management, Sustainable Development and Protection of the Benguela Current Large Marine Ecosystem (BCLME), *available at* http://www.unep.org/AbidjanConvention/docs/BCLME_SAP.pdf (last viewed on 4 Nov. 2010); Strategic Action Programme – Guinea Current Large Marine Ecosystem, *available at* http://www.unep.org/AbidjanConvention/docs/GCLME_SAP_draft.pdf (last viewed on 4 Nov. 2010).

addition, Angola, Namibia, and South Africa have established a Benguela Current Commission, which aims to follow an integrated, multi-sectored approach towards the governance of its LME.[619] An Interim Guinea Current Commission has also been established.[620]

As part of the plan for the revitalization of the Abidjan Convention, the Contracting Parties agreed to develop national policies and legislation, including those that incorporate the polluter pays principle, in order to strengthen the implementation of the Abidjan Convention. In addition, under the revitalization process, the Contracting Parties agreed to amend the text of the Abidjan Convention to incorporate the relevant provisions of the United Nations Convention on the Law of the Sea, the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change, as well as other relevant international conventions.[621]

i) The Action Plan for the Protection and Development of the Marine Environment and Coastal Areas

The Action Plan was developed as part of the UNEP Regional Seas program for West and Central Africa, which was formed in the early 1980s. Under Article 2 of the Action Plan, the principal objective is to provide a framework for comprehensive, environmentally-sound coastal area development and to protect the marine environment and the coastal areas of the West and Central African region. The Action Plan, according to Article 4.1, is designed to assess the state of the environment (including the impact of development activities on environmental quality) in order to assist the Contracting Parties in dealing with environmental problems. As described in Articles 12 and 13 of the Action Plan, a top priority is the development of a regional program of basic and applied research based on various United Nations pilot projects. The environmental assessment program should be focused on a survey of national capabilities and activities in the region that are related to marine pollution and coastal area development. An example of this would be the preparation of directories of national institutional infrastructure and a survey of the present and planned socio-economic development activities that may have an impact on the quality of the marine and coastal environments. To accomplish these aims, the plan was for local scientists and technicians to be trained in a wide variety of techniques for measuring pollution and assessing the health of ecosystems. According to Article 8 of the Action Plan, the Action Plan was intended to be implemented primarily through national and regional institutions of the Contracting Parties, by way of coordinated national, sub-regional, and regional activities.

In addition, under Article 4.2, the Action Plan aims to promote socio-economic development activities that respect environmental quality and encourage the sustainable use of resources. To achieve this aim, the Contracting Parties agreed to strengthen or expand existing development projects that demonstrate sound environmental practices, hold regional workshops on coastal area development and management, and establish training courses on the reduction and control of pollution. Plus, the Contracting Parties are allowed to establish other cooperative programs to encourage sustainable management. For example, the Action Plan, in Articles 18 and 19, envisions, among other proposals, a program to provide assistance to

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[619] *See* Benguela Current Commission, *available at* http://www.benguelacc.org/index.php (last viewed on 4 Nov. 2010).

[620] *See* Interim Guinea Current Commission, *available at* http://igcc.gclme.org/ (last viewed on 4 Nov. 2010). The countries in the Guinea Current LME are Angola, Benin, Cameroon, the Republic of the Congo, Côte d'Ivoire, the Democratic Republic of the Congo, Equatorial Guinea, Gabon, Ghana, Guinea, Guinea-Bissau, Liberia, Nigeria, Sao Tome and Principe, Sierra Leone, and Togo.

[621] 2008 Extraordinary Meeting Report, at 20-21.

the Contracting Parties in order for them to establish and strengthen national coordinating structures and mechanisms to deal with environmental affairs and to formulate guidelines and standards for management and control of industrial, agricultural, and domestic wastes. Under Article 4.3, the Action Plan also calls for the development of regional agreements and improvements in national legislation for the protection and development of the marine environment and coastal areas of the region.

ii) The Protocol Concerning Co-operation in Combating Pollution in Cases of Emergency

Negotiated in conjunction with the Abidjan Convention, the Contracting Parties also agreed to the Protocol. Under Article 4 of the Protocol, the Contracting Parties are obligated to cooperate in taking all necessary and effective measures to deal with marine emergencies in the Convention area and to work to reduce or eliminate the resulting damage. According to Article 1 of the Protocol, a marine emergency is defined as any incident resulting in substantial pollution, or imminent threat of substantial pollution, to the marine and coastal environment by oil or other harmful substance. To achieve this aim, under Article 7 of the Protocol, each Contracting Party undertakes to require masters of ships flying its flag, pilots of aircraft registered in its territory, and persons in charge of offshore structures operating under its jurisdiction to report, using the most rapid and adequate channels: (a) all accidents causing, or likely to cause, pollution of the sea by oil or other harmful substances; and (b) the presence, characteristics, and extent of spillages of oil or other harmful substances observed at sea which are likely to present a serious and imminent threat to the marine environment, coast, or related interests of the Contracting Parties. For more information, *see* **Notifications.**

Under Article 7 of the Protocol, any Contracting Party receiving such a report must promptly inform the UNEP (as the Secretariat) and, either through the UNEP or directly to the other relevant Contracting Parties, the appropriate national authority of any Contracting Party likely to be affected by the marine emergency. The Contracting Parties are required to develop standing instructions and procedures for their appropriate national authorities to follow when receiving and transmitting reports of pollution and other harmful substances. If a Contracting Party needs assistance in dealing with the emergency, it may ask for assistance from the other Contracting Parties. Furthermore, under Articles 8 and 9 of the Protocol, Contracting Parties are obligated to work to maintain and promote, either on a country level or through bilateral or multilateral cooperation, marine emergency contingency plans and means for combating pollution by oil and other harmful substances.

In 2007, the UNEP, in cooperation with the International Maritime Organization ("IMO"), hosted a meeting of legal and technical experts to discuss revising the Protocol in order to more fully address the prevention of pollution of the marine environment resulting from ships. The meeting produced a draft amendment to the Protocol, which would replace the current Protocol, that calls upon the Contracting Parties to enact regulations to prevent, reduce, and control pollution from ships, as well as for the Contracting Parties to undertake all necessary actions when there are pollution incidents. The Contracting Parties would also be obligated to work towards having in place contingency plans and other means of preventing and combating pollution (such as operation-ready equipment, ships, aircraft, and personnel, as well as the ability to stock and dispose of the pollution waste). The draft amendment to the Protocol also calls for the development of a monitoring system in the Convention area to prevent, detect, and combat pollution and to enforce compliance with the international regulations. There are also provisions in the draft regarding reporting and the dissemination of information concerning pollution.[622]

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[622] Note by IMO: Draft resolution of the meeting of the Contracting Parties on the Amendment to the "Emergency Protocol" to the Abidjan Convention adopted in Accra, August 2007, *available at* http://www.unep.org /AbidjanConvention/docs/Note_by_IMO_Revision_Protocol_Emergency_Abidjan_Convention_English.pdf.

6. Organizational Structure

Under Article 16 of the Abidjan Convention, the UNEP functions as the Secretariat for the Convention. The UNEP has the responsibility to: prepare for meetings of the Contracting Parties; transmit to the Contracting Parties certain notifications, reports, and other relevant information; communicate with the Contracting Parties about issues relating to the Abidjan Convention; coordinate the implementation of cooperative activities agreed upon by the Contracting Parties; enter into necessary administrative arrangements; and perform other functions as assigned by the Abidjan Convention. In addition to the Abidjan Convention, the UNEP also functions as the Secretariat for the Nairobi Convention. The UNEP performs its Secretariat role for both Conventions through the Joint Implementation Unit of the Nairobi and Abidjan Conventions. This UNEP Joint Secretariat develops the work programs for the Abidjan and Nairobi Conventions and oversees their implementation, as well as establishes priorities and promotes synergies between different regional initiatives.[623]

Under Article 17 of the Abidjan Convention, the Contracting Parties hold ordinary meetings (i.e., Conferences of Parties) once every two years, and can call extraordinary meeting whenever requested by the UNEP or at least four Contracting Parties. The Conference of Parties is obligated to: consider reports of the Contracting Parties on measures adopted in accordance with the Abidjan Convention; adopt and review annexes to the Abidjan Convention and its Protocols; make recommendations concerning the adoption of Protocols or amendments; establish working groups to consider any matter relevant to the Abidjan Convention or its Protocols; review the state of pollution in the Convention area; establish cooperative activities to be undertaken within the framework of the Abidjan Convention; and undertake any additional action that may be necessary to achieve the purposes of the Abidjan Convention. At the Eighth Conference of Parties in November 2007, the Contracting Parties agreed to undertake a program to revitalize the Abidjan Convention in order to promote its effective implementation. A working group was established to oversee the revitalization process. The group is composed of South Africa, Gambia, Senegal, and Ghana, who are also members of the Bureau to the Convention (which has a leadership role in implementing the Abidjan Convention). To enact this revitalization program, the Contracting Parties convened an extraordinary meeting of the Conference of Parties in June 2008.[624]

According to Article 16 of the Abidjan Convention, each Contracting Party must appoint an appropriate national authority, called a National Focal Point, to coordinate the national efforts of implementing the Abidjan Convention and its Protocol(s). This National Focal Point also serves as a channel of communication between that Contracting Party and the UNEP. The National Focal Point should be a senior government official with strong knowledge and experience in Abidjan Convention matters and should be supported with a budget to implement Convention activities. The National Focal Point is also responsible for coordinating the preparation of the report on the state of the marine and coastal environment. A Focal Points forum has been established to support these activities. The Focal Points forum is also geared towards preparing a detailed work program to present to the Conference of Parties.[625]

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[623] Introducing the Joint Conference of Parties for the Abidjan and Nairobi Conventions 10-14 September 2007 ("UNEP Report on the Joint Conference of Parties"), at 2, *available at* http://www.unep.org/NairobiConvention/docs/ANNEX1_INTRODUCTION_JOINTCOP.pdf.

[624] *See* 2008 Extraordinary Meeting Report, at 1-2, 12.

[625] Abidjan Convention—Focal Points, *available at* http://www.unep.org/AbidjanConvention/The_Convention/Institutional_Structure/Focal_Points.asp (last viewed on 4 Nov. 2010).

The Regional Coordinating Unit ("RCU"), which is hosted in Côte d'Ivoire, is a cooperative body that oversees the implementation of the Action Plan and works in cooperation with the Abidjan Convention Secretariat at the UNEP. With the Abidjan Convention Secretariat being transferred to Côte d'Ivoire, the aim is for the RCU to function as a Secretariat for the Abidjan Convention. A Coordinator has been hired to head the RCU and, along with key staff, to provide leadership during the revitalization process.[626] The work of the RCU includes: strengthening programs in the Action Plan through support services and coordination; fundraising and coordinating with bilateral and multilateral donors; enhancing cooperation with other major projects and initiatives working towards the protection and sustainable development of the marine and coastal environment in the region; improving working relationships with the United Nations and other organizations on relevant projects; and establishing institutions throughout the region to conduct research and promote policies on coastal and marine environmental issues.[627]

Under the revitalization program for the Abidjan Convention, the focus, in terms of enhancing institutional arrangements, has been on strengthening relationships with the Guinea, Benguela, and Canary Currents LMEs. As part of this approach, the Contracting Parties agreed to grant the LMEs special status as advisors to the Abidjan Convention Secretariat. In addition, the Abidjan Convention and the LMEs, as well as other relevant national and regional institutions that have coastal and marine environment programs, would work towards the development of cooperation frameworks. The Abidjan Convention and its Protocol(s) would aim to serve as the regional platform and legal framework for the activities of the LMEs, as well as other relevant national and regional institutions, concerning the coastal and marine environment in the Convention area.[628] Under this approach, the LMEs would be primarily responsible for implementing the various activities and work programs concerning the coastal and marine environment, with the Abidjan Convention's role being to coordinate and monitor. While the Benguela and Guinea Currents LMEs already have commissions in place, the Canary Current LME currently does not, and the Sub-Regional Fisheries Commission (composed of Cape Verde, Gambia, Guinea-Bissau, Mauritania, Senegal, Guinea, and Sierra Leone) would support the implementation of the Abidjan Convention in the Canary Current LME area. In addition to this collaborative relationship with the LMEs, the stakeholders stated that the Abidjan Convention should continue to work with other relevant projects and programs in the region and to utilize existing institutional structures, at every level, for its work.[629]

The revitalization program also calls for the strengthening of the National Focal Points, who would serve both the Abidjan Convention and the LMEs, and for a closer collaboration with the government agencies that would actually be implementing the relevant projects. To achieve this aim, the Contracting Parties agreed that, where practicable, countries should implement multi-sector national committees in order to coordinate the activities of the Abidjan Convention and the LMEs, as well as to provide support to the National Focal Points for the implementation, at the national and local levels, of the Abidjan Convention. In addition, the stakeholders requested that each National Focal Point provide the Secretariat with reports

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[626] 2008 Extraordinary Meeting Report, at 20-21; Abou Bamba Leaving the Ramsar Secretariat, 16 Feb. 2010, *available at* http://www.ramsar.org/cda/en/ramsar-news-archives-2010-abou-bamba-leaves/main/ramsar/1-26-45-437%5E24400_4000_0__.

[627] Abidjan Convention—Regional Coordinating Unit (RCU), *available at* http://www.unep.org/AbidjanConvention/The_Convention/Institutional_Structure/RCU.asp (last viewed on 4 Nov. 2010).

[628] 2008 Extraordinary Meeting Report, at 19-20.

[629] 2008 Stakeholders Report, at 6-8. For more information on the Sub-Regional Fisheries Commission, *see* http://www.fao.org/fishery/rfb/srfc/en (last viewed on 4 Nov. 2010).

on its national coastal and marine environment and on the status of its implementation of the relevant Abidjan Convention work programs.[630]

7. Relationships

The Abidjan Convention relies on pre-existing capabilities already available throughout the region and on the support of other regional and international organizations. Especially with the UNEP as the Secretariat of the Abidjan Convention, the Contracting Parties seek to engage with multilateral institutions to work towards the goals of protecting the coastal and marine environment and encouraging sustainable development along Africa's Atlantic coast. For example, projects in the Benguela Current LME are being done in collaboration with the United Nations Development Programme ("UNDP") and the multinational Benguela Environment Fisheries Interaction and Training Research Project.[631] The Secretariat has also formed a partnership with Wetlands International in Senegal to support the National Focal Points in developing a Conservation Strategy for the West African Manatee.[632]

The Abidjan Convention has been working to integrate its work programs with those of the New Partnership for Africa's Development ("NEPAD") Environmental Initiatives and to serve as a platform for implementing those NEPAD initiatives related to the coastal and marine environment along Africa's Atlantic coast. NEPAD and the Abidjan Convention aim, through targeted interventions that address both environmental and socioeconomic concerns, to promote awareness and commitment to the sustainable development of coastal resources. NEPAD's Action Plan on the Environment Initiative has concentrated on projects that will preserve Africa's environmental resources, alleviate poverty, and foster sub-regional and regional integration. For example, in November 2007, the Abidjan and Nairobi Conventions, in cooperation with NEPAD and under the umbrella of the Africa Union, organized a Joint Conference of Parties in South Africa. In addition, the Abidjan Convention is engaged in collaborative efforts with many other multinational institutions. For example, it has partnered with the IMO to work on institutional capacity building and resource development. It has also worked with the United Nations Industrial Development Organization on functional clean technologies, waste management, sustainable coastal tourism, strengthening institutional capacities, environmental management, and policy and legal frameworks. But, the UNEP has noted that some stakeholders, such as universities, research institutions, and certain ministries with oversight over keys sectors (e.g., fisheries, agriculture, finance, planning, foreign affairs, trade and industry, energy, wildlife, tourism, water, mineral), have had little involvement to date with the Abidjan Convention.[633]

8. Decision Making

According to Article 17 of the Abidjan Convention, the Contracting Parties, at their regularly scheduled and extraordinary Conferences of Parties, will adopt decisions concerning activities to be undertaken under the Abidjan Convention and its Protocol(s). Decisions made at the meetings of the Contracting Parties appear to be made by consensus. The Abidjan Convention, the Protocol, the Action Plan, and

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[630] 2008 Extraordinary Meeting Report, at 21; 2008 Stakeholders Report, at 13-14.

[631] *See* Abidjan Convention - Large Marine Ecosystem Projects.

[632] UNEP Report on the Joint Conference of Parties, at 7.

[633] Abidjan Convention – Partners, Stakeholders and Donors, *available at* http://www.unep.org/AbidjanConvention/The_Convention/Institutional_Structure/Partners_Stakeholders.asp (last viewed on 4 Nov. 2010); UNEP Report on the Joint Conference of Parties, at 1, 3, 8-11.

related activities and programs that have been undertaken concerning the coastal and marine environment in the region emphasize cooperation with other organizations and between the Contracting Parties. Under Article 18 of the Abidjan Convention, the Contracting Parties, at a Conference of Plenipotentiaries requested by two-thirds of the Contracting Parties, may adopt additional Protocols to the Convention. In addition, under Article 19, any Contracting Party can propose an amendment to the Abidjan Convention. An amendment must be adopted by a two-thirds majority of the Contracting Parties and will enter into force 12 months after its approval.

For the revitalization process, upon the request of the Contracting Parties, the UNEP, in cooperation with the International Union for Conservation of Nature ("IUCN"), conducted a study on the revitalization of the Abidjan Convention. For more information on the revitalization process, *see* **Additional Remarks.**

9. Dispute Resolution

According to Article 24 of the Abidjan Convention, when a dispute arises between Contracting Parties as to the interpretation or application of the Convention or its related Protocol(s), the Contracting Parties shall seek a settlement of the dispute through negotiations or any other peaceful means of their choice. If the dispute still cannot be settled, the Contracting Parties shall submit the dispute to arbitration. Although Article 24 calls for the Contracting Parties to adopt an annex detailing the arbitration process, it does not appear that the Contracting Parties have done so to date.

10. Data Information Sharing, Exchange, and Harmonization

Under Article 22 of the Abidjan Convention, the Contracting Parties should transmit to the UNEP reports on the measures they adopted in implementing the Convention and its Protocol(s). In addition, each Contracting Party should also provide the UNEP, according to Articles 12 and 3 respectively, with information concerning pollution emergencies and any additional agreements entered into concerning the protection of the marine and coastal environment in the Convention area. The UNEP, as the Secretariat, will send these reports to the other Contracting Parties, as required by Article 16 of the Abidjan Convention. And according to Article 13, the Contracting Parties should develop procedures to share information regarding their environmental assessments of potentially harmful activity. Furthermore, as the Contracting Parties are meant to cooperate, according to Article 14 of the Abidjan Convention, in the fields of scientific research and development, monitoring, and assessments of pollution in the Convention area, the Contracting Parties should exchange with each other relevant data and other scientific information related to the Abidjan Convention and its Protocol(s). In addition, under Article 5 of the Protocol, each Contracting Party is also obligated to provide the Secretariat and the other Contracting Parties with information on its National Focal Point; its relevant laws, regulations, and other legal instruments; and its national marine emergency contingency plans. And as part of the revitalization program, the stakeholders requested that each National Focal Point provide the Secretariat with reports on its national coastal and marine environment and on the status of its implementation of the relevant Abidjan Convention work programs.[634]

As part of the effort to revitalize the Abidjan Convention, one of the strategies is focused on enhancing the sharing among the Contracting Parties of reliable and up-to-date information, especially if the information could lead to a better understanding among the Contracting Parties of the benefits of the Abidjan Convention. The Abidjan Convention stakeholders recommended that the Contracting Parties adopt a specific information and data sharing policy to cover issues related to the sustainable development

[634] 2008 Stakeholder Report, at 13.

of the coastal and marine environment in the Convention area.[635] In addition, under the revitalization plan, the Contracting Parties asked the Secretariat to create a database and web-based information sharing system that would allow the Contracting Parties, as well as other stakeholders, to access information on the value and benefits of the Abidjan Convention.[636]

11. Notifications

Under Article 7 of the Protocol, each Contracting Party must require masters of ships flying its flag, pilots of aircraft registered in its territory, and persons in charge of offshore structures operating under its jurisdiction to report, using the most rapid and adequate channels: (a) all accidents causing, or likely to cause pollution, of the sea by oil or other harmful substances; and (b) the presence, characteristics, and extent of spillages of oil or other harmful substances observed at sea which are likely to present a serious and imminent threat to the marine environment, coast, or related interests of the Contracting Parties. After a Contracting Party becomes aware of a pollution emergency in the Convention area, it should notify the UNEP and, either indirectly through the UNEP or directly to the appropriate national authority, any other Contracting Party likely to be affected by the pollution emergency. If there is a request for help during a marine emergency, according to Article 8 of the Protocol, the result of this request for assistance should be reported to the UNEP and the other Contracting Parties. This report should be supplemented with information about future developments concerning the incident. The Annex to the Protocol details what the contents of these reports should be.

12. Funding and Financing

The Abidjan Convention is dependent on donor funds and United Nations support to fully operate. At the start of the Abidjan Convention, the Executive Director of the UNEP contributed US $1.4 million (contingent upon matching funds from the Trust Fund) for the implementation costs of the Action Plan from 1981-1983. An Abidjan Convention Trust Fund was established and supposed to be financed by proportional contributions, based on a United Nations scale, from the Contracting Parties in order to fund the Action Plan. The majority of countries in the Convention area (Angola, Benin, Cape Verde, the Republic of the Congo, Equatorial Guinea, Gambia, Guinea, Guinea-Bissau, Liberia, Mauritania, Sao Tome and Principe, Senegal, Sierra Leone, Togo, and Cameroon) were scheduled to contribute 3.72% (US $37,200 in 1982 and US $55,800 in 1983) towards the final budget of the Action Plan. The other levels of contribution were 4.94% (Gabon, Zaire (present-day Democratic Republic of the Congo) – US $49,400 in 1982 and US $74,100 in 1983), 6.16% (Ghana, Côte d'Ivoire – US $61,600 in 1982 and US $92,400 in 1983), and 22.01% (Nigeria – US $220,100 in 1982 and US $330,150 in 1983).[637] But, contributions to the Abidjan Convention Trust Fund have been limited – amounting to only US $112,500 from 2004-2007. Assessed annual contributions by the Contracting Parties were supposed to reach US $1 million.[638] For 2008, the majority of the assessed contributions were for US $18,600 (for Benin,

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[635] 2008 Stakeholders Report, at 14-15.

[636] 2008 Extraordinary Meeting Report, at 21.

[637] *See* Final Act of the Conference of Plenipotentiaries on Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region - Resolutions Adopted by the Conference, 23 Mar. 1981, at 11-12, *available at* http://www.unep.org/AbidjanConvention/docs/Final%20Act %20March%201981.pdf.

[638] Report of the Eighth Meeting of the Contracting Parties to the Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region ("2007 Eighth

Cameroon, the Republic of the Congo, Gambia, Guinea, Liberia, Senegal, Sierra Leone, Togo). Other levels of pledged contributions were US $24,700 (Gabon), US $30,800 (Côte d'Ivoire, Ghana), US $37,500 (South Africa), and US $110,050 (Nigeria).[639] The Secretariat of the Abidjan Convention does most of its work through partnerships. For example, the UNEP and the UNDP are funding Guinea Current LME projects (US $21.49 million); the UNDP is funding Benguela Current LME projects (US $15 million); and the Food and Agriculture Organization of the United Nations ("FAO") and the UNEP are funding Canary Current LME projects (US $12 million).[640]

In 1994, the Contracting Parties agreed to waive all accumulated payment arrears in hopes that this would improve future contribution levels.[641] As part of efforts to revitalize the Abidjan Convention, one of the main focuses is on improving the Contracting Parties' contributions to the Trust Fund in order to strengthen the implementation of the Abidjan Convention. At an extraordinary Conference of Parties meeting in 2008, the Contracting Parties agreed to make prompt payments to the Trust Fund and to continue using the assessed proportional scale to determine the level of contributions each Contracting Party is required to make. The Contracting Parties also agreed to again waive the payment arrears that had accumulated as of November 2007, with the exception of 10% of the total accumulated arrears that the Contracting Parties are still required to pay. This 10% of unpaid pledges amounts to a total of US $201,690. The Contracting Parties established biennial contributions for the Trust Fund at US $56,571 (for the Republic of the Congo, Gambia, Liberia, Sierra Leone, Togo, Benin, Guinea – the original 3.72% countries), US $80,000 (for Cameroon – originally 3.72%, Côte d'Ivoire – originally 6.16%, Gabon – originally 4.94%), US $90,000 (for Ghana – originally 6.16%, Senegal – originally 3.72%), and US $92,000 (for Nigeria – originally 22.01%, South Africa – which was not a Contracting Party in 1982). These assessed contributions would add up to an annual budget of US $500,000 and are based on the original assessment percentages agreed to in 1982, taking into the accounting the accession of South Africa and the countries that have not yet ratified the Abidjan Convention. The Secretariat also agreed to undertake additional actions, such as efforts to encourage in-kind contributions for national level projects, to strengthen the financial resources base of the Abidjan Convention.[642] The UNEP has also suggested that the Abidjan Convention figure out ways to solicit funds from the private sector, civil society, and other bilateral and multilateral entities that operate in the Convention area.[643]

Conference of Parties Meeting Report"), 14 Feb. 2008, at 44, 47, *available at* http://www.unep.org/Abidjan Convention/docs/K0820275%20COP8%20Report-DEPI-WAF-CP-8.pdf.

[639] 2008 Extraordinary Meeting Report, at 23-25.

[640] UNEP Report on the Joint Conference of Parties, at 2.

[641] Report of the First Meeting of the Bureau to the Abidjan Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central Africa Region ("2008 Bureau Meeting Report"), Apr. 2008, at 3, *available at* http://www.unep.org/AbidjanConvention/docs/Report%20of%20 the%20First%20Meeting%20of%20the%20Bureau%20to%20the%20Abidjan%20Convention%20Dakar,10%20Ma y%202008.pdf.

[642] 2008 Extraordinary Meeting Report, at 21-22, 26-28. For other ideas from the stakeholders on how to increase the financial strength of the Abidjan Convention, *see* 2008 Stakeholder Report, at 11-13.

[643] UNEP Report on the Joint Conference of Parties, at 9.

13. Benefit Sharing

The Abidjan Convention is focused primarily on collaborative partnerships to promote the marine environment and sustainable coastal development in the Convention area.

14. Compliance and Monitoring

Under Article 22 of the Abidjan Convention, the Contracting Parties should provide the UNEP with reports on measures that they have adopted to implement the Convention and its Protocol(s). Otherwise, there are no specific provisions regarding compliance and monitoring. *See* **Data Information Sharing, Exchange, and Harmonization**.

15. Participation and the Role of Multiple Stakeholders

The Abidjan Convention encourages the Contracting Parties to collaborate with other organizations, public and private, to protect the marine environment and to promote sustainable coastal development. The IUCN, the IMO, and the Swedish International Development Agency ("SIDA"), among other organizations, have already worked to implement programs under the Abidjan Convention. For example, the IUCN assisted in the development of the Abidjan Convention's revitalization program. The UNEP and SIDA have initiated a program to promote coordination mechanisms, as well as management and assessment activities, in the Convention areas of the Abidjan and Nairobi Conventions. The FAO, the Fishery Commission for the Eastern Central Atlantic, the International Commission for the Conservation of Atlantic Tunas, and IUCN have all partnered with the Abidjan Convention to develop a regional networking mechanism to monitor and manage fisheries mangroves and their ecosystems. This partnership also assists with stock assessment and the conservation of endangered species and promotes sustainable fisheries policies and legislation. In another example, the Intergovernmental Oceanographic Commission/Ocean Data and Information Network Africa have helped implement regional data exchange and information management programs.[644]

As part of the plan to revitalize the Abidjan Convention, the Contracting Parties and the Secretariat aim to develop partnerships with stakeholders in the marine and coastal sectors (such as fisheries, ports, and industries) in the Convention area. These partnerships would be used to mobilize technical and financial resources to benefit the implementation of the Abidjan Convention.[645] In addition, the revitalization process also focuses on collaboration with the three LMEs (the Benguela, Canary, and Guinea Currents) located in the Convention Area. *See* **Organization Structure.**

16. Dissolution and Termination

Under Article 30 of the Abidjan Convention, at any time after five years from the date of entry into force of the Abidjan Convention (i.e., five years from 5 August 1984), any Contracting Party may withdraw from the Convention or any Protocol by giving written notification of its withdrawal. The withdrawal will take effect 90 days after the date on which the notification of withdrawal is received by the Depositary (Côte d'Ivoire). Any Contracting Party which, upon its withdrawal from a Protocol, is no longer a party to any Protocol of the Abidjan Convention, will also be considered to have withdrawn from the Abidjan Convention.

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[644] Abidjan Convention—Partners, Stakeholders and Donors.

[645] 2008 Extraordinary Meeting Report, at 21.

17. Additional Remarks

The Abidjan Convention calls for the Contracting Parties to adopt additional protocols to prevent, reduce, combat, and control pollution and to promote environmental management. Although the Abidjan Convention and its Protocol on pollution in emergency situations came into effect in 1984, no other protocols have yet been adopted. The Contracting Parties have negotiated a Draft Protocol to the Abidjan Convention Concerning Cooperation in the Protection of the Marine and Coastal Environment from Land-Based Sources and Activities ("LBSA Protocol"). The initial draft of the LSBA Protocol was first developed in 2005, which was followed by capacity building workshops in the countries in the Guinea Current LME and review and input from all of the Contracting Parties. Further negotiations on the text of the draft occurred at a meeting of legal and technical experts that occurred in Ghana in 2009. After the text of the LBSA Protocol is finalized, it will be submitted for adoption at a Conference of Plenipotentiaries, and then to all governments in the Convention Area for ratification.[646]

African governments renewed their commitment to the protection and management of the coastal and marine environment in December 1998 in the Cape Town Declaration. At Cape Town, the African governments also called for the strengthening of the Abidjan and Nairobi Conventions in order for them to be used as the overarching platform for cooperation, synergies, and intergovernmental dialogue concerning the coastal and marine environmental management across sub-Saharan Africa.[647] In 2005, at the Seventh Conference of the Contracting Parties, the Contracting Parties of the Abidjan Convention established a new ecosystem-based coordination structure that is focused on the Benguela, Guinea, and Canary Currents LMEs. Aside from the revitalization program, other efforts, such as establishing a network of Focal Points, have also aimed to reinvigorate the Abidjan Convention.[648]

A UNEP comprehensive review of the Abidjan Convention, released in 2007, recommended raising public awareness of the economic value of the marine and coastal resources located in the Convention area in order to encourage broad-based participation and support for environmental actions. In addition, the UNEP review proposed strengthening the Abidjan Convention Secretariat in order for it to be able to secure financing mechanisms through active resource mobilization, negotiate for affordable contributions from the Contracting Parties, and broaden membership to include additional partners and donors (such as multinational oil companies operating in the region). The UNEP review also recommended that the Abidjan Convention take advantage of the numerous other environmental initiatives in the region and function, through effective coordination and consultation, as the legal framework for all marine and coastal related projects in the region.[649]

At the Eighth Conference of Parties in November 2007, the Contracting Parties agreed to undertake a program to revitalize the Abidjan Convention. Upon the request of the Contracting Parties, the UNEP, in

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[646] Abidjan Convention—Negotiations Meeting on the Abidjan Convention Draft Land Based Sources and Activities Protocol (LSBA), *available at* http://www.unep.org/AbidjanConvention/LBSA_Negotiation_Meeting/index.asp (last viewed on 20 Dec. 2010).

[647] 2007 Eighth Conference of Parties Meeting Report, at 63; UNEP Report on the Joint Conference of Parties, at 8.

[648] *See* Abidjan Convention Background, *available at* http://www.unep.org/AbidjanConvention/about/Convention_Background.asp (last viewed on 20 Dec. 2010).

[649] United Nations Environment Programme, Programme: Abidjan Convention, Report of a Comprehensive Review and Strategy Document for the Abidjan Convention, 27 Aug. 2007, at 5-7, *available at* http://www.unep.org/AbidjanConvention/docs/AbidjanStrategyDocument.pdf.

cooperation with the IUCN, conducted a study on ways to revitalize the Abidjan Convention and has led the efforts to support and coordinate activities to promote the revitalization. After the study was completed, stakeholders, in an April 2008 meeting, reviewed the findings and released a series of recommendations on the revitalization program. The stakeholders meeting was attended by the National Focal Points from 12 out of the 14 Contracting Parties, representatives from 7 of the 8 countries in the Convention area that have had not yet ratified the Abidjan Convention, representatives from the Guinea, Beguela, and Canary LMEs, and representatives from non-profit organizations and international institutions.[650] The Bureau to the Convention evaluated those recommendations and prepared draft decisions concerning the revitalization program to present to the Contracting Parties at an extraordinary Conference of Parties meeting. And then at the extraordinary Conference of Parties meeting, the Contracting Parties adopted a revitalization program from these draft decisions.[651] The revitalization program and action plan for the Abidjan Convention, as adopted by the Contracting Parties in the extraordinary Conference of Parties meeting in 2008, is focused on: (a) strengthening institutional arrangements and improving collaboration; (b) promoting ratification and accession to the Convention; (c) reviewing the mandate and objectives of the Convention; (d) transferring the Secretariat from Nairobi, Kenya to Abidjan, Côte d'Ivoire; (e) improving contributions to the Trust Fund and otherwise funding the Convention; (f) enhancing the roles of the National Focal Points; and (g) enacting an action plan for the revitalization of the Abidjan Convention.[652] The scope of the activities encompassed in the revitalization process is expected to last two years, within the four year 2008-2011 work program for the Abidjan Convention.[653]

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[650] 2008 Stakeholders Report, at 3-4.

[651] *See* 2008 Extraordinary Meeting Report.

[652] 2008 Extraordinary Meeting Report, at 19-21.

[653] 2008 Bureau Meeting Report, at 4.

- United Nations Environment Programme, Programme: Abidjan Convention, Report of a Comprehensive Review and Strategy Document for the Abidjan Convention, 27 Aug. 2007, *available at* http://www.unep.org/AbidjanConvention/docs/AbidjanStrategyDocument.pdf.

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- David M. Dzidzornu, *Marine Pollution Control in the West and Central African Region*, 20 QUEEN'S L.J. 439 (1994-1995).

Lake Tanganyika

1. Legal Basis

The Convention on the Sustainable Management of Lake Tanganyika (the "Convention") was adopted in Dar es Salaam, Tanzania on 12 June 2003.[654] The Convention entered into force in 2005, after the second instrument of ratification was deposited.[655]

2. Member States

The Contracting States of the Convention are Burundi, the Democratic Republic of Congo (the "DRC"), Tanzania, and Zambia.[656] In November 2007, the DRC became the last of the Contracting States to ratify the Convention.[657]

3. Geographical Scope

Lake Tanganyika is located in Africa's Western Great Rift Valley. The lake is divided between the four Contracting States, with the DRC and Tanzania possessing the majority of the lake's area. Lake Tanganyika is the world's longest lake, the second largest freshwater lake by volume (18,940 km^3), and the second deepest (1,470 m).[658]

Article 3 specifies that the Convention applies to Lake Tanganyika and to its "Basin" in the Contracting States, which is defined as the geographical area bounded by the watershed limits of Lake Tanganyika.[659] The Convention also applies to "activities, aircraft and vessels under the control of a Contracting State to the extent that these activities or the operation of such aircraft or vessels result or are likely to result in an adverse impact."[660]

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[654] Convention on the Sustainable Management of Lake Tanganyika ("Convention"), 12 June 2003, *available at* http://www.lta-alt.org/publications/projectdocuments/the-convention-on-the-sustainable-management-of-lake-tanganyika-eng/view.

[655] *See* Convention, art. 41(1).

[656] Convention, Preamble.

[657] *See* Resolution No. 01/08 of the Lake Tanganyika Conference of Ministers on the Status of the Lake Tanganyika Authority Secretariat and the Regional Programme for the Integrated Management of Lake Tanganyika, *available at* http://tazabuco.files.wordpress.com/2009/05/resolution-com2-2008-01-original.doc, at 1.

[658] K. West, Lake Tanganyika: Results and Experiences of the UNDP/GEF Conservation Initiative (RAF/92/G32) in Burundi, D.R. Congo, Tanzania, and Zambia, 28 Feb. 2001, ¶ 1.1.1, *available at* http://www.iwlearn.net/iw-projects/Fsp_112799468696/reports/lake-tanganyika-biodiversity-final-summary-report-results-and-experiences-of-the-undp-gef-conservation-initiative-raf-92-g32-in-burundi-d-r-congo-tanzania-and-zambia-138p-2-5mb.pdf.

[659] Convention, art. 1. Article 1 also includes a definition for "Lake Basin," which is used throughout the Convention and is defined as "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 ground waters that flow into the Lake from the Contracting States and the land submerged by these waters."

[660] Convention, art. 3.

4. Legal Personality

The Contracting States established the Lake Tanganyika Authority (the "Authority") with international legal personality and the legal capacity necessary to perform its functions and mission. The Executive Director represents the Authority in the exercise of its legal personality.[661]

5. Functions

The Convention has the primary objective of "ensur[ing] the protection and conservation of the biological diversity and the sustainable use of the natural resources of Lake Tanganyika and its Basin by the Contracting States on the basis of integrated and co-operative management."[662] To that end, the Convention aims to facilitate the "development and implementation of harmonized laws and standards concerning the management of Lake Tanganyika and its Basin."[663] The Convention addresses several aspects of the lake's management, including:

- Sustainable fisheries management:
    - Article 7 directs the Contracting States to establish a framework fisheries management plan, to develop and implement harmonized national fisheries policies and regulations, and to promote community participation in fisheries management;
- Prevention and control of pollution:
    - Article 8 requires the Contracting States to construct pollution reduction installations, to prevent waste disposal in the lake, and to develop legal, administrative, and technical measures for pollution reduction;
- Prevention of sedimentation:
    - Article 9 directs the Contracting States to take necessary legal, administrative, and technical measures to prevent excessive sedimentation from deforestation, land degradation, wetlands destruction, and other causes;
- Conservation of biological diversity:
    - Article 10 requires the Contracting States to take appropriate legal, administrative, and technical measures to conserve biological diversity and to prevent and control exotic species in the Lake Basin;
- Protection and utilization of genetic and biochemical resources:
    - Article 11 obligates the Contracting States to cooperate in protecting and controlling access to genetic and biochemical resources in the Lake and its Basin and to share, in a fair and equitable way, the utilization of those resources;

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[661] Convention, arts. 23(4), 26(2).

[662] Convention, art. 2(1).

[663] Convention, art. 2(2)(a).

- Navigation:
    - Article 12 directs the Contracting States to take steps to ensure freedom of navigation on the lake and to prevent pollution from lake vessels; and
- Environmental impact assessment:
    - Article 15 sets forth environmental impact assessment procedures to be followed by the Contracting States to avoid and minimize adverse impacts on the Lake and its Basin from proposed projects, policies, plans, programs, and other activities.

In addition to setting forth certain actions and responsibilities to be taken in those areas of lake management, the Convention directs the Contracting States to prepare a Strategic Action Program elaborating the specific measures to be taken by the Contracting States to achieve the Convention's objectives.[664] Establishing mechanisms for facilitating cooperative management in general—which are discussed under **Organizational Structure** and **Data Information Sharing, Exchange, and Harmonization**—is another significant function of the Convention.

6. Organizational Structure

The Convention established the Authority as the implementing body of the Convention. The Authority consists of the Conference of Ministers (the "Conference"), the Management Committee, and the Secretariat.[665]

The Conference is the supreme body of the Authority and consists of one Minister from each Contacting State. The Conference meets at least once a year, or as it otherwise decides, to adopt financial rules and determine the financial obligations of the Contracting States under the Convention, and to evaluate the implementation of the Convention. For those purposes, the Conference may adopt protocols or amendments to the Convention.[666] Beyond specifying that each Contracting State shall have one vote, the Convention grants the Conference discretion to develop its own procedural rules.[667] The first meeting of the Conference was held in Dar es Salaam, Tanzania, on 5 April 2007, and the second in Bujumbura, Burundi, on 24 – 25 April 2008.[668]

The Management Committee is responsible for supporting, coordinating, and monitoring the implementation of the Convention, including by: implementing the policies and decisions of the Conference; providing scientific and technical advice to the Conference; preparing a strategic action program for Lake Tanganyika for approval by the Conference; supervising the implementation of the strategic action program and proposing necessary revisions; proposing protocols, annexes, or amendments

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[664] Convention, art. 13.

[665] Convention, art. 23(1), 23(2).

[666] Convention, art. 24.

[667] Convention, arts. 24(4), 33.

[668] *See e.g.*, Regional Programme for the Integrated Management of Lake Tanganyika, Report on the Second Meeting of the Lake Tanganyika Conference of Ministers, 24 – 25 Apr. 2008, *available at* http://tazabuco.files.wordpress.com/2009/05/2-com-meeting-report-english.pdf.

to the Convention for approval by the Conference; negotiating with donors; monitoring the implementation of the Convention; supervising the Secretariat; and undertaking any other tasks identified by the Conference. The Management Committee consists of three members appointed by each Contracting State, with the appointees possessing relevant expertise concerning the sustainable management of the Lake Basin and the implementation of the strategic action program. Decisions are made on a consensus basis, or by a two thirds' majority vote at the next meeting if a consensus could not be reached on an issue. The Executive Director of the Secretariat serves as the secretary of the Management Committee, but has no right to vote.[669]

The Secretariat is the executive organ of the Authority. It consists of an Executive Director and a Deputy Executive Director, both of whom are appointed by the Conference, as well as any other staff required for its operation. The Executive Director is the chief executive officer of the Authority, answerable to the Management Committee, and represents the Authority in the exercise of its legal personality. The Secretariat's functions include: carrying out the tasks assigned to it by the Management Committee or by any protocol; providing technical and scientific services and advice; performing necessary financial and administrative services; formulating annual work programs and budgets for the Lake Tanganyika Authority; preparing plans, projects, assessments, reports and the like as required by the Management Committee; obtaining and disseminating information relevant to the implementation of the Convention to the Contracting States; maintaining databases of information; arranging and supporting meetings of the Conference of Ministers and of the Management Committee; reporting on the execution of its functions to the Management Committee; and performing any other functions determined by the Conference.[670]

The Management Committee is assisted in the performance of its functions by Technical Committees that are responsible for advising the Committee on: socioeconomic aspects of the sustainable management of the Lake; fisheries management; biological diversity; and water quality. The Management Committee may also establish further committees with the consent of the Conference.[671]

In 2009, the Government of Burundi committed to house the Authority headquarters, and to provide diplomatic immunity, legal protection, and freedom of press to its members.[672]

7. Relationships

Article 37 specifies that the Convention "shall not affect the right of any Contracting States to implement, by bilateral or multilateral agreement where appropriate, more stringent measures than those of this Convention provided that such measures are not in conflict with this Convention."

The Convention also includes specific references to two existing agreements. It provides that the Contracting States shall "develop harmonized national fisheries policies based on the relevant principles set out in the Code of Conduct for Responsible Fisheries adopted by the Conference of the Food and Agriculture Organization of the United Nations."[673] It also directs the Contracting States to share in the

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[669] Convention, art. 25.

[670] Convention, art. 26.

[671] Convention, art. 27.

[672] Saskia Marijnissen and Henry Mwima, *Lake Tanganyika Authority Headquarters Agreement Signed*, MEA BULLETIN, No. 80, 12 Nov. 2009, *available at* http://www.iisd.ca/mea-l/meabulletin80.pdf.

[673] Convention, art. 7(2)(b).

utilization of the genetic and biochemical resources of the Lake and its Basin in accordance with the Convention on Biological Diversity.[674]

Article 24(6) provides for the African Union, the United Nations, and their specialized agencies to be represented as observers at meetings of the Conference of Ministers. The Convention also provides for other states and non-governmental organizations to be represented as observers.

Notable partner organizations of the Authority include the United Nations Development Programme ("UNDP"), the Global Environment Facility ("GEF"), the African Development Bank ("AfDB"), the Food and Agriculture Organization of the United Naitons ("FAO"), the International Union for Conservation of Nature ("IUCN"), the Nordic Development Fund, and the World Bank.

8. Decision Making

Article 34 sets forth the procedure for the Contracting States to adopt additional protocols or annexes to the Convention. It provides that decisions under any protocol shall be taken only by the parties to the protocol concerned.[675]

Article 36 concerns amendment of the Convention and its protocols. It provides that the Contracting States shall attempt to reach consensus on proposed amendments, but allows for amendments to be adopted by majority vote if efforts to reach consensus fail, in which case the amendment shall be submitted to all the Contracting States for ratification, acceptance or approval. The amendment will enter into force after the deposit of the second instrument of ratification, acceptance, approval or accession.[676]

For more information on decision making within the Authority, *see also* **Organizational Structure**.

9. Dispute Resolution

Dispute settlement is governed by Article 29 of the Convention. It provides that in the case of a dispute between Contracting States concerning the interpretation or implementation of the Convention, the Contracting States involved shall notify the Secretariat of the dispute and attempt to resolve it through negotiation. If the dispute persists, the Contracting States shall agree on a dispute resolution procedure, which may include: (1) jointly seeking mediation by a third party;[677] (2) impartial fact-finding in accordance with the provisions of Annex III;[678] or (3) arbitration in accordance with the procedure laid

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[674] Convention, art. 11.

[675] *See also* Convention, art. 35(1) (specifying that annexes shall be proposed and adopted according to the procedure set forth in Article 34).

[676] *See also* Convention, art. 33 (providing that each Contracting State shall have one vote).

[677] Convention, art. 29(2)(a) (specifying that the "third party" shall be a Contracting State not involved in the dispute).

[678] Convention, art. 29(2)(b). Annex III provides that the disputing Contracting States are obligated to "consider the recommendation of the [fact-finding] Commission in good faith with a view to reaching agreement on the settlement of the dispute."

down in Annex IV.[679] Article 29 does not appear to assure resolution of disputes. While arbitration is a form of binding dispute resolution, States are not obligated to agree on such a binding procedure, and may instead only agree to a form of non-binding dispute resolution, such as mediation or fact-finding.

10. Data Information Sharing, Exchange, and Harmonization

Article 19 directs the Contracting States to provide the public with "adequate information . . . concerning the state of the Lake Basin, planned development activities, measures taken or planned to be taken to prevent, control and reduce adverse impacts, and the effectiveness of those measures." For that purpose, the Contracting States are obligated to make information available concerning: water and environmental quality objectives; compliance with permits; notifications concerning proposed activities likely to have trans-boundary adverse impacts; and environmental impact assessment reports concerning such activities.

Article 20 addresses information exchange between the Contracting States, directing them to exchange data and information concerning sustainable management of the Lake Basin and the implementation of the Convention. Contracting States are also directed to employ "best efforts" to provide data or information that is requested, but not readily available.[680] The Convention additionally obligates the Contracting States to report periodically to the Authority on certain measures relevant to the environmental management of the Lake Basin and the implementation of the Convention.[681]

Article 21 specifies that the Convention shall not affect the established rights or obligations of Contracting States to protect personal information, intellectual property, and confidential information. It also directs the Contracting States to respect the confidentiality of confidential information they receive.

11. Notifications

Under Article 14, the Contracting States are obligated to notify the other Contracting States, through the Secretariat, of any planned activities—including policies, plans, or programs—that are likely to give rise to transboundary adverse impacts.[682]

12. Funding and Financing

The Convention specifies that the Contracting States are responsible for funding activities related to implementation of the Convention that are undertaken within their territory or for their exclusive benefit.[683] However, the Convention also provides for cost-sharing. The Authority—which is funded by

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[679] Convention, art. 29(2)(c). Under Annex IV, the disputing Contracting States need to agree to submit the dispute to arbitration. The arbitral tribunal consists of three members (with each party to the dispute nominating one arbitrator, and those two arbitrators appointing the third member of the arbitral tribunal), and will base its decision on the Convention, relevant protocols, and international law. Decisions of the arbitral tribunal are taken by majority vote. The award of the arbitral tribunal shall be final and binding.

[680] Convention, art. 20(2).

[681] Convention, art. 22.

[682] A list of activities which are presumed to result in adverse impacts is included in Part A of Annex I of the Convention.

[683] Convention, art. 28(4).

equal contributions of the Contracting States,[684] and any external funding that can be obtained[685]—is charged with funding the incremental costs to each Contracting State of managing the Lake Basin. The Authority also funds activities undertaken to implement the strategic action program that benefit more than one of the Contracting States.[686]

The Convention also directs the Conference of Ministers to adopt financial rules "to determine, in particular, the financial obligations under the present Convention and protocols to which they are parties."[687]

13. Benefit Sharing

The Convention refers to benefit sharing with local communities and between the Contracting States. Under General Principles, the Convention establishes the "principle of fair and equitable benefit sharing by virtue of which local communities are entitled to share in the benefits derived from local natural resources."[688] In addition, the Contracting States are required to cooperate in order "to share in a fair and equitable way the results of research and development and the benefits arising from the utilization of the genetic and biochemical resources of the Lake and its Basin in accordance with the Convention on Biological Diversity."[689]

14. Compliance and Monitoring

The Contracting States are required to monitor the effectiveness of the Strategic Action Program.[690] They are also obligated to report on their efforts to monitor and enforce the legal and administrative measures they take under the Convention, including with regard to environmental impact management and fisheries conservation and management.[691] With regard to environmental impact assessment of specific projects and activities, the Contracting States are directed to "monitor compliance with and enforce any conditions

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[684] Convention, art. 28(1) (specifying that the Contracting States "shall contribute in equal proportions to the budget of the Authority unless otherwise agreed").

[685] Convention, art. 28(2) (directing the Authority to seek funding from donors and other sources); *see also* Lucas Liganga, *Fund Set Up to Save Lake Tanganyika*, THE CITIZEN (Tanzania), 19 May 2010, *available at* http://www.thecitizen.co.tz/news/4-national-news/2015-fund-set-up-to-save-lake-tanganyika.html (reporting on the granting to the Authority of approximately Tanzanian Shilling 20 billion in funds by the AfDB, the GEF, and the Nordic Development Fund for environmental protection and conservation purposes).

[686] Convention, art. 28(3).

[687] Convention, art. 24(4).

[688] Convention, art. 5(2)(f).

[689] Convention, art. 11(c).

[690] Convention, art. 13(3).

[691] Convention, art. 20(1)(d).

in development consents or other authorizations that were imposed for the purpose of protecting the Lake Basin."[692]

Monitoring implementation of the Convention is the responsibility of the Management Committee. To that end, the Management Committee is empowered to commission studies and assessments to monitor the Convention's effectiveness. It is also responsible for monitoring the Secretariat's execution of its annual work program.[693] For its part, the Secretariat is required to report on its own performance, and to regularly obtain information relevant to the implementation of the Convention and to ensure that the information is disseminated to all of the Contracting States.[694]

15. Participation and the Role of Multiple Stakeholders

The Convention also provides for public participation in the decision making processes. Under Article 17, the Contracting States are required to adopt measures to ensure that the public, particularly individuals and communities living within the Lake Basin, have the right to participate in decision-making processes that affect them, including the environmental impact assessment process, and are given the opportunity to submit oral or written representations before a final decision is made.[695] To support that objective, the environmental impact assessments required by the Convention must convey "[t]he results of any consultations with the public, interested and affected persons, communities, organizations, and government agencies in the course of conducting the environmental impact assessment."[696] Additionally, the Contracting States must provide appeal or review procedures to enable the public to challenge decisions by a public body authorizing "an activity that is likely to give rise to an adverse impact."[697]

16. Dissolution and Termination

The Contracting States may withdraw from the Convention at any time after three years from the date of its entry by giving written notice to the Depositary. A withdrawal takes effect one year after the notification of withdrawal is received by the Depositary.[698]

17. Additional Remarks

N/A

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[692] Convention, art. 15(1)(c); *see also* Convention, art. 15(4) (directing the Contracting States to consult with each other and the Secretariat on impact prevention and mitigation measures, including post-project monitoring and analysis).

[693] Convention, art. 25(7).

[694] Convention, art. 26(3)(f), 26(3)(j).

[695] Convention, art. 17(1).

[696] Convention, Annex I, Part B, ¶ 8.

[697] Convention, art. 17(2).

[698] Convention, art. 43(1), 43(3); *see also* Convention, art. 43(2) (providing a similar withdrawal procedure for protocols). The Secretary-General of the United Nations and the Chairperson of the African Union Commission serves as the Depositaries for the Convention and its protocols. Convention, art. 44.

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Lake Victoria Basin Commission and the Lake Victoria Fisheries Organization

1. Legal Basis

a. The EAC Treaty and the LVBC Protocol

The main agreements governing the Lake Victoria Basin fall under the institutional umbrella of the East African Community ("EAC"), a regional intergovernmental organization comprised of Kenya, Uganda, Tanzania, Rwanda and Burundi. The objectives of the EAC are to "develop policies and programmes aimed at widening and deepening co-operation among the Partner States in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs, for mutual benefit."[699] The EAC was established by the Treaty for the Establishment of the East African Community (the "EAC Treaty"), signed on 30 November 1999 in Arusha, Tanzania.

The Lake Victoria Basin Commission ("LVBC") is a specialized institution of the EAC that developed from the EAC's Lake Victoria Development Programme ("LVDP"), a mechanism established in 2001 to coordinate various interventions in the Lake Victoria Basin region and to turn the Basin into an economic growth zone. The EAC has designated Lake Victoria and its Basin as an area of common economic interest and a regional economic growth zone to be developed by the Member States.[700]

Under Article 114(2)(b)(vi) of the EAC Treaty, the Member States agreed to establish a "body for the management of Lake Victoria." Accordingly, the LVBC was established through the Protocol for Sustainable Development of the Lake Victoria Basin (the "LVBC Protocol"), which was signed on 29 November 2003 and ratified in December 2004.[701]

The relationship between the LVBC Protocol and the EAC Treaty is governed by Article 47 of the LVBC Protocol, which states that the LVBC Protocol is "an integral part of the Treaty and in case of an inconsistency between [the] Protocol and the Treaty, the Treaty shall prevail." The LVBC Protocol also states that the provisions of the LVBC Protocol "shall take precedence over any other existing agreements relating to Lake Victoria and in case any other agreement is inconsistent with [the] Protocol, it shall be null and void to the extent of its inconsistency."[702]

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[699] Treaty for the Establishment of the East African Community ("EAC Treaty"), 30 Nov. 1999, art. 5(1), *available at* http://www.eac.int/index.php?option=com_docman&task=doc_download&gid=158&Itemid=163. The original Member States of the EAC were Kenya, Uganda and Tanzania. Rwanda and Burundi both acceded to the EAC Treaty on 18 June 2007.

[700] LVBC – Overview, *available at* http://www.lvbcom.org/index.php?option=com_content&view=article&id=46&Itemid=64 (last viewed on 7 Nov. 2010).

[701] Protocol for Sustainable Development of Lake Victoria Basin ("LVBC Protocol"), 29 Nov. 2003, *available at* http://faolex.fao.org/docs/texts/mul41042.doc. *See also* LVBC – Protocol Establishing LVBC, *available at* http://www.lvbcom.org/index.php?option=com_content&view= article&id=65&Itemid=75 (last viewed on 5 Nov. 2010).

[702] LVBC Protocol, art. 48(1).

b. The LVFO

The Lake Victoria Fisheries Organization ("LVFO"), another specialized institution of the EAC, was formed through the signing of the Convention for the Establishment of the Lake Victoria Fisheries Organization (the "LVFO Convention") on 30 June 1994, which entered into force on 24 May 1996 and was amended in 1998.[703] The purpose of the LVFO Convention is for the Member States to collaborate in the development and management of the fisheries of Lake Victoria. Before the LVFO Convention was signed, the Food and Agriculture Organization of the United Nations ("FAO") had been assisting in the management of the shared fisheries resources of Lake Victoria through a sub-committee of the Committee for Inland Fisheries of Africa ("CIFA"). This sub-committee was replaced by the LVFO when the LVFO Convention was signed.[704]

Once the EAC Treaty came into force, the LVFO became a specialized institution of the EAC. Article 9(3) of the EAC Treaty established that various pre-existing organizations, including the LVFO, "shall be deemed to be institutions of the Community and shall be designated and function as such."

c. Other Agreements

Apart from the agreements governing the LVBC and the LVFO, there are several other agreements affecting the Lake Victoria Basin. These agreements include:

- The Lake Victoria Environmental Management Project ("LVEMP"), signed in 1994 between Kenya, Tanzania, Uganda and the World Bank. This project is funded by the World Bank and the Global Environment Facility ("GEF"). The second phase of this project, LVEMP II, which was launched in April 2010, is coordinated by the LVBC.[705]

- The Partnership Agreement on the Promotion of Sustainable Development in Lake Victoria ("Partnership Agreement") between the EAC and the governments of Sweden, France and Norway, the World Bank and the East African Development Bank ("EADB"), signed in April 2001. Finland acceded to the Partnership Agreement in September 2010.[706]

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[703] *See* The Convention for the Establishment of the Lake Victoria Fisheries Organization ("LVFO Convention"), 30 June 1994, *available at* http://www.lvfo.org/downloads/THE_CONVENTION_FOR_THE_ESTABLISHMENT_OF_THE_LVFO_FINAL_EDIT.pdf.

[704] *See* LVFO Convention, at Foreword, Preface.

[705] *See* The World Bank - Transboundary Water Management: Lessons from Recent Projects and Programs, 1 Mar. 2007, *available at* http://siteresources.worldbank.org/EXTWAT/Resources/4602122-1213366294492/5106220-1213649450319/5.6.1_Transboundary_Water_Management.pdf; LVBC - LVEMPII, *available at* http://www.lvbcom.org/index.php?option=com_content&view=article&id=70&Itemid=80 (last viewed on 5 Nov. 2010).

[706] *See* EAC – Press Release: Finland to Support Lake Victoria Basin Development, *available at* http://www.eac.int/about-eac/eacnews/483-finland-support-lvb-devt.html (last viewed on 5 Nov. 2010).

- The Nile River Basin Initiative ("NBI"), as the Nile River originates at Lake Victoria. The EAC signed a memorandum in 2006 with the NBI to ensure the efficient management of the Lake Victoria Basin.[707]

There are also a number of other regional and local partnerships focusing on sustainable development of the Basin, such as OSIENALA (Friends of Lake Victoria), a Kenyan non-governmental organization ("NGO") that collaborates with other NGOs and institutions in the region.[708] *See also* **Relationships.**

2. Member States

The original Member States (Partner States) of both the LVBC and the LVFO are Kenya, Uganda and Tanzania. As Rwanda and Burundi acceded to the EAC in 2007, they are being integrated as members into the LVBC and the LVFO.[709]

3. Geographical Scope

a. LVBC

The LVBC Protocol defines the Lake Victoria Basin as the "geographical area extending within the territories of the Partner States determined by the watershed limits of the system of waters, including surface and underground waters flowing into Lake Victoria."[710]

b. LVFO

The LVFO Convention does not define a precise geographic scope for the LVFO, but the LVFO Convention aims to regulate Lake Victoria and its fisheries.

4. Legal Personality

a. LVBC

According to Article 34 of the LVBC Protocol, the LVBC is an institution of the EAC, as provided for in the EAC Treaty. Article 4 of the EAC Treaty granted the EAC legal capacity, including the capacity of a body corporate with perpetual succession. Under Article 9(4) of the EAC Treaty, "[t]he organs and institutions of the Community shall perform the functions, and act within the limits of the powers conferred upon them by or under this Treaty."

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[707] *See* East African Community and Nile Basin Initiative Sign Memorandum, 20 Jul. 2006, *available at* http://www.lake-victoria.info/page/153.html. For more information on the NBI, see the separate profile on the "Nile River Basin Initiative."

[708] *See* Osienala – Friends of Lake Victoria, *available at* http://www.osienala.org/ (last viewed on 5 Nov. 2010).

[709] *See* LVFO – The Rt. Hon First Deputy Premier and Minister of East African Community Affairs, Uganda Visits LVFO, 24 Sept. 2009, *available at* http://www.lvfo.org/index.php?option=news&task=viewarticle&sid=32 (last viewed on 17 Nov. 2010); LVBC – Overview.

[710] LVBC Protocol, art. 1(2).

b. LVFO

As a specialized institution of the EAC, LVFO is also governed by Article 9(4) of the EAC Treaty. Furthermore, according to Article XVIII(1) of the LVFO Convention, the LVFO is "an independent intergovernmental organization having the capacity of a legal person to perform any legal act that is necessary or useful for the carrying out of its functions or for the exercise of its powers under this Convention." Under this provision, the LVFO has the capacity to contract, acquire and dispose of property and to be a party to legal proceedings.

Article XVIII(2) establishes that each Member State shall grant such privileges, immunities and facilities to the LVFO as may be appropriate to enable the LVFO to carry out its activities, and such privileges, immunities and facilities to state representatives or intergovernmental organizations representatives performing official duties as may be necessary to enable them to perform such official duties.

5. Functions

a. LVBC

Overall, the LVBC is responsible for coordinating the sustainable development agenda of the Lake Victoria Basin.[711] Article 33(3) of the LVBC Protocol establishes that the "broad functions" of the LVBC are "to promote, facilitate and coordinate activities of different actors towards sustainable development and poverty eradication of the Lake Victoria Basin" through:

- Harmonization of policies, laws, regulations and standards;
- Promotion of stakeholders' participation in the sustainable development of natural resources;
- Guidance on implementing sectoral projects and programs;
- Promotion of capacity building and institutional development;
- Promotion of security and safety on Lake Victoria;
- Promotion of research and development;
- Monitoring, evaluation and compliance with policies and agreed upon actions;
- Preparation and harmonization of the Member States' negotiating positions against any other state on matters concerning the Lake Victoria Basin;
- Receipt and consideration of reports from the Member States' institutions on their activities relating to the management of the Basin under the LVBC Protocol;
- Initiation and promotion of programs that target poverty eradication; and
- Performance of any other functions that many be conferred upon the LVBC under the LVBC Protocol.

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[711] *See* LVBC - Home, *available at* http://www.lvbcom.org/ (last viewed on 18 Nov. 2010).

b. LVFO

The LVFO's primary functions are to build cooperation among the Member States, to harmonize domestic laws and regulations for the sustainable use of the living resources of Lake Victoria, and to develop and adopt conservation and management measures.[712] To this end, the LVFO is tasked with:

- Promoting the proper management and the optimum utilization of the fisheries and other resources of Lake Victoria;
- Enhancing the capacity building of existing institutions and developing additional relevant institutions, in cooperation with existing institutions and other international, regional and non-governmental organizations;
- Creating a forum for discussion regarding environmental and water quality initiatives affecting the Basin and maintaining a liaison with existing bodies and programs;
- Conducting research regarding water quality in Lake Victoria;
- Encouraging, recommending, coordinating and, as appropriate, undertaking relevant training and extension activities concerning the fisheries;
- Considering and advising on the effects of the introduction of non-indigenous aquatic animals or plants into Lake Victoria or its tributaries and adopting measures related to the introduction, monitoring, control or elimination of such animals or plants;
- Serving as a clearinghouse and databank for information on Lake Victoria's fisheries and promoting the dissemination of information;
- Adopting budgets, seeking funding, formulating financial management plans and allocating funds for the LVFO's activities or to activities of the Member States related to furthering the purposes of the LVFO Convention; and
- Undertaking such other functions as necessary or desirable to achieve the purposes of the LVFO Convention.[713]

6. Organizational Structure

a. LVBC

Article 34 of the LVBC Protocol establishes the organizational structure of the LVBC, noting that it is an institution of the EAC and shall operate within the organizational structure formed by the Sectoral Council, the Coordination Committee, the Sectoral Committees, and the Secretariat of the Commission.

[712] LVFO Convention, art. II(2).

[713] LVFO Convention, art. II(3).

The Sectoral Council, which consists of Ministers from the Member States, is the main policy and decision-making organ for the LVBC.[714] It is charged with providing overall policy direction for the implementation of projects and programs in the Lake Victoria Basin. It is also responsible for, *inter alia*, guiding the implementation of development programs; developing regulations; issuing directives; making decisions and recommendations; approving the budget and work program of the LVFC; considering and approving measures to be undertaken by the Member States; formulating financial rules and regulations; and adopting annual progress reports from the Coordination Committee.[715]

The Coordination Committee submits reports and recommendations to the Sectoral Council on the implementation of the LVBC Protocol and implements the decisions of the Sectoral Council as directed.[716] It is also responsible for recommending the establishment of Sectoral Committees to the Council of Ministers of the EAC.[717] The Coordination Committee also receives and considers the reports from the Sectoral Committees and assigns specific Sectoral Committees to deal with matters relevant to the Lake Victoria Basin. It meets at least twice a year preceding the meetings of the Council of Ministers of the EAC and may hold extraordinary meetings as necessary.[718]

The Sectoral Committees are composed of senior officials in the Member States, the heads of public institutions, representatives of regional institutions, representatives from sectors covered under Article 3 of the LVBC Protocol (which establishes the scope of cooperation relating to the Lake Victoria Basin), and representatives from business, industry and civil society. The Sectoral Committees are in charge of coordinating regional activities and those of the "National Focal Points" (which are responsible for coordinating national initiatives related to the Basin); preparing for the comprehensive implementation of programs and setting priorities for the Basin; monitoring and reviewing the implementation of programs; and submitting reports and recommendations from the working groups and National Focal Points.[719]

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[714] *See* LVBC – Overview.

[715] LVBC Protocol, art. 35.

[716] LVBC Protocol, art. 36.

[717] LVBC Protocol, art. 37. The Council of Ministers of the EAC is the policy organ of the EAC and is comprised of the Minister from each Member State who is responsible for East African Community affairs and the Attorney General of the Member States, as well as other Ministers from the Member States as may be determined. *See* EAC Treaty, arts. 13, 14.

[718] LVBC Protocol, art. 36. The Coordination Committee established under the EAC Treaty consists of the Permanent Secretaries in each Member State who are responsible for East African Community affairs, as well as other Permanent Secretaries from the Member States as may be determined. *See* EAC Treaty, art. 17.

[719] LVBC Protocol, arts. 37, 38.

The Secretariat of the LVBC, which is located in Kisumu, Kenya, is charged with coordinating all activities within the scope of the LVBC Protocol. The Secretariat is also responsible for, *inter alia*: initiating the coordination and harmonization of policies and strategies related to the development of the LVBC; encouraging information and data sharing; convening meetings of the Sectoral Committees and other working groups; promoting research on sustainable development of the Lake Victoria Basin; submitting reports to the Sectoral Council through the Coordination Committee; undertaking the administration and financial management of the LVBC; mobilizing resources to implement projects and programs; developing a sustainable funding mechanism in order to promote sustainable development; and implementing the decisions of the Sectoral Council. The Secretariat also carries out other duties as may be conferred under the LVBC Protocol.[720]

The Executive Secretary heads the Secretariat, and is appointed by the Council of Ministers of the EAC on a competitive and rotating basis. The Executive Secretary implements the work of the LVBC according to the policies and decisions of the Sectoral Council; submits reports on the work and the audited accounts of the LVBC to the Council of Ministers of the EAC; and acts as the accounting officer for the LVBC. The Executive Secretary serves a five-year term and is assisted by a Deputy Executive Secretary, who must be of a different nationality from the Executive Secretary and who serves a three-year term, renewable once.[721]

b. LVFO

The LVFO is made up of the following organs: the Council of Ministers, the Policy Steering Committee, the Executive Committee, the Fisheries Management Committee, the Scientific Committee (and any committees, subcommittees and working groups that may be established); and the Permanent Secretariat.[722]

[720] LVBC Protocol, art. 42.

[721] LVBC Protocol, arts. 39, 40.

[722] LVFO Convention, art. IV(1).

The Council of Ministers is the supreme body of the LVFO and is charged with making and adopting measures for the management and conservation of fisheries resources.[723] The Council of Ministers consists of the Ministers in the Member States, or their authorized representatives, who are responsible for the fisheries. The delegation of Ministers from each Member State shall endeavor to include the heads of the departments that are responsible for fisheries management, fisheries research, environment, industry, and tourism. The Council of Ministers is headed by a Chairman, with the chairmanship rotating every two years among the Member States.[724] The functions of the Council of Ministers include, *inter alia*: reviewing reports and recommendations submitted to it by the Policy Steering Committee regarding the status of the Lake Victoria fisheries and determining the policy of the LVFO; approving the budget and work program of the LVFO; determining the contributions of the Member States; adopting financial regulations; adopting amendments to the LVFO Convention; establishing other subsidiary bodies as appropriate; and adopting management and conservation measures concerning the Lake Victoria fisheries.[725]

The Policy Steering Committee consists of the chief executive officers of the Ministries in each Member State that deal with fishery matters. It is responsible for reviewing and submitting recommendations concerning the Lake Victoria fisheries to the Council of Ministers. In addition, the Policy Steering Committee's functions are to, *inter alia*: review reports and recommendations submitted by the Executive Committee regarding the Lake Victoria fisheries; prepare the sessions of the Council of Ministers; review the LVFO's activities and report to the Council of Ministers concerning the work of the Secretariat and the various other bodies; negotiate memoranda of understanding or other formal agreements with other organizations or governments, subject to approval by the Council of Ministers; and review proposals on management and conservation measures to be adopted by the Council of Ministers.[726]

The Executive Committee is comprised of six members from the Member States who are the heads of the departments responsible for fisheries management and the departments responsible for fisheries research, or their authorized representatives.[727] The EAC Secretariat is also represented on the Executive Committee, but without voting rights. The Executive Committee is in charge of: reviewing management and scientific activities of the LVFO, agreeing on management measures to be implemented at the national level, and making proposals to be considered by the Policy Steering Committee and the Council of Ministers. In addition, the Executive Committee's functions also include monitoring the implementation of management measures at the national and regional levels and submitting reports to the Policy Steering Committee and the Council of Ministers, as well as establishing relevant sub-committees and working groups as appropriate.[728]

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[723] *See* LVFO: Organs and Institutions of the LVFO, *available at* http://www.lvfo.org/index.php?option=display page&Itemid=104&op=page (last viewed on 9 Nov. 2010).

[724] LVFO Convention, art. V.

[725] LVFO Convention, art. VI.

[726] LVFO Convention, arts. VI(1)(a), VII.

[727] As the Executive Committee only consists of six members, it is composed of the relevant department heads from the original Member States - Kenya, Tanzania, and Uganda. *See* LVFO: The Executive Committee, *available at* http://lvfo.org/index.php?option=displaypage&Itemid=143&op=page&SubMenu=143 (last viewed on 9 Nov. 2010).

[728] LVFO Convention, art. VIII.

The Fisheries Management Committee is made up of the heads of the departments that are responsible for fisheries management in the Member States, or their authorized representatives. The functions of the Fisheries Management Committee include, *inter alia*: reviewing stock assessments and other fisheries data; identifying emerging problems in the fisheries in order to promote their long-term sustainability; developing objectives for constituent fish communities; evaluating the effects of proposed or accidental introduction of fish species and proposed management means; developing partnerships among the Member States, national agencies, and local communities; promoting the conservation of indigenous species; developing management policies that take into account biological, economic, social and environmental needs; and recommending measures regarding the management and conservation of living resources in Lake Victoria.[729]

The Scientific Committee is made up of the heads of departments that are responsible for fisheries research in the Member States, or their authorized representatives. It is in charge of: developing and recommending to the Executive Committee research projects on Lake Victoria to be carried out by national agencies, universities, as well as other regional and international organizations; identifying requirements for the relevant research; evaluating the results of the research program; and developing and recommending certain standardized data collection and statistical methods.[730]

Apart from these committees, there are several working groups that help to implement policies and activities under each of the LVFO programs. The working groups consist of experts from fisheries research and management institutions, as well as experts from fisheries training institutions, universities and civil society organizations who are specialists in specific program or thematic area. There are both National Working Groups and Regional Working Groups.[731]

The Permanent Secretariat, which is located in Jinja, Uganda, is the executive organ of the LVFO. It is headed by an Executive Secretary who is responsible for ensuring that the work program and activities of the LVFO are coordinated and implemented according to the policies and decisions adopted by the Council of Ministers.[732] The Executive Secretary, who is the chief executive and legal representative of the LVFO, is also responsible for organizing the sessions of the Council of Ministers, the Policy Steering Committee, the Executive Committee, and the meetings of all the other LVFO bodies. The Executive Secretary serves a five-year term, renewable once.[733]

7. Relationships

a. LVBC

The LVBC Protocol calls for the Member States to cooperate with development partners and for the LVBC to cooperate with the objectives of the Partnership Consultative Committee, established under the Partnership Agreement between the EAC and its development partners, in promoting the development of

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[729] LVFO Convention, art. IX(2), IX(5).

[730] LVFO Convention, art. IX(3), IX(6).

[731] *See* LVFO: The Working Groups, *available at* http://lvfo.org/index.php?option=displaypage&Itemid=146&op=page&SubMenu=146 (last viewed on 9 Nov. 2010).

[732] *See* LVFO: Organs and Institutions of the LVFO.

[733] LVFO Convention, art. X.

the Lake Victoria Basin.[734] The LVBC Protocol also recognizes the relationship between the Lake Victoria Basin and the Nile River Basin, and calls upon the Member States, negotiating as a bloc, to cooperate with other interested parties.[735]

Moreover, before the LVBC Protocol took effect, the EAC had already formed partnerships with various organizations and governments. For instance, in April 2001, the EAC signed a Partnership Agreement with several of its development partners (i.e., Norway, Sweden, France, the World Bank and the EADB). The EAC has also signed Memoranda of Understanding with various institutions and governments, including the International Union for Conservation of Nature ("IUCN"), the Worldwide Fund for Nature – Eastern Africa Regional Programme Office ("WWF-EARPO"), and the International Centre for Research in Agroforestry ("ICRAF").[736] *See also* **Legal Basis.**

There is also coordination between the Member States and the LVDP. The National Focal Points are the main links between the LVDP and the Member States, and are responsible for coordinating and harmonizing the activities related to the Lake Victoria Basin conducted by the various Ministries in the Member States, NGOs, special interest groups and other development partners.[737]

b. LVFO

Under Article XIX of the LVFO Convention, the LVFO must cooperate with other intergovernmental organizations and institutions, especially those that deal with fisheries and might contribute to the work of the LVFO. The Executive Secretary is empowered to establish working relationships with such organizations and institutions and may make such arrangements as are necessary to promote effective cooperation. All formal agreements or memoranda of understanding that are proposed must be approved by the Policy Steering Committee, subject to endorsement by the Council of Ministers. The LVFO is also obligated to maintain its working relationship with the FAO and to promote collaboration with other United Nations agencies.[738]

Additionally, Article XII of the LVFO Convention provides for the granting of observer status to "States indirectly concerned with the living resources and the quality of the water resources of Lake Victoria." Once granted observer status by the Council of Ministers, observer states may participate (without voting rights) in meetings of the LVFO bodies. The Policy Steering Committee and Executive Committee may also invite intergovernmental organizations, NGOs or any other entities with "special competence" in any of the LVFO's activities to attend various sessions of the LVFO. *See also* **Participation and the Role of Multiple Stakeholders**.

The LVFO also collaborates with various fisheries agencies and institutions located in the Member States, as well as with private sector actors, NGOs, community based organizations, and other projects focused on the Lake Victoria fisheries, with the goal of promoting a healthy ecosystem and sustainable fisheries

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[734] LVFC Protocol, art. 44.

[735] LVFC Protocol, art. 5(7).

[736] *See* LVBC - Current Partnerships, *available at* http://www.lvbcom.org/index.php?option=com_content&view=article&id=88&Itemid=97 (last viewed on 10 Nov. 2010).

[737] LVBC - Overview.

[738] LVFO Convention, art. XIX.

resource utilization, as well as the socio-economic development of the Lake Victoria Basin communities.[739]

8. Decision Making

a. LVBC

Under Article 35 of the LVBC Protocol, the Sectoral Council is the body within the LVBC that is charged with making decisions "in accordance with the provisions of [the LVBC] Protocol," and is authorized to "promulgate its own rules and procedures of decision making consistent with the [EAC] Treaty." Under the EAC Treaty, decisions of the Summit (which is composed of the Heads of State of the EAC Member States) and the Council of Ministers of the EAC are taken by consensus.[740]

b. LVFO

As the "supreme body" of the LVFO, the Council of Ministers is empowered with the highest level of decision-making authority under the LVFO Convention. It adopts its own rules of procedure and makes decisions, as much as possible, by consensus. In the absence of consensus, a matter can be decided by the Council of Ministers by a majority vote (with each Member State having one vote).[741]

9. Dispute Resolution

a. LVBC

Article 46 of the LVBC Protocol provides the dispute resolution methods to be used when disputes arise between the Member States concerning the interpretation or application of the LVBC Protocol. First, the Member States must seek to resolve the dispute by negotiation. If negotiations fail, either Member State involved in the dispute or the Secretary General of the EAC may refer the dispute to the East African Court of Justice. The decision of the East African Court of Justice regarding the dispute shall be final.[742]

b. LVFO

Under Article XVIII of the LVFO Convention, disputes arising out of any agreement between the LVFO and any natural person or legal entity that cannot be settled by negotiation or conciliation, and for which the LVFO has not waived its immunity from legal process, will be submitted to arbitration in accordance with rules established by the Council of Ministers. In cases where immunity has been conferred upon a person under the LVFO Convention and such immunity would prejudice the interests of LVFO, that immunity is obligated to be waived by a Member State in the case of its representative, by the Council of Ministers or the Policy Steering Committee in the case of the Executive Secretary and the Deputy Secretary, and by the Executive Secretary in the case of other staff of the LVFO. *See also* **Legal Personality.**

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[739] *See* LVFO: About the Lake Victoria Fisheries Organization, *available at* http://www.lvfo.org/index.php?option=displaypage&Itemid=135&op=page (last viewed on 10 Nov. 2010).

[740] EAC Treaty, arts. 12(3), 15(4).

[741] LVFO Convention, art. V.

[742] *See also* EAC Treaty, arts. 28, 29.

Article XXIII of the LVFO Convention also calls for arbitration, upon the request of any Member State, in the case of a dispute concerning the application or interpretation of the LVFO Convention that cannot be settled by negotiation or conciliation. Each party to the dispute selects one arbitrator, and the two appointed arbitrators select a third, who will be the President of the arbitral tribunal. If one of the parties to the dispute has not appointed an arbitrator within two months of the appointment of the first arbitrator, or if the President of the arbitral tribunal has not been appointed within two months of the appointment of the second arbitrator, the Chairman of the Council of Ministers will appoint the relevant arbitrator. The decisions of the arbitral tribunal are final.

10. Data Information Sharing, Exchange, and Harmonization

a. LVBC

Article 24 of the LVBC Protocol discusses the exchange of data and information, mandating that the Member States, on a regular basis, "exchange readily available and relevant data and information on existing measures on the condition of the natural resources of the Basin." If one Member State receives a request from another Member State for information that is not readily available, that Member State is obligated to use its best efforts to fulfill the request, but may condition its compliance upon receiving payment from the requesting Member State to cover the reasonable costs of collecting and processing the relevant data. The Member States are also charged with facilitating collaboration in research and on the exchange of data, reports and information among stakeholders within the Member States. However, the exchange of information or data does not extend to information that is protected under the laws of the Member States or any international treaty to which a Member State is a party.[743] Additionally, one of the functions of the LVFC Secretariat is to establish a regional database and to promote the sharing of information and the development of information systems and data exchange.[744]

In terms of harmonization, Article 6(2) of the LVBC Protocol requires the Member States to take steps to harmonize their laws and policies through the institutional framework established under the LVBC Protocol. Accordingly, one of the functions of the LVBC listed under Article 33(3) is to harmonize the policies, laws, regulations and standards of all of the Member States. More specifically, Article 14 requires the Member States to harmonize their laws and regulations in order to conform to the guidelines formulated by the LVBC regarding environmental audits for operators of facilities within the Member States that are likely to have a significant impact on the environment; Article 16(2) requires the Member States to "adopt standardized equipment and methods of monitoring natural phenomena;" Article 25(1) requires the Member States to harmonize their water quality standards; and Article 29 calls for the harmonization of infrastructure and services within the Member States.

b. LVFO

Article II(2) of the LVFO Convention calls for the harmonization of national measures in order to promote the sustainable utilization of the living resources of Lake Victoria. However, the LVFO Convention specifies that it does not infringe upon each Member State's sovereign powers regarding any of the areas covered by the LVFO Convention, and that each Member State remains free to adopt national laws that are more stringent or extensive than those required to fulfill its obligations to the LVFO.[745]

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[743] LVFC Protocol, art. 24.

[744] LVFC Protocol, art. 42(c).

[745] LVFO Convention, art. XIII(4).

Under Article XIII of the LVFO Convention, the Member State agreed to implement the decisions of the LVFO's governing bodies, in accordance with their respective constitution and national legal framework. The Member States also agreed to adopt laws and regulations prohibiting the introduction of non-indigenous species into Lake Victoria, other than in accordance with a decision by the Council of Ministers.

In terms of data sharing, each Member State is to provide the LVFO with access to "laws, regulations and all documents, data and reports pertaining to fish landings, stock assessments, living resources of Lake Victoria or any other matter which is the subject of resource management and utilization, and research" in furtherance of the objectives of the LVFO Convention.[746] Additionally, each Member State must transmit to the LVFO an annual statement of the measures it has taken to implement the decisions of the Council of Ministers.[747]

Article XIV of the LVFO Convention requires the Member States, when a research program has been authorized by the LVFO, to grant access to the research teams to their national territories and territorial waters.

11. Notifications

a. LVBC

One of the principles listed in Article 4 of the LVBC Protocol is the principle of prior notification concerning planned measures, which requires each Member State to notify the other Member States of planned activities within its territory that may have adverse effects upon the other Member States. This requirement is elaborated upon in Article 13, which requires the notifying Member State to provide technical data and information regarding the planned project in order to allow the notified Member States to conduct an evaluation of the effects of the planned measures. This notification is supposed to be followed by consultation among the Member States in regards to the planned measures.

In addition, Article 26 of the LVBC Protocol requires each Member State to notify potentially affected Member States, the LVBC, and other relevant international organization when there is an emergency originating in its territory.

b. LVFO

The LVFO Convention names the Director-General of the FAO as the Depositary of the LVFO Convention, which requires the FAO to keep the Member States informed of changes in the status of the LVFO Convention and membership in the LVFO, as well as any other notifications received from the Member State governments.[748]

Under Article XIII, the Executive Secretary is required to notify Member States of any decisions or recommendations that are adopted by the Council of Ministers. The Executive Secretary must also notify, upon the direction of the Policy Steering Committee or upon the request of observer states or organizations and with approval from the Policy Steering Committee, such observer states, organizations

[746] LVFO Convention, art. XIII(5).

[747] LVFO Convention, art. XIII(8).

[748] LVFO Convention, art. XXIV.

or other entities of decisions or recommendations adopted by the Council of Ministers. Each Member State must also send the LVFO an annual statement of the measures it has taken to implement the decisions of the Council of Ministers. *See also* **Data Information Sharing, Exchange, and Harmonization.**

12. Funding and Financing

a. LVBC

The LVBC is funded from the EAC budget, stakeholders' contributions, development partners and "other such sources as shall be established by the Council [of Ministers of the EAC]."[749]

The Lake Victoria Environmental Trust Fund ("LVETF") was established in July 2010, with the goal of raising funds to finance the LVBC's environmental management and conservation activities in the region without relying on donors. It is expected to be operational by 2012. The LVBC expects those who use resources in the region, including industries that discharge industrial waste into Lake Victoria, as well as EAC Member State governments and NGOs focused on environmental conservation, among others, to contribute to the LVETF.[750]

b. LVFO

Funding of the LVFO is governed by Article XV of the LVFO Convention, which establishes that the LVFO is to be funded both by contributions from the Member States and by "subventions, donations and legacies from any suitable body, whether governmental or non-governmental," as long as the terms of use are compatible with the objectives of LVFO. The LVFO's current development partners that contribute to funding LVFO programs are the European Union, the Norwegian Agency for Development Cooperation ("NORAD"), the Common Fund for Commodities (an intergovernmental financial institution), and the FAO.[751]

13. Benefit Sharing

a. LVBC

Article 5 of the LVBC Protocol, entitled "Equitable and Reasonable Utilisation of Water Resources," contains standards for how each Member State is supposed to use the resources of the Lake Victoria Basin. The Member States are to use the resources of the Basin in their respective territories in an "equitable and reasonable manner," and develop and use the water resources "with a view to attaining optimal and sustainable utilisation thereof and benefits therefrom, taking into account the interests of the Partner States."[752]

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[749] LVBC Protocol, art. 43.

[750] Ouma Wanzala, *Kenya: New Trust Fund Set Up to Finance Conservation in the Lake Basin*, ALLAFRICA.COM, 27 Jul. 2010, *available at* http://allafrica.com/stories/201007271194.html.

[751] LVFO: About the Lake Victoria Fisheries Organization.

[752] LVBC Protocol, art. 5(1), 5(2).

In determining what is reasonable and equitable use, the Member States are to keep in mind "all relevant factors and circumstances," including, for instance, geographic and other natural factors, the social and economic needs of the Member States, the population dependent on the water resources in each Member State, the effects of the use of the water resources in one Member State on the other Member States, and the "comparative costs of alternative means of satisfying the economic and social needs of each Partner State."[753]

The Member States are also required, in their respective territories, to "keep the status of their water utilisation under review in light of substantial changes and relevant factors and circumstances," and to cooperate with other interested parties, regional or international bodies and programs.[754]

b. LVFO

No specific provision

14. Compliance and Monitoring

a. LVBC

Although one of the functions of the LVBC listed under Article 33(3) of the LVBC Protocol is the "monitoring, evaluation and compliance with policies and agreed actions," there is no specific provision in the LVBC Protocol establishing a mechanism to monitor the Member States' compliance. However, Article 45 obligates the Member States to periodically report on measures taken to implement the LVBC Protocol and the effectiveness of those measures in meeting the objectives of the LVBC Protocol. In addition, the Sectoral Committees are responsible for monitoring and reviewing the implementation of programs undertaken in the Lake Victoria Basin.[755]

b. LVFO

The Executive Committee is charged with monitoring the implementation, at the national and regional levels, of the management measures, and must report periodically to the Policy Steering Committee and Council of Ministers.[756]

15. Participation and the Role of Multiple Stakeholders

a. LVBC

The LVBC Protocol defines stakeholders as "all persons, legal or natural and all other entities being governmental or non-governmental, residing, having interest or conducting business in the Basin."[757] The LVBC Protocol provides for stakeholder involvement in several areas. One of the principles enumerated

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[753] LVBC Protocol, art. 5(4).

[754] LVBC Protocol, art. 5(6), 5(7).

[755] LVBC Protocol, art. 38(c).

[756] LVFO Convention, art. VIII(6)(c).

[757] LVBC Protocol, art. 1(2).

under Article 4(2), for instance, is that of public participation and of having decisions about projects and policies take into account the views of stakeholders. This principle is reiterated in Article 22, which states that "[t]he Partner States shall create an environment conducive for stakeholders' views to influence governmental decisions on project formulation and implementation."

The LVBC Protocol also targets certain groups of stakeholders, such as women. Article 23 ("Mainstreaming of Gender Concerns") requires the Member States to "promote community involvement and mainstreaming of gender concerns at all levels of socio-economic development, especially with regard to decision-making, policy formulation and implementation of projects and programmes." But, "mainstreaming of gender concerns" is not defined in the LVBC Protocol. The LVBC Protocol also calls for gender equality in regards to development and decision-making and the integration of gender concerns in all activities in the Lake Victoria Basin.[758]

Other areas of the LVBC Protocol involve information sharing and coordination with stakeholders. Article 21, for instance, requires the Member States to promote awareness of the sustainable development of the Basin through public education campaigns. Article 24(3) refers to the formation of a conducive environment for data sharing among stakeholders. Under Article 37, which governs the establishment and composition of the Sectoral Committees, the Member States are directed to establish "National Focal Points" responsible for coordinating national initiatives in the Basin and sharing information with the LVBC and other stakeholders.[759] *See also* **Data Information Sharing, Exchange, and Harmonization.**

b. LVFO

The LVFO provides for other interested states, intergovernmental organizations, NGOs and other relevant entities to participate in and/or observe some of its activities. For instance, the LVFO Convention allows for the granting of observer status to interested states and allows any state interested in the activities of LVFO to be invited by the Policy Steering Committee to be represented by an observer at sessions of the Council of Ministers, the Policy Steering Committee or the Executive Committee. Intergovernmental organizations, NGOs, and other relevant entities may be invited by the Policy Steering Committee or the Executive Committee to attend certain sessions of the LVBC.[760] The Executive Committee may also invite the designated representatives of key regional projects on Lake Victoria in the Member States to participate, without voting rights, in sessions of the Executive Committee.[761] *See also* **Relationships.**

In terms of community and stakeholder engagement, the tasks of the Fisheries Management Committee include developing objectives for constituent fish communities and developing partnerships among the Member States, their agencies and the local communities.[762] The LVFO has also partnered with organizations to host events geared towards stakeholders, including commercial fish farmers and fishing

[758] LVBC Protocol, arts. 3(n), 4(2)(j).

[759] *See* LVBC: Current Coordination Arrangements, *available at* http://www.lvbcom.org/index.php?option=com_content&view=article&id=63&Itemid=73 (last viewed on 18 Nov. 2010).

[760] LVFO Convention, art. XII.

[761] LVFO Convention, art. VIII(1).

[762] LVFO Convention, art. IX(5)(c), IX(5)(e).

communities, such as the Fishing Expo Eastern Africa 2010, which was held in Kisumu City, Kenya in October 2010.[763]

16. Dissolution and Termination

a. LVBC

No specific provision

b. LVFO

The LVFO Convention will remain in force until two of the Member States withdraw. A Member State may withdraw from the LVFO Convention at any time after two years from the date the LVFO Convention entered into force, by giving written notice to the Depositary. The withdrawal will become effective at the end of the calendar year following the year in which the notice of withdrawal was received by the Depositary.[764]

17. Additional Remarks

a. LVBC

Numerous provisions in the LVBC Protocol are focused on the Member States preserving and sustaining the environment of the Lake Victoria Basin. Several of the principles enumerated in Article 4 are focused on sustainable development and environmental monitoring, with a number of these principles being elaborated upon in greater detail later in the LVBC Protocol. For instance, Article 16 governs environmental monitoring and precautionary measures; Articles 17 and 18 deal with the application of the "Polluter Pays" and "User Pays" principles, respectively; and Articles 19 and 20 both deal with pollution prevention.

b. LVFO

The seat of the LVFO, according to Article III(1) of the LVFO Convention, is in Uganda. The LVFO Convention includes a Headquarters Agreement, which sets out additional rights and obligations of the host Member State. The Headquarters Agreement is attached as an Annex to the LVFO Convention and is considered an integral part of the LVFO Convention.[765] The Headquarters Agreement requires Uganda to grant certain privileges, immunities and facilities to the LVFO and to official representatives, the Executive Secretary, the Deputy Executive Secretary and other staff of the LVFO. It also requires the LVFO to cooperate with Ugandan authorities in order to facilitate the administration of justice, secure the observance of police regulations, and prevent any abuse of the privileges, immunities and facilities conferred under the LVFO Convention or the Headquarters Agreement. The Headquarters Agreement

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[763] *See* LVFO: The Fishing Expo Eastern Africa 2010, Kisumu, Kenya, *available at* http://www.lvfo.org/index.php?option=news&task=viewarticle&sid=38 (last viewed on 15 Nov. 2010).

[764] LVFO Convention, art. XXII.

[765] LVFO Convention, art. XXV; *see* Headquarters Agreement - Recognition of the Lake Victoria Fisheries Organization and the granting of privileges and immunities by the Host State ("Headquarters Agreement"), 30 June 1994, *available at* http://www.lvfo.org/downloads/THE_CONVENTION_FOR_THE_ESTABLISHMENT_OF_THE_LVFO_FINAL_EDIT.pdf.

also includes several specific provisions concerning Uganda's obligations as the host Member State, such as the provision of equipment and facilities for the LVFO.[766]

18. Websites and References

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- World Bank - Transboundary Water Management: Lessons from Recent Projects and Programs, *available at* http://siteresources.worldbank.org/EXTWAT/Resources/4602122-1213366294492/5106220-1213649450319/5.6.1_Transboundary_Water_Management.pdf.

[766] Headquarters Agreement, Parts A and B.

Niger Basin

1. Legal Basis

The Niger Basin has been governed by a series of agreements in the post-colonial era, including:

- Act Regarding Navigation and Economic Co-operation between the States of the Niger Basin, done at Niamey, Niger, 26 October 1963, entered into force 1 February 1966 ("1963 Act");[767]
- Agreement Concerning the Niger River Commission and the Navigation and Transport on the River Niger, done at Niamey, Niger, 25 November 1964, entered into force 12 April 1966;[768]
- Agreement Revising the Agreement Concerning the Niger River Commission and the Navigation and Transport on the River Niger of 25 November 1964, adopted at Niamey, Niger, 15 June 1973, entered into force 15 December 1973 ("Niamey Agreement");[769]
- Convention Creating the Niger Basin Authority, concluded at Faranah, Guinea, 21 November 1980, entered into force 3 December 1982 (the "1980 Convention");[770]
- Protocol relating to the Development Fund of the Niger Basin, done in Faranah, Guinea, 21 November 1980, entered into force 3 December 1982 (the "Protocol");[771] and
- Niger Basin Water Charter, signed in Niamey, Niger, 30 April 2008 ("Water Charter").[772]

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[767] Act Regarding Navigation and Economic Co-operating between the States of the Niger Basin, 26 Oct. 1963, *available at* http://www.fao.org/docrep/w7414b/w7414b04.htm.

[768] Agreement Concerning the River Niger Commission and the Navigation and Transport on the River Niger, 25 Nov. 1964, *available at* faolex.fao.org/docs/texts/ben15922.doc. The agreement was amended twice in 1968, and again in 1979.

[769] Agreement Revising the Agreement Concerning the Niger River Commission and the Navigation and Transport on the River Niger of 25 November 1964 ("Niamey Agreement"), 15 June 1973, *available at* http://untreaty.un.org/unts/60001_120000/11/40/00021986.pdf.

[770] Convention Creating the Niger Basin Authority, 21 Nov. 1980, *available at* http://www4.worldbank.org/afr/ssatp/Resources/HTML/legal_review/Annexes/Annexes%20VII/Annexe%20VII-36.pdf. As described below, the Convention was revised in 1987.

[771] Protocol relating to the Development Fund of the Niger Basin, 21 Nov. 1980, *available at* http://www4.worldbank.org/afr/ssatp/Resources/HTML/legal_review/Annexes/Annexes%20VII/Annexe%20VII-36.pdf. *See also* Agreement Concerning a Study on the Navigability of the Central Portion of the Niger River, signed at Niamey, 22 September 1967, entered into force on 22 September 1967, *available at* http://faolex.fao.org/docs/texts/ben15922.doc. This agreement was not basin-wide, as the agreement was concluded among the Netherlands, Dahomey (current-day Benin), Mali, Niger and Nigeria.

[772] Niger Basin Water Charter, 30 Apr. 2008, *available at* http://www.abn.ne/index.php/eng/News/Publi-INFO/The-Water-Charter. The Water Charter will enter into force when two thirds of the Niger Basin Authority Member States have ratified it. Water Charter, art. 35. As of June 2010, no information is publicly available on whether the Water Charter has entered into force.

The 1980 Convention significantly revised, but did not replace, the Niamey Agreement. While the 1980 Convention established the Niger Basin Authority in lieu of the Niger River Commission, it did not displace provisions of the Niamey Agreement relating to navigation in particular. Additional revisions and supplementary provisions relating to aspects of the 1980 Convention include:

- Revised Financial Rules of the Niger Basin Authority, concluded at Nndjamena. Chad, 27 October 1987;[773] and

- Revised Convention Creating The Niger Basin Authority, concluded at Nndjamena, Chad, 27 October 1987 ("Convention").[774]

Additionally, the Heads of State and Government of the Niger Basin Authority Member States signed the Paris Declaration on 27 April 2004, which set out certain "principles of management and good governance for the sustainable and shared development of the Niger Basin."[775]

2. Member States

The Niger Basin Authority ("NBA") Member States include the following riparian states of the Niger River: Niger, Benin, Chad, Guinea, Côte d'Ivoire, Mali, Nigeria, Cameroon and Burkina Faso.[776]

3. Geographical Scope

The Niger River is the third longest river in Africa, running 4,200 km with an average annual flow of 180 km^3. The basin itself covers an area of 2.2 million km^2. The Niger River's two main branches constitute its hydrological system, reinforced by tributaries from Guinea, Côte d'Ivoire, Burkina Faso and Benin. More than 100 million people currently reside in the Niger Basin.[777]

4. Legal Personality

The NBA is an intergovernmental organization created by the 1980 Convention to replace the earlier Niger River Commission (1964), and is headquartered in Niamey, Niger. The NBA inherited all of the

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[773] Revised Financial Rules of the Niger Basin Authority ("Revised NBA Financial Rules"), 27 Oct. 1987, *available at* http://iea.uoregon.edu/pages/view_treaty.php?t=1987-RevisedFinancialRulesNigerBasinAuthority.FR.txt&par=view_treaty_html (French only).

[774] Revised Convention Creating The Niger Basin Authority ("Convention"), 27 Oct. 1987, *available at* http://iea.uoregon.edu/pages/view_treaty.php?t=1987-Revised-1980-NigerBasinAuthority.FR.txt&par=view_treaty_html (French only). Citations to the Convention refer to the revised 1987 Convention.

[775] Water Charter, art. 1(9).

[776] *See* Niger Basin Authority, *available at* www.abn.ne/index.php/eng/L-ABN (last viewed on 18 Jan. 2011); *see also* Convention, Preamble, art. 2.

[777] World Bank Report No. 26675, Project Appraisal Document on a Proposed Grant from the Global Environment Facility Trust Fund in the Amount of US $6.0 Million to the Niger Basin Authority (NBA) for the Reversing Land and Water Degradation Trends in the Niger River Basin, 23 Apr. 2004, at 2, *available at* http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/05/04/000160016_20040504115754/Rendered/PDF/266750NR.pdf.

assets and assumed all of the obligations of the Niger River Commission.[778] The NBA enjoys legal personality, with the legal capacity to contract, acquire, enjoy and dispose of movable and immovable property, and the right to institute legal proceedings. The NBA exercises its legal authority through the Executive Secretary, who, along with NBA functionaries, is accorded certain privileges and immunities in the Member States.[779]

5. Functions

As provided in the Convention, the NBA's purpose is to promote cooperation among the Member States and to ensure an integrated development of the Niger Basin in the fields of energy, water resources, agriculture, animal husbandry, fishing and fisheries, forestry, transport, communications and industry. More specifically, the Convention provides that the NBA is responsible for harmonizing and coordinating national development policies; assisting in the development of an integrated development plan for the Basin; promoting projects of common interest; assuring the regulation of navigation consistent with the 1963 Act; and requesting assistance and mobilizing financing for studies and research on Basin resources. The NBA is also tasked with maintaining contact with the Member States and keeping them informed of its work. Reciprocally, Member States have pledged to inform the Executive Secretary of the NBA of projects they propose to carry out in the Basin.[780]

In the past, the NBA has implemented its objectives and responsibilities through the Development Fund of the Niger Basin, which was established by the Protocol accompanying the 1980 Convention. All NBA Member States are also members of the Fund, which is tasked with collecting the necessary financial resources to implement NBA objectives and to guarantee loans for NBA projects. Resources are derived, *inter alia*, from Member State contributions, external sources and income from the Development Fund's operations.[781]

In 2002, the Member States tasked the Executive Secretary of the NBA with developing a "Shared Vision" process and Sustainable Development Action Program ("SDAP") for the development of the Basin, principles of which have since become enshrined in the Paris Declaration and a "NBA Partners Cooperation Framework" starting in 2004.[782]

In 2008, at the Eight Heads of State and Government Summit, West African Heads of State of the Niger Basin riparian countries adopted a twenty year, 5.5 billion euro program to reforest, rehabilitate and

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[778] Convention, art. 1.

[779] Convention, arts. 15, 16.

[780] Convention, arts. 3-4.

[781] Protocol, arts. 1-3.

[782] ABN – Paris Declaration, *available at* http://www.abn.ne/index.php/eng/Media/Files/Meetings/Head-of-states-summit-2008/04-2004/Paris-Declaration (last visited 19 Jan. 2011); ABN – Cooperation Framework, *available at* http://www.abn.ne/index.php/eng/Partners/Cooperation-Framework (mainly in French); Peter Pieck, *West Africa Sets an Example* ("Pieck, *West Africa Sets an Example*"), Development and Cooperation, 2009, *available at* www.inwent.org/ez/articles/152306/index.en.shtml; Inger Andersen, et al., *The Niger River Basin: A Vision for Sustainable Management*, World Bank, Directions in Development 34518 (Katherin George Golitzen, ed. 2005), at 10, 61-63, *available at* http://siteresources.worldbank.org/INTWAT/Resources/4602114-1206643460526/ Niger_River_Basin_ Vision_ Sustainable_Management.pdf.

remove silt from the Niger River. Some eighty percent of the funding is to be earmarked for developing social and economic infrastructure, with a smaller amount to protect natural resources and ecosystems. The plan is to be implemented in four five-year phases. The 2008 Summit also resulted in the adoption of a "Water Charter" designed to ensure that NBA Member States share the river's resources fairly and responsibly.[783] The Charter lays out a series of general principles for equitable and reasonable participation and use of Niger River water. The Water Charter obligates parties: i) not to cause harm to other states in accordance with the Convention; ii) to take certain precautionary, preventive and corrective measures; iii) to take into account a polluter-payer principle, such that costs of pollution are borne by the polluters (whether legal persons or individuals); and iv) to take into account an off-taker-pays principle to include the setting of water tariffs depending on use.[784]

The Water Charter also contains several general obligations, including for parties to manage the Niger Basin water to preserve the quality and quality of water resources, to preserve and protect the environment, and to institute policing measures. Member States must exchange information and consult each other on planned measures, and notify other states in the event measures may have "significant adverse effects" on other Basin States.[785]

6. Organizational Structure

The NBA is divided into several permanent institutions or organs, including the Summit of Heads of State and Government (the "Summit"), the Council of Ministers (the "Council"), the Technical Committee of Experts and the Executive Secretariat.[786]

The Summit is the supreme decision-making organ, comprised of the Heads of State of the Member States or their duly accredited representatives. The Summit's decisions are binding on the NBA. The Summit defines the NBA's development policy and ensures control of its executive functions with a view to realizing its objectives. It meets once every two years in ordinary session in the Member State holding the chairmanship, with a simple majority quorum. The Summit elects its chairman every two years, rotating among its Member States. The chairman represents the Summit between sessions and may make decisions on its behalf.[787]

The Council is the controlling organ of the NBA, comprised of Ministers or their representatives, with one vote on the Council for each Member State. The Council monitors the activities of the Executive Secretariat and reports to, as well as prepares the meetings of, the Summit. The Council meets once a year in ordinary session, also with a simple majority quorum. Recommendations and resolutions are adopted by consensus. Council chairmen, elected every two years on a rotating basis, are empowered to

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[783] Niger Basin Authority Announces 42 Projects in Cameroon, 18 Aug. 2009, *available at* http://allafrica.com/stories/200908180274.html.

[784] Water Charter, arts. 4-9.

[785] Water Charter, arts. 10-13, 19-20. .

[786] Convention, art. 5.

[787] Convention, art. 6.

make decisions in between sessions according to the directives of the Summit, within the limits of their authority.[788]

The Technical Committee of Experts is comprised of representatives of the Member States and is tasked with preparing Council sessions and presenting reports and recommendations to the Council. The Technical Committee of Experts may meet as requested by the Executive Secretary, according to a schedule approved by the Council.[789]

The Executive Secretariat, in turn, is run by an Executive Secretary appointed on the recommendation of the Council to the Summit for a four-year term, renewable once. Each Member State may present a candidate for Executive Secretary. The Executive Secretary may be removed by the Summit on the recommendation of the Council. The Executive Secretary is responsible for day-to-day administration and also undertakes studies and formulates proposals with a view to realizing the NBA's objectives.[790]

The Convention also provides for a Commission and Financial Controller relating to the Executive Secretariat's finances.[791] The functions of the Commission and Financial Controller, as well as auditors and additional provisions concerning the Secretariat's budget, are detailed in the Financial Rules established by the Council.[792]

In addition, the Water Charter created a Permanent Technical Committee to pursue and implement the Water Charter's aims. As an advisory body of the NBA Executive Secretariat, the Permanent Technical Committee is designed to be in charge of, among other things: ensuring rational and equitable use of the Basin's water as agreed by the Member States; developing information tools to enable the organization of project/program consultations; issuing advisory opinions for the Council on projects or programs affecting the Niger Basin; giving opinions on the technical aspects of projects and their consistency with the SDAP and the Water Charter; and facilitating dialogue, consultation, negotiation and mediation in the event of controversies or disputes.[793]

The Water Charter envisions the creation of several other entities that will support the mission of the Permanent Technical Committee, including the Niger Basin Observatory, National Focal Structures, Sub-basin Commissions, a Regional Advisory Unit and a Panel of Experts.[794]

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[788] Convention, art. 7.

[789] Convention, art. 8.

[790] Convention, art. 9.

[791] Convention, art. 13.

[792] Convention, art. 12 (obligating the Council to establish the Financial Regulation); *see* Revised NBA Financial Rules.

[793] Water Charter, arts. 16-17.

[794] Water Convention, art. 18.

7. Relationships

The NBA has secured a number of external partners and donors. The Bank of African Development has become a major NBA partner, providing 37 million euros to finance the NBA's plans in connection with silt removal. In 2007, the Islamic Development Bank approved funding for NBA's plans to build two dams, one in Niger and another in Mali.[795]

Other NBA donors and partners include the World Bank, the European Union, Germany's Development Ministry (which funds NBA capacity-building in particular), Canada and France.[796] In 2003, the NBA partnered with the World Bank, the United Nations Development Programme and the Global Environment Facility ("GEF") to fund a project to reverse land and water degradation trends in the Niger River Basin. This joint project, set to be completed in 2009, involves several components, including institution and capacity building, data and knowledge management, regional fora, demonstration pilots and microgrant programs, and the preparation of a transboundary diagnostic analysis and strategic action plan.[797] The NBA also signed, in 2002, a Memorandum of Cooperation with the Bureau of the Convention on Wetlands (Ramsar) concerning joint efforts on the sustainable use and management of basin wetlands.[798]

8. Decision Making

Recommendations and resolutions of the Council are adopted by consensus. *See* **Organizational Structure**.

9. Dispute Resolution

The Convention provides that any dispute among the Member States as to the interpretation or implementation of the Convention is to be settled amicably through direct negotiation. If such negotiations fail to settle the dispute, the matter will be referred to the Summit, whose decision is final.[799]

The Water Charter provides for amicable settlement with respect to a dispute between two or several parties concerning the interpretation or application of the Water Charter, and submission to the Permanent Technical Committee should such efforts fail. The Permanent Technical Committee will then propose a settlement to the Council and the Summit. If no satisfactory settlement at that level is achieved, the dispute may be referred to the Conciliation Commission of the African Union, prior to referral to the

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[795] AFP, West Africa adopts plan to save the Niger River, 30 Apr. 2008, *available at* http://afp.google.com/article/ALeqM5i99u4s9cGajrDim63UL4ENJ9j_Dg.

[796] Pieck, *West Africa Sets an Example*.

[797] IW: Learn – Reversing Land and Water Degradation Trends in the Niger River Basin, *available at* http://www.iwlearn.net/iw-projects/Fsp_112799468181 (last viewed on 18 Jan. 2011).

[798] *See* Memorandum of Cooperation between The Bureau of the Convention on Wetlands (Ramsar, 1971) and The Niger Basin Authority, 23 Nov. 2002, *available at* http://www.ramsar.org/cda/en/ramsar-documents-mous-memorandum-of-21478/main/ramsar/1-31-115%5E21478_4000_0__.

[799] Convention, art. 20.

International Court of Justice. The Water Charter explicitly states that non-disputed provisions continue to apply while a dispute is being settled.[800]

10. Data Information Sharing, Exchange, and Harmonization

The Convention charges the NBA with harmonizing and coordinating national policies to develop the resources of the Niger Basin, and requires it to maintain permanent contact with the Member States to inform them of development plans in the Basin. In turn, the Member States undertake to inform the Executive Secretary of proposed projects in the Basin and agree not to undertake projects on portions of the Niger River in their jurisdiction that are likely to pollute the waters or adversely affect the biological characteristics of the flora or fauna.[801]

Outside the Convention framework, the NBA has established "national focal structures," or teams in each country, including a point of contact and various experts, to liaise and ensure proper communication between the Executive Secretariat and national governments.[802]

Projects such as the one funded by World Bank and GEF also involve data sharing and regional cooperation. *See* **Functions, Organizational Structure** and **Relationships**.

The Water Charter provides for the exchange of information and obligates parties to consult and negotiate (if necessary) on the possible effects of planned measures. Member States are obligated to notify other Basin States (through the Executive Secretariat) prior to implementing measures that may have "significant adverse effects" on such states. The Executive Secretariat then refers the notification to the Permanent Technical Committee for an opinion. Notifying States must allow the Executive Secretariat a three month period to review and evaluate the planned measures (such period may be extended), and during this period must provide requested data and information and refrain from implementing the planned measures. In the event a Notified State or the Executive Secretariat considers that the proposed measures are likely to have a significant harmful impact, the parties are to enter into consultations and negotiations.[803]

11. Notifications

See **Data Information Sharing, Exchange, and Harmonization.**

12. Funding and Financing

The Convention establishes an annual budget for the NBA, with the operating budget being financed by equal contributions from each Member State. The NBA's expenses, including those of the Executive Secretariat, are approved by the Council and provided for in the budget according to the modalities established in the Financial Rules.[804]

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[800] Water Charter, arts. 29-32.

[801] Convention, art. 4.

[802] Pieck, *West Africa Sets an Example*.

[803] Water Charter, arts. 19-20, 22.

[804] Convention, art. 10.

According to the Protocol, the Development Fund has been funded by Member State contributions, external resources, gifts and grants, trusts and income from the Development Fund's operations.[805] Components of the NBA's recent Shared Vision and its twenty-year development plan for the Basin are funded by a variety of international partners and foreign governments. *See* **Relationships** and **Functions**.

13. Benefit Sharing

Among the purposes of the Water Charter is to "provide a framework to the principles and procedures for the allocation of water resources between various use sectors and the associated benefits."[806] Additionally, the Water Charter provides for the right of Basin populations to water,[807] and calls for the just and equitable use of water – with particular attention paid to "essential human needs."[808]

The Water Charter also establishes new provisions for the recognition of "common facilities" and "facilities of common interest."[809] "Common facilities" are defined in the Water Charter as facilities that NBA Member States have decided by legal instrument to be of common and indivisible ownership. "Facilities of common interest" are facilities in which two or more NBA Member States have an interest and have decided, by mutual agreement of NBA Member States, to coordinate management.[810] With respect to such facilities, the Water Charter envisions future agreements to determine their status, as well as conditions for funding, management and the sharing of benefits.[811]

14. Compliance and Monitoring

The NBA institutional organs are responsible in reporting to their superior organs and making recommendations. *See* **Organizational Structure**.

15. Participation and the Role of Multiple Stakeholders

The NBA structure allows for participation at various levels from representatives from the Member States. Additionally, the NBA has recently supported the formation of "national coordinating bodies," comprised of representatives of civil society, including farmer unions, fishermen and women's groups. These coordinating bodies are invited to attend all important NBA meetings as advisers.[812] *See* **Organizational Structure**.

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[805] Protocol, art. 3.

[806] Water Charter, art. 2.

[807] Water Charter, art. 4. Art. 1(11) of the Charter also defines the "right to water" as the "fundamental right to a sufficient and physically accessible supply at an affordable cost of safe water of a quality that is acceptable for personal and domestic use by everyone."

[808] Water Charter, arts. 14-15.

[809] Water Charter, art. 27.

[810] Water Charter, art. 1(21)-(22).

[811] Water Charter, art. 28.

[812] Pieck, *West Africa Sets an Example*.

Additionally, projects, such as the one funded by the World Bank and GEF, also involve participation by multiple stakeholders at the local, national and regional levels. *See* **Relationships**.

The Water Charter includes provisions requiring parties to ensure that users of the resource have the right to information on water quality and to participate in the development of the Basin. More specifically, the Water Charter provides for the public communication of information on decision-making and for reasonable time to allow for public participation, and requires Member States and the NBA to take public participation into account in any decision-making.[813]

16. Dissolution and Termination

There is no termination provision in the Convention. The Convention may be amended or revised on the proposal of any Member State, which is then referred to the Council Chair and considered by the other Members. Any revision or amendment enters into force in the same manner as the Convention itself. Any Member State may denounce the Convention before ten years have expired from the date of its entry into force.[814]

The Niamey Agreement may be amended upon the written request of one third of the Member States, with any proposal requiring the approval of two thirds of all the Member States.[815]

There is no termination provision in the Water Charter either. Member States may withdraw five years after entry into force of the Water Charter on written notification to take effect one year after the date of its receipt. Member States may also propose amendments to the Water Charter and, although consensus is preferred, amendments may take effect in the same manner as entry into force of the Water Charter – i.e., sixty days after the ratification by two thirds of the NBA Member States.[816]

17. Additional Remarks

Portions of the Niamey Agreement not replaced by the Convention provide for freedom of navigation. Specifically, the Niamey Agreement established non-discriminatory treatment in the payment of taxes or duties, and provided that infrastructure for traversing non-navigable portions of the Niger River or improving sections of waterways, as integral parts of the Niger River, should be open to international traffic, with equal treatment for nationals of all states regarding tolls. The Niger River Commission was also tasked with ensuring the safety and control of navigation and facilitating the movement of vessels.[817]

18. Websites and References

- Niger Basin Authority, *available at* www.abn.ne.

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[813] Water Charter, arts. 25-26.

[814] Convention, arts. 17, 18.

[815] Niamey Agreement, art. 18.

[816] Water Charter, arts. 33, 34, 35.

[817] Niamey Agreement, art. 13-15.

- International Environmental Agreements (IEA) Database Project – Niger Basin, *available at* http://iea.uoregon.edu/page.php?query=treaties_lineage&lineage=Niger%20Basin.

- Peter Pieck, *West Africa Sets an Example*, Development and Cooperation, 2009, *available at* www.inwent.org/ez/articles/152306/index.en.shtml.

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- Jonathan Lautze and Mark Giordano, *Transboundary Water Law in Africa: Development, Nature, and Geography*, 45 NAT. RESOURCES J. 1053 (2005).

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Nile River Basin Initiative

1. Legal Basis

i) Historical Treaties and Agreements

A series of colonial-era agreements affect use of the Nile River.[818] Two commonly cited agreements in terms of water allocation and the purported rights of riparians include a 1929 Exchange of Notes between His Majesty's Government in the United Kingdom and the Egyptian Government in Regard to the Use of the Waters of the River Nile for Irrigation Purposes,[819] and the 1959 Agreement between the Republic of Sudan and the United Arab Republic (of Egypt) for the Full Utilization of the Nile Waters.[820]

Following Sudan's independence from British and Egyptian rule in 1956, Sudan urged renegotiation of the terms of the 1929 Agreement. The 1959 Agreement governs the control of certain projects concerning the Nile, as well as water allocation between Sudan and Egypt. The allocation of BCM (billion cubic meters – a measurement unit for water allocation) was changed to 55.5 annually for Egypt and 18.5 annually for Sudan. Other riparian countries were still not allocated BCM. The 1959 Agreement also commits Egypt and Sudan to adopt a "united view" on the claims of upstream riparian states. The current status of these agreements is disputed among the Nile riparian states.[821]

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[818] *See, e.g.*, Christina M. Carroll, *Past and Future Legal Framework of the Nile River Basin*, 12 GEO. INT'L ENVTL. L. REV. 269 (1999) (citing, in addition to the 1929 and 1959 Agreements noted above, the 1891 Protocols between the Governments of Great Britain and Italy, a 1902 treaty between the Sudan, Ethiopia and Eritrea, a 1906 Agreement between Great Britain and His Majesty King Leopold II (Congo), a 1925 Exchange of Notes between Italy and the United Kingdom, a 1949 Exchange of Notes between Egypt and the United Kingdom concerning the Owen Falls Dam, the 1950 Exchange of Notes between Egypt and the United Kingdom Regarding Cooperation in Meteorological and Hydrological Surveys in Certain Areas of the Nile Basin, a 1953 Exchange of Notes between Egypt and the United Kingdom on the Owen Falls Dam, the 1967 Hydromet Agreement, and a 1977 Agreement between Burundi, Rwanda and Tanzania on the Creation of an Organization for the Management and Development of the Kagera Basin.) There is also a 1993 Framework for General Cooperation between the Arab Republic of Egypt and Ethiopia, which commits the parties to refrain from any activity causing the other party "appreciable harm" to its Nile interests. A list of Nile River Basin treaties, agreements and instruments is available at the Transboundary Freshwater Dispute Database. *See* Transboundary Freshwater Dispute Database, *available at* http://ocid.nacse.org/tfdd/treaties.php (last viewed on 3 Dec. 2010).

[819] Exchange of Notes Regarding the Use of the Waters of the Nile for Irrigation, Egypt-United Kingdom ("1929 Agreement"), 7 May 1929, *available at* http://ocid.nacse.org/tfdd/tfdddocs/92ENG.pdf. The 1929 Agreement was based on findings of the 1925 Nile Commission, which studied irrigation and other projects regarding Nile use by Sudan. The 1929 Agreement allocated 48 billion cubic meters ("BCM") of water annually to Egypt and 4 BCM annually to Sudan, while disregarding any other riparian countries. *See* Agreement Between the Republic of Sudan and the United Arab Republic for the Full Utilization of the Nile Waters ("1959 Agreement"), art. 1(1), 8 Nov. 1959, *available at* http://ocid.nacse.org/tfdd/tfdddocs/230ENG.pdf.

[820] 1959 Agreement.

[821] *See, e.g.*, Carroll, *Past and Future Legal Framework of the Nile River Basin*, at 278-279; Arthur Okoth-Owiro, *The Nile Treaty: State Succession and International Treaty Commitments: A Case Study of the Nile Water Treaties*, 13-21 (Konrad Adenauer Stiftung Law and Policy Research Foundation, 2004), *available at* http://www.kas.de/wf/doc/kas_6306-544-1-30.pdf.

ii) Nile Basin Initiative

The main focus of current efforts centers around the Nile Basin Initiative ("NBI"), although other informal cooperation among riparian countries of the Nile River Basin existed earlier.[822] The NBI was launched in February 1999 by the water ministers of the countries that share the river—Egypt, Sudan, Ethiopia, Uganda, Kenya, Tanzania, Burundi, Rwanda, the Democratic Republic of Congo, and Eritrea (which participates as an "observer"). The NBI "seeks to develop the river in a cooperative manner, share substantial socioeconomic benefits, and promote regional peace and security" and to "provide[] an institutional mechanism, a shared vision, and a set of agreed policy guidelines to provide a basinwide framework for cooperative action."[823]

In November 2008, the NBI Member States signed the non-binding Khartoum Declaration, which declared the support of the NBI Member States for the "clear environment functions of the future permanent Nile River Basin Organization that include," among other things: harmonization of environment management policies; data and information exchange; environmental impact assessment; policy, institutional, and legal analysis; and a coordinating role in climate change issues.[824] A goal of the NBI has been to establish a "cooperative framework agreement" ("CFA") to replace earlier bilateral treaties and to "formalize the transformation of the Nile Basin Initiative into a permanent Nile River Basin Commission."[825] In April 2010, seven of the Nile Basin states agreed to open the CFA for signature. Egypt and Sudan rejected this proposition, suggesting instead that all of the riparian countries issue a "presidential declaration to launch the River Nile Basin Commission as negotiations [on the CFA] continue."[826] Despite these disagreements, the Agreement on the Nile River Basin Cooperative

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[822] For example, in 1992, the Council of Ministers of Water Affairs of the Nile Basin States ("NILE-COM") began an initiative for cooperation involving six of the riparian countries, who formed the Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile Basin ("TECCONILE"). This initiative developed the Nile River Basin Action Plan in 1995 and implemented the program with United Nations Development Programme ("UNDP") funding. Several reviews of the Action Plan were undertaken, resulting in the establishment of a Technical Advisory Committee ("NILE-TAC") to recommend appropriate action. In turn, the NILE-TAC developed a Shared Vision Program ("SVP") and proposed the Nile Basin Initiative Policy Guidelines to establish the NBI. *See* Nile Basin Initiative — Background: Key Milestones, *available at* http://www.nilebasin.org/index.php?option=com_content&task=view&id=13&Itemid=42 (last viewed on 3 Dec. 2010).

[823] Nile Basin Initiative — Background.

[824] *Khartoum Declaration*, 17-19 Nov. 2008, SUDAN VISION DAILY (Alula Berhe Kidani, ed.), *available at* http://www.sudanvisiondaily.com/modules.php?name=News&file=print&sid=41005.

[825] Agreement on the Nile River Basin Cooperative Framework Opened for Signature, 14 May 2010, *available at* http://www.nilebasin.org/index.php?option=com_content&task=view&id=165&Itemid=102.

[826] Ministers of Water Affairs End Extraordinary Meeting over the Cooperative Framework Agreement, 14 Apr. 2010, *available at* http://www.nilebasin.org/index.php?option=com_content&task=view&id=161&Itemid=70. *See also* Patricia Kameri-Mbote, *From Conflict to Cooperation in the Management of Transboundary Waters: The Nile Experience*, *in* LINKING ENVIRONMENT AND SECURITY – CONFLICT PREVENTION AND PEACE MAKING IN EAST AND HORN OF AFRICA, 6, *available at* http://www.ielrc.org/content/a0509.pdf (The Heinrich Böll Foundation North America 2005) ("the current sticking point [of the framework agreement] is Principle 15, which states that all existing agreements which are inconsistent with the framework … will be null and void. Egyptian and Sudanese members of the panel of experts have proposed that the principle instead states that the Framework shall be without prejudice to existing agreements.").

Framework was officially opened for signature on 14 May 2010. Ethiopia, Rwanda, Tanzania and Uganda signed the CFA immediately; it will remain open for signature by other states until 13 May 2011.[827]

2. Member States

The NBI Member States are: Burundi, the Democratic Republic of Congo, Egypt, Ethiopia, Kenya, Rwanda, Sudan, Tanzania, and Uganda. Eritrea, the tenth riparian country of the Nile River Basin, currently participates as an observer, but has expressed an interest in joining the NBI.[828]

3. Geographical Scope

The Nile River Basin encompasses ten countries, extending from its origination at Lake Victoria to where it empties into the Mediterranean Sea. The basin area covers about 3.3 million square kilometers.[829] The countries it passes through are Ethiopia, Sudan, Egypt, Rwanda, Tanzania, Uganda, Burundi, the Democratic Republic of the Congo, Eritrea, and Kenya.

4. Legal Personality

In August 2002, the Council of Ministers of Water Affairs of the Nile Basin Countries ("Nile-COM") agreed, in Agreed Minute No. 7, to "invest the NBI, on a transitional basis, with legal personality to perform all of the functions entrusted to it, including the power to sue and be sued, and to acquire or dispose of movable and immovable property."[830]

The Agreed Minute determined that NBI "shall enjoy in the territory of each Nile Basin State the legal personality referred to above and such privileges and immunities as are necessary for the fulfill[ment] of its functions." The Executive Director of the Nile Basin Secretariat ("Nile-SEC") and the staff and officials of the NBI "shall enjoy in the territory of each Nile Basin State such privileges and immunities as are necessary for the fulfillment of their functions."[831]

NBI signed a headquarters agreement with Uganda in 2002, and the Nile-SEC is located in Entebbe, Uganda. In October, 2002, the Uganda legislature passed the Nile Basin Initiative Act to "confer legal status in Uganda on the Nile Basin Initiative, and otherwise give the force of law in Uganda to the signed Agreed Minute No. 7 … and to provide for other connected or incidental matters."[832]

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[827] *See* Agreement on the Nile River Basin Cooperative Framework opened for signature, 14 May 2010, *available at* http://www.nilebasin.org/index.php?option=com_content&task=view&id=165&Itemid=1.

[828] Stefano Burchi and Melvin Spreij, *Institutions for International Freshwater Management* ("Burchi and Spreij Report"), FAO LEGAL OFFICE, 2003, at 10, *available at* http://webworld.unesco.org/water/wwap/pccp/cd/pdf/legal_tools/institutions_for_int_freshwater_management_2.pdf. As of June 2010, no information indicating that Eritrea's observer status has changed is available.

[829] *See* Watersheds of the World 2005, *available at* http://earthtrends.wri.org/pdf_library/data_tables/wat3_2005.pdf.

[830] The Nile Basin Initiative Act, 2002, *available at* http://faolex.fao.org/docs/pdf/uga80648.pdf.

[831] The Nile Basin Initiative Act, sec. 6.

[832] The Nile Basin Initiative Act.

In Uganda, the NBI has the capacity of "a body corporate with perpetual succession, and with power to acquire, hold, manage and dispose of movable and immovable corporate property, and to sue and be sued in its own name." The NBI also has the capacity in Uganda to "perform any of the functions conferred upon it by and under the Agreed Minute No. 7, and to do all things, including borrowing, that are, in the opinion of the Nile Basin States or the appropriate organ of the NBI, necessary or desirable for the performance of those functions."[833] Additionally, NBI staff and officials are granted, in Uganda, "such privileges and immunities as are necessary for their functions," in accordance with the provisions of Uganda's Diplomatic Privileges Act of 1965.[834]

5. Functions

According to NBI, its primary objectives are to develop the Nile Basin water resources in a sustainable and equitable way to ensure prosperity, security, and peace for all its peoples; to ensure efficient water management and optimal use of the resources; to ensure cooperation and joint action between the riparian countries; to seek win-win gains; to target poverty eradication and promote economic integration; and to ensure that the program results in a move from planning to action.[835]

The Strategic Action Program is intended to achieve these objectives by translating "this shared vision into concrete activities through a two-fold, complementary approach," namely the Shared Vision Program ("SVP") and investment in sub-basin activities such as the Eastern Nile ("ENSAP") and Nile Equatorial Lakes ("NELSAP") programs.[836] There are a variety of currently implemented projects under these umbrella programs.

According to the World Bank, the SVP is a basin-wide program that "focuses on building institutions, sharing data and information, providing training and creating avenues for dialogue and region-wide networks needed for joint problem-solving, collaborative development, and developing multi-sector and multi-country programs of investment to develop water resources in a sustainable way."[837] The Nile-SEC coordinates the SVP projects, which are hosted in several NBI Member States. There have been eight SVP projects:

- Applied Training Project: The project focused on strengthening individual capacity, as well as the institutional capacity of the Nile Basin States, in regards to the integrated management of water resources. For example, the project provided short courses for practitioners with the goal of enhancing their knowledge and skills and hosted a forum (the Nile Net) aimed at fostering cooperating and the exchange of knowledge among professionals across the Nile River Basin.[838]

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[833] The Nile Basin Initiative Act, sec. 3.

[834] The Nile Basin Initiative Act, sec. 5.

[835] Nile Basin Initiative – Background: Objectives.

[836] Nile Basin Initiative – Background: Objectives.

[837] World Bank—NBI's Programs, *available at* http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EXTREGINI/EXTAFRNILEBASINI/0,,contentMDK:21212081~menuPK:3426445~pagePK:64168445~piPK:64168309~theSitePK:2959951,00.html (last viewed on 9 Dec. 2010).

[838] *See* Nile Basin Initiative: Applied Training Project – About ATP, *available at* http://atp.nilebasin.org/index.php?option=com_content&task=view&id=13&Itemid=1 (last viewed on 9 Dec. 2010).

- Confidence-Building and Stakeholder Involvement Project: The project aimed to encourage participation in the NBI by a wide variety of stakeholders, to promote examples that showcased the benefits of regional cooperation, and to provide regional activities intended to foster cross-border cooperation. The four main components of the project were: regional, sub-regional and national implementation; public information; stakeholder involvement; and confidence building.[839]

- Regional Power Trade Project: The project's objectives are, *inter alia*, to facilitate the development of regional power markets, with a focus on technical assistance and the development of infrastructure, and to help alleviate poverty in the region by facilitating access, in an environmentally sustainable way, to more reliable and low cost power in the Nile Basin.[840]

- Socioeconomic and Benefits Sharing Project: The project concentrated on developing a network across the Nile River Basin consisting of economic planning and research institutions, public and private sector technical experts, sociologists, academics, civic groups, and non-governmental organizations, with the aim of investigating alternative development plans and benefit-sharing ideas.[841]

- Transboundary Environmental Action Project: The largest project, it focused on, *inter alia*: strengthening regional cooperation in regards to environmental and water management; increasing basin-wide community action and networks; fostering appreciation of river hydrology; increasing the available information concerning land and water resources that are available to professionals and non-governmental organizations in the Nile Basin States; strengthening capacity in order to combat transboundary water quality threats; and promoting awareness of transboundary water quality threats and the linkages between other policies and the environment. The project had five components, including institutional strengthening, community-level conservation, environmental education, water quality monitoring, and wetlands and biodiversity.[842]

- Efficient Water Use for Agriculture Project: The project's objective was to develop a forum for stakeholders, at the regional, national and community levels, concerning the efficient use of water for agricultural production in the Nile Basin, with the aim of fostering regional dialogue,

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[839] *See* Nile Basin Initiative – Confidence Building and Stakeholders Involvement, *available at* http://cbsi.nilebasin.org/index.php?option=com_content&task=view&id=13&Itemid=37 (last viewed on 9 Dec. 2010).

[840] *See* Nile Basin Initiative: Regional Power Trade Project – Project Objectives, *available at* http://rpt.nilebasin.org/index.php?option=com_content&task=view&id=18&Itemid=99 (last viewed on 9 Dec. 2010).

[841] *See* Nile Basin Initiative: Socio-Economic and Benefits Sharing Project, *available at* http://sdbs.nilebasin.org/index.php?option=com_content&task=view&id=16&Itemid=39 (last viewed on 9 Dec. 2010).

[842] *See* Nile Basin Initiative: Transboundary Environmental Action Project – NTEAP Aims to, *available at* http://nteap.nilebasin.org/index.php?option=com_content&task=view&id=50&Itemid=72 (last viewed on 9 Dec. 2010); Nile Basin Initiative: Transboundary Environmental Action Project – Project Components, *available at* http://nteap.nilebasin.org/index.php?option=com_content&task=section&id=4&Itemid=26 (last viewed on 9 Dec. 2010).

disseminating best practices and strengthening national capacity through the development of irrigation policy.[843]

- Water Resources Management Project: The project aims to support the development, management and protection of the Nile Basin water resources, as well as to promote the socioeconomic development in the Nile Basin. The project is focused on improving national water policies through the use of good practices and integrated water resources management, enacting cross-border projects, and developing a Nile Basin Decision Support System to exchange information, support dialogue and identify investment projects.[844]

- Shared Vision Coordination Project: This project, which was established at the Nile-SEC, was responsible for overseeing the implementation of the other seven projects. The project was also charged with developing procedures concerning quality control and fiduciary duties, performing monitoring and evaluation of the projects, and promoting information sharing among both the NBI and the public. Overall objectives of the project include enhancing NBI's capacity to conduct basin-wide programs and providing effective oversight and coordination.[845]

All of the SVP projects, except the Regional Power Trade Project and the Water Resources Management Project, were completed by December 2009.[846]

The ENSAP and NELSAP programs support NBI cooperative investment projects. ENSAP includes Egypt, Ethiopia and Sudan, while NELSAP includes Burundi, the Democratic Republic of Congo, Kenya, Rwanda, Tanzania and Uganda, as well as Egypt and Sudan.[847]

ENSAP is led by the Eastern Nile Council of Ministers ("ENCOM"), comprised of the Water Ministers in the three Eastern Nile countries, and an ENSAP Team ("ENSAPT") formed of three technical country teams. ENSAP's objective is to achieve joint action on the ground in order to promote poverty alleviation, economic growth and reversal of environmental degradation. ENCOM established the Eastern Nile Technical Regional Office ("ENTRO") in 2001. ENTRO, based in Addis Ababa, Ethiopia, manages and coordinates ENSAP projects.[848]

According to the NBI, NELSAP's objectives, as defined by the Nile Equatorial Lakes Council of Ministers, are also to "contribute to the eradication of poverty, promote economic growth, and reverse

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[843] *See* Nile Basin Initiative: Efficient Water Use For Agricultural Production, *available at* http://www.nilebasin.org/ewap/index.php?option=com_content&task=view&id=52%E2%8C%A9= (last viewed on 9 Dec. 2010).

[844] *See* Nile Basin Initiative: Water Resources Planning and Management Project – Project Overview, *available at* http://wrpmp.nilebasin.org/index.php?option=com_content&task=view&id=12&Itemid=50 (last viewed on 9 Dec. 2010).

[845] *See* Nile Basin Initiative – Shared Vision Coordination Project, *available at* http://svpcp.nilebasin.org/index.php?option=com_content&task=view&id=12&Itemid=29 (last viewed on 9 Dec. 2010).

[846] Email from Rose Sirali of the Nile Basin Initiative, 7 May 2010 (on file with White & Case LLP).

[847] World Bank—NBI's Programs.

[848] *See* Nile Basin Initiative – Investment Programs, *available at* http://www.nilebasin.org/index.php?option=com_content&task=view&id=75&Itemid=115 (last viewed on 9 Dec. 2010).

environmental degradation." The Nile Equatorial Lakes riparian states identified twelve NELSAP projects and, in 2001, established a Coordination Unit ("NEL-CU") in Entebbe, Uganda, subsequently relocated to Kigali, Rwanda, to facilitate project preparation and implementation.[849]

6. Organizational Structure

The Nile-COM is the highest decision-making body of, and provides policy guidance to, the NBI. The Chairpersonship of the Nile-COM rotates on an annual basis. The Technical Advisory Committee ("Nile-TAC"), established in 1998, renders technical advice and assistance to Nile-COM, and the Nile-SEC, established in 1999, renders administrative services to both Nile-COM and Nile-TAC. Nile-SEC's core functions are self-financed by the NBI Member States.[850]

7. Relationships

NBI programs are supported by international donors as participants in the International Consortium for Cooperation on the Nile. *See* **Funding and Financing**.

8. Decision Making

The Nile-COM is the highest decision-making body of the NBI. *See* **Organizational Structure**.

9. Dispute Resolution

No specific provision

10. Data Information Sharing, Exchange, and Harmonization

Numerous SVP projects involved data sharing – such as the projects on Transboundary Environmental Action, Efficient Water Use for Agriculture, and Water Resources Management. *See* **Functions**.

11. Notifications

No specific provision

12. Funding and Financing

The costs of Nile-COM, Nile-TAC, and Nile-SEC are financed by the Nile Basin Member States through annual dues. The Nile Basin Member States also provide counterpart funds for all NBI projects and contribute additional funds to the Nile-SEC. The financing of the local costs of SVP project management units is also borne by the host NBI Member State.[851]

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[849] *See* Nile Basin Initiative – Investment Programs.

[850] *See* Nile Basin Initiative – Operational Structure, *available at* http://www.nilebasin.org/index.php?option=com_content&task=view&id=30&Itemid=77 (last viewed on 9 Dec. 2010).

[851] *See* Nile Basin Initiative—How We Are Funded, *available at* http://www.nilebasin.org/index.php?option=com_content&task=view&id=43&Itemid=97 (last viewed on 9 Dec. 2010).

Nile-COM requested World Bank assistance to coordinate donor involvement, and in partnership with the United Nations Development Programme ("UNDP") and the Canadian International Development Agency ("CIDA"), established the International Consortium for Cooperation on the Nile ("ICCON"). ICCON held a Consultative Group meeting in 2001 where development partners committed approximately US $130 million to the NBI.[852]

In 2003, a World Bank managed, multi-donor trust fund was established. The majority of funds supporting NBI programs and projects are administered through this Nile Basin Trust Fund ("NBTF"). The NBTF is overseen by a Committee comprised of contributors to the fund, the NBI, and the World Bank. The NBTF Committee Rules of Procedure outline the operation and responsibilities of the Committee. Formal NBTF Committee meetings are held once a year in one of the Nile Basin Member States.[853]

According to the World Bank, the NBTF transfers funds to the NBI, which then carries out the implementation of project activities since almost all (95%) of the project activities are recipient-executed. The NBTF supports the implementation of the SVP, as well as sub-basin investment programs in the ENSAP and the NELSAP. As progress is made in program implementation and establishing a permanent institutional framework for the NBI, the goal is to transfer the NBTF to a NBI institution.[854]

Donors to the NBTF include: Canada, Denmark, the European Commission, Finland, France, the Netherlands, Norway, Sweden, the United Kingdom, and the World Bank. Other bilateral and multilateral NBI development partners include: the African Development Bank, Germany, the Global Environment Facility ("GEF"), Italy, Japan, Switzerland, the UNDP, and the United States.[855]

13. Benefit Sharing

See **Functions**, discussing the SVP Socioeconomic and Benefits Sharing Project, which was an initiative to explore development options for the Nile River Basin and to determine and evaluate benefit-sharing schemes.

14. Compliance and Monitoring

Responsibility for compliance and monitoring of NBI's SVP projects rests with the Nile-SEC under the banner of the Shared Vision Coordination Project. Oversight of the NBTF currently rests with the NBTF Committee through the World Bank. *See* **Funding and Financing**.

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[852] The World Bank – The World Bank and NBI, *available at* http://go.worldbank.org/C25RHXSYG0 (last viewed on 9 Dec. 2010).

[853] Nile Basin Initiative—How We Are Funded; The World Bank - Nile Basin Trust Fund, *available at* http://go.worldbank.org/V0QNBV7WP0 (last viewed on 9 Dec. 2010).

[854] The World Bank – Nile Basin Trust Fund; Nile Basin Initiative—How We Are Funded.

[855] The World Bank –Nile Basin Trust Fund.

15. Participation and the Role of Multiple Stakeholders

Some affiliate initiatives have been organized with the aim of involving non-governmental organizations and civil society in the work of the NBI, including the Nile Basin Discourse ("NBD"), which is funded by international partners.[856]

See also **Functions**, especially the SVP Confidence-Building and Stakeholder Involvement and Efficient Water Use for Agriculture Projects.

16. Dissolution and Termination

No specific provision

17. Additional Remarks

N/A

18. Websites and References

- Nile Basin Initiative, *available at* http://www.nilebasin.org.
- World Bank – Nile Basin Initiative, *available at* http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EXTREGINI/EXTAFRNILEBASINI/0,,menuPK:2960057~pagePK:64168427~piPK:64168435~theSitePK:2959951,00.html.
- International Waters Learning Exchange and Resource Network – Nile Basin Initiative, *available at* http://www.iwlearn.net/News/nile-basin-initiative.
- Nile Basin Discourse – Bibliography, *available at* http://www.nilebasindiscourse.net/biblio_EN.php.
- Arthur Okoth-Owiro, *The Nile Treaty: State Succession and International Treaty Commitments: A Case Study of the Nile Water Treaties* (Kinrad Adenauer Stuftung and Law and Policy Research Foundation, 2004), *available at* http://www.kas.de/wf/doc/kas_6306-544-1-30.pdf.
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- Jutta Brunnee and Stephen J. Toope, *The Changing Nile Basin Regime: Does Law Matter?*, 43 HARV. INT'L L. J. 105 (2002).

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[856] Kameri-Mbote, *From Conflict to Cooperation in the Management of Transboundary Waters: The Nile Experience*, at 7. *See also* Nile Basin Discourse, *available at* http://www.nilebasindiscourse.org/index_EN.php (last viewed on 9 Dec. 2010).

- Valerie Knobelsdorf, Note, *The Nile Waters Agreements: Imposition and Impacts of a Transboundary Legal System*, 44 COLUM. J. TRANSNAT'L L. 622 (2005).

Nubian Sandstone Aquifer System (NSAS)

1. Legal Basis

The primary documents that provide a framework for the Nubian Sandstone Aquifer System ("NSAS" or "Aquifer") are:

- Constitution of the Joint Authority for the Study and Development of the Nubian Sandstone Aquifer ("Joint Authority Agreement"), entered into in 1992;[857]
- Agreement #1: Terms of Reference for the Monitoring and Exchange of Groundwater Information of the Nubian Sandstone Aquifer System, entered into in October 2000;[858] and
- Agreement #2: Terms of Reference for Monitoring and Data Sharing, entered into in October 2000.[859]

2. Member States

The Member States of the Joint Authority are Egypt, Libya, Sudan (since 1996), and Chad (since 1999).[860]

3. Geographical Scope

The NSAS is one of the largest aquifers in the world and spans approximately 2 million square kilometers across Libya, Egypt, Chad and Sudan.[861]

4. Legal Personality

The Joint Authority Agreement created a Joint Authority for the Study and Development of the Nubian Sandstone Aquifer Waters ("Joint Authority"), with its headquarters located in Tripoli, Libya.[862] The Joint Authority Agreement, under Article 24, also provides that the Joint Authority shall have a corporate

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[857] 1992, Constitution of the Joint Authority for the Study And Development of the Nubian Sandstone Aquifer Waters ("Joint Authority Agreement") (English translation – original in Arabic), *contained in* UNDP-GEF, Medium-Sized Project Proposal, Formulation of an Action Programme for the Integrated Management of the Shared Nubian Aquifer ("GEF Project Proposal"), Annex 7, 2004, *available at* http://www-naweb.iaea.org/napc/ih/documents/Nubian/Nubian_final_MSP_ Sandstone.pdf.

[858] Agreement #1, Terms of Reference for the Monitoring and Exchange of Groundwater Information of the Nubian Sandstone Aquifer System ("Agreement #1"), 5 Oct. 2000, *available at* http://faolex. fao.org/docs/pdf/int39094E.pdf.

[859] Agreement #2, Terms of Reference for Monitoring and Data Sharing ("Agreement #2"), 5 Oct. 2000, *available at* http://faolex.fao.org/docs/pdf/int39095E.pdf.

[860] GEF Project Proposal, at 4.

[861] GEF Project Proposal, at 3.

[862] Joint Authority Agreement, arts. 1-2.

body with the relevant rights, and that internal administrative and financial regulations shall be created and issued by a Board of Directors.

5. Functions

Article 3 of the Joint Authority Agreement calls upon the Joint Authority to perform the following tasks:

- Collecting, classifying and analyzing information, data and study results gathered by the Member States;
- Preparing and executing studies in order to determine the quantity and quality of the water in the Aquifer;
- Developing and executing common policies and programs, both nationally and regionally, for the development and utilization of the groundwater;
- Pursuing a scientific basis for water management in the Aquifer;
- Establishing cooperation in the field of training and habitation activities concerning water resources;
- Undertaking to ration the consumption of the Aquifer waters in the Member States;
- Studying the environmental aspects of developing the Aquifer, desertification control, and renewable energy applications; and
- Disseminating information regarding the Aquifer and fostering relationships with relevant international and regional organizations.

A Regional Technical Review Committee, among other roles, monitors the status and reviews the utilization of the Aquifer, evaluates the progress and activities enacted on the regional and national levels, identifies capacity building needs, and works on data collecting and monitoring activities.[863]

The Joint Authority works through focal point institutions and national coordinators in each of the Member States, who are appointed by the relevant ministries in each country. The focal points are: the Research Institute for Groundwater (Egypt), the General Water Authority (Libya), the Non-Nile Waters Directorate (Sudan), and the Directorate de l'Hudraulique, le Ministère de l'Environement et de l'Eau (Chad). The heads of these institutions function as the national coordinators.[864]

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[863] Khaled M. Abu-Zeid, *Regional Management of the Nubian Sandstone Aquifer "Potential Arab Region & Latin America Cooperation on Large Aquifers,"* 2003, at 4-5, *available at* http://www2.mre.gov.br/aspa/semiarido/data/khaled_abu_zeid.htm.

[864] The relevant ministries are: Egypt's Ministry of Water Resources and Irrigation, Libya's Secretariat of Agriculture, Sudan's Ministry of Irrigation and Water Resources, and Chad's Directorate de l'Hudraulique, le Ministère de l'Environement et de l'Eau. *See* Abu-Zeid, *Regional Management of the Nubian Sandstone Aquifer*, at 5.

6. Organizational Structure

According to the Joint Authority Agreement, a Board of Directors, consisting of three directors from each Member State that appointed by the relevant ministries in the countries, manages the Joint Authority. The Chairmanship of the Board of Director rotates on an annual basis. The Chairman represents the Joint Authority in its relationships with third parties and before courts, and, upon the recommendations of the Board of Directors, can sign contracts on behalf of the Joint Authority. Meetings of the Board of Directors are held once every four months and may be held at other times at the request of a Member State. Attendance by two-thirds of the directors from each Member State form constitutes a quorum for purposes of holding a meeting. However, if the required quorum is not met at the first meeting, the second meeting will be valid if attended by any number of the directors. The Chairman of the Board of Directors is authorized to invite representatives of international organizations and donor states and institutions to attend the Board of Directors' meetings as observers.[865]

The Joint Authority has an administrative secretariat, as well as technical, administrative, legal, and other staff. The Board of Directors appoints an executive general manager for a renewable three-year period.[866]

In addition, a Regional Project Steering Committee was formed from the Joint Authority's directors to approve the work plan and budget and to review recommendations from the Regional Technical Review Committee. The Regional Project Steering Committee meets once a year, or as necessary. The Regional Technical Review Committee includes representatives from the NSAS Member States, the Center for Environment and Development for the Arab Region and Europe ("CEDARE"), the International Fund for Agriculture Development ("IFAD"), the Islamic Development Bank ("IDB"), the United Nations Educational, Scientific and Cultural Organization ("UNESCO"), the Arab Center for the Study of Arid Zones and Dry Lands ("ACSAD"), the Sahara and Sahel Observatory ("OSS"), and the Technical University of Berlin.[867]

7. Relationships

The Joint Authority and the secretariat cooperate with the International Atomic Energy Agency ("IAEA")/United Nations Development Program ("UNDP")/Global Environment Facility ("GEF") Nubian Project, which has the long term goal of establishing a rational and equitable management of the NSAS for sustainable socio-economic development and the protection of biodiversity and land resources. The Nubian Project's four main short-term objectives are to: (a) identify priority transboundary threats and their root causes; (b) fill key gaps in data, methodology, and capacity for strategic planning decisions by using appropriate technical approaches with a focus on isotope techniques and applications under the supervision of the IAEA; (c) prepare a Strategic Action Program ("SAP"); and (d) establish a framework to implement the SAP.[868]

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[865] Joint Authority Agreement, arts. 5-9, 11.

[866] Joint Authority Agreement, arts. 13-14.

[867] Abu-Zeid, *Regional Management of the Nubian Sandstone Aquifer*, at 4.

[868] IAEA: The Nubian Aquifer Project, Project Summary – Project Goals and Objectives, *available at* http://www-naweb.iaea.org/napc/ih/IHS_projects_nubian_summary_goals.html (last viewed 22 Nov. 2010); *see also* GEF Project Proposal, at 3.

CEDARE has also been very involved with the NSAS.[869]

8. Decision Making

Under Article 8 of the Joint Authority Agreement, the decisions of the Board of Directors are taken by majority vote. However, a two-thirds majority is required for consideration and approval of the budget, proposals for cooperation with regional and international organizations and donor states, and the establishment of new offices in the Member States.

9. Dispute Resolution

No specific provision

10. Data Information Sharing, Exchange, and Harmonization

Data is consolidated in the Nubian Aquifer Regional Information System ("NARIS")—which has the following functions: (a) stores and documents different data relating to the NSAS; (b) processes, analyzes and displays the data; (c) prepares input parameters for different models of the Aquifer and provides comparisons of the results; and (d) provides a link among the Member States to exchange information.[870]

Additionally, the Member States have agreed to share information on yearly extractions, representative electrical conductivity measures, and water level measurements.[871]

11. Notifications

No specific provision

12. Funding and Financing

In addition to donations from national and international institutions, organizations and donor states, each Member State is supposed to contribute funds to the budget of the Joint Authority. Member States are supposed to contribute on an equal basis to the budget and to observe a timely payment schedule.[872]

13. Benefit Sharing

No specific provision

14. Compliance and Monitoring

The Member States agreed to monitor and report key information regularly. *See* **Data Information Sharing, Exchange, and Harmonization**.

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[869] *See Regional Management of the Nubian Sandstone Aquifer*.

[870] Agreement #1.

[871] Agreement #2.

[872] Joint Authority Agreement, arts. 16-23.

15. Participation and the Role of Multiple Stakeholders

No specific provision

16. Dissolution and Termination

There is no specific provision for termination of the Joint Authority Agreement. However, the Board of Directors may amend items in the Joint Authority Agreement with the approval of two-thirds of the Board of Directors.[873]

17. Additional Remarks

N/A

18. Websites and References

- UNDP-GEF, Medium-Sized Project Proposal, Formulation of an Action Programme for the Integrated Management of the Shared Nubian Aquifer, 2004, *available at* http://www-naweb.iaea.org/napc/ih/documents/Nubian/Nubian_final_MSP_Sandstone.pdf.

- IAEA: The Nubian Aquifer Project, *available at* http://www-naweb.iaea.org/napc/ih/HIS_ projects_nubian.html.

- Khaled M. Abu-Zeid, *Regional Management of the Nubian Sandstone Aquifer "Potential Arab Region & Latin America Cooperation on Large Aquifers,"* 2003, *available at* http://www2.mre.gov.br/aspa/semiarido/data/ khaled_abu_zeid.htm.

- Stefano Burchi and Melvin Spreij, *Institutions for International Freshwater Management*, FAO Legal Office, 2003, *available at* http://unesdoc.unesco.org/images/0013/001324/132478e.pdf.

- GROUNDWATER IN INTERNATIONAL LAW: COMPILATION OF TREATIES AND OTHER LEGAL INSTRUMENTS (Stefano Burchi, Kerstin Mechlem eds. 2005, FAO/UNESCO), part II(1), *available at* http://www.fao.org/docrep/008/y5739e/y5739e00.htm.

[873] Joint Authority Agreement, art. 26.

North-Western Sahara Aquifer System (NWSAS)

1. Legal Basis

The North-Western Sahara Aquifer System ("NWSAS") Project is part of the United Nations Environment Programme ("UNEP") and is funded by the Global Environment Facility ("GEF"). It is administered by the Sahara and Sahel Observatory ("OSS")—an independent international organization based in Tunis, Tunisia that focuses on combating desertification and mitigating drought in Africa.[874]

The NWSAS plan was adopted at a meeting that took place from 8-10 September 1997 in Tunis, Tunisia.[875] In May 1999, the Member States and funding partners met in Rome, Italy and named the OSS as the Executive Agency in charge of the NWSAS Project.[876]

While no formal treaty has been signed, the Member States—Algeria, Tunisia, and Libya—reached an agreement in 2002 to establish a "Consultation Mechanism" for the NWSAS. This consensus was reached by the three Member States at a meeting at the Food and Agriculture Organization of the United Nations ("FAO") in Rome, Italy on 19-20 December 2002. The *procès verbal*—or minutes of the meeting—were endorsed by Algeria on 6 January 2003, Tunisia on 15 February 2003, and Libya on 23 February 2003; these approvals constituted an agreement to establish the Consultation Mechanism. The objective of the Consultation Mechanism is to "coordinate, promote and facilitate the rational management of the NWSAS water resources."[877]

2. Member States

The Member States are Algeria, Tunisia, and Libya.

3. Geographical Scope

The NWSAS covers over 1,000,000 square kilometers of which 700,000 are in Algeria, 80,000 in Tunisia, and 250,000 in Libya. It includes the two main aquifers in the region—the Intercalary Continental and the Terminal Complex.[878]

4. Legal Personality

No specific provision

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[874] *See* Sahara and Sahel Observatory, *available at* http://www.oss-online.org/ (last viewed on 4 Nov. 2010).

[875] NWSAS—The SASS Program, *available at* http://nwsas.iwlearn.org/publications/projectdocuments/Le%20 Programme%20SASS.pdf/view (last viewed on 4 Nov. 2010).

[876] NWSAS—Project Structure, *available at* http://nwsas.iwlearn.org/about/structure (last viewed on 4 Nov. 2010).

[877] *Establishment of a Consultation Mechanism for the Northwestern Sahara Aquifer System (SASS) [2002]* ("Consultation Mechanism"), *in* GROUNDWATER IN INTERNATIONAL LAW: COMPILATION OF TREATIES AND OTHER LEGAL INSTRUMENTS (Stefano Burchi, Kerstin Mechlem eds. 2005, FAO/UNESCO), part II(2), *available at* http://www.fao.org/docrep/008/ y5739e/y5739e00.htm.

[878] GEF Project Brief—Protection of the North West Sahara Aquifer System (NWSAS) and related humid zones and ecosystems ("GEF Project Brief"), at 1-2, *available at* http://www.iwlearn.net/iw-projects/Msp_112799492025/ project_doc/nw-sahara-aquifer-project-brief.pdf (last viewed on 4 Nov. 2010).

5. Functions

The functions of the NWSAS Project, according to the Consultation Mechanism, are: (a) to manage the hydrogeologic database and simulation model; (b) to develop and oversee a reference observation network; (c) to process, analyze, and validate data relating to the NWSAS; (d) to develop databases on socio-economic activities in the region in relation to water uses; (e) to develop public indicators on the resource and its uses in the three Member States; (f) to promote and facilitate the conduct of joint or coordinated studies and research by experts in the three Member States; (g) to formulate and implement training programs; (h) to update the NWSAS model on a regular basis; and (i) to formulate proposals relating to the evolution of the Consultation Mechanism.[879]

6. Organizational Structure

The OSS, as the Executive Agency, presides over a Steering Committee that is responsible for the execution of projects. The OSS is in charge of managing funds, recruiting experts and consultants, obtaining equipment, providing logistical assistance, and auditing scientific reports. The Steering Committee is tasked with reviewing the validity and quality of the scientific research; approving or modifying the proposals and plans submitted by regional coordinators and the OSS; and resolving problems that arise during the execution of the program.[880]

The Steering Committee is composed of the General Directors of the national institutions responsible for water resources in the Member States (the Algerian Agence Nationale des Recources Hydrauliques ("ANRH"); the Libyan General Water Authority ("GWA"); and the Tunisian Direction Générale des Ressources en Eau ("DGRE")); international scientific partners (such as the United Nations Educational, Scientific and Cultural Organization ("UNESCO"); the Arab Center for the Studies of Arid Zones and Dry Lands ("ACSAD"); and Germany's Federal Institute for Geosciences and Natural Resources ("BGR")); and cooperation partners (including the FAO; the United Nation's International Fund for Agricultural Development ("IFAD"); and Switzerland's Direction du Développement et de la Coopération ("DDC-Suisse")).[881] The Steering Committee meets for one ordinary session each year, and extraordinary sessions may be convened at the request of one of the Member States. The sessions are held on a rotating basis in each of the three Member States, and the Steering Committee's chairmanship is held by the representative of the host country.[882]

In addition to the Steering Committee, the NWSAS Project's organizational structure includes a Coordination Unit, led by a coordinator designated by the OSS in consultation with the Steering Committee, and an *ad hoc* scientific committee that provides technical advice and knowledge as needed.[883]

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[879] Consultation Mechanism, sec. iv.

[880] NWSAS—Project Structure.

[881] NWSAS—Project Structure.

[882] Consultation Mechanism, sec. ii.

[883] Consultation Mechanism, sec. ii.

The Member States have agreed on an evolutionary approach towards the development of an institutional structure for the NWSAS, starting with a simple structure and then moving towards a more complex and autonomous structure with responsibility for specific functions.[884]

7. Relationships

Project partners for the NWSAS include the GEF, FAO, UNESCO, and IFAD.[885] These international agencies have taken a significant role in financing and implementing the projects.

8. Decision Making

Decisions are made by the Steering Committee. The Steering Committee also oversees the execution of the projects.[886] *See* **Organizational Structure**.

9. Dispute Resolution

No specific provision

10. Data Information Sharing, Exchange, and Harmonization

The original UNEP project called for the establishment of a "consultation mechanism" for the NWSAS in order to ensure that, at the conclusion of GEF project funding, there would be continued management of the shared water resources. This led to the creation of an Observatory for the Aquifer-Basin, which is shared by the three Member States. The Observatory for the Aquifer-Basin is responsible for technical and scientific issues related to the management of the shared waters, information exchange and consultation, and joint elaboration of simulation models. The Observatory of the Aquifer-Basin is also charged with a number of additional tasks, including data collection and the publication of relevant documents that synthesize data analysis on the exploitation of water resources and its implications.[887]

11. Notifications

There are no specific provisions on notification. However, the General Directors of the national institutions in charge of water resources in all three Member States are on the Steering Committee and therefore receive all of the relevant information.[888]

12. Funding and Financing

In addition to funding received from the main partner organizations (*see* **Relationships**), the NWSAS Project also receives funding support from national development agencies (such as France's Fonds Français pour l'Environnement Mondial ("FFEM") and DDC-Suisse).[889]

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[884] Consultation Mechanism.

[885] NWSAS—Welcome To Project Website, *available at* http://nwsas.iwlearn.org/ (last visited on 4 Nov. 2010).

[886] NWSAS—Project Structure.

[887] GEF Project Brief, at 22.

[888] NWSAS—Project Structure.

The Steering Committee is responsible for approving the expenditure plans of the regional coordinators of the program and the OSS. The OSS, in turn, manages the funds allocated to the project. The management of program funds is also subjected to an external financial audit.[890]

13. Benefit Sharing

No specific provision

14. Compliance and Monitoring

The Observatory for the Aquifer-Basin carries out several monitoring functions, including collecting data on the use and management of water resources in the NWSAS. *See* **Data Information Sharing, Exchange, and Harmonization.**

Additionally, the Steering Committee is responsible for assessing the validity and the quality of the technical results from each phase of the project. The OSS is obligated to provide a scientific audit of these results.[891]

15. Participation and the Role of Multiple Stakeholders

The Observatory for the Aquifer-Basin is tasked with raising public awareness on NWSAS water resource issues and with planning public outreach activities. It is also in charge of liaising between the public and private sectors (particularly in the agricultural industry) and among the Member States and the national agencies in order to increase cooperation regarding water resource management and use.[892]

16. Dissolution and Termination

No specific provision.

17. Additional Remarks

N/A

18. Websites and References

- North-Western Sahara Aquifer System Project, *available at* http://nwsas.iwlearn.org/.
- Sahara and Sahel Observatory, *available at* http://www.oss-online.org/.
- The North-Western Sahara Aquifer System (Algeria, Tunisia, Libya): Concerted Management of a Transboundary Water Basin, OSS Synthesis Collection No. 1, 2008, *available at* http://www.oss-online.org/pdf/synth-sass_En.pdf.

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[889] NWSAS—Project Funding, *available at* http://nwsas.iwlearn.org/about/funding (last viewed on 4 Nov. 2010).

[890] NWSAS—Project Structure.

[891] NWSAS—Project Structure.

[892] GEF Project Brief, at 22.

- *Establishment of a Consultation Mechanism for the Northwestern Sahara Aquifer System (SASS) [2002], in* GROUNDWATER IN INTERNATIONAL LAW: COMPILATION OF TREATIES AND OTHER LEGAL INSTRUMENTS (Stefano Burchi, Kerstin Mechlem eds. 2005, FAO/UNESCO), part II(2), *available at* http://www.fao.org/docrep/008/ y5739e/y5739e00.htm.

Okavango River Basin

1. Legal Basis

The Agreement Between the Governments of the Republic of Angola, the Republic of Botswana, and the Republic of Namibia on the Establishment of a Permanent Okavango River Basin Water Commission (OKACOM) (the "OKACOM Agreement") was signed in Windhoek, Namibia, on 15 September 1994, and immediately entered into force.[893]

2. Member States

The Member States are Angola, Botswana, and Namibia.

3. Geographical Scope

The Okavango River has its source in the Cuito and Cubango Rivers in Angola. The river flows uninterrupted through Namibia to Botswana and discharges an average of 10 billion cubic meters per year to the Okavango Delta.[894] The area of the Okavango Delta fluctuates between 6,000 to 8,000 square kilometers during the dry season, swelling to 15,850 square kilometers during the flood season.[895]

4. Legal Personality

Article 1.1 of the OKACOM Agreement established the Permanent Okavango River Basin Water Commission ("OKACOM" or the "Commission"). The OKACOM Agreement does not contain a provision regarding the legal personality of the Commission.

5. Functions

The broad objective of the OKACOM Agreement was to establish OKACOM as an entity that would act as a technical advisor to the Member States "on matters relating to the conservation, development and utilization of water resources of common interest" to the Member States.[896] Specifically, OKACOM is charged with advising the Member States on the following issues affecting the Okavango River Basin:

- Measures and arrangements to determine the long term safe yield of the water available from all potential water resources in the Basin;
- The reasonable demand for water from consumers in the Basin;

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[893] Agreement Between the Governments of the Republic of Angola, the Republic of Botswana, and the Republic of Namibia on the Establishment of a Permanent Okavango River Basin Water Commission (OKACOM) ("Okacom Agreement", 15 Sept. 1994, art. 7.1, *available at* http://www.icp-confluence-sadc.org/sites/default/files/OKACOM_Agreement_2004.pdf.pdf.

[894] OKACOM, Overview of the Okavango River Basin, *available at* http://www.okacom.org/okavango.htm (last viewed on 10 Nov. 2010).

[895] OKACOM, Fact Sheet about the OKAVANGO, *available at* http://www.okacom.org/factsheet.htm (last viewed on 10 Nov. 2010).

[896] OKACOM Agreement, art. 1.2.

- The criteria to be adopted in the conservation, equitable allocation and sustainable utilization of water resources in the Basin;

- Investigations related to the development of water resources in the Basin, including the construction, operation and maintenance of any waterworks;

- Prevention of water pollution and control over aquatic weeds in the Basin;

- Measures to alleviate short term difficulties resulting from water shortages in the Basin during periods of drought, taking into consideration the availability of stored water and the water requirements of the Member States; and

- Other matters to be determined by OKACOM.[897]

6. Organizational Structure

OKACOM consists of delegations appointed by each Member State, with each delegation containing not more than three members. Each Member State designates one member of its delegation to serve as the delegation's leader, with the leader having the authority to employ an unlimited number of advisors to the delegation (although no more than three may attend an OKACOM meeting unless otherwise agreed by OKACOM).[898]

OKACOM is required to meet at least once per year, but may meet more frequently as agreed upon by the three delegations. The venue of meetings alternates between the three Member States, unless the delegations determine otherwise with respect to a particular meeting. The leader of the delegation tasked with hosting a particular meeting serves as chairperson during that meeting.[899]

In May 2007, OKACOM's Member States entered into the Agreement on the Organizational Structure of OKACOM. This agreement provides for three entities within OKACOM—the Commission, the Okavango Basin Steering Committee (the "OBSC"), and the Secretariat (also referred to as "OKASEC"). The Commission serves as OKACOM's principal organ and is responsible for guiding its policy and supervising its activities. The OBSC, which was established in 1995, serves as the technical advisory body to the Commission.[900] The Secretariat, which commenced operations in February 2008, is an internal entity within OKACOM that possesses the legal capacity and mandate necessary to assist OKACOM in implementing its decisions. The Secretariat also assists with information sharing and communication. The Secretariat is headed by an Executive Secretary who works under the direction of

[897] OKACOM Agreement, art. 4.

[898] OKACOM Agreement, art. 2.

[899] OKACOM Agreement, art. 3.

[900] OKACOM – Structure, *available at* http://www.okacom.org/structure.htm (last viewed on 10 Nov. 2010).

the Commission.[901] Botswana was selected to host the Secretariat for its first three years, after which time it may relocate to another Member State.[902]

7. Relationships

OKACOM has partnered with a number of multilateral organizations and foreign governments. In May 2007, OKACOM signed an agreement with the Government of Sweden whereby Sweden pledged to provide US $2.2 million to help establish the OKACOM Secretariat and to fund its first three years of operation. Through the Swedish International Development Agency ("SIDA"), Sweden also promised to support the activities of the Secretariat for ten years, with Swedish funding decreasing as Member State funding increases over that time period.[903]

OKACOM has also partnered with the Global Environment Facility ("GEF") and the United Nations Development Programme to implement the Environmental Protection and Sustainable Management of the Okavango River Basin Project ("EPSMO").[904] With a GEF grant of over US $5 million and funds from other sources, the project will prepare a transboundary diagnostic analysis of hydro-environment threats and develop a strategic action program designed to facilitate the joint management of the Basin's water resources and to protect its aquatic ecosystems and biological diversity.[905]

OKACOM has also partnered with the United States Agency for International Development ("USAID"), which provided US $7 million to support OKACOM's institutional framework development through the Okavango Integrated River Basin Management Project.[906]

8. Decision Making

All Commission decisions during OKACOM meetings are made on the basis of consensus. If the delegations fail to reach consensus on an issue during a meeting, the issue must be referred to the Member States by the respective delegations for further negotiation.[907]

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[901] OKACOM – Structure; OKACOM – The Permanent Okavango River Basin Water Commission, *available at* http://www.okacom.org/ okacom.htm (last viewed on 10 Nov. 2010).

[902] OKACOM Newsletter – Okaflow No. 5 ("Okaflow No. 5"), July 2007, at 1, *available at* http://www.okacom.org/ Newsletters/OKAFLOW%205%20-%20FINAL%20ENGLISH.pdf (last viewed Nov. 10, 2010).

[903] Okaflow No. 5, at 1; OKACOM; *see also*, The Permanent Okavango River Basin Water Commission – Brochure ("OKACOM Brochure"), at 4, *available at* http://www.okacom.org/pdfs/OKACOM%20English%20brochure.pdf (last viewed on 10 Nov. 2010).

[904] OKACOM – Environmental Protection and Sustainable Management of the Okavango River Basin (EPSMO), *available at* http://epsmo.iwlearn.org (last viewed on 10 Nov. 2010).

[905] OKACOM – OKACOM Affiliated Projects and Partners, *available at* http://www.okacom.org/affiliated _projects_partners.htm (last viewed on 10 Nov. 2010); UNDP-GEF Project Writeups – Environmental Protection and Sustainable Management of the Okavango River Basin (EPSMO), *available at* http://www.undp.org/gef/ portfolio/writeups/iw/epsmo.html (last viewed on 10 Nov. 2010).

[906] Okaflow No. 5, at 1; Okavango Integrated River Basin Management Project (IRBM) Final Report, 31 Aug. 2009, *available at* http://www.okacom.org/images/IRBM%20Final%20Report%20-%20August%2031%202009.pdf (last viewed on 10 Nov. 2010).

9. Dispute Resolution

Article 7.4 of the OKACOM Agreement provides that: "Any dispute as to the interpretation or implementation of any Article of this Agreement shall be settled by the [Member States]." There are no further provisions for dispute resolution in the OKACOM Agreement.

10. Data Information Sharing, Exchange, and Harmonization

OKACOM is authorized to appoint consultants to assist in gathering and processing information concerning any matter on which it is tasked with advising the Member States. A Member State may request that OKACOM provide such advice in the form of a written report signed by the leaders of each Member State's delegation. Each Member State's delegation is then responsible for submitting such reports to its respective government.[908]

During OKACOM's 16th Meeting, held in Gaborone, Botswana from 24-27 May 2010, OKACOM adopted a protocol to share information related to the Okavango River Basin.[909] This new protocol, the OKACOM Protocol on Hydrological Data Sharing for the Okavango River Basin ("Protocol"), is intended to help the three Member States better prepare themselves for extreme climatic events, such as floods and droughts.[910]

The Protocol provides that the OBSC is the entity responsible for the implementation of the Protocol. But, under the Protocol, each Member State shall be responsible for the installation and the operation and maintenance of hydrometeorological stations in its territory.[911]

The specific types of data required to be monitored pursuant to the Protocol include water levels, water discharge, water quality, sediment transport and meteorological data.[912] More specifically, the Protocol also provides that the Member States shall share, on a daily basis, water level data collected from key hydrometric stations at the following sites: (a) in Angola, Menongue on the Cuebe, Mucundi on the Cubango and Cuito Cuanavale on the Cuito; (b) in Namibia, Rundu and Andara on the Kavango; and (c) in Botswana, Mohembo on the Okavango.[913] The Member States are also required to share, on a quarterly basis, discharge data from all stations, calculated using rating curves from the previous hydrological year. Water quality data is also to be shared on a quarterly basis, and on an *ad hoc* basis as

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[907] OKACOM Agreement, art. 3.5.

[908] OKACOM Agreement, art. 5.

[909] *See* OKACOM Protocol on Hydrological Data Sharing for the Okavango River Basin ("Protocol"), 26 May 2010, *available at* http://www.icp-confluence-sadc.org/sites/default/files/OKACOM_Hydrological_Data_Sharing_Protocol_English_C.pdf.

[910] OKACOM – News: 16th OKACOM Meeting, *available at* http://www.okacom.org/events.htm (last viewed 9 Nov. 2010).

[911] Protocol, arts. II, III, IV.

[912] Protocol, art. V.

[913] Protocol, art. VI.

requested by the Member States.[914] The Protocol specifies that the following parameters should be considered during an analysis of water quality: electrical conductivity, total dissolved solids, dissolved oxygen, pH, phosphates; nitrates, fecal coliforms (in inhabited zones), total hardness, temperature, turbidity, total suspended solids, and chlorophyll a. The Protocol requires that the sampling and analytical methods used to measure water quality be standardized among the Member States.[915] With respect to sediment transport data, the Protocol mandates that such data be shared on an annual basis among the Member States. The Protocol also requires that meteorological data, including rainfall, evaporation and temperature data, be shared on an *ad hoc* basis.[916] At the end of each hydrological year (defined in the Protocol as the period commencing each October 1 and ending each September 30), the Member States are given three months to prepare an annual hydrological report for such year, and the report is then distributed by OKASEC.[917]

The Protocol also requires that early warning information with respect to important environmental indicators is shared among the Member States. OKACOM's Hydrological Task Force is required to provide OKASEC with "the best available information on floods, droughts and pollution magnitudes at different time and space scales." OKASEC is then required to channel such information to "decision making bodies and other public actors" in the Member States.[918]

See also **Organizational Structure**, noting that it is the responsibility of the Secretariat to assist with information sharing and communication.

11. Notifications

See **Data Information Sharing, Exchange, and Harmonization**, which describes the notifications provided to Member States under the Protocol.

12. Funding and Financing

Each Member State is responsible for covering the costs incurred by its delegation and related advisors in attending OKACOM meetings. In addition, Member States that host particular OKACOM meeting are responsible for all costs associated with securing a venue for the meeting, distributing an agenda, and recording and distributing the meeting minutes. Otherwise, all other costs incurred or liabilities accepted by OKACOM in the performance of its duties are shared equally among the Member States, unless otherwise agreed by OKACOM.[919]

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[914] Protocol, arts. VII, VIII.

[915] Protocol, arts. IX, XII.

[916] Protocol, arts. X, XIII

[917] Protocol, arts. I, XV.

[918] Protocol, art. XIV.

[919] OKACOM Agreement, art. 6.

Reports prepared by OKACOM are to include estimates of the costs involved in implementing the Commission's advice, and may also include proposals for the apportionment of these implementation costs among the Member States.[920]

See also **Relationships**, describing the international funding partnerships.

13. Benefit Sharing

No specific provision

14. Compliance and Monitoring

While the OKACOM Agreement does not contain a specific provision regarding compliance and monitoring, *see* **Data Information Sharing, Exchange, and Harmonization**, which describes data monitoring requirements under the Protocol.

15. Participation and the Role of Multiple Stakeholders

The Every River Has Its People Project is a regional initiative funded by SIDA and implemented by the Kalahari Conservation Society in Botswana, the Namibian Nature Foundation, and the Association for Environment Conservation and Rural Development in Angola. The Project was initiated in 2004 and ended in 2007.[921] The Project created the Basin Wide Forum, a transboundary committee comprised of 10 local community representatives from each of the Member States. The Forum's purpose is for the participants to share experiences and to assist in the development of knowledge-based community livelihoods and environmental action plans based on the socio-economic and hydro-environmental conditions in the Okavango River Basin.[922]

16. Dissolution and Termination

Each Member State is free to withdraw from the OKACOM Agreement six months after providing written notice to the other Member States. Even after withdrawing, a Member State remains bound by its obligations for a further twelve months from the effective date of its withdrawal.[923]

17. Additional Remarks

N/A

18. Websites and References

- OKACOM, *available at* http://www.okacom.org.

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[920] OKACOM Agreement, art. 5.3.

[921] OKACOM Brochure, at 4; OKACOM – OKACOM Affiliated Projects and Partners.

[922] OKACOM – Structure.

[923] OKACOM Agreement, art. 7.

- TRANSBOUNDARY RIVERS, SOVEREIGNTY AND DEVELOPMENT: HYDROPOLITICAL DRIVERS IN THE OKAVANGO RIVER BASIN (Anthony Turton, Peter Ashton and Eugenen Cloete eds. 2003), *available at* http://www.nnf.org.na/EIS/data/literature_OK/Turton.pdf.

Senegal River Basin

1. Legal Basis

There are two main agreements governing the Senegal River Basin:

- The Convention Concerning the Status of the Senegal River (Convention Relative au Statut du Fleuve Sénégal) ("Senegal River Convention"), signed in Nouakchott, Mauritania on 11 March 1972.[924]

- The Convention Establishing the Organization for the Development of the Senegal River (Convention Portant Création de l'Organisation pour la Mise en Valeur du Fleuve Sénégal) ("OMVS Convention"), signed in Nouakchott, Mauritania on 11 March 1972.[925]

In addition, there have been a number of additional instruments that pertain to the Senegal River Basin. These include the following:

- The Convention Concluded Between Mali, Mauritania and Senegal Concerning the Legal Status of Common Works, signed in Bamako, Mali on 21 December 1978 (Convention Conclue Entre Le Mali, La Mauritanie et Le Sénégal Relative au Statut Juridique des Ouvrages Communs);[926]

- The Convention Regarding the Methods of Financing Joint Works, signed in Bamako, Mali on 12 May 1982 (Convention Relative aux Modalités de Financement des Ouvrages Communs);[927]

- The Draft Framework Agreement for Cooperation between the Republic of Guinea and the OMVS, signed in August 1992 (Protocole d'Accord-Cadre de Coopération entre la République de Guinée et l'OMVS);[928]

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[924] Convention Concerning the Status of the Senegal River (Convention Relative au Statut du Fleuve Sénégal) ("Senegal River Convention"), 11 Mar. 1972, *available at* http://www.fao.org/docrep/W7414B/w7414b07.htm#TopOfPage (French only). According to the United Nations Environment Programme ("UNEP") Register of International Environmental Treaties 2005, the Senegal River Convention has yet to enter into force. *See* http://www.unep.org/law/PDF/register_Int_treaties_part1.pdf.

[925] Convention Establishing the Organization for the Development of the Senegal River (Convention Portant Création de l'Organisation pour la Mise en Valeur du Fleuve Sénégal) ("OMVS Convention"), 11 Mar. 1972, *available at* http://www.fao.org/docrep/W7414B/w7414b08.htm#TopOfPage (French only). According to the UNEP Register of International Environmental Treaties 2005, the OMVS Convention has yet to enter into force. *See* http://www.unep.org/law/PDF/register_Int_treaties_part1.pdf.

[926] *See* IEA-Designated Lineage: Senegal River Basin ("IEA – Senegal River Basin"), *available at* http://iea.uoregon.edu/page.php?query=treaties_lineage&lineage=Senegal%20River%20Basin (last viewed on 6 Jan. 2011); *see also* Pilot Case Studies: A Focus on Real-World Examples—Senegal River Basin, Guinea, Mali, Mauritania, Senegal ("Pilot Case Studies - Senegal River Basin"), at 457, *available at* http://www.unesco.org/water/wwap/case_studies/senegal_river/senegal_river.pdf (last viewed on 6 Jan. 2011).

[927] *See* IEA – Senegal River Basin; IEA Database Project: Convention Regarding the Methods of Financing Joint Works, *available at* http://iea.uoregon.edu/page.php?query=treaty_info&mitch_id=4464 (last viewed on 6 Jan. 2011); *see also* Pilot Case Studies – Senegal River Basin, at 457.

[928] *See* Pilot Case Studies – Senegal River Basin, at 457.

- The Convention Establishing the Agency for the Management and Exploitation of Diama, signed on 7 January 1997 (Convention Portant Création de l'Agence de Gestion et d'Exploitation de Diama);[929]

- The Convention Establishing the Agency for the Management of Power of Manantali, signed on 7 January 1997 (Convention Portant Création de l'Agence de Gestion de l'Energie de Manantali);[930] and

- Charter of Senegal River Waters, signed on 28 May 2002 (Charte des Eaux du Fleuve Sénégal).[931]

2. Member States

The Member States are Mali, Mauritania, and Senegal. Guinea has observer status.[932]

3. Geographical Scope

The Senegal River Basin extends through Mali, Mauritania and Senegal.[933]

4. Legal Personality

The Organization for the Development of the Senegal River ("OMVS") has full legal capacity and the power to enter into contracts, acquire and dispose of property, receive donations, subsidies, legacies and other gifts, request loans, apply for technical assistance, and institute legal proceedings. The Council of Ministers ("Council") is the legal representative of the OMVS and can delegate the legal authority needed to exercise the aforementioned powers to the High Commissioner.[934] *See* **Organizational Structure.**

5. Functions

The primary entity for the Senegal River Basin, the OMVS, is charged with: implementing the Senegal River Convention; promoting and coordinating development studies and works on the Senegal River Basin within the Member States; and carrying out all technical and economic functions conferred to it by the Member States.[935]

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[929] *See* IEA – Senegal River Basin; *see also* Pilot Case Studies – Senegal River Basin, at 457.

[930] *See* IEA – Senegal River Basin; *see also* Pilot Case Studies – Senegal River Basin, at 457.

[931] *See* IEA – Senegal River Basin; *see also* Pilot Case Studies – Senegal River Basin, at 457.

[932] *See generally* Senegal River Convention.

[933] Senegal River Convention, art. 1.

[934] OMVS Convention, art. 1.

[935] OMVS Convention, art. 1.

The Conference of Heads of State and Government ("Conference") is the chief decision-making body and is responsible for setting the general policies of the OMVS.[936]

The Council sets priorities and formulates the policies for managing the Senegal River, developing its resources, and promoting the cooperation of states around the Senegal River. The Council also approves the budget and determines the funding from the Member States. The decisions of the Council are binding on the Member States.[937]

The Office of the High Commissioner implements the decisions of the Council of Ministers. The Office of the High Commissioner is responsible for the administration and staff of the OMVS and exercises the powers delegated to it by the Council of Ministers. It also implements studies and projects relating to hydrology and agriculture, solicits funds for projects, and coordinates the development and exploitation of common works.[938]

The Permanent Water Commission allocates water rights among the Member States and different sectors, including industry, agriculture, and transport.[939]

The Advisory Committee provides advice to the OMVS. The Regional Planning Committee advises the OMVS on the regional development plans of the Member States and their impact on the basin's resources. The National Offices coordinate with the OMVS in regards to project management and implementation, as well as for activities within the Member States.[940]

6. Organizational Structure

As noted above, the OMVS is governed by the Conference. The President of the Conference is elected from its members on a rotating basis for a term of two years. Once a year, the Conference holds an ordinary session. The President or a Member State can also call an extraordinary meeting.[941]

The Council is the legal representative and supervisory body of the OMVS, which delegates tasks to the High Commissioner. The President of the Council is elected from its members on a rotating basis for a term of two years. Twice a year, the Council holds ordinary sessions, where attendance by the Member States is mandatory. A Member State can also call an extraordinary meeting. The President represents the Council between its meetings.[942]

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[936] OMVS Convention, art. 3.

[937] OMVS Convention, art. 8.

[938] OMVS Convention, arts. 11-19.

[939] OMVS Convention, art. 20.

[940] Stefano Burchi and Melvin Spreij, *Institutions for International Freshwater Management* ("Burchi and Spreij Report"), FAO Legal Office, 2003, at 16, *available at* http://unesdoc.unesco.org/images/0013/001324/132478e.pdf.

[941] OMVS Convention, arts. 3, 4, 6.

[942] OMVS Convention, arts. 8-10.

The Office of the High Commissioner is the executive body of the OMVS. The High Commissioner is appointed by the Conference to a renewable term of four years. The Office of the High Commissioner represents OMVS and is charged with multiple tasks, including implementing Council directives, organizing and coordinating the exploration of natural resources, project development, financial and budget management, and asset and personnel management.[943]

The Permanent Water Commission, composed of representatives of the Member States, meets at the request of the High Commissioner and advises the Council. The Permanent Water Commission is responsible for defining the principles and modalities of the distribution of water of the Senegal River between the Member States and between certain sectors involved with water use (i.e., industry, agriculture, and transport).[944]

The Advisory Committee is composed of representatives from the Member State governments, financial institutions, and the OMVS. In addition, the Member States each have a National Office, which is represented on the Advisory Committee.[945]

The Council also acts as the "General Assembly" of the SOGED (Société de Gestion et d'Exploitation du Barrage de Diama) and the SOGEM (Société de Gestion de l'Energie de Manantali) – two companies that were created to oversee the Diama and Manantali Dam projects that were constructed on the Senegal River.[946]

7. Relationships

The Advisory Committee consists of representatives from governments, financial institutions, and the OVMS. *See* **Organization Structure**.

8. Decision Making

The decisions of the Conference and the Council are taken unanimously.[947] The decisions are binding on the Member States.[948]

9. Dispute Resolution

Any dispute between the Member States regarding the interpretation or application of the relevant Conventions is to be resolved by mediation. If the Member States cannot reach an agreement, the dispute is to be submitted to the Commission of Mediation, Conciliation, and Arbitration of the Organization of

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[943] OMVS Convention, arts. 11-17.

[944] OMVS Convention, art. 20.

[945] Burchi and Spreij Report, at 15.

[946] *See generally* The Organization for the Development of the Senegal River Basin (Organes de l'OMVS,) *available at* http://www.omvs.org/fr/omvs/organes.php (last viewed on 6 Jan. 2011).

[947] OMVS Convention., arts. 4, 10.

[948] OMVS Convention., arts. 5, 8.

African Unity ("Commission"). The Commission's decisions can be appealed to the International Court of Justice.[949]

10. Data Information Sharing, Exchange, and Harmonization

See **Notifications.**

11. Notifications

Any project that is likely to substantially modify the river regime, the state of its water, the biological features of its flora and fauna, its navigability, or the conditions of its agricultural and industrial use can only be executed with the approval of the Member States. Member States, therefore, must provide the OMVS with timely information about any project concerning the development of the river.[950]

12. Funding and Financing

The Member States each contribute to the OMVS ordinary budget. The costs and expenses for common works are shared among the Member States in proportion to the benefits received by each Member State from the work. The sharing of costs for common works is to be reassessed periodically. The Convention on the Financing of Common Works provides a framework for methods of financing, such as contributions, loans, and subsidies.[951]

13. Benefit Sharing

The Permanent Water Commission allocates water rights among the Member States and different sectors, including industry, agriculture, and transport. *See* **Functions** and **Organizational Structure.**

14. Compliance and Monitoring

No specific provision

15. Participation and the Role of Multiple Stakeholders

No specific provision

16. Dissolution and Termination

Any Member State may withdraw from the OMVS or the Convention on the Legal Status of Common Works by written notice. Withdrawal is given effect after acceptable agreements have been made with

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[949] OMVS Convention., art. 24.

[950] Senegal River Convention, art. 4.

[951] Burchi and Spreij Report, at 16; The Organization for the Development of the Senegal River Basin, *available at* http://www.omvs.org/fr/omvs/presentation.php (stating that Mali contributes 35.3%, Mauritania 22.6%, and Senegal 42.1%) (last viewed on 6 Jan. 2011); *see also* OMVS Convention, art. 21.

the other Member States and interested third parties regarding the liquidation of established rights and the discharge of obligations.[952]

Any Member State can withdraw from the Senegal River Convention upon the expiration of a period of ninety-nine years from the date in which the Convention came into force by written notice to the government of Mauritania. Withdrawal is given effect six months after notice, but does not affect any existing agreements.[953]

The OMVS can be dissolved upon the request of at least two Member States.[954]

17. Additional Remarks

In 1997, the OMVS implemented environmental conservation measures for the Senegal River Basin, such as the Environmental Impact Mitigation and Monitoring Program ("PASIE") (Program d'Atténuation et de Suivi des Impacts sur l'Environment), in response to the Diama and Manatli Dams.[955]

18. Websites and References

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[952] OMVS Convention, art. 25.

[953] Senegal River Convention, art. 17.

[954] OMVS Convention, art. 26.

[955] Burchi and Spreij Report, at 17.

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- Stefano Burchi and Melvin Spreij, *Institutions for International Freshwater Management*, FAO Legal Office, 2003, *available at* http://unesdoc.unesco.org/images/0013/001324/132478e.pdf.

Southern African Development Community (SADC)

1. Legal Basis

The Southern African Development Community ("SADC") developed from an earlier alliance of Southern African states known as the Southern African Development Coordination Conference ("SADCC"), an entity whose general purpose included promoting sustainable economic development within Southern Africa. On 17 August 1992 in Windhoek, Namibia, the Southern African states signed the Treaty of the Southern African Development Community ("SADC Treaty") and the Declaration "Towards a Southern African Development Community," effectively transforming the SADCC into the SADC.[956] The SADC Treaty entered into force on 30 September 1993. The SADC Treaty was amended on 14 August 2001.[957]

On 28 August 1995, the SADC Member States signed the Protocol on Shared Watercourse Systems in the Southern African Development Community Region, which entered into force on 29 September 1998. This original Protocol was later repealed and replaced by the Revised Protocol on Shared Watercourses ("Watercourses Protocol"), which was signed by the SADC Member States on 7 August 2000 and entered into force on 22 September 2003. The primary goal of the Watercourses Protocol is to foster closer cooperation and to develop sustained and coordinated management of the shared watercourses of the SADC Member States.[958]

The Member States have also entered into various other agreements relevant to water bodies.[959] One such agreement is the Dar-es-Salaam Declaration on Agriculture and Food Security in the SADC Region ("Dar-es-Salaam Declaration"), signed by the Member States on 15 May 2004.[960] The Dar-es-Salaam Declaration seeks to improve water management and irrigation by seeking to have the Member States

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[956] *See* Introducing SADC, *available at* http://www.sadc.int/index/browse/page/715# (last viewed on 21 Oct. 2010); Muna Ndulo, *African Integration Schemes: A Case Study of the Southern African Development Community*, Cornell Law Faculty Publication (1999), at 8-11, *available at* http://scholarship.law.cornell.edu /cgi/viewcontent.cgi?article=1057&context=facpub. SADCC was formed with the adoption of the Lusaka Declaration on Economic Liberation on 1 April 1980. The founding countries of SADCC were Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe (with Namibia joining SADCC in 1989). The original Declaration and Treaty of the Southern Africa Development Community is available at: http://www.sadc.int/index/browse/page/119.

[957] *See* The Treaty of the Southern African Development Community ("SADC Treaty"), 14. Aug. 2001, *available at* http://www.sadc.int/index/browse/page/120.

[958] Revised Protocol on Shared Watercourses ("Watercourses Protocol"), arts. 2, 16, 7 Aug. 2000, *available at* http://www.sadc.int/index/browse/page/159.

[959] Note that some Member States have entered into agreements with other Member States, or non-member states, involving some of the river basins that are governed by the SADC Treaty. *See, e.g.*, Tripartite Interim Agreement between the Republic of Mozambique and 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 ("Incomati and Maputo Watercourses Interim Agreement"), 29 Aug. 2002, *available at* http://portal.unesco.org/en/ev.php-URL_ID=47482&URL_DO=DO_TOPIC&URL_SECTION=201.html.

[960] The Dar-es-Salaam Declaration on Agriculture and Food Security in the SADC Region ("Dar-es-Salaam Declaration"), 15 May 2004, *available at* http://www.sadc.int/index/browse/page/173.

allocate a substantial portion of their agricultural budgets to water management and irrigation development, and by developing programs to improve flood and drought mitigation and water harvesting technologies. The Dar-es-Salaam Declaration also aims to develop and implement policies aimed at attracting private sector investments and to accelerate the implementation of transboundary water resources development and management policies and programs. In addition, the Dar-es-Salaam Declaration seeks to facilitate inter-basin water transfers within the framework of the Watercourses Protocol.[961]

The SADC Member States have also adopted a Protocol on Fisheries, which was signed on 14 August 2001 and entered into force on 8 August 2003. The objectives of the Protocol on Fisheries are to "promote responsible and sustainable use of the living aquatic resources and aquatic ecosystems of interest to State Parties in order to: a) promote and enhance food security and human health; b) safeguard the livelihood of fishing communities; c) generate economic opportunities for nationals in the Region; d) ensure that future generations benefit from these renewable resources; and e) alleviate poverty with the ultimate objective of its eradication."[962]

In 2002, a Tripartite Interim Agreement was entered into between Mozambique, South Africa and Swaziland for Co-operation on the Protection and Sustainable Utilisation of the Water Resources of the Incomati and Maputo Watercourses ("Incomati and Maputo Watercourses Interim Agreement"). The general principles of the SADC Treaty and Declaration and the Watercourses Protocol apply to this agreement as well. However, under the Incomati and Maputo Watercourses Interim Agreement specific responsibilities are assigned to these three countries involving, *inter alia*: preventing, reducing and controlling pollution of surface and ground waters; controlling and mitigating transboundary impacts; coordinating management plans; promoting water use partnerships; promoting the security of water infrastructure; monitoring and mitigating the effects of floods and droughts; implementing flood warnings and emergency flood measures; establishing comparable monitoring systems; exchanging information on the quality and quantity of water resources; implementing capacity building programs; and cooperating with SADC organs and other shared watercourse institutions.[963]

2. Member States

The SADC Member States are Angola, Botswana, the Democratic Republic of the Congo, Lesotho, Madagascar,[964] Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.

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[961] The Dar-es-Salaam Deceleration, sec. 5.

[962] Protocol on Fisheries, art. 3, 14 Aug. 2001, *available at* http://www.sadc.int/index/browse/page/150.

[963] Incomati and Maputo Watercourses Interim Agreement, art. 4; *see also* Álvaro Carmo Vas and Pleter van der Zaag, Sharing the Incomati Waters: Cooperation and Competition in the Balance, 2001-2003, *available at* http://unesdoc.unesco.org/images/0013/001332/133297e.pdf. This profile does not discuss the legal and institutional framework of the Incomati and Maputo Watercourses Interim Agreement or any of the other specific waterbodies in the SADC region.

[964] The Extraordinary Summit of SADC Heads of State and Government suspended Madagascar from all of SADC's institutions and organs until the return of constitutional normalcy, with immediate effect, to Madagascar. *See* Communique, Extraordinary Summit of SADC Heads of State and Government, 30 Mar. 2009, at par. 14, *available at* http://www.sadc.int/index/browse/page/477.

New members are admitted to SADC pursuant to the provisions of Article 8 of the SADC Treaty.

3. Geographical Scope

The SADC region contains fifteen major internationally shared river basins. The water basins include: the Buzi, Congo, Cuvelai, Incomati, Kunene, Limpopo, Maputo-Usutu-Pongola, Nile, Okavango, Orange-Senqu, Pungwe, Ruvuma, Save-Sabi, Umbeluzi, and the Zambezi.[965] The water basins all vary in size, with the smallest being the Umbeluzi which covers 10,900 square kilometers, while the largest is the Congo Basin which covers 3,691,000 square kilometers.[966]

4. Legal Personality

Article 3 of the SADC Treaty establishes SADC as an international organization having the "legal personality with capacity and power to enter into contract, acquire, own or dispose of movable or immovable property and to sue and be sued." Moreover, in each SADC Member State, SADC has the legal capacity, as is necessary, to properly exercise its functions. The headquarters of SADC is based in Gaborone, Botswana.[967]

Article 9 of the SADC Treaty establishes the institutional framework of the SADC. The Summit of Heads of State or Government consists of the Heads of State or Government of all of the SADC Member States and is the supreme policy-making institution that is responsible for the overall policy direction and control of the functions of SADC.[968] The following additional institutions were established by the SADC Treaty: Organ on Politics, Defence and Security Co-operation; Council of Ministers; Integrated Committee of Ministers; Standing Committee of Officials; Secretariat; Tribunal; and the SADC National Committees.[969] Troikas were also implemented to act as steering committees for certain of the SADC institutions. In between the meetings of the institutions, the Troika is responsible for decision making, policy direction and facilitating the implementation of decisions.[970]

In addition to the institutions created by the SADC Treaty, the Watercourses Protocol established the SADC Water Sector Organs (comprised of the Committee of Water Ministers, the Committee of Water Senior Officials, the Water Sector Co-ordinating Unit, and the Water Resources Technical Committee and sub-committees) and several Shared Watercourse Institutions.[971]

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[965] Activities of International Cooperating Partners (ICPs) in Transboundary Water Cooperation in the SADC Region ("SADC ICP Water Cooperation Report"), Apr. 2009, at 1, *available at* www.icp-confluence-sadc.org/project/docs/publicfile?id=15.

[966] International River Basin Register, Oregon State University Program in Water Conflict Management and Transformation, *available at* http://www.transboundarywaters.orst.edu/publications/register/tables/IRB_africa.html (last viewed on 21 Oct. 2010).

[967] SADC Treaty, arts. 2(2), 3.

[968] SADC Treaty, art. 10.

[969] SADC Treaty, art. 9.

[970] SADC Treaty, art. 9A.

[971] Watercourses Protocol, art. 5(1)(a), 5(1)(b).

See **Functions** and **Organizational Structure**.

5. Functions

The objectives of the SADC, referred to as the Common Agenda, are to:

- Promote sustainable and equitable economic growth and socio-economic development to ensure poverty alleviation, with the ultimate objective of eradicating poverty, enhancing the standard and quality of life of the people in the SADC region and supporting the socially disadvantaged through regional integration;

- Promote common political values, systems and other shared values that are transmitted through democratic, legitimate and effective institutions;

- Consolidate, defend and maintain democracy, peace, security and stability;

- Promote self-sustaining development through collective self-reliance and the interdependence of Member States;

- Achieve complementarity between national and regional strategies and programs;

- Promote and maximize productive employment and the utilization of resources in the SADC region;

- Achieve sustainable utilization of natural resources and the effective protection of the environment;

- Strengthen and consolidate long standing historical, social, and cultural affinities and links among people in the SADC region;

- Combat HIV/AIDS and other deadly and communicable diseases;

- Address poverty eradication in all SADC activities and programs; and

- Mainstream gender through the community building processes.[972]

The SADC undertakes to achieve these objectives, in part, by harmonizing the Member States' policies; creating institutions and mechanisms to mobilize resources to implement SADC programs and operations; eliminating obstacles to the free movement of capital and labor, goods and services, and people throughout the region; promoting the development of human resources; and transferring technology.[973] In addition, the SADC Member States have also agreed to "adopt adequate measures to promote the achievement of the objectives of SADC."[974]

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[972] SADC Treaty, arts. 5, 5A. The objectives of the SADC Treaty are not all related to water management.

[973] SADC Treaty, art. 5(2).

[974] SADC Treaty, art. 6(1).

The objectives of the Watercourses Protocol include the fostering of "closer cooperation for judicious, sustainable and co-ordinated management, protection and utilisation of shared watercourses and advance[ing] the SADC agenda of regional integration and poverty alleviation."[975] To implement these objectives, the Watercourses Protocol seeks to:

- Promote and facilitate the establishment of Shared Watercourses Institutions and shared watercourse agreements in regards to the management of shared watercourses;

- Advance the sustainable, equitable and reasonable utilization of the shared watercourses in the region;

- Promote a coordinated and integrated, as well as environmentally-sound, development and management of the shared watercourses;

- Promote the harmonization and monitoring of legislation and policies concerning the planning, development, conservation, and protection of the shared watercourses, as well as the allocation of their resources; and

- Promote research and technology development, information exchange, capacity building, and the application of appropriate technologies in regards to shared watercourses management.[976]

To achieve these objectives, the Member States have agreed, *inter alia*, to undertake to harmonize water uses in the shared watercourses and to respect the customary or general international law with respect to the use and management of the shared watercourse resources.[977] The Member States have also agreed to use the shared watercourses in "an equitable and reasonable manner," which is defined to mean "taking into account all relevant factors 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."[978]

The Member States also committed to protecting the aquatic environment under the Protocol on Fisheries, through the conservation of aquatic ecosystems and by applying the precautionary principle to prevent activities within their jurisdiction and control from causing excessive transboundary adverse impacts. The Member States also agreed to address the causes of aquatic environmental degradation through measures undertaken in conformity with the SADC Treaty and its Protocols, as well as other relevant international environmental treaties and conventions, and to closely cooperate with the SADC institutions in taking concerted action to protect endangered living aquatic species and their habitats. In addition,

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[975] Watercourses Protocol, art. 2.

[976] Watercourses Protocol, art. 2.

[977] *See* Watercourses Protocol, art. 3(1), 3(3).

[978] *See* Watercourses Protocol, art. 3(7), 3(8).

each Member States committed to adopting the necessary legislative and administrative measures to prevent water pollution by inland, coastal or offshore activities.[979]

Furthermore, the Member States agreed, under the Protocol on Fisheries, to take appropriate measures to regulate the use of living aquatic resources and to protect these resources from over-exploitation, as well as to build capacity for the sustainable utilization of those resources. The Member States are also called upon to transfer to the other Member States relevant skills and technologies relevant to the fisheries.[980] The obligations to implement the Protocol on Fisheries are primarily the responsibility of the individual Member States, but the Member States are obligated to cooperate with each other in regards to shared resources. In addition, the Member States have agreed to adopt measures to ensure that their nationals act, both in areas within and beyond the limits of national jurisdiction, in a responsible manner in the use of living aquatic resources. The Member States are also supposed to ensure that nationals and fishing vessels flying their flags comply with measures adopted pursuant to the Protocol and do not engage in activities that undermines the effectiveness of those measures. For example, the Member States agreed to establish appropriate arrangements regarding the hot pursuit of vessels that violate the laws of one Member State and then subsequently enter into the jurisdiction of another Member State.[981] Furthermore, the Member States are also called upon to develop management plans for shared resources (which may include components on integrated systems to monitor fish resources and their exploitation, joint fish stock assessment programs, specific scientific methodologies to determine sustainable levels of exploitation, etc.) and for shared inland water bodies (through balancing the needs of industrial enterprises, artisanal fishers, subsistence fishers, recreational fishers, and aquaculture practitioners).[982]

6. Organizational Structure

The Summit of Heads of State or Government ("Summit") functions as the supreme policy-making institution of SADC, is responsible for the overall policy direction and control of the functions of SADC, decides on the admission of new countries to SADC, and adopts the legal instruments necessary for implementing the provisions of the SADC Treaty. The Summit may also create committees or other institutions as it deems necessary. Unless otherwise specified, the decisions of the Summit are taken by consensus and are binding. The Summit elects a Chairperson and Deputy Chairperson from among the Member States to serve for a one year term. The Summit meets at least twice a year.[983]

The SADC Organ on Politics, Defence and Security Co-operation ("Organ") is headed by a Chairperson and Deputy Chairperson, who serve for terms of one year and are chosen by the Summit from among the members of the Summit. The Chairperson is responsible for consulting with the Troika of the Summit and reporting to the Summit. In addition, there is a Ministerial Committee of the Organ, which consists of the Ministers of the Member States in charge of foreign affairs, defense, public security, and state

[979] Protocol on Fisheries, art. 14.

[980] Protocol on Fisheries, art. 4.

[981] Protocol on Fisheries, arts. 5, 8.

[982] Protocol on Fisheries, art. 7(5), 7(6).

[983] SADC Treaty, art. 10.

security for each Member State and is responsible for coordinating the work of the Organ and its structures. Decisions of the Organ are made by consensus.[984]

The SADC Council of Ministers ("Council") is comprised of one Minister from each of the Member States and is responsible for overseeing the development and implementation of SADC's policies and programs, as well as advising the Summit on various policy matters. The Chairperson and Deputy Chairperson of the Council are appointed by the Member States holding the Chairpersonship and Deputy Chairpersonship of SADC. The Council reports to the Summit and must meet at least four times a year. Decisions of the Council are taken by consensus. The Council also considers and recommends to the Summit any application for membership to SADC.[985]

The SADC Integrated Committee of Ministers ("Integrated Committee") consists of at least two ministers from each Member State and is responsible for overseeing activities in the core areas of SADC integration, which include: trade, industry, finance and investment; infrastructure and services; food, agriculture and natural resources; and social and human development and special programs. It is also responsible for, *inter alia*: monitoring and controlling the implementation of the Regional Indicative Strategic Development Plan;[986] providing policy guidance to the Secretariat; making decisions on matters concerning the directorates; monitoring and evaluating the work of the directorates;[987] and creating subcommittees as needed to address cross-sectoral issues. The Integrated Committee meets at least once a year and reports to the Council. It takes decisions by consensus, but also has authority that is intended to allow for the rapid implementation of programs without having to wait for approval at a formal meeting of the Council. The Member States that hold the Chair and Deputy Chair positions of the Council appoint the Chairperson and Deputy Chairperson of the Integrated Committee.[988]

The SADC Standing Committee of Officials ("Standing Committee") consists of one permanent secretary or official from each Member State and acts as the technical advisory committee for the Council. Decisions are made by consensus. The Standing Committee reports to the Council and is required to

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[984] SADC Treaty, art. 10A. *See also* Protocol on Politics, Defense and Security Co-operation, 14 Aug. 2001, *available at* http://www.sadc.int/index/browse/page/157.

[985] SADC Treaty, art. 11.

[986] *See e.g.*, Southern African Development Community – Regional Indicative Strategic Development Plan ("SADC Strategic Development Plan"), *available at* http://www.sadc.int/index/browse/page/104 (last viewed on 22 Oct. 2010). Commissioned by the SADC Heads of State and Government in 1999, the Regional Indicative Strategic Development Plan provides a review of the operations of the SADC institutions, with the goal of enhancing the efficiency and effectiveness of the institutions. *See* SADC Strategic Development Plan, at Acknowledgements.

[987] The directorates are: (a) Food, Agriculture and Natural Resources Directorate; (b) Directorate of Infrastructure and Services – which covers Water Programmes (including Groundwater and Drought Management and SADC Water Sector International Cooperating Partners Collaboration Portal); (c) Directorate of Politics, Defence and Security; (d) Directorate of Social and Human Development and Special Programmes; and (e) Directorate of Trade, Industry, Finance and Investment. *See e.g.*, Directorate of Infrastructure and Services (I&S), 5 Oct. 2010, *available at* http://www.sadc.int/is (last viewed on 22 Oct. 2010).

[988] SADC Treaty, art. 12.

meet at least four times a year. The Member States that holds the Chairperson and Deputy Chairperson positions of the Council appoint the Chairperson and Deputy Chairperson of the Standing Committee.[989]

The Secretariat is the principal executive institution of SADC, and is responsible for planning and managing SADC's programs and implementing the decisions of the Summit, the Organ, the Council, the Integrated Committee, and the respective Troikas of those institutions.[990] The Secretariat is headed by an Executive Secretary and Deputy Executive Secretary, who are both appointed for four-year terms (with the option of one renewal term).[991] The Executive Secretary must "liaise closely with other institutions, [and] guide, support and monitor the performance of SADC in the various sectors to ensure conformity and harmony with agreed policies, strategies, programmes and projects."[992]

The Tribunal acts as SADC's legal body, with its main functions being to ensure that the SADC Treaty is interpreted properly and to adjudicate any disputes under the SADC Treaty that are referred to it. Decisions of the Tribunal are final and binding. The Tribunal may also give advisory opinions on any matters referred to it by the Summit or Council.[993] For more information, *see* **Dispute Resolution.**

Each Member State must also create a SADC National Committee consisting of key stakeholders (i.e., people from the government, private sector, civil society, non-governmental organizations, and workers and employers organizations). The SADC National Committees are responsible for providing input at the national level to help formulate SADC policies and strategies, and to coordinate the implementation of various SADC programs. Each SADC National Committee has a national steering committee, sub-committees and technical committees. The SADC National Committees must meet at least four times per year.[994]

Different Troikas act as steering committees for the Summit, the Organ, the Council, the Integrated Committee of Ministers, and the Standing Committee of Ministers, and, in between meetings of the relevant institution, are responsible for decision-making, facilitating the implementation of decisions and policy direction. The Troika of each institution is established for one year terms and has the power to create committees on an *ad hoc* basis.[995]

The Protocol on Fisheries authorizes two or more Member States to form certain institutions for the coordination, cooperation, or integration of the management of shared fisheries resources. These institutions include: specialist scientific advisory groups, joint programs and projects (especially in regards to the integrated assessment of shared fish stocks), joint technical or advisory committees, joint ministerial commissions (which could allocate shared resources among the Member States and implement

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[989] SADC Treaty, art. 13.

[990] SADC Treaty, art. 14.

[991] SADC Treaty, arts. 14(2), 14(3), 15(3).

[992] SADC Treaty, art. 15(2).

[993] SADC Treaty, art. 16. *See also* Protocol on Tribunal and the Rules of Procedure Thereof ("Tribunal Protocol"), 7 Aug. 2000, *available at* http://www.sadc.int/index/browse/page/163.

[994] SADC Treaty, art. 16A.

[995] SADC Treaty, art. 9A.

management measures), and groups for the enforcement of management plans for the shared resources. The Protocol on Fisheries also calls on the Member States to establish a committee to oversee the implementation of the Protocol.[996]

The Watercourses Protocol is implemented by the SADC Water Sector Organs (consisting of the Committee of Water Ministers, the Committee of Water Senior Officials, the Water Sector Co-ordinating Unit, and the Water Resources Technical Committee and Sub-Committees) and the Shared Watercourse Institutions.[997]

i) SADC Water Sector Organs

The Committee of Water Ministers consists of the Permanent Secretaries, or officials of equivalent rank, from each Member State that are responsible for water. The Committee of Water Ministers is charged with overseeing and monitoring the implementation of the Watercourses Protocol and in assisting to resolve potential conflicts involving shared watercourses; guiding and coordinating the cooperation and harmonization related to relevant legislation, policies, strategies, programs and projects; advising the Council on policies; recommending to the Council, as necessary, the creation of other organs for the implementation of the Watercourses Protocol; and providing regular updates to the Council on the status of the implementation of the Watercourses Protocol.[998]

The Committee of Water Senior Officials is responsible for examining reports and documents from the Water Resources Technical Committee and the Water Sector Co-ordinating Unit. It also advises the Committee of Water Ministers on policies, strategies, programs and projects for presentation to the Council for its approval, as well as providing regular updates to the Committee of Water Ministers on the status of implementing the Watercourses Protocol. In addition, the Committee of Water Senior Officials is charged with recommending to the Committee of Water Ministers the creation of other organs that would be needed to better implement the Protocol.[999]

The Water Sector Co-ordinating Unit is tasked with being the executing agency for the Water Sector, and is headed by a Co-ordinator who is appointed by the Member State responsible for coordinating the Water Sector. The Water Sector Co-ordinating Unit is responsible for: monitoring the implementation of the Watercourses Protocol; liaising with other SADC organs and Shared Watercourse Institutions on matters related to the implementation of the Watercourses Protocol; providing guidance concerning the interpretation of the Watercourses Protocol; advising Member States on matters pertaining to the Watercourses Protocol; drafting terms of reference for consultancies and managing those assignments; facilitating the mobilization of financial and technical resources; and submitting annual status reports to the Council regarding the implementation of the Protocol.[1000]

The Water Resources Technical Committee's responsibilities include: providing technical support and advice to the Committee of Water Senior Officials regarding the implementation of the Watercourses

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[996] Protocol on Fisheries, arts. 7(4), 19.

[997] Watercourses Protocol, art. 5.

[998] Watercourses Protocol, art. 5(1)(c), 5(2)(a).

[999] Watercourses Protocol, art. 5(2)(b).

[1000] Watercourses Protocol art. 5(1)(e), 5(2)(c).

Protocol; discussing issues tabled by the Water Sector Co-ordinating Unit and preparing for the Committee of Water Senior Officials; approving terms of reference for consultancies; recommending to the Committee of Water Senior Officials for consideration matters of interest on which agreement had not been reached; appointing working groups, for short-term tasks, and standing sub-committees, for longer term tasks; and addressing any other issues that may have implications for the implementation of the Watercourses Protocol.[1001]

ii) Shared Watercourse Institutions

The Member States have undertaken to establish appropriate Shared Watercourse Institutions, such as watercourse commissions, water authorities or boards. The responsibilities of these institutions are to be determined by the nature of the objectives of the institutions, which must be in conformity with the principles set out in the Watercourses Protocol. These institutions are also obligated to provide on a regular basis, or as required by the Water Sector Co-ordinating Unit, the information needed to assess the progress on implementing the provisions of the Watercourses Protocol.[1002]

The Watercourses Protocol was put into operation through a Regional Strategic Action Plan ("RSAP") for Integrated Water Resources Management and Development in the SADC Region from 1999 to 2004. The intended aim of the RSAP is to promote the adoption of an integrated approach to water resources development and management. The RSAP identified seven priorities to achieve this goal, which include: improving the legal and regulatory framework; strengthening institutions; following sustainable development policies; promoting information acquisition, management and dissemination; encouraging awareness building, education and training; promoting public participation; and developing infrastructure.[1003]

7. Relationships

The SADC has relationships with several bilateral and multilateral international cooperation partners ("ICPs"). The bilateral country ICPs include: Austria, Denmark, Finland, France, Germany, the Netherlands, Norway, Sweden, Switzerland, the United Kingdom, and the United States. Several of these bilateral country ICPs have focused on supporting SADC's water programs and have also implemented projects that involve specific water basins. For example, Germany is the lead ICP in the water sector. In this role, Germany has prepared a report on the "Activities of International Cooperating Partners (ICPs) in Transboundary Water Cooperation in the SADC Region" and has supported projects in the Congo, Kunene, Limpopo, Nile, Orange-Senqu, Ruvuma, and Zambezi river basins. The United States has worked to improve the management of water basins (such as the Orange-Senqu), as well as supporting capacity building for the SADC Secretariat. Denmark is involved in the SADC water sector through its work on water resource management projects in the Zambezi Basin and its support of programs under the RSAP. France has also provided technical assistance in the field of water (including for projects on the Limpopo and Orange-Senqu basins).[1004]

[1001] Watercourses Protocol art. 5(2)(d).

[1002] Watercourses Protocol art. 5(3).

[1003] SADC Strategic Development Plan, at sec. 3.3.5.

[1004] ICP Support to SADC, *available at* http://www.sadc.int/index/browse/page/455 (last viewed on 25 Oct. 2010); SADC ICP Water Cooperation Report. *See also* SADC Water Sector ICP Collaboration Portal, *available at* http://www.icp-confluence-sadc.org/ (last viewed on 25 Oct. 2010). In addition, Japan is currently in consultations with SADC on potential areas for support (including in the water sector).

Multilateral ICPs that have been involved with water issues include: the African Development Bank, the European Commission Delegations in Botswana and South Africa, the European Investment Bank, the Food and Agricultural Organization of the United Nations, the United Nations Development Programme ("UNDP"), and the World Bank.[1005] The World Bank, among other projects, has conducted studies on the SADC's water strategy and has supported its capacity building. The UNDP had a Regional Cooperation Framework for Africa and its Water Governance Programme, which focuses on water supply, sanitation, transboundary water management and integrated water resources management, is active in 13 of the SADC Member States.[1006] The SADC also has a relationship with the Global Environmental Facility ("GEF"), which supports the SADC Groundwater and Drought Management Project that aims to promote the development of a regional approach and capacity enhancements in regards to groundwater and drought management.[1007]

In 2003, a Joint SADC-ICP Task Force ("JTF") was established with the objective of improving coordination between the ICPs and SADC and promoting contribution to the implementation of SADC's Regional Indicative Strategic Development Plan. The JTF also seeks to foster enhanced dialogue within the framework of SADC-ICP cooperation. Several thematic groups have developed out of the JTF, one of which includes the Water Sector Reference Group, which is comprised of the SADC's Infrastructure and Services Directorate as well as any ICPs who are interested in supporting SADC's water sector programs. The Water Sector Reference Group is coordinated by the UNDP.[1008]

8. Decision Making

Decisions by the SADC institutions are made by consensus.[1009] But, according to Article 36 of the SADC Treaty, any amendments to the SADC Treaty will be adopted by a three-quarters vote of the all of the Members of the Summit. A quorum for the meetings of the SADC institutions consists of two-thirds of that particular institution's members.[1010]

The Watercourses Protocol does not specify the decision making procedures to be used by the SADC Water Sector Organs or the Shared Watercourse Institutions. But, Article 12 of the Watercourses

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[1005] SADC ICP Water Cooperation Report, at 3.

[1006] ICP Support to SADC; SADC Water Sector ICP Collaboration Portal - United Nations-United Nations Development Programme (UNDP) ("SADC-UNDP Collaboration"), *available at* http://www.icp-confluence-sadc.org/node/263 (last viewed on 25 Oct. 2010). The Global Environment Facility is the principal source of funding for the UNDP's Transboundary Water Management programs.

[1007] SADC Groundwater and Drought Management Project, *available at* http://www.sadc-groundwater.org/gmisa.php (last viewed on 25 Oct. 2010).

[1008] Joint SADC-ICP Task Force *available at* http://www.sadc.int/icp/index/browse/page/376 (last viewed on 25 Oct. 2010). The JTF is composed of a Wider Group of ICPs and representatives of the SADC Secretariat, with the possible participation of the SADC Troika as well as other SADC institutions and stakeholders (such as the SADC National Committees).

[1009] SADC Treaty, arts. 10(9), 10A(7), 11(6), 12(7), 13(7), 19. Under Article 8 of the SADC Treaty, admission of new Member States to SADC requires a unanimous decision of the Summit.

[1010] SADC Treaty, art. 18.

Protocol does provide that any amendments to the Watercourses Protocol must be adopted by a decision of three-quarters of the Summit Members who are also a party to the Watercourses Protocol. The Protocol on Fisheries also does not contain a provision on decision-making, but does specify that any amendment to the Protocol must be adopted by a decision of three-quarters of the Members of the Summit.[1011]

9. Dispute Resolution

According to Article 16 of the SADC Treaty, the Tribunal is tasked with adjudicating disputes, with the decisions of the Tribunal being final and binding.[1012] Any disputes regarding the application or interpretation of the SADC Treaty, or the interpretation, application, or validity of the Protocols or any of the subsidiary instruments under the SADC Treaty, that cannot be resolved amicably are referred to the Tribunal. The Tribunal may also hear all matters on which the Member States specifically confer jurisdiction on the Tribunal.[1013] The Tribunal has jurisdiction over disputes between Member States, between Member States and SADC, and between natural or legal persons and SADC, as well as disputes between Member States and natural or legal persons (provided that the natural or legal person has exhausted all other available remedies or cannot proceed under domestic jurisdiction). When a dispute is referred to the Tribunal by any party, the Tribunal does not need to obtain the consent of the other party to proceed with the case.[1014] The Tribunal will base its decision on the SADC Treaty, relevant Protocols, subsidiary instruments adopted by other SADC institutions, as well as jurisprudence developed by the Tribunal. Decisions of the Tribunal are made by majority vote.[1015]

The Tribunal consists of five regular members, with each Member State nominating one candidate and selections and appointments made by the Council and Summit, respectively. For purposes of hearing a case, an individual tribunal will consist of three members appointed by the President of the Tribunal. The Tribunal may also decide to constitute a full bench of all of its regular members.[1016] The members of the Tribunal are appointed for a five year term, with an option of one additional re-appointment, and are not allowed to engage in any political or administrative functions in any of the Member State, the SADC, or any other entity that may interfere with the proper exercise of their judicial functions.[1017]

[1011] Protocol on Fisheries, art. 29.

[1012] *See also* Tribunal Protocol; Southern African Development Community Tribunal, *available at* http://www.sadc-tribunal.org/ (last viewed on 25 Oct. 2010).

[1013] *See* SADC Treaty, art. 32; Watercourses Protocol, art. 7(2); Protocol on Fisheries, art. 23; Tribunal Protocol, art. 14.

[1014] Tribunal Protocol, arts. 15, 17, 18, 19.

[1015] Tribunal Protocol, arts. 21, 24.

[1016] Tribunal Protocol, arts. 3, 4. The Tribunal consists of ten qualified members from the SADC Member States, with the Council designating only five of those members to sit regularly on the Tribunal. The other five members only serve when a regular member is temporarily absent. Under Article 7 of the Tribunal Protocol, the President of the Tribunal is elected by the Tribunal. Article 4(2) of the Tribunal Protocol also calls for the due consideration to be given to fair gender representation in the nomination and appointment process for members of the Tribunal.

[1017] Tribunal Protocol, arts. 6, 9.

In addition, the Tribunal gives advisory opinions on matters referred to it by the Summit or the Council. Under the Watercourses Protocol, if a dispute arises between SADC and a Member State, a request may be made, via the Summit or Council, for an advisory opinion.[1018]

10. Data Information Sharing, Exchange and Harmonization

To achieve the objectives of the SADC Treaty, the SADC Treaty encourages, *inter alia*, the harmonization of political and socioeconomic policies of the Member States and the promotion of the coordination and harmonization of the international relations of the Member States.[1019] Furthermore, the Member States have agreed to cooperate in numerous areas, including in regards to natural resources and the environment.[1020]

The objectives of the Watercourses Protocol include promoting the harmonization and monitoring of relevant legislation and policies concerning shared watercourses, as well as encouraging information exchange regarding shared watercourses management.[1021] The Watercourses Protocol also obligates the Member States to undertake to harmonize their water uses in the shared watercourses and to observe the objectives of regional integration and harmonization of their socioeconomic policies. In addition, the Member States agreed to verify that all necessary interventions in the shared watercourses are consistent with the sustainable development of all of the Watercourse States. For planned measures that may have a significant adverse impact upon other Watercourse States, the relevant Member States must engage in consultations (and, if necessary, negotiations on the possible effects of the planned measures on the shared watercourse) and exchange certain technical data and information, including the results of any environmental impact assessment. *See also*, **Notifications**. In terms of data exchange, the Member States committed to exchanging available information and data concerning the hydrological, hydro-geological, water quality, meteorological and environmental condition of the shared watercourses in the SADC region.[1022] Furthermore, the Shared Watercourse Institutions are obligated to provide, on a regular basis or as required by the Water Sector Co-ordinating Unit, all of the information needed to assess the progress on implementing the Watercourses Protocol.[1023]

Under the Protocol of Fisheries, the Member States agreed to exchange information needed to achieve the Protocol's objective of responsible and sustainable use of the aquatic resources and the aquatic ecosystems in the SADC region, as well as to cooperate in the exchange of information on the state of shared resources, levels of fishing effort, measures undertaken to monitor and control the exploitation of shared resources, any plans for new or expanded exploitation, and relevant research activities. Two or more Member States may collaborate to create mechanisms for cooperation and information sharing regarding shared resources. The Member States are also called upon to promote effective communication strategies with stakeholders in order to encourage the participative management of the aquatic resources and to publicize certain information, including the rationale and criteria behind decisions regarding total

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[1018] SADC Treaty, art. 16(4); Watercourses Protocol, art. 7(3); Tribunal Protocol, art. 20.

[1019] SADC Treaty, art. 5(2).

[1020] SADC Treaty, art. 21.

[1021] Watercourses Protocol, arts. 2, 4(2)(b)(ii).

[1022] Watercourses Protocol, arts. 3(1), 3(6), 4(1).

[1023] Watercourses Protocol, art. 5(3)(c).

allowable catches, allocation of quotas, permits, licensing, and other rights to use the living aquatic resources.[1024] In addition, Member States are called upon to harmonize their legislation concerning the management of shared resources. The Member States have also agreed to make illegal fishing and related activities by nationals an offense under their national laws and to establish region-wide comparable levels of penalties for illegal fishing by both non-SADC flag vessels and SADC flag vessels.[1025]

11. Notifications

The Watercourses Protocol established specific procedures that a Member State must follow regarding consultations about planned measures involving a shared watercourse that may have a significant adverse effect upon other Watercourse States. Timely notification to the other Watercourse States is required before any Member State can implement such a planned measure. The notification should include any available technical data and information, including the results of any environmental impact assessment, in order for the notified Member States to be better able to assess the possible effects of the planned measures. Notified Member States are given a reply period of six months to study and evaluate the possible effects of the planned measures, subject to a six month extension at the request of a notified Member State.[1026]

During the reply period, the notifying Member State is required to cooperate with the notified Member States by providing any additional data or available information needed for an accurate evaluation, and the notifying Member State must not implement any planned measures without the consent of the notified Member States. The notified Member States are obligated to communicate their evaluation findings to the notifying Member State within the time period mentioned above, and if a notified Member State finds that the planned measure would be inconsistent with certain provisions of the Watercourses Protocol concerning the use of shared watercourses in an equitable and reasonable manner and the prevention of significant harm, it must attach a documented explanation. If, during the applicable period, the notifying Member State receives no relevant communication, it may generally proceed with the implementation of the planned measure.[1027] However, where the notifying Member State receives a communication from a notified Member State regarding the planned measures, those Member States must enter into consultations and, if necessary, negotiations to arrive at an equitable resolution. During the course of consultations and negotiations, the notifying Member State, upon request and unless otherwise agreed, must refrain from implementing the planned measures for a period of six months.[1028]

In addition, under Article 4(5) of the Watercourses Protocol, Member States are obligated to notify, without delay, potentially affected Member States, the SADC Water Sector Co-ordinating Unit and relevant international organizations about any relevant emergency originating within their territories and to supply the necessary information about the emergency.

[1024] Protocol on Fisheries, arts. 3, 7(3)-(4), 18.

[1025] Protocol on Fisheries, arts. 8(1), 8(2), 8(4)(b).

[1026] Watercourses Protocol, art. 4(1)(a)-(c).

[1027] When a notified Member State that failed to reply within the applicable period later makes a claim for compensation, the claim may be offset by the costs incurred by the notifying Member State for any action taken after the expiration of the time period mandated for a timely reply. Watercourses Protocol, art. 4(1)(f)(ii).

[1028] Watercourses Protocol, art. 4 (1)(d)-(g). *See also* Watercourses Protocol, art. 3(7), 3(10).

12. Funding and Financing

SADC's funding consists of contributions from the Member States, income from SADC enterprises, as well as funds from other regional and non-regional sources (such as loans, grants or other gifts). The SADC is responsible for mobilizing the resources needed to implement its programs and projects, and may make resources available to the Member States, upon agreement, in order to achieve the objectives of the SADC Treaty.[1029] To achieve these funding aims, the SADC Treaty established a Regional Development Fund ("RDF"), consisting of contributions from the Member States and other regional and non-regional sources, including the private sector, civil society, non-governmental organizations, and workers' and employers' organizations. The RDF must account for SADC receipts and expenditures relating to SADC's development.[1030] Member States contribute to the SADC budget according to a formula agreed on by the Summit. Before the beginning of the financial year, estimates of the yearly revenue and expenses for the Secretariat are prepared by the Executive Secretary and submitted to the Council for approval. The Council is also responsible for appointing external auditors to review annual statements of account.[1031] The approved budget for 2010/2011 is approximately $66 million, with 44% of the funding from Member State contributions and 55% through financing agreements with development partners (and 1% from other sources).[1032]

Several ICPs provide a substantial amount of funding to SADC. For example, the United Kingdom launched its Regional Plan for Southern Africa in 2006 and offered approximately 150 million euros in support over five years. Germany, which is the lead ICP in the water sector, committed for 2008 and 2009 to provide a contribution of 26 million euros. Japan has also pledged approximately 400 billion Yen to support infrastructure development in Africa.[1033] Multilateral ICPs such as the UNDP and GEF also provide substantial funding towards water management. GEF is a major source of funding for transboundary water management in the SADC region, with the UNDP implementing projects funded by GEF. Currently, the UNDP is implementing US $50 million worth of international waters projects in the SADC region, with a further US $30 million worth of projects under development.[1034]

Under the Protocol on Fisheries, each of the Member States committed to attempt to allocate the resources needed to effectively implement the Protocol within their respective countries. Activities under the Protocol may also be funded by money legitimately solicited from other sources, such as the international donor community. In addition, the Secretariat may accept gifts, grants, and other donations as long as it conforms to any guidelines that may be set by the Council.[1035]

[1029] SADC Treaty, arts. 25, 26.

[1030] SADC Treaty, art. 26A.

[1031] SADC Treaty, arts. 28, 29.

[1032] *SADC Council Discusses Climate Change, Food Security*, ALLAFRICA.COM, 17 Mar. 2010, *available at* http://allafrica.com/stories/ 201003170389.html.

[1033] ICP Support to SADC.

[1034] SADC-UNDP Collaboration.

[1035] Protocol on Fisheries, art. 20.

13. Benefit Sharing

The SADC Treaty provides general language on benefit sharing, stating that the SADC and its Member States shall act in accordance with certain principles, including equity, balance and mutual benefit.[1036]

The purpose of the Watercourses Protocol is to establish a framework for cooperation in the utilization, management, and protection of shared watercourses in the SADC region. Among the general principles of the Watercourses Protocol is the expectation that:

> Watercourse States shall in their respective territories utilise a shared watercourse in an equitable and reasonable manner. In particular, a 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.[1037]

The Protocol on Fisheries also promotes cooperation and coordination among the Member States for the protection of living aquatic resources. Among the general principles of the Protocol on Fisheries is the commitment of each Member State to cooperate with the other Member States to ensure that the goals of the Protocol are achieved with respect to shared resources. The Protocol also contains the expectation that the Member States will transfer skills and technology to one another in order to facilitate regional cooperation.[1038]

14. Compliance and Monitoring

The SADC Treaty tasks the Executive Secretary with establishing close relationships with other institutions in order to guide, support, and monitor the performance of the SADC and to ensure conformity with agreed upon policies, strategies, programs and projects.[1039]

In addition, the SADC Treaty provides for sanctions against Member States that: (a) fail, without good reason, to fulfill obligations under the SADC Treaty, (b) implement policies that serve to undermine the principles and objectives of SADC, or (c) are in arrears in their contributions to SADC, in the absence of certain exceptional circumstances. Sanctions for failure to fulfill obligations or for implementing policies inconsistent with SADC objectives are determined by the Summit on a case-by-case basis, whereas sanctions in the case of arrears are applied by the Secretariat according to the specific provisions of the SADC Treaty.[1040]

[1036] SADC Treaty, art. 4(d); *see also* SADC Treaty, art. 21(1) ("Member States shall cooperate in all areas necessary to foster regional development and integration on the basis of balance, equity and mutual benefit").

[1037] Watercourses Protocol, art. 3(7)(a).

[1038] Protocol on Fisheries, art. 4(1), 4(4).

[1039] SADC Treaty, art. 15(2).

[1040] SADC Treaty, art. 33. Sanctions for payment arrears include suspension of speaking rights and the right to receive meeting documents, personnel recruitment, SADC funds for new projects in the Member State, and certain

Under the Watercourses Protocol, the Committee of Water Ministers is tasked with overseeing and monitoring the implementation of the Watercourses Protocol and assisting in resolving potential conflicts on shared watercourses in the SADC region. The Committee of Water Senior Officials, the Water Sector Co-ordinating Unit, and the Shared Watercourse Institutions also serve to monitor the implementation of the Watercourses Protocol.[1041] Furthermore, while Member States are obligated to take all appropriate measures to prevent significant harm to other Watercourse States when utilizing the shared watercourses, if significant harm does occur, the Member States are called upon to take all appropriate measures to mitigate the harm, and to discuss the question of compensation where appropriate.[1042]

Under Article 19 of the Protocol on Fisheries, the Member States agreed to establish a committee to oversee the implementation of the Protocol. The Member States are also obligated to optimize the use of existing fisheries law enforcement measures, and to cooperate with respect to surveillance in the region in order to reduce costs. Furthermore, a Member State may authorize people to act as fisheries enforcement officers, or as on-board observers, on behalf of two or more Member States.[1043] In addition, if two or more Member States want to allow Member States to enforce a penalty imposed under the national fisheries laws of another Member State, they may establish appropriate procedures.[1044]

15. Participation and the Role of Multiple Stakeholders

In order to achieve the objectives of the SADC Treaty, SADC is called upon to encourage the people and institutions of the region to undertake initiatives to develop economic, social and cultural ties, as well as to fully participate in the implementation of SADC's programs and projects.[1045] SADC is also tasked with promoting the full involvement of key stakeholders (i.e., private sector, civil society, non-governmental organizations, and workers' and employers' organizations) and other people in the region in the regional integration procession, as well as with fostering closer relationships between the communities, associations and people in the SADC region.[1046] The Protocol on Fisheries also calls for the Member States to promote the participation of stakeholders in achieving the objectives of the Protocol and in decision-making processes that affect the management of shared resources.[1047]

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areas of cooperation between SADC and the Member States. To impose these sanctions, the SADC needs to provide notice to the Member States.

[1041] Watercourses Protocol, art. 5(2)(a)-(c), 5(3)(c).

[1042] Watercourses Protocol, art. 3(10).

[1043] Protocol on Fisheries, art. 9. In addition, "a State Party may permit another State Party to extend its fisheries surveillance and law enforcement activities to its inland water bodies and the exclusive economic zone and, in such circumstances, the conditions and method of stopping, inspecting, detaining, directing to port and seizing vessels shall be governed by the national laws and regulations applicable to the waters where the fisheries surveillance or law enforcement activity is carried out." Protocol on Fisheries, art. 9(d).

[1044] Protocol on Fisheries, art. 8(5).

[1045] SADC Treaty, art. 5(2)(b).

[1046] SADC Treaty, art. 23.

[1047] Protocol on Fisheries, arts. 4(2), 7(7).

Furthermore, the objectives of the SADC Treaty include the mainstreaming of gender in community building, with the Secretariat responsible for gender mainstreaming in all of SADC's programs and activities. The Protocol on Fisheries also calls upon the Member States to promote gender equality and to address any potential inequalities in the implementation of the Protocol.[1048]

In addition, the SADC Treaty requires Member States to establish National Committees, consisting of key stakeholders from government, the private sector, civil society, non-governmental organizations, and workers' and employers' organizations. Moreover, each National Committee is responsible for creating a national steering committee, sub-committees, and technical committees, with the aim of involving key stakeholders in the operations of these entities.[1049] For more information on the National Committees, *see* **Organizational Structure.**

16. Dissolution and Termination

A Member State wishing to withdraw from SADC must serve notice, in writing, to the SADC Chairperson a year in advance of the withdrawal. Upon expiration of the notice period, that Member State will cease to be a member of SADC. However, in the interim, that Member State must comply with the provisions of the SADC Treaty.[1050] The Summit may decide to dissolve the SADC, or any of its institutions, by a resolution supported by three-quarters of all of the Member States. Any Member State may make a proposal to the Council for preliminary consideration of the dissolution of the SADC. The Summit may only decide on the dissolution proposal after all of the Member States have been notified and one year has passed since the submission of the proposal to the Council.[1051]

Member States to the Watercourses Protocol may withdraw from the Protocol a year after providing written notice to the SADC Executive Secretary, but must comply with its obligations under the Watercourses Protocol until its withdrawal becomes effective. The Watercourses Protocol may be terminated by a three-quarters vote of the members of the SADC Summit.[1052] The Protocol on Fisheries also mandates similar procedures regarding withdrawal.[1053]

17. Additional Remarks

N/A

18. Website and References

- Southern African Development Community, *available at* http://www.sadc.int/.

[1048] SADC Treaty, arts. 5(1)(k), 14(1)(g); Protocol on Fisheries, art. 4(5).

[1049] SADC Treaty, art. 16(A).

[1050] SADC Treaty, art. 34.

[1051] SADC Treaty, art. 35.

[1052] Watercourses Protocol, arts. 13, 14.

[1053] Protocol on Fisheries, art. 30.

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D. Asia

Bay of Bengal

1. Legal Basis

The Agreement on the Institutionalisation of the Bay of Bengal Programme as an Inter-Governmental Organisation ("Agreement") was signed on 26 April 2003 in Chennai, India (with the Maldives signing the Agreement on 21 May 2003).[1054]

The Agreement evolved from the U.N. Food and Agriculture Organization's ("FAO") Bay of Bengal Programme, which was in place from 1979 to 2000. In the October 1999 Phuket Resolution, representatives from the fishery agencies of Bangladesh, India, Indonesia, Malaysia, the Maldives, Sri Lanka, and Thailand recommended the establishment of an Intergovernmental Organization for Technical and Management Advisory Services for Fisheries Development and Management in the Bay of Bengal Region.[1055]

2. Member States

The Member States of the Bay of Bengal Inter-Governmental Organisation on coastal fisheries ("BOBP-IGO") are Bangladesh, India, the Maldives, and Sri Lanka. There have also been discussions for other countries in the Bay of Bengal region (such as Myanmar, Thailand, and Indonesia) to join the BOBP-IGO.[1056]

3. Geographical Scope

The BOBP-IGO is a regional fisheries organization for the Bay of Bengal. The Agreement does not define what constitutes the Bay of Bengal, but the Bay of Bengal is generally considered the northeastern part of the Indian Ocean surrounded by the basin countries of the Maldives, India, Sri Lanka, Bangladesh, Myanmar, Thailand, Malaysia, and Indonesia.

4. Legal Personality

Under Article 4 of the Agreement, the BOBP-IGO is granted juridical personality and the legal capacity needed to fulfill its objectives and to exercise its functions. In addition, the BOBP-IGO, the representatives of the Member States, the Director, and staff of BOBP-IGO are accorded the privileges and immunities that are necessary for the independent exercise of the functions provided for in the Agreement and by the BOBP-IGO. Each Member States is required to apply the privileges and immunities that are provided for in the U.N. Convention on the Privileges and Immunities of Specialised Agencies. The BOBP-IGO is headquartered in Chennai, India.

[1054] Agreement on the Institutionalisation of the Bay of Bengal Programme as an Inter-Governmental Organisation ("Agreement"), 26 Apr. 2003, *available at* http://www.bobpigo.org/dnload/agreement.pdf.

[1055] The Phuket Resolution, 16 Oct. 2009, *available at* http://www.bobpigo.org/dnload/phuket.pdf.

[1056] BOBP-IGO: FAQ, *available at* http://www.bobpigo.org/faq.htm (last viewed on 5 Jan. 2011).

5. Functions

According to Article 3 of the Agreement, the aim of the BOBP-IGO is to enhance cooperation among the Member States, as well as with other countries and organizations in the region, and to provide technical and managerial support for the development and management of sustainable coastal fisheries in the Bay of Bengal region. Under Article 4, BOBP-IGO is responsible for:

- Implementing programs and activities concerning the sustainable development and management of coastal fisheries;
- Establishing an expanded network to share responsibilities for fisheries management, training, and information exchange;
- Assisting Member States in improving the quality of life and increasing the livelihood opportunities of small-scale fishers;
- Increasing the knowledge and awareness of the benefits, needs, and practices of coastal fisheries management;
- Assisting Member States in harmonizing their policies and legal frameworks regarding the sustainable development and management of the region's coastal fisheries;
- Training the personnel needed for coastal fisheries planning, research, training, extension and development;
- Establishing a regional information system to share information on development, planning, research, and training;
- Supporting the Member States in strengthening their national capabilities for the development and management of coastal fisheries;
- Transferring to the Member States technologies and techniques to assist in the development of small-scale fisheries;
- Establishing a framework for Technical Cooperation among Developing Countries in order to promote regional self-reliance in small-scale fisheries development;
- Developing programs to promote female participation in coastal fisheries development;
- Assisting Member States in conducting feasibility studies and project formulation; and
- Performing any other activities as may be approved by the BOBP-IGO Governing Council.

The BOBP-IGO has released a Vision, Mission and Strategic Plan of Action (2010-2014) that is focused on: (a) improving the monitoring, control and surveillance of fishery resources among the Member States; (b) promoting safety at sea for artisanal and small-scale fishermen; (c) taking the FAO Code of Conduct for Responsible Fisheries to the grassroots level; (d) adapting to climate change; and (e) enhancing

livelihoods for small-scale and artisanal fishermen.[1057] The BOBP-IGO has also been involved in programs on fish stocks assessments in the Bay of Bengal, capacity building and information services for fisheries development and management in the Bay of Bengal region, and setting up a regional information network.[1058] In addition, the BOBP-IGO is also investigating the option of adopting a broader mandate and becoming a Regional Fisheries Management Organization.[1059]

6. Organizational Structure

Under Article 8, the Governing Council is the highest body of the BOBP-IGO and is composed of representatives of the Member States. These Member State representatives are from the Focal Ministries in each country (i.e., the Ministry of Fisheries). The Governing Council holds sessions annually, with special sessions able to be convened at the request of two-thirds of the Member States. According to Article 9, the Governing Council determines the policies of BOBP-IGO and approves the work program and budget of the organization (with due consideration paid to the recommendations of the Technical Advisory Committee). The Governing Council is also responsible for: (a) assessing the financial contributions of the Member States; (b) establishing special funds in order to receive additional resources for programs and projects; (c) developing standards and guidelines needed for the running of the organization; (d) evaluating the work and activities of the BOBP-IGO; (e) approving agreements for cooperation; and (f) performing all other functions as called for in the Agreement or that are ancillary to achieving the approved activities. The Governing Council will also elect a Chairman and Vice-Chairman.

According to Article 12, the Governing Council appoints a Director, who is the legal representative of the BOBP-IGO. The Director is responsible for directing the work of the BOBP-IGO, according to the directions of the Governing Council. At each regular session of the Governing Council, the Director submits a report on the work of the BOBP-IGO and the audited accounts, as well as a draft work program and budget for the following year. The Director is also required, among other duties, to prepare and organize sessions of the Governing Council and other meetings of the BOBP-IGO; facilitate coordination among the Member States; organize conferences, regional training programs, and other meetings as specified in the work program; initiate proposals for joint action programs with other regional and international bodies; ensure that research findings, training manuals, and other relevant information is published; and take other needed actions as are consistent with BOBP-IGO's objectives and as specified by the Governing Council. To carry out these objectives, the Director can appoint staff members and consultants. Below the Director, the staff structure is comprised of the Management Support Services, Resource Management Services, Information and Communication Services, and Policy Program Development Services.[1060]

Under Article 11, the Governing Council is required to establish a Technical Advisory Committee, consisting of one representative, who possesses expertise in coastal fisheries, from each Member State.

[1057] Vision, Mission & Strategic Plan of Action (2010-2014) of the BOBP-IGO, Report of the Sixth Meeting of the Governing Council ("2010 Governing Council Report"), at 12-13, 51-60, *available at* http://www.bobpigo.org/pdf/GCM6_report.pdf.

[1058] BOBP-IGO: Programs, *available at* http://www.bobpigo.org/programs.htm (last viewed on 5 Jan. 2011).

[1059] *See* Concept Noted on the Modalities and Requirements for Assigning the Role of a Regional Fisheries Management Organisation to the Bay of Bengal Programme Inter-Governmental Organisation, 2010 Governing Council Report, at 13, 61-78.

[1060] 2010 Governing Council Report, at 53-54.

The Technical Advisory Committee is responsible for advising the Governing Council on all technical aspects of the activities of the BOBP-IGO. The Technical Advisory Committee meets annually, or more frequently upon the request of the Governing Council. At each session, the Technical Advisory Committee adopts a report on its recommendations and conclusions, which it then submits to the Governing Council.

7. Relationships

The Member States agreed that there should be a close working relationship between the BOBP-IGO and the FAO. The FAO is invited to attend, in an advisory capacity, the meetings of the Governing Council and the Technical Advisory Committee. The Member States also agreed that there should be cooperation between non-member donor governments and international organizations and institutions (especially those involved in the fisheries sector) that could contribute to the activities and objectives of the BOBP-IGO. For those non-member governments, organizations and institutions that make significant contributions to the activities of BOBP-IGO, they may be invited to attend the sessions of the Governing Council and the Technical Advisory Committee as observers. In addition, the BOBP-IGO is authorized to enter into agreements with these entities to specify participation rights in the BOBP-IGO.[1061]

In addition to the current Member States of the BOBP-IGO (Bangladesh, India, the Maldives, and Sri Lanka), Indonesia and Thailand were also invited to the Meeting of Plenipotentiaries to adopt the Agreement. Even though Indonesia and Thailand are not currently members of the BOBP-IGO, they can become parties to the Agreement by depositing an instrument of accession with the Director-General of the FAO (as the Depositary). Otherwise, if any other state wants to become a member of BOBP-IGO, the Governing Council must authorize (by a two-thirds vote of the Member States) that state to accede to the Agreement.[1062]

8. Decision Making

Under Article 8.6, each Member State has one vote in the Governing Council. Decisions of the Governing Council are generally made by majority vote (with a majority of Member States present constituting a quorum). Decisions concerning BOBP-IGO's work program, budget, financial contributions, and new Member States must be approved by two-thirds of the Member States. Amendments to the Agreement must be approved by three-quarters of the Member States.[1063]

9. Dispute Resolution

Under Article 19, disputes between the Member States concerning the interpretation or application of the Agreement should first be attempted to be settled by negotiation, conciliation, or similar means. If those methods fail, a party to the dispute can refer the matter to the Governing Council for its recommendation. If a settlement still cannot be reached, the matter will be submitted to a three-member arbitral tribunal. Each party to the dispute will appoint one arbitrator, and then those two arbitrators will jointly appoint the third arbitrator, who will also serve as President of the arbitral tribunal. If one of the parties does not appoint an arbitrator within two months of the appointment of the first arbitrator or the two party

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[1061] Agreement, art. 8.7, 10, 11.7, 15.

[1062] Agreement, art. 6.3, 16.

[1063] Agreement, art. 6.3, 9, 17.

arbitrators cannot agree on a third arbitrator, the Chairman of the Governing Council will appoint the arbitrator. The proceedings of the arbitral tribunal are to be conducted in accordance with the rules of the U.N. Commission on International Trade Law. If a Member State does not abide by an arbitral award delivered under the Agreement, its rights and privileges of membership in the BOBP-IGO may be by suspended by a vote of two-thirds of the Member States.

10. Data Information Sharing, Exchange, and Harmonization

In 2005, the Governing Council decided to create a database of scientific organizations and individual scientists who work on fisheries, aquaculture, and other related activities in the region. The database is intended to promote the sharing of information between relevant organizations and scientists and individuals in the region. Currently, the database is limited to the Member States and their populations, but the goal is to eventually expand the database to a wider audience.[1064] In addition, the Governing Council has approved activities regarding capacity building related to fisheries data collection methodologies and stock assessment.[1065]

In 1995, the FAO developed a global Code of Conduct for Responsible Fisheries. Under the old FAO Bay of Bengal Program and continuing under the BOBP-IGO, the Code of Conduct was translated into the languages of Bay of Bengal basin countries (Bengali, Dhivehi, Sinhalese, Thai, Oriva, Tamil, Telugu, Gujarati, Hindi and Marathi) in order to better engage the fishing community in the region. The BOBP-IGO is continuing this effort to translate the Code of Conduct and its Technical Guidelines into additional regional languages. The BOBP-IGO also intends to promote the Code of Conduct and its Technical Guidelines though workshops, seminars, and regional training courses in Member States, as well as distributing booklets directly to local fisherman.[1066] The regional training courses consist of theoretical sessions, field visits and interactions regarding the Code of Conduct and are targeted at mid-level and junior level fisheries officials in the Member States.[1067]

In addition, documents from the FAO's erstwhile Bay of Bengal Program are available online.[1068]

11. Notifications

No specific provision

[1064] BOBP-IGO: Database, *available at* http://www.bobpigo.org/database.htm (last viewed on 5 Jan. 2011).

[1065] 2010 Governing Council Report, at 13.

[1066] BOBP-IGO: Programs, *available at* http://www.bobpigo.org/programs.htm (last viewed on 5 Jan. 2011).

[1067] BOBP-IGO: News & Events, *available at* http://www.bobpigo.org/news_events.htm (last viewed on 5 Jan. 2011).

[1068] FAO Fisheries and Agriculture Department: BOBP – Bay of Bengal Programme, *available at* http://www.fao.org/
fi/oldsite/eims_search/advanced_s_result.asp?progname=3&sortorder=3&form_c=AND&lang=en (last viewed on 5 Jan. 2011).

12. Funding and Financing

Article 13 of the Agreement details the financial resources of the BOBP-IGO as: (a) contributions from the Member States; (b) revenues from providing services; (c) donations and voluntary contributions (that are compatible with the objectives of BOBP-IGO); and (d) other resources that are approved by the Governing Council and compatible with the objectives of BOBP-IGO.

Under Article 13.3, a Member State that has arrears totaling its contributions due from the two preceding calendar years will not be allowed to vote in the Governing Council. But, the Governing Council can still permit that Member State to vote if it finds that the Member State's failure to pay its financial contribution was as a result of circumstances beyond its control.

13. Benefit Sharing

The objective of the BOBP-IGO is to support the development and management of sustainable coastal fisheries in the Bay of Bengal region for the benefit of the entire region. To achieve this aim, the countries of the region have come together to discuss regional and national level management plans for certain fish stocks threatened by over-exploitation. For example, Bangladesh, India, and Myanmar have engaged in regional consultations on the preparation of management plans for hilsa fisheries. Regional consultations with the Member States have also been held regarding the development of a management plan for shark fisheries.[1069]

The Member States have also come together in regards to meeting the European Union's ("EU") Regulation on Illegal, Unregulated and Unreported ("IUU") Fishing. In September 2009, the Member States held a Regional Strategic Meeting on the EU measure in order to understand the impact of the EU IUU Fishing Regulation and to determine the ability of the countries to meet the EU's requirements.[1070]

14. Compliance and Monitoring

The BOBP-IGO has helped host national workshops across the region on monitoring, control and surveillance in marine fisheries. These workshops have focused on the scope for implementing an effective monitoring, control and surveillance system (such as registration and licensing of fishing vessels, effort optimization, institutional support and capacity building). National workshops have been held in all of the Member States. Each Member State is responsible for implementing its own monitoring, control and surveillance action plan.[1071]

As part of the BOBP-IGO's Vision, Mission and Strategic Plan of Action (2010-2014), the BOBP-IGO has developed a plan to strengthen monitoring, control and surveillance of fishery resources in the Bay of Bengal among the Member States. After the Member States develop their National Plans of Actions for Monitoring, Control and Surveillance (through the various national workshops), the countries are supposed to work together to develop a Regional Plan of Action that involves the management of transboundary species and specific management plans for major commercial species (such as the work that the BOBP-IGO has undertaken with regards to the hilsa and shark fisheries). This enhanced monitoring, control and surveillance system would be supported by capacity building through technical

[1069] BOBP-IGO: News & Events.

[1070] BOBP-IGO: News & Events.

[1071] BOBP-IGO: News & Events.

training and cooperation with international partners. The BOBP-IGO will monitor the progress of developing an improved monitoring, control and surveillance system. An enhanced monitoring, control and surveillance system, as well as, management plans for the shark and hilsa fisheries are scheduled to be in place by the end of 2014.[1072]

15. Participation and the Role of Multiple Stakeholders

For most of its activities, the BOBP-IGO works in partnership with other organizations and governments, as well as with domestic government agencies of the Member States. For example, as part of the FAO's global project on Safety at Sea, one of the Regional Consultations on Safety at Sea for Small-Scale Fisheries for South Asia was jointly organized by the FAO, the Swedish International Development Agency ("SIDA), the National Institute of Occupational Safety and Health, Alaska ("NIOSH"), and the BOBP-IGO. In addition, the Regional Workshops on Monitoring, Control and Surveillance are held in cooperation with various government agencies of the host Member State.[1073]

The BOBP-IGO is focused on small-scale fishers. For example, BOBP-IGO has also worked with the International Cooperative Fisheries Organization of the International Cooperative Alliance in a Japanese-funded project to provide training in Asian countries regarding community-based fishery resource management ("CBFRM"). The project aims to promote CBFRM by small-scale coastal fishers and their organizations in order to support sustainable production, job opportunities, and poverty alleviation. The project is divided into three phases, whereby: (1) experts visit the selected country to evaluate their CBFRM; (2) then a select group of fishers from that country goes to Japan to study fisheries resource management; and (3) finally, a project workshop is conducted in the selected country. The BOBP-IGO's role is to prepare the final reports for each of the selected countries. The selected countries are not limited to the BOBP-IGO Member States, as the Philippines, Thailand, Vietnam, and Indonesia have all participated in the project.[1074]

16. Dissolution and Termination

According to Article 18, three years after a Member State becomes a party to the Agreement, it may give notice of its withdrawal from the BOBP-IGO to the Depositary (the FAO Director-General). The withdrawal will take effect twelve months after the notice was received (or on a later day if specified). Even after submitting a notice of withdrawal, any obligations incurred by that Member State remain valid. The Governing Council can also decide, by a three-quarters vote, to disband the BOBP-IGO. In addition, the BOBP-IGO will disband if the number of Member States decreases to three countries – unless the remaining three Member States unanimously agree to continue the BOBP-IGO.

17. Additional Remarks

As the BOBP-IGO is focused on the management of coastal small-scale fisheries and does not include all of the countries in the Bay of Bengal region as members, the eight countries in the region (Bangladesh, India, Indonesia, Malaysia, Maldives, Myanmar, Sri Lanka and Thailand) have also partnered together in the FAO/Global Environment Facility ("GEF") Bay of Bengal Large Marine Ecosystem ("BOBLME")

[1072] 2010 Governing Council Report, at 55-56.

[1073] BOBP-IGO: News & Events.

[1074] BOBP-IGO: News & Events; *see also* BOBP-IGO: Reports, *available at* http://www.bobpigo.org/reports.htm (last viewed on 5 Jan. 2011).

project. The BOBLME project, which is scheduled to occur between May 2008 and April 2013, is designed to address threats to the coastal and marine environment and to promote comprehensive eco-system based management throughout the Bay of Bengal region. In addition, the project aims to strengthen institutional capacity throughout the region and to develop a permanent regional institutional arrangement to continue the work of the BOBLME project. The BOBLME project has total funding of nearly US $31 million – based on a US $12 million grant from GEF, co-financing from Norway, SIDA, the U.S. National Oceanic and Atmospheric Administration ("NOAA"), and the FAO, and by contributions from the eight participating countries in the Bay of Bengal.[1075]

Priority issues for the BOBLME include: (a) the overexploitation of certain marine resources, (b) the degradation of highly productive marine and coastal habitats (such as coral reefs, mangroves and estuaries, and marine grass beds), (c) land-based sources of pollution, (d) vulnerable populations that live in habitats often affected by natural disasters, and (e) overcoming the lack of regional institutional arrangements.[1076] Therefore, the objectives of the BOBLME project are to produce: "(i) a finalized Transboundary Diagnostic Analysis (TDA); (ii) an agreed Strategic Action Programme (SAP); (iii) the establishment of permanent, partially financially-sustainable institutional arrangements that will support the continued development and broadening of commitment to a regional approach to BOBLME issues; (iv) creation of conditions leading to improved wellbeing of rural fisher communities; (v) support for a number of relevant regional and sub-regional activities; (vi) development of a better understanding of the BOBLME's large-scale processes and ecological dynamics; (vii) establishment of basin health indicators in the BOBLME; (viii) increased capacity; and (ix) long-term commitment from the BOBLME countries to collaborate in addressing complex situations confirmed through adoption of an agreed institutional collaborative mechanism."[1077]

The BOBLME project has identified three groups of stakeholders: (a) regional stakeholders, such as regional development banks and agencies and international non-governmental organizations ("NGOs"); (b) national stakeholders, such as national and state government agencies, NGOs and other civil society organizations, private sector entities, and academic institutions; and (c) local stakeholders, such as local government agencies, fishermen, rural youth, local environmental NGOs, and other local citizens. The BOBLME project has involved all three groups in project development, including through participation in consultations and workshops, meetings of national task forces, and the development of national reports. The project also encourages ongoing dialogue and relationships with stakeholders during project implementation.[1078]

The FAO Fisheries Department, through the Regional Office for Asia and the Pacific ("RAP"), coordinates the implementation of the BOBLME project. The Regional Operations Branch in RAP is the Budget Holder ("BH"). The FAO is accountable for the timeliness and quality of technical services regarding the project's execution, while the BH is responsible for administrative functions, including the disbursement of funds. Additionally, the World Bank offers policy support, technical advice, and aid in developing investment opportunities for the country participants. The Project Steering Committee

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[1075] *See* FAO/Global Environment Facility Project Document - Sustainable Management of the Bay of Bengal Large Marine Ecosystem ("BOBLME Project Document"), at 1, 3, 13, 48-49, *available at* http://www.boblme.org/uploads/BOBLME%20Project%20document.pdf (last viewed on 19 Jan. 2011).

[1076] BOBLME Project Document, at 9-10.

[1077] BOBLME Project Document, at 3.

[1078] BOBLME Project Document, at 14-15, 55-56, 147-149.

("PSC") establishes the annual policies for the project. Each country participant nominates two members of the PSC (generally from the Ministry of Fisheries and the Ministry of the Environments). Representatives of the FAO, the World Bank, and bilateral donors are also members of the PSC. The chair of the PSC rotates annually. A Regional Coordination Unit ("RCU") acts as secretariat to the PSC, and coordinates work at the national level (through the National Task Force ("NTF")) and at the regional level. The RCU is also tasked with finalizing the framework for the TDA and the SAP, as well as developing and implementing a monitoring program. A NTF guides the implementation of projects at the national level. NTF members are nominated by the BOBLME countries, and also include representatives from NGOs, civil society, and private sector organizations.[1079]

The PSC is also responsible for providing general oversight of the BOBLME project. The PSC provides guidance to the RCU regarding the project's execution, reviews project outputs for conformity with the guiding documents, and amends and approves the Annual Regional Work Plans ("ARWPs") for submission to GEF and the FAO. The RCU monitors the project's outcomes and progress using the adopted results framework. The central mechanisms guiding the work of the BOBLME project are the ARWPs. Every year, the RCU prepares and delivers an ARWP to the PSC. These ARWPs are derived from national work plans, as well as regional activities. The PSC has 45 days to endorse the ARWP. Specific monitoring tasks are also defined in the AWRPs, which may assign these tasks to RCU staff, National Coordinators, or outside consultants. The FAO monitors financial inputs and disbursements, comparing financial disbursements to technical activities planned in the AWRPs.[1080]

In addition, the BOBLME project is planning several partnerships with some of the NGOs and international and regional institutions operating in the Bay of Bengal. Potential partners include: the Southeast Asian Fishery Development Centre (SEAFDEC), which has fishery assessment capabilities and capacity building and training resources; the BOBP-IGO, which can facilitate regional meetings; the Network of Aquaculture Centers in Asia-Pacific (NACA), which has experience dealing with coastal-land interaction and managing coastal aquaculture; and the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC), which has a working committee on fisheries.[1081]

18. Websites and References

- Bay of Bengal Programme-Intergovernmental Organisation, *available at* http://www.bobpigo.org/index.htm.
- BOBP-IGO: Report of the Sixth Meeting of Governing Council, *available at* http://www.bobpigo.org/pdf/GCM6_report.pdf.
- Bay of Bengal Large Marine Ecosystem Project, *available at* http://www.boblme.org/index.html.

[1079] BOBLME Project Document, at 39-42, 125-146.

[1080] BOBLME Project Document, at 50-52.

[1081] BOBLME Project Document, at 33.

Mekong

1. Legal Basis

The Mekong River Commission ("MRC") governs the allocation and utilization of the Mekong River waters by four countries – Thailand, Cambodia, Vietnam, and Laos. The MRC was founded in 1995 pursuant to the Agreement on the Cooperation for Sustainable Development of the Mekong River Basin (the "1995 Agreement"), which was signed and entered into force at Chiang Rai, Thailand on 5 April 1995.[1082] On 5 April 2010, the heads of state of Thailand, Cambodia, Vietnam, and Laos met in Hua Hin, Thailand for the first MRC Summit to mark the 15th anniversary of the adoption of the 1995 Agreement. The parties adopted a joint declaration—the Hua Hin Declaration—reaffirming their commitment to implementing the 1995 Agreement.[1083]

The 1995 Agreement was the result of more than 40 years of regional and supra-regional efforts to manage the resources of the Mekong River Delta. In the mid-1950s, the United Nation's Economic Commission for Asia and the Far East ("ECAFE") and the U.S. Bureau of Reclamation sent teams to the Mekong to examine water management issues.[1084] Both ECAFE and the U.S. Government published detailed reports of their findings.

The ECAFE report "provided for a conceptual framework to develop the Mekong River Basin as an integrated system through close collaboration of the riparian countries" and called for a permanent apparatus to oversee the development of the Mekong Basin.[1085] Representatives of the lower Mekong states—Thailand, Cambodia, Vietnam, and Laos—met in Bangkok, Thailand in May 1957 to discuss the ECAFE report. On 17 September 1957, the parties adopted the Statute of the Committee for the Coordination of Investigations of the Lower Mekong Basin (the "1957 Statute").[1086] The 1957 Statute "represent[ed] the first constitutional document for the Mekong Regime,"[1087] and "the first attempt of the United Nations to be directly involved in continuing support for the planning and development of an international river basin."[1088] Article 4 of the 1957 Statute provided the new Mekong Committee with powers to coordinate the development of the Mekong River Basin.

[1082] Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin ("1995 Agreement"), 5 Apr. 1995, *available at* http://www.mrcmekong.org/agreement_95/agreement_95.htm.

[1083] Hua Hin Declaration, 5 Apr. 2010, *available at* http://www.mrcsummit2010.org/MRC-Hua-Hin-Declaration-05-Apr-10.pdf.

[1084] *See* Greg Browder and Leonard Ortolano, *The Evolution of an International Water Resources Management Regime in the Mekong River Basin*, 40 NAT. RESOURCES J. 499, 505 (2000).

[1085] Mikiyasu Nakayama, *Aspects Behind Differences in Two Agreements Adopted by Riparian Countries of the Lower Mekong River Basin*, 1 J. COMP. POL'Y ANALYSIS 1 293, 294 (Dec. 1999).

[1086] Statute for the Committee for Co-ordination of Investigations of the Lower Mekong Basin ("1957 Statute"), 17 Sep. 1957, as amended on 31 Oct. 1957, 2 Aug. 1962 and Mar. 1972, *reprinted in* LEGISLATIVE TEXTS AND TREATY PROVISIONS CONCERNING THE UTILIZATION OF INTERNATIONAL RIVERS FOR OTHER PURPOSES THAN NAVIGATION 267 (United Nations Legislative Series).

[1087] Browder and Ortolano, *The Evolution of an International Water Resources Management Regime*, at 505.

[1088] Nakayama, *Aspects Behind Differences in Two Agreements*, at 295.

The 1957 Statute was followed by the Joint Declaration of Principles for Utilization of the Waters of the Lower Mekong Basin (the "Joint Declaration"), signed at Vientiane, Laos on 31 January 1975. The Joint Declaration described the Mekong "as a resource of common interest" and required that major unilateral appropriations of the mainstream waters received prior approval from the other parties.[1089]

On 5 January 1978, Thailand, Laos, and Vietnam signed the Declaration Concerning the Interim Mekong Committee for Coordination of Investigations of the Lower Mekong Basin (the "Interim Mekong Committee Declaration") in Vientiane, Laos. Due to the rise to power of the Khmer Rouge, Cambodia did not participate. The new Interim Committee's functions were reduced by the parties, with the main role of the Interim Commission being to obtain assistance from donor countries.[1090]

In 1991, the Khmer Rouge was defeated and the new regime in Cambodia requested readmission into the consortium and the reactivation of the former Mekong Committee.[1091] The 1995 Agreement allowed for Cambodia's readmission and created a new body in place of the former Mekong Committee and the Interim Mekong Committee.

The 1995 Agreement superseded all three prior agreements (the Joint Declaration, the Interim Mekong Committee Declaration and the 1957 Statute) and all rules of procedure adopted under past agreements.[1092] The 1995 Agreement is a treaty.

2. Member States

The Member States to the 1995 Agreement are Thailand, Laos, Cambodia, and Vietnam (the four countries in the Lower Mekong Basin). However, China and Myanmar, whose territories comprise the Upper Mekong Basin, have not signed the 1995 Agreement. In 1996, China and Myanmar became official "dialogue partners." As such, they may dispatch representatives to Joint Committee and Council meetings, where they may participate in discussions.[1093] In the 2010 Hua Hin Declaration, the Member States expressed hope that China and Myanmar would join the MRC in the near future.[1094] Indeed, the 1995 Agreement contemplates the accession of China and Myanmar, stating that "[a]ny other riparian State, accepting the rights and obligations under this Agreement, may become a party with the consent of the parties."[1095]

3. Geographical Scope

[1089] Joint Declaration for Principles for Utilization of the Waters of the Lower Mekong Basin ("Joint Declaration"), art. X, 31 Jan. 1975, *available at* http://www.fao.org/legal/legstud/ls55-ef.pdf.

[1090] Browder and Ortolano, *The Evolution of an International Water Resources Management Regime*, at 510.

[1091] Browder and Ortolano, *The Evolution of an International Water Resources Management Regime*, at 515.

[1092] 1995 Agreement, art. 36.

[1093] Browder and Ortolano, *The Evolution of an International Water Resources Management Regime*, at 526.

[1094] Hua Hin Declaration, at 2.

[1095] 1995 Agreement, art. 39.

The Mekong River Basin is the land area surrounding all of the streams and rivers that flow into the Mekong River. The MRC governs the Lower Mekong River Basin—which includes parts of Vietnam, nearly one-third of Thailand, and most of Laos and Cambodia.[1096]

4. Legal Personality

In contrast to the Mekong Committee which functioned under the auspices of the United Nations,[1097] the MRC is an independent international body. The 1995 Agreement provides:

> The institutional framework for cooperation in the Mekong River Basin under this Agreement shall be called the Mekong River Commission and shall, for the purpose of the exercise of its functions, enjoy the status of an international body, including entering into agreements and obligations with the donor or international community.[1098]

In addition, the MRC assumes all rights and obligations of the prior Mekong Committee. The 1995 Agreement states that:

> The Mekong River Commission shall assume all the assets, rights and obligations of the Committee for the Coordination of Investigations of the Lower Mekong Basin (Mekong Committee/Interim Mekong Committee) and Mekong Secretariat.[1099]

5. Functions

There are three bodies that comprise the MRC—the Council, the Joint Committee, and the Secretariat.[1100]

The Council makes policy decisions "on behalf of member governments"[1101] that are necessary to the successful implementation of the 1995 Agreement. Accordingly, the Council approves the Joint Committee's Rules of Procedure, rules of water utilization and inter-basin diversions to be proposed by the Joint Committee, the basin development plan, and major component projects and programs. The Council also settles disputes referred to it by any Council member, the Joint Committee, or any Member State on matters arising under the 1995 Agreement.[1102]

[1096] Mekong River Commission—About the Mekong, *available at* http://www.mrcmekong.org/about_mekong/about_mekong.htm (last viewed on 30 Nov. 2010).

[1097] George E. Radosevich and Douglas C. Olson, *Existing and Emerging Basin Arrangements in Asia: Mekong River Commission Case Study*, 24 June 1999, at 17, *available at* http://siteresources.worldbank.org/INTWRD/918599-1112615943168/20431963/MekgongRiverComCaseStudy.pdf.

[1098] 1995 Agreement, art. 11.

[1099] 1995 Agreement, art. 13.

[1100] 1995 Agreement, art. 12.

[1101] Browder and Ortolano, *The Evolution of an International Water Resources Management Regime*, at 524.

[1102] 1995 Agreement, art. 18.

The Joint Committee implements the policies and decisions of the Council and performs other tasks as may be assigned by the Council. In particular, the Joint Committee is responsible for formulating a basin development plan and joint development projects and programs; updating and exchanging information and data necessary to implement the 1995 Agreement; conducting environmental studies and assessments to maintain the ecological balance of the Mekong River Basin; supervising the Secretariat; and seeking to resolve disputes that may arise between regular sessions of the Council that are referred to it by any Joint Committee member or Member State on matters arising under the 1995 Agreement, and when necessary referring matters to the Council.[1103]

The Secretariat is the "central coordinating and logistical body to the [MRC] under the direct supervision of the [Joint] Committee."[1104] The Secretariat renders technical and administrative support to the Council and the Joint Committee.[1105]

6. Organizational Structure

The Council is composed of one member from each Member State at the Ministerial or Cabinet level.[1106] It shall convene at least one regular session a year and may convene special sessions whenever the Council considers it necessary or at the request of a Member State. The Council may invite observers to its meetings.[1107] The chairmanship of the Council is for a one-year term and rotates alphabetically amongst the Member States. The Council adopts its own Rules of Procedure.[1108]

The Joint Committee is composed of one member from each Member State at no less than the Department-Head level.[1109] It shall convene at least two regular sessions a year and may convene special sessions whenever the Joint Committee considers it necessary or at the request of a Member State. The Joint Committee may invite observers to its meetings.[1110] The chairmanship of the Joint Committee is for a one-year term and rotates reverse-alphabetically amongst the Member States. The Joint Committee adopts its own Rules of Procedure, subject to Council approval.[1111]

The Secretariat is led by a Chief Executive Officer ("CEO") who is appointed by the Council from a short-list of "qualified candidates" chosen by the Joint Committee. The deputy to the CEO, the Assistant Chief Executive Officer, is nominated by the CEO and approved by the Chairman of the Joint

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[1103] 1995 Agreement, art. 24.

[1104] George E. Radosevich, *Draft Commentary and History of the Making of the Mekong Agreement* ("Radosevich Commentary"), 22 Oct. 1993, at 26 [unpublished manuscript on file with White & Case LLP].

[1105] 1995 Agreement, arts. 28, 30.

[1106] 1995 Agreement, art. 15.

[1107] 1995 Agreement, art. 17.

[1108] 1995 Agreement, arts. 16, 19.

[1109] 1995 Agreement, art. 21.

[1110] 1995 Agreement, art. 23.

[1111] 1995 Agreement, arts. 22, 25.

Committee.[1112] The CEO is also assisted by a riparian technical staff. The number of riparian staff posts is assigned on an equal basis among the Member States.[1113]

In addition, each Member State has established a National Mekong Committee ("NMC") to coordinate MRC programs at the national level. The organizational structure of NMCs varies across Member States.[1114]

In the 2010 Hua Hin Declaration, the parties "encourage[d] the MRC to increasingly explore de-centralized implementation modalities for its core river basin management functions," and suggested that "institutional models adopted by other international river basin organizations" could serve as a guide.[1115]

7. Relationships

Certain international organizations have rights to attend and participate in Joint Committee and Council meetings. The Asian Development Bank, the Association of Southeast Asian Nations ("ASEAN"), the International Union for Conservation of Nature, the United Nations Development Programme, the United Nations Economic and Social Commission for Asia and the Pacific, the World Bank, and the World Wildlife Fund all have observer status.[1116]

At the MRC Summit in Hua Hin, Thailand in April 2010, the ASEAN Secretariat agreed to collaborate to implement a basin-wide strategy to manage and develop Mekong water and related resources.[1117]

8. Decision Making

The Council and the Joint Committee must reach a unanimous result in order to implement a decision, unless otherwise provided for in their Rules of Procedures.[1118]

[1112] 1995 Agreement, arts. 31, 32.

[1113] 1995 Agreement, art. 33.

[1114] Ellen Bruzelius Backer, *Paper Tiger Meets White Elephant?: An Analysis of the Effectiveness of the Mekong River Regime*, Aug. 2006, at 37, *available at* http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ots591=0C54E3B3-1E9C-BE1E-2C24-A6A8C7060233&lng=en&id=47649. But while the structures of the NMCs are not uniform, they generally have common features, including an inter-ministerial policy-making body, a management group consisting of key government departments, and a secretariat to support the NMC. *See* Radosevich and Olson, *Existing and Emerging Basin Arrangements*, at 18.

[1115] Hua Hin Declaration, at 4.

[1116] Backer, *Paper Tiger*, at 37.

[1117] Mekong River Commission Media Release, ASEAN, MRC to Boost Cooperation on Mekong Issues, 4 Apr. 2010, *available at* http://www.mrcmekong.org/MRC_news/press10/ASEAN-MRC-to-Boost-Cooperation4-Apr-10.htm.

[1118] 1995 Agreement, art. 20, 27.

9. Dispute Resolution

The MRC must make the first effort to resolve disputes between two or more Member States regarding matters covered by the 1995 Agreement.[1119] Both the Council and the Joint Committee are empowered to address and to resolve disputes.[1120] *See* **Functions.**

The MRC can only put an end to the dispute if "the concerned parties are satisfied."[1121] If the MRC is unable to resolve a dispute in a timely manner, the dispute shall be referred to the Member States' governments to resolve through diplomatic channels.[1122] By mutual agreement, the Member State governments may resort to third-party mediation, including an entity like the World Bank or an individual, as may be mutually agreed upon by the parties.[1123]

10. Data Information Sharing, Exchange, and Harmonization

Both the Joint Committee and the Secretariat have responsibilities related to general data information sharing, exchange, and harmonization.[1124] The Joint Committee is directed to "regularly obtain, update and exchange information and data necessary to implement this Agreement" and to "conduct appropriate studies and assessments for the protection of the environment and maintenance of the ecological balance of the Mekong River Basin."[1125] The Secretariat is directed to "[m]aintain databases of information as directed."[1126]

The MRC maintains a hydrologic monitoring network. In each Member State, one or more government agencies are responsible for collecting data and providing it to the MRC. In turn, "[t]he MRC Secretariat assists the participating agencies with network maintenance, improving field data collection and arranging in-service training for staff. Each year the MRC publishes the *Lower Mekong Hydrologic Yearbook* which is circulated widely."[1127]

In April 2002, the MRC signed the "Agreement on the Provision of Hydrological Information" with China, which allows for the provision of data from two Chinese monitoring stations to assist the MRC's

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[1119] 1995 Agreement, art. 34.

[1120] 1995 Agreement, arts. 18, 24.

[1121] LE Thanh Long, *Sustainable Development of the Mekong: A Reality or Just Another Hortatory Cliché?*, 2002, at 22, *available at* http://ir.nul.nagoya-u.ac.jp/dspace/bitstream/2237/6003/1/HH019411001.pdf.

[1122] 1995 Agreement, art. 35.

[1123] Radosevich Commentary, at 27.

[1124] 1995 Agreement, arts. 24, 30.

[1125] 1995 Agreement, art. 24.

[1126] 1995 Agreement, art. 30.

[1127] Jonathan Chenoweth, *International River Basin Management: Data and Information Exchange under International Law and the Case of the Mekong River Basin*, 18 J. ENERGY NAT. RESOURCES L. 142, 155 (2000).

flood-forecasting operation.[1128] Since 2002, China has shared hydro-metereological data with the MRC during the flood season, and in March 2010 committed to providing such data in the dry season as well.[1129]

11. Notifications

A Member State must meet certain information-reporting requirements before utilizing the Mekong River waters. The 1995 Agreement distinguishes three forms of information-reporting: notification, prior consultation and agreement.[1130] Where notification is required, the Member State must make a statement of its proposed use to the Joint Committee. No discussion is necessary, if the notification is timely and complies with relevant Joint Committee's Rules. Further, during the wet season, uses subject to notification do not require annual notification, as one notification is generally sufficient.[1131]

Prior consultation consists of notification plus the provision of additional documents and information.[1132] It is intended to allow other Member States to evaluate the impact of the proposed water use and make reasonable and prompt objections, "but with the specific understanding that this consultation would not give any riparian a right to veto the use of water."[1133]

Following prior consultations, agreement on the use of waters concerns proposed uses of the water during the dry season. The purpose of agreement is to "anticipate the water flows for the forthcoming dry season based upon the data from previous years and the current year data."[1134] The agreement process monitors the water flows during the dry season and adjusts the uses of water as necessary.[1135]

Article 5 of the 1995 Agreement states that notification or prior consultation will be required as follows:

> A. On tributaries of the Mekong River, including Tonle Sap, intra-basin uses and inter-basin diversions shall be subject to notification to the Joint Committee.

[1128] *See* Pech Sokhem, *Cooperation in the Mekong Basin in Implementing Integrated River Basin Management (IRBM): From Negotiation Stage to a More Concrete Joint Planning and Implementation*, 24-25 Feb. 2004, at 16, *available at* http://www.adb.org/Documents/Events/2004/NARBO/1_5_Pech_paper.pdf.

[1129] Mekong River Commission Media Release, China Ready to Share Data on Mekong Water Levels Ahead of Regional River Summit, 26 Mar. 2010, *available at* http://www.mrcmekong.org/MRC_news/press10/China-ready-to-share-data-26-mar-10.htm.

[1130] *See generally,* Long, *Sustainable Development of the Mekong*, at 10-11.

[1131] Radosevich Commentary, at 9.

[1132] Radosevich Commentary, at 9.

[1133] Radosevich Commentary, at 9. Agreement between the parties as to a proposed use is only required in one situation: "in the most extreme of cases, that of inter-basin diversion from mainstream during the dry season." Philip Hirsch, *Beyond the Nation State: Natural Resource Conflict and "National Interest" in Mekong Hydropower Development*, 29 GOLDEN GATE U. L. REV. 399, 406 (1999).

[1134] Radosevich Commentary, at 9.

[1135] Radosevich Commentary, at 9.

B. On the mainstream of the Mekong River:

1. During the wet season:

a) Intra-basin use shall be subject to notification to the Joint Committee.

b) Inter-basin diversion shall be subject to prior consultation which aims at arriving at an agreement by the Joint Committee.

2. During the dry season:

a) Intra-basin use shall be subject to prior consultation which aims at arriving at an agreement by the Joint Committee.

b) Any inter-basin diversion project shall be agreed upon by the Joint Committee through a specific agreement for each project prior to any proposed diversion. However, should there be a surplus quantity of water available in excess of the proposed uses of all parties in any dry season, verified and unanimously confirmed as such by the Joint Committee, an inter-basin diversion of the surplus could be made subject to prior consultation.

In 2003, the MRC adopted "Procedures for Notification, Prior Consultation and Agreement" ("PNPCA"), which elaborates on the scope, content, form, process, and timing of the information-reporting requirements in Article 5.[1136] The PNPCA states that "if a country is to build hydropower dams on a Mekong tributary, it must notify the Joint Committee of the MRC."[1137]

In addition to creating a pre-use notification and consultation mechanism, the 1995 Agreement empowers Member States to challenge current harmful uses of the Mekong waters. Article 7 provides:

> Where one or more States is notified with proper and valid evidence that it is causing substantial damage to one or more riparians from the use of and/or discharge to water of the Mekong River, that State or States shall cease immediately the alleged cause of harm until such cause of harm is determined in accordance with Article 8.

12. Funding and Financing

The budget of the MRC is drawn up by the Joint Committee and approved by the Council. The budget "shall consist of contributions from member countries on an equal basis unless otherwise decided by the

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[1136] Procedures for Notification, Prior Consultation and Agreement, Nov. 2003, *available at* http://www.mrcmekong.org/download/agreement95/Procedures_Guidlines/Procedures-Notification-Prior-Consultation-Agreement.pdf.

[1137] MRC – Support for the implementation of the Prior Notification, Prior Consultation Procedures, *available at* http://www.mrcmekong.org/ish/support-PNPCA.htm (last viewed on 30 Nov. 2010).

Council, from the international community (donor countries) and from other sources."[1138] The senior legal advisor to the drafters explained:

> The "operating or administrative budget" may be distinguished from the "program budget" in that the former pertains to the cost of the [MRC] . . . and the latter pertains to the development projects, program and activities of the [MRC] supported by donor and parties.
>
> The "equal basis" contribution of the parties pertains only to the administrative or operating budget of the [MRC] that is not covered by other sources, i.e. overhead, interest and donor contributions, unless the Council decides otherwise. For example, if there were "extraordinary" expenditures that exceed the planned and budgeted activities, i.e. special meetings of the Council or Committee, etc., the Council may vary the member contribution requirements.[1139]

The MRC carries out formal consultation with the donor community through an annual Donor Consultative Group meeting.[1140]

In 2004, the Member States contributed approximately US $1 million combined, while grants from donors totaled approximately US $13 million.[1141] In the Hua Hin Declaration, the Member States committed to having the MRC being financially sustained by them by 2030.[1142]

13. Benefit Sharing

Benefit sharing through the "equitable and reasonable utilization" of water resources is a cornerstone of the 1995 Agreement.[1143] The principle of benefit sharing is inscribed in the Preamble:

> REAFFIRMING the determination to continue to cooperate and promote in a constructive and mutually beneficial manner in the sustainable development, utilization, conversation, and management of the Mekong River Basin water and related resources . . .
>
> AFFIRMING to promote or assist in the promotion of interdependent sub-regional growth and cooperation among the communities of Mekong nations, taking into account the regional benefits that could be derived and/or detriments that could be avoided or mitigated from activities

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[1138] 1995 Agreement, art. 14.

[1139] Radosevich Commentary, at 22.

[1140] MRC Work Programme 2010, Dec. 2009, at Introduction to the Mekong River River Commission – 1.3, *available at* http://www.mrcmekong.org/download/programmes/work_program_10.pdf.

[1141] Backer, *Paper Tiger*, at 37.

[1142] Hua Hin Declaration, at 4.

[1143] Hirsch, *Beyond the Nation State*, at 21.

> within the Mekong River Basin undertaken by this framework of cooperation . . .

In practice, benefit sharing is accomplished through data collection and exchange, notification and prior consultation, and development initiatives, as discussed above.

14. Compliance and Monitoring

The MRC maintains a hydrologic monitoring network, and each Member State collects and provides data for this network. *See* **Data Information Sharing, Exchange, and Harmonization**.

15. Participation and the Role of Multiple Stakeholders

The MRC has acknowledged the importance of public participation.[1144] Since 2002, civil society representatives have been invited to attend the Joint Committee and Council meetings.[1145]

16. Dissolution and Termination

The 1995 Agreement may be terminated by mutual agreement of all the Member States.[1146] Any Member State to the 1995 Agreement may withdraw or suspend its participation by written notice to the Council. Such notice of withdrawal or suspension takes effect one year after the date of acknowledgement of receipt. Such notice shall not relieve the notifying Member State of any prior commitments made concerning programs, projects, studies, or other recognized rights and interests of any Member States.[1147]

17. Additional Remarks

N/A

18. Websites and References

- The Mekong River Commission, *available at* http://www.mrcmekong.org/.
- Australian Mekong Resource Center, The University of Sydney, *available at* http://www.mekong.es.usyd.edu.au/.
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- Ellen Bruzelius Backer, *Paper Tiger Meets White Elephant?: An Analysis of the Effectiveness of the Mekong River Regime*, Aug. 2006, *available at* http://www.isn.ethz.ch/isn/Digital-

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[1144] Joakim Öjendal and Elin Torell, *Some Implications of the Mekong River Commission Agreement*, *in* COMMON PROPERTY IN THE MEKONG: ISSUES OF SUSTAINABILITY AND SUBSISTENCE 2-3 (Mahfuzuddin Ahmed and Philip Hirsch eds., 2000), *available at*: http://www.worldfishcenter.org/libinfo/Pdf/Pub%20SR76%2026.pdf.

[1145] Sokhem, *Cooperation in the Mekong Basin*, at 14-15.

[1146] 1995 Agreement, art. 37.

[1147] 1995 Agreement, art. 40.

Library/Publications/Detail/?ots591=0C54E3B3-1E9C-BE1E-2C24-A6A8C7060233&lng=en&id=47649.

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- Pech Sokhem, *Cooperation in the Mekong Basin in Implementing Integrated River Basin Management (IRBM): From Negotiation Stage to a More Concrete Joint Planning and Implementation*, 24-25 Feb. 2004, *available at* http://www.adb.org/Documents/Events/2004/NARBO/1_5_Pech_paper.pdf.

Partnerships in Environmental Management for the Seas of East Asia (PEMSEA)

1. Legal Basis

The Partnerships in Environmental Management for the Seas of East Asia ("PEMSEA") is a partnership arrangement involving stakeholders in the Seas of East Asia, including state and non-state parties, to address the "identified threats to the environment and sustainable development of the Seas of East Asia."[1148]

The Sustainable Development Strategy for the Seas of East Asia ("SDS-SEA"), adopted in 2003 by the Partner States through the Putrajaya Declaration of Regional Cooperation is a non-binding informational and aspirational document, which provides a detailed shared vision for implementing sustainable development in the region. It contains information on the Seas of East Asia, including current problems and the potential impact they could have on the region and the world, and presents "A New Paradigm" for the Seas of East Asia, which focuses on an integrated strategy involving governmental partners at all levels, as well as non-governmental stakeholders. It details a framework for this strategy and methods for monitoring its implementation.[1149]

The 2006 Haikou Partnership Agreement ("Haikou Agreement") establishes PEMSEA "as the regional coordinating mechanism for the implementation of the SDS-SEA" and "resolve[s] to transform PEMSEA from the existing project-based arrangement to a self-sustained and effective regional collaborative mechanism."[1150] The Haikou Agreement also broadly details the operational structure of PEMSEA for implementing the SDS-SEA.[1151]

The Partnership Operating Arrangements for the Implementation of the Sustainable Development Strategy for the Seas of East Asia ("Partnership Operating Arrangements") detail the inclusion, rights, and roles of Partners, as well as the four major PEMSEA operating mechanisms. In November 2009, the Partner States adopted the Agreement Recognizing the International Legal Personality of the Partnerships in Environmental Management for the Seas of East Asia ("PEMSEA Legal Personality Agreement").[1152]

[1148] *See* Partnership Operating Arrangements for the Implementation of the Sustainable Development Strategy for the Seas of East Asia ("Partnership Operating Arrangements"), par. 1-5, *available at* http://pemsea.org/pdf-documents/pemsea-documents/partnrship-operatng-arrngments.pdf.

[1149] Sustainable Development Strategy for the Seas of East Asia ("SDS-SEA"), 12 Dec. 2003, at 26-32, 34, 37, 93-100, *available at* http://pemsea.org/pdf-documents/sds-sea/SDSSEA-Full.pdf. The Putrajaya Declaration of Regional Cooperation for the Sustainable Development of the Seas of East Asia is also available at: http://pemsea.org/pdf-documents/sds-sea/SDSSEA-Full.pdf.

[1150] Haikou Partnership Agreement on the Implementation of Sustainable Development Strategy for the Seas of East Asia ("Haikou Agreement"), art. 10, 15 Dec. 2006, *available at* http://pemsea.org/pdf-documents/pemsea-documents/Haikou_Partnership_Agreement_Signed.pdf.

[1151] Haikou Agreement, art. 10(a) - 10(d).

[1152] Agreement Recognizing the International Legal Personality of the Partnerships in Environmental Management for the Seas of East Asia ("PEMSEA Legal Personality Agreement"), 26 Nov. 2009, *available at* http://pemsea.org/pdf-documents/pemsea_legal_personality.pdf.

In November 2009, the Partner States also signed the Manila Declaration on Strengthening the Implementation of Integrated Coastal Management for Sustainable Development and Climate Change Adaptation in the Seas of East Asia Region ("Manila Declaration"). The Manila Declaration reiterated support for the SDS-SEA and the Haikou Agreement, and reaffirmed the importance of Integrated Coastal Management and set general goals for continuing progress.[1153]

2. Member States

The PEMSEA Partner States who signed the Putrajaya Declaration are: Brunei Darussalam, Cambodia, China, the Democratic People's Republic of Korea, Indonesia, Japan, Malaysia, the Philippines, the Republic of Korea, Singapore, Thailand, and Vietnam. The signatories of the Haikou Agreement are: Cambodia, China, the Democratic People's Republic of Korea, Indonesia, Japan, Laos, the Philippines, the Republic of Korea, Singapore, Timor-Leste, and Vietnam. The Manila Declaration was signed by Cambodia, China, the Democratic People's Republic of Korea, Indonesia, Japan, Laos, the Philippines, the Republic of Korea, Singapore, Timor-Leste, and Vietnam.

In addition to the Partner States, PEMSEA includes non-state Partners. These non-state partners include the Association of Southeast Asian Nations Centre for Biodiversity, the Coastal Management Center, Conservation International Philippines, the International Environmental Management of Enclosed Coastal Seas Center, the International Ocean Institute, the Intergovernmental Oceanographic Commission Sub-Commission for the Western Pacific, the International Union for the Conservation of Nature Asia Regional Office, the Korea Environment Institute, the Korea Maritime Institute, the Korea Ocean Research and Development Institute, the Northwest Pacific Action Plan, the Ocean Policy and Research Foundation, Oil Spill Response, the Plymouth Marine Laboratory, the PEMSEA Network of Local Governments for Sustainable Coastal Development, the Swedish Environmental Secretariat for Asia, the United Nations Development Programme ("UNDP")/Global Environment Facility ("GEF") Small Grants Programme, the United Nations Environment Programme ("UNEP") Global Programme of Action, and the UNDP/GEF Yellow Sea Large Marine Ecosystem Project.[1154]

3. Geographical Scope

The SDS-SEA defines the Seas of East Asia as those bordered by China, the Democratic People's Republic of Korea, the Republic of Korea, Japan, the Philippines, Indonesia, Brunei Darussalam, Malaysia, Singapore, Thailand, Cambodia, and Vietnam. Of these, the East China Sea, the Yellow Sea, the South China Sea, the Sulu-Celebes Sea, and the Indonesian Seas are of particular economic and ecological importance.[1155]

[1153] Manila Declaration on Strengthening the Implementation of Integrated Coastal Management for Sustainable Development and Climate Change Adaptation in the Seas of East Asia Region ("Manila Declaration"), arts. 2, 5, 7, 9, 26 Nov. 2009, *available at* http://www.pemsea.org/eascongress/section-support-files/manila_declaration.pdf.

[1154] PEMSEA: Partners, *available at* http://pemsea.org/partnerships/partners (last viewed on 2 Dec. 2010).

[1155] SDS-SEA, at 16.

4. Legal Personality

Pursuant to the PEMSEA Legal Personality Agreement, PEMSEA has international legal personality, including the legal capacity to contract, to hold and dispose of property, and such other legal capacity as need to perform its functions. PEMSEA has its seat in Metro Manila in the Philippines.[1156]

5. Functions

PEMSEA's role "as the regional coordinating mechanism for the implementation of the [SDS-SEA]" is to "facilitate the realization of the shared vision, mission, action programmes and desired changes of the SDS-SEA."[1157] The SDS-SEA's purpose is to set forth a "package of applicable principles, relevant existing regional and international action programmes, agreements, and instruments, as well as implementation approaches, for achieving sustainable development of the Seas of East Asia."[1158]

The implementation of Integrated Coastal Management programs is a priority for PEMSEA, with the Partner States establishing regional targets of having Integrated Coastal Management programs in place in at least 20% of the coasts in the region and of having 70% of the countries in the region adopt national coastal and ocean policies.[1159] The signatories of the Manila Declaration also called upon PEMSEA to develop an Implementation Plan for the SDS-SEA in order to strengthen Integrated Coastal Management programs across the region and to encourage collaborative education and training activities related to Integrated Coastal Management and climate change. The Manila Declaration also established a list of priorities designed to strengthen the implementation of Integrated Coastal Management programs, including:

- Setting up sub-regional and national coordinating mechanisms for strengthening existing mechanisms to oversee and guide the implementation of [Integrated Coastal Management] programmes;

- Mainstreaming [Integrated Coastal Management] into development plans and programmes at the sub-regional, national and local levels, including the conservation, rehabilitation and management of sub-regional seas and related watershed areas;

- Delineating highly vulnerable coastal areas, coastal communities and resources and habitats, as well as vulnerable sectors of society, including the poor, women and the youth, and strengthening their capacity to respond and adapt to the impacts of climate change;

- Developing and applying land- and sea-use zoning plans and schemes;

- Implementing capacity building and technical assistance programmes to strengthen leadership capacities, skills and scientific and technical capabilities, including local governments' capacity to develop and implement [Integrated Coastal Management] programmes;

[1156] PEMSEA Legal Personality Agreement, art. 1.

[1157] Partnership Operating Arrangements, par. 2-3.

[1158] SDS-SEA, at 10.

[1159] Manila Declaration, art. 7; Haikou Agreement, art. 7.

- Applying [Integrated Coastal Management] good practices as guidance in developing and implementing [Integrated Coastal Management] programmes;

- Employing a range of new and alternative financing mechanisms to develop, implement and sustain [Integrated Coastal Management] programmes and managing available funds in a cost-effective and cost-efficient manner;

- Carrying out habitat restoration and management programmes, including coral reefs, seagrass beds, coastal wetlands and mangroves, and establishing marine protected areas, as appropriate, based on scientifically sound information, in order to improve the natural defenses on coastal and marine ecosystem[s] to the impacts of climate change and to enhance carbon sequestration capacities of relevant habitats;

- Formulating and implementing disaster risk management programmes including preparing for, responding to and recovering from natural and man-made disasters; and

- Sharing information and knowledge on the development and application of innovative policies, legislation, technologies and practices in support of [Integrated Coastal Management] programmes, as well as the social, economic and environmental benefits being derived.[1160]

At the 2009 EAS Congress, the International Conference (*see* **Organizational Structure**) concentrated on six themes – (1) coastal and ocean governance, (2) natural and man-made hazard prevention and management, (3) habitat protection, restoration and management, (4) water use and supply management, (5) food security and livelihood management, and (6) pollution reduction and waste management. In addressing these themes, the overriding objectives were to provide a venue for the exchange of information concerning ecosystem-based approaches to managing coastal and marine areas; evaluate the progress made since the last EAS Congress (including in regards to implementing international environmental instruments) and discuss new approaches to address remaining challenges at the local, national, and regional level; review experiences applying Integrated Coastal Management programs at the local level; encourage partnerships to overcome capacity barriers and to promote more effective coastal and ocean management; and provide recommendations to the PEMSEA Partners concerning the continued implementation of the SDS-SEA.[1161]

6. Organizational Structure

PEMSEA has four main operating mechanisms: the East Asian Seas ("EAS") Congress, the EAS Partnership Council, the PEMSEA Resource Facility, and the Regional Partnership Fund.

The EAS Congress is held every three years and consists of a Ministerial Forum and an International Conference. The Ministerial Forum is responsible for proving policy direction and commitments

[1160] Manila Declaration, art. 9.

[1161] The East Asian Seas Congress 2009 – International Conference on Sustainable Coastal and Ocean Development (23-26 November) ("EAS Congress 2009 – International Conference"), *available at* http://www.pemsea.org/eas congress/international-conference (last viewed on 9 Dec. 2010).

intended to improve and strengthen the implementation of the SDS-SEA.[1162] The International Conference, which is designed to serve as a large forum, is charged with:

- Monitoring and evaluating the implementation of the SDS-SEA;
- Facilitating knowledge exchange, advocacy and multi-stakeholder participation, through sessions, workshops, side events and exhibitions, etc.;
- Promoting the ocean agenda as a priority programme in international and regional forums;
- Promoting the development of financing mechanisms and investment opportunities for sustainable coastal and marine development;
- Encouraging corporate responsibility and accountability in the business community; and
- Discussing specific sectoral and cross-sectoral issues and concerns, as well as partnership arrangements for the subregional seas or environmentally sensitive areas, for the implementation of the SDS-SEA.[1163]

The EAS Congress' conclusions and recommendations are then presented to the EAS Partnership Council for implementation.[1164]

The EAS Partnership Council ("Council") is a regular body composed of all PEMSEA Partners (both state and non-state parties) that "formulates both program and operational policy in support of the implementation of the SDS-SEA, based on policy direction, recommendations and commitments of the Ministerial Forum, the EAS Congress and other Partners."[1165] The Council consists of an Executive Committee and Intergovernmental and Technical Sessions. The Council elects a Chair, who serves a three year term and also acts as Chair of the Executive Committee and sits in the Intergovernmental and Technical Sessions. In addition, the Intergovernmental and Technical Sessions each elect (for a three-year term) a Chair for their respective Sessions. The Session Chairs also sit on the Executive Committee.[1166]

The Executive Committee operates between meetings of the Council and addresses pressing business issues.[1167] The Executive Committee is also responsible for overseeing the implementation of the Council's decisions and submitting reports to the Council. It is comprised of the Council Chair, the Chairs of the Intergovernmental Session and the Technical Session, and the Executive Director of the

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[1162] Partnership Operating Arrangements, par. 20-21.

[1163] Partnership Operating Arrangements, par. 22.

[1164] Partnership Operating Arrangements, par. 22, 24.

[1165] *See* Partnership Operating Arrangements, par. 25-26. *See also* PEMSEA Legal Personality Agreement, art. II(1).

[1166] Partnership Operating Arrangements, par. 27-29.

[1167] PEMSEA Regional Mechanism Report, at 18.

PEMSEA Resources Facility (who serves as Secretary to both the Council and the Executive Committee). The members of the Executive Committee also serve as the officers of the Council.[1168]

The Intergovernmental Session, which consists of representatives from the Partner States, "considers and decides on the recommendations of the Technical Session, and provides policy guidance, coordination and evaluation of the progress of the SDS-SEA implementation."[1169] The Technical Session, which consists of representatives from the Partner States as well as other parties to PEMSEA, "discusses matters related to the scientific, technical and financial aspects of SDS-SEA implementation and makes appropriate recommendation to the Intergovernmental Session."[1170]

The PEMSEA Resource Facility ("PRF") is responsible for providing Secretariat and Technical Services related to the implementation of the SDS-SEA. Secretariat Service includes: providing support to the Council, the Executive Committee, the Ministerial Forum, the Regional Partnership Fund and the EAS Congress; assisting in knowledge transfer and capacity building; compiling proposals for new initiatives and gathering resources for the proposals' implementation; reporting to the Council on program development and implementation (including submitting financial statements); monitoring the implementation of the SDS-SEA; overseeing the updating of the SDS-SEA; and performing any other tasks as may be required by the Council. In terms of Technical Service, the PRF is tasked with: developing and enacting (in cooperation with the Secretariat Service) a business plan and marketing strategy concerning the implementation of the SDS-SEA; providing technical, financial, investment, and management assistance for specific projects; developing a certification for good practices regarding the implementation of the SDS-SEA; submitting operation and management recommendations for the Regional Partnership Fund to the Council; and implementing decisions and projects approved by the Council. An Executive Director is in charge of the PRF and is responsible for coordinating the Secretariat and Technical Services (especially in regards to program development and implementation).[1171]

The PEMSEA Regional Partnership Fund manages contributions from multiple sources, with a focus on promoting the self-sustainability of PEMSEA as a regional mechanism.[1172] *See* **Funding and Financing.**

7. Relationships

According to the Partnership Operating Arrangements, Partners to PEMSEA include: "a) Countries of the Seas of East Asia region; b) Other countries using the Seas of East Asia region; c) Local governments in the region; d) Communities in the region; e) Non-governmental organizations (NGOs) and other members of civil society in the region; f) Research and educational institutions; g) The private sector; h) UN and international agencies that support or sponsor the implementation of the SDS-SEA; i) Financial

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[1168] Partnership Operating Arrangements, par. 31-33. *See also* PEMSEA Legal Personality Agreement, art. II(2). PEMSEA has also listed the immediate former Executive Director as a member of the Executive Committee. *See* Partnership in Environmental Management for the Seas of East Asia (1994-2010) – A Regional Mechanism Facilitating Sustainable Environmental Benefits in River Basins, Coasts, Islands and Seas ("PEMSEA Regional Mechanism Report"), 2007, at 18, *available at* http://pemsea.org/about-pemsea/PEMSEA-Portfolio.pdf.

[1169] PEMSEA Legal Personality Agreement, art. I(1)(a); *see also* Partnership Operating Arrangements, arts. 35, 37.

[1170] PEMSEA Legal Personality Agreement, art. I(1)(b); *see also* Partnership Operating Arrangements, arts. 38, 39.

[1171] Partnership Operating Arrangements, par. 43-46.

[1172] PEMSEA Regional Mechanism Report, at 19.

institutions that support or sponsor the implementation of the SDS-SEA; and j) Other Concerned regional and global entities and programmes."[1173] *See also* **Member States.**

In addition, participants in the EAS Congress have included representatives from national and local governments, the private sector, scientific organizations, academic institutions, non-governmental organization and community organizations. For example, the 2009 EAS Congress had almost 1,500 participants.[1174]

8. Decision Making

Decision making in PEMSEA is done by the Council. The Council, which meets every eighteen months, makes decisions by consensus.[1175]

9. Dispute Resolution

No specific provision

10. Data Information Sharing, Exchange, and Harmonization

One of the objectives of the SDS-SEA is to mobilize governments, civil society and the private sector to use innovative communication methods. To achieve this aim and to enhance the dissemination of data related to coastal and marine environmental and resource management, the SDS-SEA encourages the use of local, national and regional networks to distribute information, the creation of online resource centers, the establishment of a news monitoring and quick response systems, and the establishment of partnerships with international agencies in order to strengthen technical skills related to information sharing.[1176]

In addition, the Partnership Operating Arrangements call upon the Partners to "[s]trengthen communication and dialogue with each other regarding activities affecting the implementation of the SDS-SEA," and indicate that the Partners have the right "[t]o participate in PEMSEA's knowledge sharing network."[1177] Additionally, the International Conference of the EAS Congress serves as a forum to "[f]acilitat[e] knowledge exchange, advocacy and multi-stakeholder participation, through sessions, workshops, side events and exhibitions, etc."[1178]

[1173] Partnership Operating Arrangements, par. 8. The Partnership Operating Arrangements detail the steps necessary to be included as a Partner of PEMSEA. All stakeholders who are interested in becoming a Partner must submit written notification to the PRF, with applications to be a Partner subject to the approval of the Executive Committee. *See* Partnership Operating Arrangements, par. 14-18.

[1174] EAS Congress 2009 – International Conference.

[1175] Partnership Operating Arrangements, par. 40.

[1176] SDS-SEA, at 91.

[1177] Partnership Operating Arrangements, par. 9(c), 10(e).

[1178] Partnership Operating Arrangements, par. 22(b).

11. Notifications

In the Manila Declaration, the Partner States agreed to report, every three years, on their progress in implementing Integrated Coastal Managements programs, including measures undertaken in regards to climate change adaptation.[1179]

12. Funding and Financing

The Regional Partnership Fund, which was set up by the Council, "receives voluntary financial contributions from countries, international agencies, donors, institutions, individuals and any other entity for the implementation of the SDS-SEA."[1180] The depositary of this money is to be a sponsoring United Nations agency. In addition, the Council is authorized to hold fund-raising events (such as meetings of donors) in order to supplement the funds.[1181]

The Executive Committee manages the Regional Partnership Fund and its distribution, including through developing policies and operations guidelines for funding, disbursement, management, and audit, issuing guidance on voluntary contributions received from Partner States, ensuring earmarked funds are properly managed, and appointing a Regional Partnership Fund manager.[1182]

Article I(2) of the PEMSEA Legal Personality Agreement specifies that "this Agreement imposes no obligation on any of the Parties, and in particular, imposes no obligation to provide any form of financial contribution or support to PEMSEA or to guarantee any of the liabilities, debts and other financial obligations incurred by PEMSEA." But, the PRF does receive financial support from China, Japan, the Republic of Korea, and the Philippines.[1183]

13. Benefit Sharing

Some of the objectives and action programs described in the SDS-SEA discuss benefit sharing. For example, in terms of the SDS-SEA objective of safeguarding rare, threatened and endangered species and genetic resources, the SDS calls for the development of benefit-sharing arrangement for bioprospecting activities (i.e., performing scientific research that is focused on discovering a useful application, process, or product in nature), based on the prior informed consents from the government and local communities.[1184]

[1179] Manila Declaration, par. 10

[1180] Partnership Operating Arrangements, par. 48.

[1181] Partnership Operating Arrangements, par. 49, 51.

[1182] Partnership Operating Arrangements, par. 50.

[1183] PEMSEA Regional Mechanism Report, at 18-19.

[1184] SDS-SEA at 59. *See also* SDS-SEA, at 81 (Public-Private Partnerships in sustainable financing and environmental investments), 91 (promoting information sharing by encouraging the equitable sharing of the benefits).

14. Compliance and Monitoring

There are several informal PEMSEA monitoring mechanisms. The International Conference of the EAS Congress is a forum that is intended to monitor and evaluate the implementation of the SDS-SEA;[1185] the Secretariat Service of the PRF is tasked with monitoring and reporting on the implementation of the SDS·SEA;[1186] and the Council receives reports and monitors the progress of SDS-SEA implementation and the status of work programs.[1187]

In addition, a series of indicators have been developed to monitor the status of the implementation of the SDS-SEA. These indicators are intended to measure: (a) institutional activities (i.e., "the individual and collective policy, legal, and administrative actions of countries, in accordance with the [SDS-SEA]"), (b) operational activities ("measures taken by countries to halt, mitigate, adapt to, or prevent damage to the environment caused by natural processes and human activities, as defined in the [SDS-SEA]"), and (c) environmental state ("quality and quantity of natural resources, and the state of human and ecological health.")[1188]

15. Participation and the Role of Multiple Stakeholders

Stakeholders are eligible to be Partners in PEMSEA. *See* **Relationships** and **Member States.**

As described in the Haikou Agreement:

> We consider partnership as an effective mechanism to facilitate concerted actions in our common endeavour to implement the SDS-SEA as it gives due consideration to the initiatives, shared responsibilities, desired outcomes, mutually supportive roles and the need to address disparities in capacity among the concerned countries and other stakeholders, including national and local governments, international agencies, non-governmental organizations (NGOs), the private sector, academic and scientific institutions, communities, financial institutions and donor agencies.[1189]

16. Dissolution and Termination

The PEMSEA Legal Personality Agreement provides that a party may withdraw from the Agreement by submitting a written notice of withdrawal to the Executive Director of the PRF. The party's withdrawal will become effective one year from the date the notice was received.[1190]

[1185] Partnership Operating Arrangements, par. 22(a).

[1186] Partnership Operating Arrangements, par. 44(e).

[1187] PEMSEA Regional Mechanism Report, at 18.

[1188] SDS-SEA, at 94. *See also* SDS-SEA, at 95-98 (lists of monitoring indicators).

[1189] Haikou Agreement, art. 5.

[1190] PEMSEA Legal Personality Agreement, arts. III, V.

17. Additional Remarks

N/A

18. Websites and References

- PEMSEA, *available at* http://www.pemsea.org.

- Partnership in Environmental Management for the Seas of East Asia (1994-2010) – A Regional Mechanism Facilitating Sustainable Environmental Benefits in River Basins, Coasts, Islands and Seas, 2007, *available at* http://pemsea.org/about-pemsea/PEMSEA-Portfolio.pdf.

- The East Asian Seas Congress 2009 – Proceedings of the International Conference on Sustainable Coastal and Ocean Development, 23-26 Nov. 2009, *available at* http://pemsea. org/pdf-documents/pemsea-documents/easc2009-proceedings.pdf.

- PEMSEA Accomplishment Report 2008-2010, 2010, *available at* http://www.pemsea.org/ pdf-documents/publications-1/accomplishment-report-08-10.pdf.

- Putrajaya Declaration of Regional Cooperation for the Sustainable Development of the Seas of East Asia and Sustainable Development Strategy for the Seas of East Asia – Regional Implementation of the World Summit on Sustainable Development Requirements for the Coasts and Oceans, 12 Dec. 2003, *available at* http://pemsea.org/pdf-documents/sds-sea/SDSSEA-Full.pdf.

South China Sea

1. Legal Basis

There is not a unified framework governing the South China Sea. But with renewed tensions in the region, in July 2010, the foreign ministers of the Member States of the Association of Southeast Asian Nations ("ASEAN") issued a joint communiqué underscoring the need for a Regional Code of Conduct in the South China Sea.[1191] Foreign observers, including the United States, have supported the idea of a binding code of conduct for the South China Sea.[1192]

Currently, the most relevant, legally-binding agreement governing the South China Sea is the 1982 United Nations Convention on the Law of the Sea ("UNCLOS").[1193]

There are also several multilateral declarations that are relevant to the South China Sea. These declarations include the following:

- Declaration on the Conduct of the Parties in the South China Sea:[1194] This Declaration, issued during the eighth ASEAN Summit in 2002, is the first to include all littoral countries of the South China Sea. The purpose of the declaration is to reaffirm the determination of the governments of the ASEAN Member States and China "to consolidate and develop the friendship and cooperation existing between their people and governments with the view to promoting a 21st century-oriented partnership of good neighbourliness and mutual trust."

- ASEAN Declaration on the South China Sea:[1195] This Declaration was signed in 1992, with the stated purpose of fostering cooperation in the South China Sea on issues of safety in maritime navigation, protection against pollution, coordination of search and rescue operations, combating piracy, and collaborating against illegal drug trafficking. It references the Treaty of Amity and Cooperation in Southeast Asia as the basis for establishing a code of international conduct over the South China Sea.

- Treaty of Amity and Cooperation in Southeast Asia:[1196] This Treaty was signed in Indonesia in 1976. Its purpose is "to promote perpetual peace, everlasting amity and cooperation among [the

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[1191] Joint Communiqué of the 43rd ASEAN Foreign Ministers Meeting, 19-20 Jul. 2010, at ¶ 28, *available at* http://www.aseansec.org/24899.htm.

[1192] *Clinton Urges Legal Resolution of South China Sea Dispute*, 23 Jul. 2010, *available at* http://www.america.gov/st/peacesec-english/2010/July/20100723154256esnamfuak4.879177e-03.html.

[1193] United Nations Convention on the Law of the Sea ("UNCLOS"), 10 Dec. 1982, *available at* http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

[1194] Declaration on the Conduct of the Parties in the South China Sea ("2002 ASEAN Declaration"), 5 Nov. 2002, *available at* http://www.aseansec.org/13163.htm.

[1195] ASEAN Declaration on the South China Sea ("1992 ASEAN Declaration"), 22 Jul. 1992, *available at* http://www.aseansec.org/1196.htm.

[1196] Treaty of Amity and Cooperation in Southeast Asia ("Treaty of Amity"), 24 Feb. 1976, *available at* http://www.asean sec.org/1217.htm. The Treaty of Amity and Cooperation in Southeast Asia was amended on 15 December 1997 and 25 July 1998. *See* Association of Southeast Asian Nations: Text of the Treaty of Amity and

people of the Contracting Parties] which would contribute to their strength, solidarity and closer relationship." In addition, the Treaty is based on the following principles: (1) mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations; (2) the right of every state to lead its national existence free from external interference, subversion or coercion; (3) non-interference in the internal affairs of one another; (4) settlement of differences or disputes by peaceful means; (5) renunciation of the threat or use of force; and (6) effective cooperation among themselves.
The Contracting Parties further agreed to cooperate on matters of common interest (e.g., economic, social, technical, scientific and administrative issues).

In addition to the above-mentioned agreements, there are a number of resolutions and declarations involving the countries surrounding the South China Sea. But, there are myriad disputes over territorial and jurisdictional rights to the South China Sea and none of the agreements contains an enforcement mechanism.[1197]

- Regional Guidelines for Responsible Fisheries in Southeast Asia ("Guidelines"):[1198] These Guidelines are an outgrowth of the Code of Conduct for Responsible Fisheries ("CCFR"), which was developed by the Food and Agricultural Organization of the United Nations ("FAO"). The Guidelines were finalized in April 2003 and are non-binding. The signatories include: Brunei, Cambodia, Indonesia, Philippines, Thailand, Malaysia, Myanmar, and Vietnam. In addition to the Guidelines, the FAO also facilitated the creation of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. This Agreement, referenced in the Guidelines is binding, but the nations bordering the South China Sea are not Member States.

- Jakarta Declaration on Environment and Development:[1199] This Declaration was signed, *inter alia*, to reaffirm the ASEAN Ministers' commitment to sustainable development. There is no enforcement mechanism. The signatories are Brunei, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, and Vietnam.

- Bandar Seri Begawan Resolution on Environment and Development:[1200] This Resolution was signed with the purpose of adopting the ASEAN Strategic Plan of Action on the Environment. There is no enforcement mechanism. The signatories are Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand, and Vietnam.

Cooperation in Southeast Asia and Related Information, Mar. 2005, *available at* http://www.aseansec.org/TAC-KnowledgeKit.pdf.

[1197] The following resolutions and declarations will not be discussed further in this profile. They are only provided as possible reference points.

[1198] Regional Guidelines for Responsible Fisheries in Southeast Asia, Apr. 2003, *available at* http://www.seafdec.org.ph/pdf/Responsible_Fisheries_Management_MFRDMD.pdf.

[1199] Jakarta Declaration on Environment and Development, 18 Sep. 1997, *available at* http://www.aseansec.org/6085.htm.

[1200] Bandar Seri Begawan Resolution on Environment and Development, 26 Apr. 1994, *available at* http://www.aseansec.org/6084.htm.

- Singapore Resolution on Environment and Development:[1201] This Resolution was signed with the purpose of "intensify[ing] cooperation in environmental management and protection" for sustainable development purposes. There is no enforcement mechanism. The signatories are Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand, and Vietnam.

- Kuala Lumpur Accord on Environment and Development:[1202] This Resolution was signed with the purpose of streamlining environmental management, including among other goals, the harmonization of environmental quality standards and the development of joint natural resource management programs.

2. Member States

The UNCLOS Member States that border the South China Sea are: Brunei, Indonesia, Malaysia, Myanmar, Laos, China, Philippines, Thailand, Vietnam, and Singapore. Cambodia and Thailand have signed UNCLOS, but have not yet ratified the Treaty.

The Parties to the Declaration on the Conduct of the Parties in the South China Sea are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam, and China.

The Parties to the ASEAN Declaration on the South China Sea are Brunei, Indonesia, Malaysia, Philippines, Singapore, and Thailand.

The Contracting Parties of the Treaty of Amity and Cooperation in Southeast Asia, as amended, which border the South China Sea are: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam, and China.

3. Geographical Scope

None of the agreements reference specific coordinates or have provisions dedicated to geographical scope. But, the South China Sea is generally considered to comprise the portion of the Pacific Ocean that stretches from Singapore and the Strait of Malacca in the southwest to the Taiwan Strait in the northeast.[1203]

4. Legal Personality

UNCLOS established the International Seabed Authority ("the Authority").[1204] UNCLOS also provides that the Authority, which was created to organize and control activity in areas of the seabed, the ocean

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[1201] Singapore Resolution on Environment and Development, 18 Feb. 1992, *available at* http://www.aseansec.org/6083.htm.

[1202] Kuala Lumpur Accord on Environment and Development, 19 June 1990, *available at* http://www.aseansec.org/6082.htm.

[1203] *See* U.S. Energy Information Administration Independent Statistics and Analysis – South China Sea, *available at* http://www.eia.doe.gov/cabs/South_China_Sea/Background.html (last viewed on 4 Nov. 2010).

[1204] UNCLOS, art. 156.

floor, and the subsoil thereof that are beyond the limits of national jurisdiction, has international legal personality and the legal capacity necessary to fulfill its functions and purposes.[1205]

The other agreements do not contain provisions pertaining to legal personality.

5. Functions

As there is no centralized framework over the South China Sea, the functions are described in relation to the different agreements that pertain to the region:

- UNCLOS: The stated purpose of UNCLOS is to "settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea."[1206] Part IX, entitled "Enclosed or Semi-Enclosed Seas," provides in Article 123 that states bordering an enclosed or semi-enclosed sea should (1) coordinate the management, conservation, exploration, and exploitation of the living sea resources; (2) coordinate rights and duties regarding protection and preservation of the marine environment; (3) coordinate scientific research; and (4) involve other states and international organizations in this process.

- Declaration on the Conduct of the Parties in the South China Sea: This Declaration notes the Parties desire to peacefully resolve all territorial and jurisdiction disputes between them. It also states that "[p]ending the peaceful settlement of territorial and jurisdictional disputes, the Parties concerned undertake to intensify efforts … to build trust and confidence" in the following ways: (1) holding dialogues and exchanging views between their defense and military officials; (2) ensuring the humane treatment of all persons in danger or distress; (3) voluntarily notifying other Parties of impending military actions; and (4) voluntarily exchanging relevant information.[1207] The Declaration further provides that pending the settlement of disputes, the Parties may endeavor to cooperate on the following activities: (1) marine environmental protection, (2) marine scientific research, (3) safety of navigation and communication at sea, (4) search and rescue operations, and (5) combating transnational crime.[1208]

- ASEAN Declaration on the South China Sea: In light of the sensitive territorial and jurisdictional issues surrounding the South China Sea, the stated purpose of this Declaration includes "promoting conditions essential to greater economic cooperation and growth."[1209] The Declaration also urges a positive environment for the resolution of all disputes over the water body. The Parties resolved: to explore the possibility of cooperation in the region in the areas of maritime navigation and communication, to protect against pollution of the marine environment, to coordinate search and rescue operations, to coordinate efforts against piracy and armed robbery, and to collaborate in the campaign against illegal drug trafficking.[1210]

[1205] UNCLOS, arts. 1(1), 176.

[1206] UNCLOS, Preamble

[1207] 2002 ASEAN Declaration, Declaration 5.

[1208] 2002 ASEAN Declaration, Declaration 6.

[1209] 1992 ASEAN Declaration, Preamble.

[1210] 1992 ASEAN Declaration, Declarations 2, 3.

- The Treaty of Amity and Cooperation in Southeast Asia: The purpose of this Treaty is to promote perpetual peace, everlasting amity and cooperation among the Contracting Parties in order to contribute to the Contracting Parties' strength, solidarity and ever closer relationships.[1211]

6. Organizational Structure

UNCLOS is composed of four bodies: the Authority, the Commission on the Limits of the Continental Shelf, the Tribunal for the Law of the Sea ("ITLOS"), and the ITLOS Trust Fund. In addition, several sub-bodies—the Assembly, the Secretariat, the Council, and the Enterprise—fall under the Authority.[1212]

Neither the ASEAN Declaration on the South China Sea nor the Declaration on the Conduct of the Parties in the South China Sea contains provisions pertaining to an organizational structure.

7. Relationships

The Declaration on the Conduct of the Parties in the South China Sea references UNCLOS. The Declaration states that all Parties "reaffirm their commitment to the purposes and principles of... the 1982 UN Convention on the Law of Seas." In addition, the Declaration references the Charter of the United Nations, the Treaty of Amity and Cooperation in South East Asia, and the Five Principles of Peaceful Coexistence[1213] and had the Parties reaffirm their commitments to those agreements.[1214]

The ASEAN Declaration on the South China Sea references the Treaty of Amity and Cooperation in Southeast Asia as the basis for establishing a code of international conduct over the South China Sea.[1215]

8. Decision Making

Under UNCLOS, the Authority, which is made up of all of the state Parties to UNCLOS, organizes and controls the areas of the seabed, the ocean floor, and the subsoil thereof. The Assembly consists of all the members of the Authority. In addition to handling procedural issues, the Assembly has the power to establish policy, consistent with the provisions of UNCLOS, on any matter within the competence of the Authority. Procedural issues are decided by a majority vote of members present and voting. Substantive issues are decided by a two-thirds vote of the members present and voting.[1216]

The other agreements do not contain provisions relating to decision-making.

[1211] Treaty of Amity, art. 1.

[1212] *See* UNCLOS, Part XI - Section 4, Annex II, Annex VI; International Tribunal for the Law of the Sea Trust Fund, *available at* http://www.un.org/Depts/los/ITLOS/itlos_trust_fund.htm (last viewed on 4 Nov. 2010).

[1213] The Five Principles of Peaceful Coexistence were developed as a result of negotiations between China and India in the 1950s and include mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in internal affairs, equality and mutual benefit, and peaceful coexistence. *See* Consulate-General of the People's Republic of China in Houston – The Five Principles of Peaceful Co-existence, *available at* http://houston.china-consulate.org/eng/nv/t140964.htm (last viewed on 4 Nov. 2010).

[1214] 2002 ASEAN Declaration, Declaration 1.

[1215] 1992 ASEAN Declaration, Declaration 4.

[1216] UNCLOS, arts. 1(1), 156, 157, 159, 160.

9. Dispute Resolution

The Parties to the Declaration on the Conduct of the Parties in the South China Sea agreed that pending the peaceful settlement of territorial and jurisdictional disputes, they would resolve conflicts through "friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea."[1217]

The ASEAN Declaration on the South China Sea emphasizes the necessity to resolve disputes peacefully and encourages the Parties to use the Treaty of Amity and Cooperation in Southeast Asia as the basis for an international code of conduct over the South China Sea.[1218]

The Treaty of Amity and Cooperation in Southeast Asia also calls for the pacific settlement of disputes. The Contracting Parties are obligated to strive to resolve disputes peacefully through friendly negotiations.[1219] To facilitate these negotiations, the Contracting Parties created a High Council, comprised of a ministerial-level representative from each of the Contracting Parties, as a continuing body that will take notice of disputes or situations that are likely to disturb the region.[1220] In the event that certain Contracting Parties fail to reach a solution to a dispute through direct negotiations, the High Council shall recommend the appropriate means for settlement (such as mediation, inquiry, or conciliation). If the disputing Contracting Parties choose, the High Council can constitute a committee of mediation, inquiry, or conciliation.[1221] The settlement of disputes remains completely voluntary and the High Council cannot bind any party to its decision. Finally, the Treaty of Amity and Cooperation in Southeast Asia does not preclude recourse to the modes of peaceful settlement contained in the United Nations Charter.[1222]

An alternative method for dispute resolution involving the South China Sea is provided for under UNCLOS. Under Part XV of UNCLOS, Member States must resolve their disputes through peaceful means, with the Member States being free to choose their means of resolution. A Party to the dispute may also invite the other Parties in the dispute to submit the dispute to conciliation. The other Member State Party, however, is not required to accept the conciliation invitation. But, if no settlement has been reached, conciliation is required, upon demand by any Member State, when the dispute involves the

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[1217] 2002 ASEAN Declaration, Declaration 4.

[1218] 1992 ASEAN Declaration, Declarations 1, 4.

[1219] Treaty of Amity, Ch. IV, art. 13.

[1220] Treaty of Amity, art. 14. *See also* Rules of Procedure of the High Council of the Treaty of Amity and Cooperation in Southeast Asia, 23 Jul. 2001, *available at* http://www.aseansec.org/TAC-KnowledgeKit.pdf.

[1221] Treaty of Amity, art. 15.

[1222] Treaty of Amity, art. 17; *see also* UN Charter, art. 33(1) which commands parties to "seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." Charter of the United Nations, 26 June 1945, *available at* http://www.un.org/en/documents/charter/chapter6.shtml.

proper conservation and management of the Exclusive Economic Zone ("EEZ") resources or the determination or allocation of living resources in an EEZ.[1223]

If a settlement cannot be reached, a dispute concerning the interpretation or application of UNCLOS can be submitted, upon the request of any party to the dispute, to a court or tribunal with appropriate jurisdiction. Upon signing, ratifying, or acceding to UNCLOS, Member States may choose between the following means of dispute resolution: (1) ITLOS; (2) the International Court of Justice, (3) an arbitral tribunal constituted in accordance with Annex VII of UNCLOS; or (4) a special arbitral tribunal constituted in accordance with Annex VIII of UNCLOS. If Member States to a dispute have selected the same procedure for settlement, the dispute must be submitted to that procedure. However, where Member States have selected different procedures, or if a selection has not been made at all, the dispute must be submitted to an arbitral tribunal pursuant to Annex VII. A decision rendered by a competent court or tribunal is final and binding, though only between the Member States to the dispute.[1224]

Annex VIII arbitrations are of particular relevance to water use issues, as the only disputes that may be referred to "special arbitrations" involve: (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, and (4) navigation, including pollution from vessels. The special arbitral tribunal is comprised of recognized experts in the relevant fields.

10. Data Information Sharing, Exchange, and Harmonization

UNCLOS obligates Member States to cooperate directly and through competent international organizations to exchange information and data acquired about pollution of the marine environment.[1225]

In addition, under the Declaration on the Conduct of the Parties in the South China Sea, the Parties agreed to share data on a voluntary basis. However, such data sharing is to begin "pending the peaceful settlement of territorial and jurisdictional disputes."[1226]

The ASEAN Declaration on the South China Sea simply states that the Parties shall resolve to explore the possibilities of cooperation in the South China Sea. It does, however, urge the Parties to apply the principles contained in the Treaty of Amity and Cooperation in Southeast Asia as the basis for establishing a code of international conduct over the South China Sea.[1227]

The Treaty of Amity and Cooperation in Southeast Asia states that the Contracting Parties shall "strive to achieve the closest cooperation on the widest scale and shall seek to provide assistance to one another in the form of training and research facilities in the social, cultural, technical, scientific and administrative fields."[1228] The Treaty further states that the Contracting Parties shall "maintain regular contacts and

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[1223] UNCLOS, arts. 279, 280, 284, 297(3)(b), Annex V(1).

[1224] UNCLOS arts. 286, 287, 288, 296. But, where Member States have agreed through a separate agreement to resolve the dispute by alternative means to those provided for in Section 2 ("Compulsory Procedures Entailing Binding Decisions"), the agreed upon dispute resolution mechanism will prevail. UNCLOS, art. 282.

[1225] UNCLOS, art. 200.

[1226] 2002 ASEAN Declaration, Declaration 5.

[1227] 1992 ASEAN Declaration, Declaration 4.

[1228] Treaty of Amity, art. 8.

consultations with one another on international and regional matters with a view to coordinating their views actions and policies."[1229]

11. Notifications

Parties to the Declaration on the Conduct of the Parties in the South China Sea agreed that after jurisdictional and territorial conflicts are settled, they will notify each other, on a voluntary basis, of any impending joint or combined military exercise.[1230]

12. Funding and Financing

Under UNCLOS, the Assembly has the power to assess contributions from Member States for the administrative budget of the Authority, based on an agreed assessment scale, until the Authority has sufficient income from other sources to meet its administrative expenses.[1231]

The other agreements do not contain a specific provision pertaining to funding and financing.

13. Benefit Sharing

UNCLOS has a general provision entitled "Benefit of mankind," which states that the areas of the seabed and ocean floor and subsoil thereof should benefit mankind as a whole, regardless of the geographical location of a state.[1232]

The other agreements do not contain any specific provisions pertaining to benefit sharing. They all emphasize the necessity of close cooperation and the peaceful sharing of resources, but also explicitly state that this shall be done on a voluntary basis.

14. Compliance and Monitoring

No specific provision

15. Participation and the Role of Multiple Stakeholders

No specific provision

16. Dissolution and Termination

No specific provision

17. Additional Remarks

[1229] Treaty of Amity, art. 9.

[1230] 2002 ASEAN Declaration, Declaration 5.

[1231] UNCLOS, art. 160(2)(e).

[1232] UNCLOS, arts. 1(1), 140.

There are a number of Joint Statements regarding issues involving the South China Sea. Each is non-binding. The Joint Statements include:

- Joint Statement, RP-PRC [Philippines-China] Consultation on the South China Sea and Other Areas of Cooperation, coordinated on 9-10 August 1995;[1233]

- Joint Statement on the Fourth Annual Bilateral Consultation between the Socialist Republic of Vietnam and the Republic of the Philippines, signed on 7 November 1995;[1234]

- Joint Statement of the Meeting of Heads of State/Government of the Member States of ASEAN and the President of the People's Republic of China, signed on 16 December 1997;[1235]

- Joint Statement between China and the Philippines on the Framework of Bilateral Cooperation in the Twenty-First Century, signed on 15 November 2000;[1236] and

- Joint Declaration of the Heads of State/Government of The People's Republic of China and The Member States of ASEAN on Strategic Partnership for Peace and Prosperity, signed on 8 October 2003.[1237]

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[1233] Scott Snyder, Brad Glosserman, and Ralph Cossa, *Confidence Building Measures in the South China Sea*, *in* PACIFIC FORUM CSIS ISSUES & INSIGHTS, Vol.1 No. 2, at Appendix D (Aug. 2001), *available at* http://csis.org/files/publication/issuesinsightsv01n02.pdf.

[1234] Nguyen Hong Thao, *Vietnam and the Code of Conduct for the South China Sea*, 32 OCEAN DEV. & INT'L. L. 105, 126 (2001) (this publication contains only an excerpt of the Joint Statement).

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[1236] Joint Statement between China and the Philippines on the Framework of Bilateral Cooperation in the Twenty-First Century, 15 Nov. 2000, *available at* http://www.fmprc.gov.cn/eng/wjb/zzjg/yzs/gjlb/2762/2763/t16139.htm.

[1237] Joint Declaration of the Heads of State/Government of The People's Republic of China and The Member States of ASEAN on Strategic Partnership for Peace and Prosperity, 8 Oct. 2003, *available at* http://www.aseansec.org/15265.htm.

- The Philippines-Vietnam Joint Research in the South China Sea, 1996-2007 (Educators Speak), MANILA BULLETIN, 27 Apr. 2008, *available at* http://www.highbeam.com/doc/1G1-178338946.html.

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Western and Central Pacific Fisheries Commission (WCPFC)

1. Legal Basis

The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean ("Convention") was opened for signature at Honolulu, Hawaii on 5 September 2000.[1238] The Convention entered into force on 19 June 2004—six months after the deposit of the thirteenth instrument of ratification, acceptance, approval, or accession.[1239] The Convention implemented the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982[1240] and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.[1241]

Under Article 3.3, the Convention applies to all stocks of highly migratory fish (as listed in Annex I of the Convention on the Law of the Sea)[1242] within the Convention Area, except sauries.

2. Member States

The Contracting Parties are Australia, China, Canada, the Cook Islands, the European Community, the Federated States of Micronesia, Fiji, France, Japan, Kiribati, South Korea, the Republic of the Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Samoa, the Solomon Islands, Chinese Taipei (as a fishing entity), Tonga, Tuvalu, the United States, and Vanuatu. In addition, American Samoa, the Commonwealth of the Northern Mariana Islands, French Polynesia, Guam, New Caledonia, Tokelau, and Wallis and Fatuna are Participating Territories. Belize, Indonesia, Senegal, Mexico, El Salvador, Ecuador, and Vietnam are Cooperating Non-Members ("CNMs"). The Contracting Parties, the Participating Territories, and CNMs are referred to collectively as "CCMs."[1243]

[1238] The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean ("Convention"), 5 Sept. 2000, *available at* http://www.wcpfc.int/doc/convention-conservation-and-management-highly-migratory-fish-stocks-western-and-central-pacific-.

[1239] Western and Central Pacific Fisheries Commission: Convention Text, *available at* http://www.wcpfc.int/key-documents/convention-text (last viewed on 30 Dec. 2010).

[1240] United Nations Convention on the Law of the Sea, 10 Dec. 1982, *available at* http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

[1241] The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 Dec. 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 4 Aug. 1995, *available at* http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N95/274/67/PDF/N9527467.pdf?OpenElement.

[1242] Convention, art. 1(f); Annex I of UNCLOS lists the Highly Migratory Species as: albacore tuna, bluefin tuna, bigeye tuna, skipjack tuna, yellowfin tuna, blackfin tuna, little tuna, southern bluefin tuna, frigate mackerel, pomfrets, marlins, sail-fishes, swordfish, sauries, dolphin, oceanic sharks, and cetaceans.

[1243] Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean – Sixth Regular Session ("WCPFC6 Summary Report"), 2 Apr. 2010, at 1-7, *available at* http://www.wcpfc.int/doc/wcpfc6-summary-report-final; Status of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, 7 Nov. 2009, *available at* http://www.wcpfc.int/doc/wcpfc2-2005-07-rev2/status-convention-34k.

3. Geographical Scope

According to Article 3.1 of the Convention, the Convention Area includes all of the waters of the Pacific Ocean that are bounded to the south and east by a line that runs from the south coast of Australia due south along the 141º meridian of east longitude to its intersection with the 55º parallel of south latitude; then due south along the 150º meridian of east longitude to its intersection with the 60º parallel of south latitude; then due east along the 60º parallel of south latitude to its intersection with the 130º meridian of west longitude; then due north along the 130º meridian of west longitude to its intersection with the 4º parallel of south latitude; then due west along the 4º parallel of south latitude to its intersection with the 150º meridian of west longitude; and then due north along the 150º meridian of west longitude.

4. Legal Personality

Under Article 9.6 of the Convention, the Western and Central Pacific Fisheries Commission ("WCPFC" or "Commission") has international legal personality and the legal capacity necessary for it to perform its functions and to achieve its objectives. The privileges and immunities of the WCPFC and its officers in the territory of a Contracting Party are determined by an agreement between the Commission and that Contracting Party.

5. Functions

Under Article 2, the objective of the Convention is to promote and effectively manage the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean. The functions of the WCPFC, according to Article 10 of the Convention, include:

- Determining, through defined criteria, the total allowable catch, or the total level of fishing effort, within the Convention Area for certain highly migratory fish stocks and adopt other Conservation and Management Measures ("CMMs") as needed in order to ensure the long-term sustainability of those fish stocks;

- When necessary, adopting CMMs and other recommendations for non-target species and species that are associated with target stocks in order to maintain or restore populations so that their reproduction does not become seriously threatened;

- Promoting cooperation and coordination between members of the Commission so that the CMMs for highly migratory fish stocks on the high seas are compatible with measures in areas under national jurisdiction;

- Encouraging scientific research and analyzing the relevant scientific advice, evaluating the status of the fish stocks, and compiling and disseminating relevant data (including statistical, economic, and other relevant fisheries-related data);

- Adopting international minimum standards that would apply to the responsible conduct of fishing operations; and

- Establishing cooperative systems for monitoring, control, surveillance and enforcement (such as a vessel monitoring system).

Under Article 7 of the Convention, principles and measures for the conservation and management of fisheries in the waters in the Convention Area under national jurisdiction are the responsibility of the coastal state. But, according to Article 8, CMMs established by the Commission for the high seas and the

measures adopted for areas under national jurisdiction must be compatible, and measures adopted for the areas under national jurisdiction must not undermine the effectiveness of the Commission's CMMs. In terms of the Commission's CMMs, according to Article 10, the Commission is authorized to regulate the quantity and size of a species or stock that can be caught, the level of fishing effort, fishing capacity (such as limits on fishing vessel numbers, types and sizes), the areas and periods open for fishing, the fishing gear and technology that can be used, as well as fishing in particular subregions of the Convention Area. When developing the criteria to be used in determining the allocation among the CCMs of the total allowable catch or the total level of fishing effect, the Commission will consider: (a) the status of the fish stocks and existing levels of fishing effort; (b) the respective interests, past and present fishing patterns and practices, as well as the amount of the catch that is used for domestic consumption; (c) historic catch; (d) the needs of small island developing states ("SIDS"), territories and possessions that are overwhelmingly dependent on the use of marine resources for their economies, food supplies, and livelihoods; (e) contributions to the conservation and management of the stocks, such as providing scientific research and accurate data; (f) records of compliance with the CMMs; (g) the needs of coastal communities that depend on fishing; (h) when a state has a limited Exclusive Economic Zone ("EEZ"), but is surrounded by the EEZs of other states; (i) when a SIDS is composed of non-contiguous group of islands that are separated by the high seas; and (j) the fishing interests of coastal states, especially SIDS, territories, and possessions, in situations where the fish stocks are also present in areas under their national jurisdiction.

Under Article 5, the CCMs are obligated to adopt CMMs that promote the long-term sustainability of highly migratory fish stocks in the Convention Area. These measures should be based on the best scientific evidence available and be designed to maintain or restore stocks at levels capable of producing maximum sustainable yield. These measures should follow the precautionary approach and be based on an assessment of the impacts of fishing, other human activities and environmental factors on the stocks and aim to protect the biodiversity in the marine environments. As part of the precautionary approach, as detailed in Article 6, there are stock-specific reference point, developed on the basis of the best scientific information available, and a series of actions to be taken if those limits are exceeded. The CMMs, according to Article 5, are intended to prevent, or stop, over-fishing and excess fishing capacity, as well as to ensure that fishing effort levels are compatible with the sustainable use of fishery resources in the Convention Area. The CMMs can also be used to reduce waste, discards, catch by lost or abandoned gear, pollution from fishing vessels, catch of non-target species, and impacts on associated or dependent species (such as endangered species), as well as to encourage the development and use of environmentally-safe and cost-effective fishing gear and techniques.

The Convention, in Article 11, established, as subsidiary bodies to the WCPFC, a Technical and Compliance Committee ("TCC") and a Scientific Committee ("SC"). The SC, according to Article 12, is responsible for obtaining the best scientific information available, identifying data needs, and recommending a research plan to the WCPFC. In addition, the duties of the Scientific Committee include: reviewing and commenting on the reports prepared for the WCPFC by scientific experts; promoting cooperation in scientific research concerning highly migratory stocks, non-target species, and species associated with or dependent on such stocks in the Convention Area; and reporting to the WCPFC on its findings concerning the status of these stocks and recommendations concerning their conservation and management.

Under Article 14 of the Convention, the TCC is tasked with: providing the WCPFC with information, technical advice and recommendations on implementing and complying with the CMMs; monitoring and evaluating compliance with the CMMs and making relevant recommendations; and reviewing the implementation of cooperative measures in regards to monitoring, control, surveillance and enforcement that are adopted by the WCPFC and making relevant recommendations. In addition, under Article 11.7, a Northern Committee ("NC") has been established that makes recommendations for CMMs that concern

fish stocks that are mostly found in the part of the Convention Area that is north of 20° parallel of north latitude.

Under Article 24 of the Convention, each member of the Commission is obligated to take measures to ensure that fishing vessels flying its flag comply with the Convention and the CMMs adopted by the WCPFC (and do not participate in any activity which undermines the CMMs' effectiveness). To accomplish these aims, each member of the Commission must specifically authorize each fishing vessel flying its flag that wants to fish in the Convention Area, beyond areas of its national jurisdiction, for highly migratory fish stocks. Each member of the Commission must keep a Record of Fishing Vessels, which lists all vessels that are entitled to fly its flag and fish in the Convention Area, and transmit that list, and any subsequent modifications, to the Commission.[1244] The CCMs need to ensure that all vessels flying its flags are placed on the WCPFC's Record of Fishing Vessels before the vessels commence fishing. Fishing vessels are also not allowed to conduct fishing in areas under the national jurisdiction of any other state besides its flag states, unless they have received a valid authorization from that other state. In addition, under Article 23.5, each member of the Commission should enact, to the greatest extent possible, measures to ensure that its nationals, as well as fishing vessels owned or controlled by its nationals that fish in the Convention Area, comply with the Convention and the CMMs. This can involve entering into agreements with the flag states of the fishing vessels to facilitate enforcement.

The Commission has also established an Interim Register of Non-Member Carrier and Bunker Vessels, which lists certain fish carriers and bunker vessels (i.e., vessels that are used to supply another vessel's engine with oil or coal) flying the flags of non-CCM countries. Vessels on the Interim Register are authorized to be in the Convention Area and to receive transshipments of highly migratory fish stocks and to bunker and supply vessels fishing for highly migratory fish stocks in the Convention Area that are flying the flag of any of the CCM countries. The Interim Register is set to expire after the Commission's annual meeting in 2012, unless the list is renewed.[1245]

With respect to non-members of the Convention, according to Article 32, members of the Commission are obligated to take measures, consistent with the Convention, to deter the activities of vessels flying the flags of non-parties that undermine the effectiveness of the CMMs adopted by the Commission. The Commission will also inform non-member states of any activities by its fishing vessels that affect the implementation of the objectives of the Convention. Furthermore, members of the Commission should request that these non-member states with vessels fishing in the Convention Area cooperate in the implementation of the CMMs.

These cooperating states can apply to become CNMs and receive fishery benefits, such as participatory rights, based on their commitment and compliance with the CMMs. At the annual meeting of the

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[1244] For vessels listed on the Record of Fishing Vessels, the following information, as detailed in Annex IV of the Convention, needs to be provided: the name of the fishing vessel, registration number, previous names, and port of registry; name and address of owner(s); name and nationality of master; previous flag; International Radio Call Sign; vessel communication types and numbers; a color photograph of the vessel; where and when built; type of vessel; normal crew complement; type of fishing method(s); length; moulded depth; beam; gross register tonnage; power of main engine(s); nature of the authorization to fish granted by the flag state; and carrying capacity (including freezer type, capacity and number and fish hold capacity). The Record of Fishing Vessels is available at: http://www.wcpfc.int/record-fishing-vessel-database.

[1245] Western and Central Pacific Fisheries Commission: Vessels, *available at* http://www.wcpfc.int/vessels#Register (last viewed on 30 Dec. 2010); WCPFC Record of Fishing Vessels and Authorization to Fish (Revised), CMM 2009-01, Dec. 2009, *available at* http://www.wcpfc.int/node/2663.

Commission in December 2009, specific participatory rights for 2010 for each of the CNMs (i.e., Indonesia, Belize, El Salvador, Mexico, Senegal, Ecuador, and Vietnam) were decided upon. In addition to granting participatory rights, the Commission can also impose conditions as part of its granting of CNM status. For example, out of concern that Ecuador had been involved in numerous illegal, unreported and unregulated ("IUU") fishing incidents, the Commission required that all of Ecuador's vessels be equipped with Commission and Pacific Islands Forum Fisheries Agency ("FFA") vessel monitoring systems, which would be operational the whole time the vessels are in the Convention Area.[1246] *See* **Benefit Sharing** for more information on CNM status.

Under Article 29 of the Convention, members of the Commissions are supposed to encourage their fishing vessels to conduct transshipment in port. Transshipment is the unloading of fish on board a fishing vessel to another fishing vessel (either at sea or in port). Transshipment in an area under national jurisdiction will occur subject to that state's applicable law—whereas transshipment on the high seas in the Convention Area is subject to the terms and conditions of the Convention. Subject only to specific exceptions granted by the WCPFC, transshipment at sea by purse-seine vessels operating within the Convention Area is prohibited. Members of the Commission can establish some of its ports as transshipment ports, and the WCPFC will circulate to its members a list of these ports that are available for transshipment. The WCPFC also has procedures to obtain and verify data on the quantity and species transshipped (both in port and at sea) in the Convention Area and when transshipment has been completed. And while the Convention states that every effort will be made to minimize disruptions to fishing operations, according to Article 4 of Annex III on the Terms and Conditions for Fishing, operators of vessels must assist persons authorized by the WCPFC for inspections and allow them to have the full access necessary to carry out their duties regarding the regulation of transshipment.

To combat IUU fishing incidents, the WCPFC has adopted a CMM establishing a list of vessels presumed to have carried out IUU activities in the Convention Area.[1247] Under the provision of this CMM, the Commission will approve, at its annual meeting, an IUU Vessel List which contains vessels that have engaged in fishing activities within the Convention Area in ways that have been found to undermine the Convention and the CMMs. At least 120 days before the TCC annual meeting, the CCMs can report, accompanied by sufficient evidence and details, vessels they believe are engaged in IUU activities in the Convention Area for inclusion on the TCC's Provisional IUU Vessel List. For example, any fishing vessel that is not on the Record of Fishing Vessels, but is found to be harvesting relevant species in the Convention Area (and not fishing exclusively in the waters under the jurisdiction of its flag state) is presumed to be carrying out IUU fishing activities.[1248] The TCC will not include a vessel on the IUU Vessel List if the vessel's flag state demonstrates: (a) the vessel in question fished in a manner consistent with the Convention and the CMMs, or with the laws of a coastal state if it was only fishing in waters under its national jurisdiction, or the vessel only fished exclusively for species not covered by the

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[1246] WCPFC6 Summary Report, at 3-7.

[1247] Conservation and Management Measure to Establish a List of Vessels presumed to Have Carried out Illegal, Unreported and Unregulated Fishing Activities in the WCPO, CMM 2007-03, Dec. 2007, *available at* http://www.wcpfc.int/doc/cmm-2007-03/conservation-and-management-measure-establish-a-list-vessels-presumed-have-carried-o.

[1248] CMM 2007-03 lists numerous other vessel activities and characteristics which, if discovered, are presumed to qualify as IUU fishing activity. One of them is "[a]re under the control of the owner of any vessel on the WCPFC IUU Vessel List." At the sixth annual meeting of the WCPFC in December 2009, the Commission assigned the TCC the task of developing specific procedures for applying this control/ownership provision when determining presumed IUU activity. *See* WCPFC6 Summary Report, at 19-20.

Convention; (b) effective action was taken to respond to the IUU activities (including prosecution or imposing sanctions that were sufficiently severe); or (c) that the case concerning the IUU fishing vessel has been resolved to the satisfaction of the CCM that originally reported the vessel and the vessel's flag state. Once the Commission adopts the IUU Vessel List, the flag state should take all necessary measures to eliminate these IUU fishing activities (such as withdrawing the vessel's registration or fishing license). In addition, the other CCMs are obligated to take measures in response, according to international law and their own legislation, such as not authorizing listed vessels to land, transship, refuel, or resupply at their ports and prohibiting commercial transactions, imports, landings, and transshipments of species covered under the Convention from listed vessels. As decided at the Commission's annual meeting in December 2009, there are currently five vessels on the IUU Vessel List.[1249]

In developing the CMMs and its other regulations, the WCPFC, according to Article 30 of the Convention, is obligated to give full recognition to the special requirements of Contracting Parties that are developing states, particularly SIDS, as well as to the special requirements of territories and possessions. Factors to be considered by the WCPFC are: the vulnerability of developing countries that are dependent on the exploitation of marine life (including for the satisfaction of the nutritional requirements of the population); the need to avoid adverse impacts and to ensure access to fisheries by subsistence, small-scale and artisanal fishers and indigenous people; and the need to ensure that such measures do not result in the transfer of a disproportionate amount of the burden of conservation action onto developing country Contracting Parties and territories and possessions. The WCPFC has a fund to facilitate the effective participation of developing country Contracting Parties, particularly SIDS and where appropriate territories and possessions, in the work of the WCPFC. The financial assistance available through this fund will also be directed towards: improving the conservation and management of highly migratory fish stocks through collection, reporting, verification, exchange, and analysis of fisheries data; stock assessment and scientific research; and monitoring, control, surveillance, compliance and enforcement measures. In addition, the Commission has passed a Resolution on the Aspirations of Small Island Developing States and Territories. Under this resolution, the developed CCMs are urged to assist the developing states, especially the least developed, the SIDS, and territories in the Convention Area, in developing their own fisheries, including the option of having the developed CCMs reduce or restructure their fisheries to accommodate the fishing aspirations of the SIDS and territories.[1250]

6. Organizational Structure

Much of the WCPFC's regulatory framework was established during the Preparatory Conference from 2001 to 2004, and became operational during the WCPFC's Inaugural Session in December 2004.[1251]

The WCPFC, which is comprised of representatives of the Contracting Parties, is the highest authority. The WCPFC elects a Chairman and Vice-Chairman (of different nationalities) from among the Contracting Parties for a two-year term, with eligibility for re-election. There is a permanent Secretariat, with an Executive Director (who is appointed by the Commission for a four-year term subject to one

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[1249] *See* WCPFC6 Summary Report, at 21-28.

[1250] Resolution of Aspirations of Small Island Developing States and Territories, Resolution 2008-01, Dec. 2008, *available at* http://www.wcpfc.int/doc/resolution-2008-01/resolution-aspirations-small-island-developing-states-and-territories.

[1251] *See* Final Report of the Preparatory Conference for the Establishment of the Commission for the Conservation of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean on All Matters within its Mandate Pursuant to Paragraph 9 of Resolution 1, 7 Dec. 2004, *available at* http://www.wcpfc.int/doc/wcpfcprepcon48/final-report.

renewal) as the chief administrative officer and other staff as may be required. The WCPFC's headquarters is in Pohnpei in the Federated States of Micronesia. The WCPFC is required to hold an annual meeting and can call any other meetings as it deems necessary to carry out its functions. At these meetings, the WCPFC: makes determinations on applications for membership (including CNM status); considers annual reports from the members of the Commission, the SC, the NC, the TCC, the Finance and Administration Committee ("FAC"), as well as other summaries of relevant activities; evaluates the CMMs and the monitoring, control and surveillance schemes; and adopts and implements certain measures and recommendations for WCPFC action (including the adoption of non-binding resolutions).[1252]

The Contracting Parties, under Article 35, may invite, by consensus, other states and regional economic integration organizations to accede to the Convention and become members of the Commission. Also, under Annex I of the Convention, a fishing entity (i.e., Chinese Taipei) that agrees to be bound by the Convention is allowed to participate in the work of the Commission, including in the decision-making. Even if a state is not a Contracting Party to the Convention, it can apply, each year, to the Commission for CNM status. As part of the application for CNM status, the non-member state must, among other requirements: commit to ensuring that fishing vessels flying its flag comply with the Convention and the CMMs adopted by the Commission; agree to accept high seas boarding and inspections; provide full data on its historical fishing in the Convention Area; and provide details on its current fishing presence in the Convention Area. The TCC initially reviews the application (based, in part, on the state's record of response to any reported IUU activities by vessels flying its flag and, for renewal applications, the record of compliance with the CMMs), and provides recommendations to the Commission (with the Commission being the body granting final approval).[1253] Even if a non-member state does not obtain CNM status, it can be invited to attend the meetings of the Commission and its subsidiary bodies as an observer.[1254]

Under Article 11 of the Convention, the SC and the TCC were established as subsidiary bodies to the WCPFC in order to provide advice and expert recommendations in their respective areas of competence. Each member of the Commission can appoint one representative (accompanied by experts and advisers) to each committee. These committees meet prior to the Commission's annual meeting and prepare a report, generally adopted by consensus, to present to the WCPFC. If the Committee fails to reach consensus, it would present both the majority and minority views in its report to the WCPFC. Within these committees, working groups can be established to handle specific issues, such as technical issues relating to particular fish species. For the NC, since it is only concerned with fish stocks that occur mostly north of the 20º parallel of north latitude, only member of the Commission located in that area or those fishing in that area are included as members of that committee. The NC must adopt, by consensus, recommendations to the Commission (and any measures adopted by the Commission relating to particular stocks and species in this area must be based on the NC's recommendations). The FAC is focused on the operational issues of running the WCPFC.

[1252] Convention, arts. 9, 15, 16; *see also, e.g.*, WCPFC6 Summary Report.

[1253] Cooperating Non-Members, CMM 2009-11, Dec. 2009, *available at* http://www.wcpfc.int/doc/cmm-2009-11/cooperating-non-members.

[1254] Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean – Rules of Procedure ("Procedural Rules"), Rule 36, *available at* http://www.wcpfc.int/doc/commission-01/rules-procedure.

7. Relationships

Under Article 22 of the Convention, the WCPFC has a mandate to cooperate and collaborate with other relevant intergovernmental organizations, especially with other regional fisheries management organizations (such as the Commission for the Conservation of Antarctic Marine Living Resources ("CCAMLR"), the Commission for the Conservation of Southern Bluefin Tuna ("CCSBT"), the Indian Ocean Tuna Commission ("IOTC"), and the Inter-American Tropical Tuna Commission ("IATTC")), as well as with the Food and Agriculture Organization of the United Nations ("FAO"). The WCPFC has signed Memoranda of Understanding with the Secretariat of the Pacific Community – Oceanic Fisheries Programme ("SPC-OFP"), the FFA, the Secretariat for the Pacific Regional Environment Programme ("SPREP"), the IOTC, the IATTC, the CCSBT, the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean ("ISC") and the Agreement for the Conservation of Albatross and Petrels.[1255] Especially when there is an overlap in a covered area with another fisheries management organization, the WCPFC and the other organization are obligated to work together to avoid duplication of measures in the regulations of species. In addition, the Convention emphasizes that the WCPFC should be run in a cost-effective manner. Therefore, the WCPFC and its subsidiary committees are supposed to utilize the services of existing regional organizations and consult, where appropriate, with other fisheries management, technical or scientific organizations. But, where necessary, the WCPFC is authorized to contract with relevant institutions for necessary expert services.[1256]

Under Procedural Rule 36, the FAO, as well as other relevant intergovernmental and South Pacific regional organizations, are able to participate, upon invitation, as observers in the work of the Commission and its subsidiary bodies. These intergovernmental organizations with observer status are also given the opportunity to submit written statements that will be distributed to the members of the Commission. At the annual meeting of the WCPFC in December 2009, observers from intergovernmental organizations included the IATTC, the ISC, the FFA, the Pacific Islands Forum Secretariat, the Secretariat of the Pacific Community ("SPC"), and the World Bank.[1257]

As part of the implementation of its Regional Observer Programme ("ROP") (*see* **Compliance and Monitoring**), the WCPFC has expressed interest in concluding an observer cross-endorsement agreement with the IATTC. But until an agreement is finalized, vessels crossing from the IATTC Convention Area into the WCPFC Convention Area are still required to pick up a WCPFC observer at the first entry into port in the WCPFC Convention Area. Under the Nauru Agreement (a FFA subregional agreement[1258] concerning tuna purse seine fishing licenses in the region), all fishing vessels in waters covered under the Nauru Agreement must carry PNA observers on board. These PNA observers can serve on the high seas in the WCPFC Convention Area, as long as they have been authorized under the WCPFC's ROP.[1259]

[1255] *See* Western and Central Pacific Fisheries Commission: Relations with Other Organisations, *available at* http://www.wcpfc.int/relations-with-other-organisations (last viewed on 3 Nov. 2010). The Commission is still considering formalizing a new Memorandum of Understanding with the North Pacific Anadromous Fisheries Commission. *See* WCPFC6 Summary Report, at 44-45.

[1256] Convention, arts. 9.5, 11.5, 13, 15.5.

[1257] WCPFC6 Summary Report, at 2.

[1258] The Parties to the Nauru Agreement ("PNA") are the Federated States of Micronesia, Kirbati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, and Tuvalu.

[1259] *See* WCPFC6 Summary Report, at 37.

In terms of sub-regional agreements, in January 2010, the Cook Islands, New Zealand, Niue, Samoa, Tonga, and Tokelau entered into a Cooperation Arrangement (referred to as the Te Vaka Moana Arrangement) concerning the sustainable use and management of fisheries within the Polynesian region. The objectives of the Te Vaka Moana Arrangement are to: strengthen cooperative relations between the participants in order to promote the sustainable use of fisheries resources (including increasing the economic benefit that can be derived from the fisheries and protecting the role of fisheries in the food security of communities); assist with fisheries-related capacity development and enhancing sub-regional capabilities through the sharing of resources (especially as it relates to the monitoring, control, surveillance and enforcement of fisheries resources); promote the sharing of fisheries-related information among the participants; enhance the ability of participants to fully and effectively participate in regional organizations and international fora (such as the WCPFC) that deal with fisheries issues; promote cooperation between the participants regarding monitoring, control, surveillance and enforcement in both domestic settings and on the high seas; and support and strengthen fisheries development initiatives.[1260]

8. Decision Making

According to Article 20 of the Convention, decision-making by the WCPFC is generally made by consensus (i.e., without formal objections when the decision was made). If all efforts to reach consensus have failed, decisions on questions of substance can be passed by a vote of three-fourths of the members of the Commission voting and present. This supermajority must include a three-fourths majority of the members of the FFA present and voting and a three-fourths majority of the non-members of the FFA present and voting (with no proposal allowed to be defeated by two or fewer votes). Votes on questions of procedure only require a majority approval of the members of the Commission present and voting. Certain decisions (such as amendments to the Convention, decisions on the allocation of the total allowable catch or the total level of fishing effort (including decisions on the exclusion of vessel types), accession to the Convention, budget decisions, financial regulations, and rules of procedures) can only be passed by consensus.[1261]

A decision by the WCPFC will become binding 60 days after the date of its adoption or 30 days from the date the review panel approves a challenged decision and reports its approval to the Executive Director.[1262]

9. Dispute Resolution

Under Article 20.4, to encourage decision making by consensus, the Chairman of the Commission can appoint a conciliator to reconcile the differences between the members of the Commission. If this process fails and a decision gets approved by a less-than-unanimous vote (or a member of the Commission was not present when the decision was adopted), under Article 20.6, that member of the Commission can challenge the decision of the WCPFC by submitting a written application for review to the Executive Director within 30 days of the adoption of the decision by the WCPFC. To evaluate this application, a review panel will be established, which will consist of three members appointed from an approved list,

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[1260] *See* Pacific Islands Marine Portal: Polynesian Fisheries Cooperative Formalised, *available at* http://www.pimrisportal.net/index.php?option=com_content&view=article&id=145:te-vaka&catid=65:news-highlights&Itemid=77 (last viewed on 3 Nov. 2010). A copy of the Te Vaka Moana Arrangement is available through White & Case LLP.

[1261] Convention, arts. 9, 10.4, 17, 18, 35, 40, 41.

[1262] Convention, art. 20.5, 20.8.

maintained by the FAO, of experts in the field of fisheries. The member(s) of the Commission submitting the application for review will appoint one member of the review panel. The Chairman will appoint one member of the review panel, and the last member of the panel will be appointed by agreement between the Chairman and the member(s) seeking review. The applicant(s) and the Chairman must also agree on which member of the review panel will serve as President. If there is no agreement, the President of the International Tribunal for the Law of the Sea will make the necessary appointments.[1263]

The review panel is required to conduct a hearing within 30 days from its date of appointment. The Executive Director, on behalf of the WCPFC, will provide the review panel with the necessary information for the panel to understand the reasoning behind the WCPFC's challenged decision. Any other member of the Commission may also submit to the review panel a memorandum relating to the challenged decision. The review panel will reach its decision by majority vote, with any dissenting opinion being attached to the majority's ruling. The panel will communicate its findings and recommendations, including the reasons behind its decision, to the applicant(s) and the Executive Director within 30 days from the end of the hearing. The Executive Director will then distribute the review panel's findings to all of the Commission members.[1264]

The findings and recommendations of the review panel are required to be limited to the subject matter of the application. The challenged WCPFC decision will be struck down if the decision is found to be inconsistent with the Convention, or if the decision unjustifiably discriminates, in form or in fact, against the applicant(s). If the review panel recommends to the WCPFC that the decision be modified or revoked, at its next annual meeting, the WCPFC must revoke its decision or modify its decision as needed to conform with the review panel's findings and recommendations.[1265]

If there is a dispute over the interpretation or the application of the Convention which involves a fishing entity (i.e., Chinese Taipei) and it cannot be resolved by agreement, at the request of either party to the dispute, the dispute shall be submitted to final and binding arbitration, in accordance with the relevant rules of the Permanent Court of Arbitration.[1266]

10. Data Information Sharing, Exchange, and Harmonization

Each CCM must submit an annual report containing certain statistical, biological and other data as required. Part 1 of the Annual Report, which is submitted to the SC, includes information for each CCM on: (a) fisheries information; (b) background (e.g., historical description of national fisheries) (c) flag state reporting that details the activities of national fleets, listed by gear types, in the Convention Area (including trends in each fishery related to changes in fishing patterns, fleet operations, target species, and size composition); (d) coastal state reporting that details activities by foreign and domestic fleets in waters under national jurisdiction (including trends in each fishery related to changes in fishing patterns, fleet operations, target species, and size composition); (e) socioeconomic factors; (f) disposal of catch (such as fresh or frozen) and market destination (export of import); (g) onshore developments (such as processing plants or support facilities); (h) prospects of the fishery (such as long-term viability and if the fisheries are expanding or contracting); (i) the status of tuna fishery data collection systems (including information on

[1263] Convention, Annex II (Review Panel).

[1264] Convention, Annex II (Review Panel).

[1265] Convention, Annex II (Review Panel).

[1266] Convention, Annex I (Fishing Entities), Annex II (Review Panel), art. 20.

log sheet data collection and verification, the observer program, the port sampling program, and unloading and transshipment); and (j) research activities focused on both target and non-target species. For the fisheries information, each CCM is required to provide data for its national fleet in the Convention Area, including information on, among other requirements: annual catch and effort estimates, number of vessels, annual distribution of target species catch and effort, and estimated annual coverage of operational catch/effort, port sampling and observer data. This information must be broken down by gear type (such as longline, purse seine, pole-and-line, troll, handline, ringnet, and driftnet).[1267] In Part 2 of the Annual Report, which is submitted to the TCC, the CCMs report on their implementation of the CMMs, as well as monitoring and inspection activities, surveillance activities, investigations and prosecution activity, and other relevant information. Monitoring and inspection activities includes the vessel monitoring system, transshipments inspections, at-sea inspections, port inspections, observer monitoring, monitoring of trade and domestic distribution of highly migratory fish species, inspections of domestic-only vessels, and high seas boarding and inspection of flag vessels.[1268] Part 1 Reports are posted on the WCPFC website, but Part 2 Reports are classified as confidential and only available to other CCMs.[1269]

Under Article 24, each CCM must produce a Record of Fishing Vessels that are entitled to fly its flag and are authorized to fish, beyond the areas of national jurisdiction, in the Convention Area and submit it to the Commission.[1270] *See* **Functions** for more information on the Record of Fishing Vessels.

The Commission has established a Vessel Monitoring System ("VMS") that requires each vessel that fishes in certain parts of the high seas in the Convention Area (south of 20°N and above 20°N, east of 175°E) to use near real-time satellite position-fixing transmitters (i.e., a mobile transceiver unit/automatic location communicator ("MTU/ALC")) in order to track the positions and movements of fishing vessels. If a vessel is initially fishing in the covered area but then moves north of 20°N and west of 175°E, it still needs to keep its MTU/ALC activated. Generally, vessels report their position to the Commission automatically. Automated alerts have also been established to alert the Commission when vessels enter or exit the high seas of the Convention Area. If a vessel is fishing in waters under the national jurisdiction of another member of the Commission (besides it flag state), it must comply with the requirements of that coastal state in regards to the use of near real-time satellite position-fixing transmitters. The Commission enacted security measures to protect access to the data. The flag states are obligated to ensure that their fishing vessels comply with the VMS requirements. The FFA also has a VMS program, and fishing vessels on the high seas have the option of reporting data to the Commission through the FFA's VMS. In addition, any CCM can request that the waters under its national jurisdiction be included in the Commission's VMS (with New Zealand being the first county to sign up for this option).[1271]

[1267] Annual Report to the Commission – Part 1: Information on Fisheries, Research and Statistics, Aug. 2008, *available at* http://www.wcpfc.int/node/604; Convention, art. 23.

[1268] Western and Central Pacific Fisheries Commission - Revised Template for the Annual Report (Part 2), Dec. 2009, *available at* http://www.wcpfc.int/doc/commission-08/revised-template-annual-report-part-2; Convention, art. 23.

[1269] Summary of Annual Reports (Part 1 and 2) to the Commission, 16 Nov. 2009, *available at* http://www.wcpfc.int/ doc/wcpfc6-2009ip03/summary-annual-reports-part-1-and-2-commission.

[1270] WCPFC Intranet: RFV Vessels, *available at* http://intra.wcpfc.int/Lists/Vessels/Stats.aspx (last viewed on 3 Nov. 2010).

[1271] Commission Vessel Monitoring System, CMM 2007-02, Dec. 2007, *available at* http://www.wcpfc.int/doc/cmm-2007-02/commission-vessel-monitoring-system; Commission VMS Standard

The WCPFC has entered into a Data Exchange Agreements with the SPC in regards to aggregated catch and effort data and with the IATTC in regarding to operational-level tuna fisheries data (such as catch and effort, observer, unloading, transshipment and port inspection data), aggregated catch and effort data, and other relevant monitoring, control, surveillance, inspection and enforcement data.[1272] The Commission has also adopted rules governing the protection and dissemination of data that is compiled by the WCPFC.[1273]

11. Notifications

See **Data Information Sharing, Exchange, and Harmonization.**

In addition, under Articles 23.5 and 25 of the Convention, when a member of the Commission commences an investigation, upon the request of another WCPFC member, into potential violations of the Convention and the CMMs by fishing vessels flying its flag or its nationals, that member must submit a report, within two months, on the progress of the investigation, to the Commission and the member who made the investigation request. That member of the Commission must also provide a final report on the outcome of the investigation. All Commission members must also report annually to the WCPFC on sanctions imposed in response to violations of the Conventions and any CMMs. *See* **Compliance and Monitoring** for more information on the investigation process.

12. Funding and Financing

Funding for the operational costs of the Commission is from a combination of assessed contributions from members of the Commission, voluntary contributions (i.e., the Japan Trust Fund), a fund to provide assistance to developing country members, and any other monies the WCPFC may receive. The assessed contributions for members of the Commission are comprised of: (a) a basic fee divided equally among the members (10%); (b) a fee based upon national wealth and the country's level of development (20%); and (c) a variable fee based on the total catch of all stocks covered by the Convention that are taken in areas beyond national jurisdiction and within the EEZs (discounted by a factor of 0.4 if the catch was within the EEZ of a developing country member or territory of the Commission and the vessel flies that country's flag).[1274]

Operating Procedures (SOPs), 19 Feb. 2010, *available at* http://www.wcpfc.int/doc/commission-vms-standard-operating-procedures; Convention, art. 24 (8)-(10); WCPFC Quarterly Reports – First Quarter 2010, 9 Apr. 2010, *available at* http://www.wcpfc.int/doc/ wcpfc-2010-qtr-01/1st-quarter-2010.

[1272] Data Exchange Agreement Between the Western and Central Pacific Fisheries Commission and The Secretariat of the Pacific Community, 27 Aug. 2009, *available at* http://www.wcpfc.int/doc/wcpfc-spc-ofp-data-exchange-agreement; Memorandum of Cooperation on the Exchange and Release of Data between the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean and the Inter-American Tropical Tuna Commission, 11 Dec. 2009, *available at* http://www.wcpfc.int/node/2684.

[1273] Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission, Dec. 2007, *available at* http://www.wcpfc.int/doc/data-02/rules-and-procedures-protection-access-and-dissemination-data-compiled-commission-revise.

[1274] Convention, art. 18; Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean – Financial Regulations, Regulation 5, *available at* http://www.wcpfc.int/doc/commission-02/financial-regulations.

Under Article 18, the WCPFC is required to draft the budget by consensus. If a member of the Commission is in arrears in paying its contribution for two years, that member will not be allowed to participate in WCPFC decisions. Unless otherwise decided, the expenses for a review panel to challenge a WCPFC decision are apportioned according to: (a) 70% by the applicant Commission member (and if there is more than one challenging member, divided equally among those members); and (b) 30% from the annual budget of the WCPFC.[1275] In addition, an applicant seeking CNM status needs to commit to make financial contributions to the Commission in the amount that it would be assessed if it became a Contracting Party. This requirement does not apply to entities that are not eligible to become members of the Commission.[1276] Otherwise, CNMs are encouraged to make voluntary contributions to the budget of the WCPFC.

The proposed budget for 2010 was US $5.4 million. At the annual meeting of the Commission in December 2009, the FAC reported a potential budget problems as a result of higher than anticipated VMS expenses (as nearly double the number of vessels that were forecasted had reported to the Commission's VMS in 2009), and recommended finding additional sources of funding (such as instituting a fee for observer delegations, recovering air time costs associated with the VMS program, and increasing financial contributions from the CNMs).[1277]

13. Benefit Sharing

The Convention aims to maintain the viability of highly migratory fish stocks in the Convention Area, with the CMMs intended to protect those species that are in danger of falling below sustainability levels. If the WCPFC is successful in protecting the fish stocks in the Convention Area, benefits will not have to be allocated. Otherwise, if fish stocks are still threatened and an allocation of total allowable catch or total allowable fishing levels is necessary, the members of the Commission will decide what measures need to be taken and the levels of restrictions to be imposed. Under Article 10.4, decisions on the allocation of the total allowable catch or the total level of fishing effort, including decisions concerning the exclusion of vessel types, can only be passed by the consensus of all of the members of the Commission. For example, the members of the Commission agreed that all of the CCMs, with the exception of South Korea, are obligated to take necessary measures to ensure that their fishing vessels in 2010 do not increase, from 2002-2004 levels, their total fishing effort for northern Pacific bluefin tuna in the area north of 20° N.[1278] There is also a CMM in place for bigeye and yellowfin tuna that aims to achieve a 30% reduction in fishing mortality for bigeye tuna in the purse seine fishery between 20°N and 20°S and a reduction in the risk of overfishing of yellowfin tuna. As part of the CMM, the Commission has closed two western high seas pockets, effective 1 January 2010, to purse-seine fishing (but denied

[1275] Convention, Annex II (Review Panel) art. 7.

[1276] Cooperating Non-Members, CMM 2009-11, Dec. 2009, at 2(g), *available at* http://www.wcpfc.int/doc/cmm-2009-11/cooperating-non-members. Under Articles 34 and 35 of the Convention, Indonesia and the United Kingdom (for Pitcairn, Henderson, and the Ducie and Oeno Islands) are eligible to be members of the Commission. In addition, self-governing associated states and territories that have full internal self-government located in the Convention Area can accede to the Convention.

[1277] WCPFC6 Summary Report, at 42-43.

[1278] Conservation and Management Measure of Pacific Bluefin Tuna, CMM 2009-07, Dec. 2009, *available at* http://www.wcpfc.int/doc/cmm-2009-07/conservation-and-management-measure-pacific-bluefun-tuna.

requests to close two additional seas pockets and the entire high seas portion of the Convention Area between 20°N and 20°S).[1279]

In approving applications for CNM status, the Commission grants each applicant specific participatory rights in the Convention Area. For example, among other restrictions imposed on the country, Belize's catches of bigeye tuna are limited in 2010 to 803.25 metric tons (its average catch level from 2001 to 2004) and its catches of yellowfin tuna are limited to 2,000 metric tons. For El Salvador, its fishing on the high seas in the Convention Area is restricted to 29 days of fishing in 2010 and to only four unique purse seine vessels in the EEZs of Commission members.[1280]

14. Compliance and Monitoring

Under Article 25 of the Convention, each member of the Commission is obligated to enforce the provisions of the Convention and any CMMs that are adopted by the WCPFC. When non-compliance is suspected, all relevant investigations and judicial proceedings are required to be carried out expeditiously. Upon the request of another member of the Commission and when provided with sufficient information, a WCPFC member must fully investigate alleged violations of the Convention or any of the CMMs committed by fishing vessels flying its flag. If there is sufficient evidence of a violation, that member is required to refer the case to the relevant domestic authorities and, when appropriate, detain the vessel involved. In addition, each member of the Commission is obligated to establish procedures in its domestic law to ensure that when vessels flying its flag commit serious violations[1281] of the Convention or any of the CMMs, these vessels will cease fishing activities in the Convention Area and will not be allowed to resume fishing activities until all outstanding sanctions imposed by the flag state concerning the violations have been resolved. If a vessel is involved in unauthorized fishing within waters under the national jurisdiction of a coastal member of the Commission, the flag state must, in accordance with its domestic laws, ensure that the vessel complies with the sanctions imposed by the coastal state or impose appropriate sanctions itself. In addition, according to Article 23.5, members of the Commission should take measures, including entering into agreements with the flag state, to ensure that its nationals, as well as fishing vessels owned or controlled by its nationals, comply with the Convention and the CMMs, and initiate investigations when they receive information that shows the contrary. In responding to violations of the Convention and the CMMs, the sanctions are required to be sufficiently severe to effectively secure compliance, to deter future violations, and to remove the benefits gained from the illegal activity. The Convention also allows for the development and application of non-discriminatory trade measures, which are consistent with international obligations, on any species regulated by the Commission against any state or entity if the activities of their fishing vessels undermine the effectiveness of any of the CMMs.

[1279] Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean, CMM 2008-01, Dec. 2008, at 6, *available at* http://www.wcpfc.int/doc/cmm-2008-01/conservation-and-management-measure-bigeye-and-yellowfin-tuna-western-and-central-pa; WCPFC6 Summary Report, at 30-31.

[1280] WCPFC6 Summary Report, at 3-8.

[1281] According to Article 21, paragraph 11(a)-(h) of the Agreement, a "serious violation" includes: (a) fishing without valid authorization from the flag state; (b) not maintaining accurate records of catch and catch-related data as required; (c) fishing in a closed area, during a closed season, or in violation of quota; (d) fishing for prohibited stock; (e) using prohibited fishing gear; (f) concealing the markings, identity or registration of a fishing vessel; (g) tampering with evidence relevant to an investigation; and (h) multiple violation that, when aggregated, represent a serious disregard for the CMMs.

When in the Convention Area, each fishing vessel must carry on board its authorization papers issued by its flag state and, if applicable, any license issued by a coastal member of the Commission and must produce these papers at the request of an authorized enforcement official from any of the members of the Commission. When a fishing vessel is in waters under national jurisdiction and is not authorized to fish, all fishing equipment needs to be on board the vessel and cannot be readily available for fishing. The vessel is also required to be marked in accordance with FAO standards and to monitor the international distress and calling frequency. The master and crew of fishing vessels are required to comply with instructions and directions given by an authorized officer of a member of the Commission, including in regards to the boarding and inspection of the fishing vessel. These authorized boardings and inspections are supposed to be conducted, to the extent possible, as to not unduly interfere with the lawful operation of the fishing vessel.[1282]

The WCPFC has developed a ROP to collect verified catch data, other scientific data, and additional information related to fishing in the Convention Area and to monitor the implementation of the CMMs adopted by the WCPFC. The members of the Commission have committed to provide a sufficient level of coverage in the Convention Area in order to receive appropriate data and information on catch levels and other related fisheries issues. The ROP is coordinated with existing regional, sub-regional and national observers programs and consists of qualified independent and impartial observers. The ROP applies to all fishing vessels in the Convention Area, except those that operate exclusively within the water under the national jurisdiction of its flag state. Each CCM must ensure that all applicable fishing vessels flying its flag will accept an observer from the Commission's ROP. A vessel is given a reasonable notice concerning the placement of a ROP observer, and the observer must not unduly interfere with the lawful operation of the vessel.[1283] The Commission established an Intersessional Working Group to fully develop the ROP. Agreement among the members of the Commission has already been reached concerning: minimum standards, vessel safety checks, observer training qualifications, liability and insurance, Standard Operating Procedures for observer deployment, authorization of de-briefers and requirements for de-briefing, observer placement costs (which are to be paid by the observer provider), the fisheries to be monitored, coverage levels, the establishment of a cadre of observers, and the use of ROP workbooks. But, agreement still has not been reached concerning vessel size limits (such as whether small vessels can carry observers), the source of observers, definitions for certain key terms, WCPFC/IATTC observer cross-endorsement, ROP data management options (including cost concerns), as well as other issues.[1284] As of January 1, 2010, the Commission claimed 100% observer coverage for purse seiners and catch retention, as requested in the CMM for bigeye and yellowfin tuna.[1285]

In addition, the Commission has developed an IUU list of fishing vessels that have engaged in activity that is found to undermine the effectiveness of the CMMs. *See* **Functions** for more information.

[1282] Convention, Annex III (Terms and Conditions of Fishing) art. 6.

[1283] Convention, art. 28; Conservation and Management Measures for the Regional Observer Programme, CMM-2007-01, Dec. 2007, *available at* http://www.wcpfc.int/regional-observer-programme.

[1284] WCPFC6 Summary Report, at 16-17, 19.

[1285] WCPFC Quarterly Report – First Quarter 2010.

15. Participation and the Role of Multiple Stakeholders

Under Article 21 of the Convention, non-governmental organizations ("NGOs") are granted the opportunity to attend the meetings of the Commission and its subsidiary bodies as observers. Under Rule 36 of the WCPFC's Rules of Procedure, if a NGO that deals with matters relevant to the implementation of the Convention wants to obtain observer status, it must notify the Executive Director of the Commission. Unless a majority of the members of the WCPFC object, that NGO will be granted observer status, which will remain in effect until the status is revoked by the Commission. The NGOs that have been approved as observers may, upon the invitation of the Chairman and the approval of the Commission, make oral statements on relevant issues. In addition, they may also submit, with the approval of the Chairman, relevant written statements to the WCPFC, which would be distributed at the meetings of the Commission and its subsidiary bodies and would be available for consideration by the members of the Commission in their decision-making. At the annual meeting of the WCPFC in December 2009, observers from NGOs included Birdlife International, Earth Island Institute, Greenpeace, International Sustainable Seafood Foundation, International Union for the Conservation of Nature, Marine Stewardship Council, Pacific Island Tuna Industry Association, the World Tuna Purse Seine Organisation, and World Wide Fund for Nature.[1286] Intergovernmental organizations and states can also participate as observers, *see* **Relationships and Organizational Structure** for more information**.** Despite this participation in meetings, only members of the Commission have the ability to vote on decisions.

16. Dissolution and Termination

Under Article 42, a Contracting Party may, by written notification addressed to the depositary (New Zealand), withdraw from the Convention. Unless the notification specifies a later date, this withdrawal will take effect one year after the date the notification is received. Withdrawal from the Convention does not affect the financial obligations already incurred by the Contracting Party.

17. Additional Remarks

The Commission has adopted CMMs concerning: (a) the Record of Fishing Vessels and Authorization to Fish (CMM 2009-01); (b) Cooperating Non-Members (CMM 2009-11); (c) Specifications for the Marking and Identification of Fishing Vessels (CMM 2004-03); (d) Bigeye and Yellowfin Tuna (CMM 2008-01); (e) South Pacific Albacore (CMM 2005-02); (f) North Pacific Albacore (CMM 2005-03); (g) Mitigating the Impact of Fishing on Seabirds (CMM 2007-04); (h) Swordfish (CMM 2009-3); (i) Striped Marlin in the Southwest Pacific (CMM 2006-04); (j) Sharks (CMM 2009-04); (k) the Commission Vessel Monitoring System (CMM 2007-02); (l) the Regional Observer Program (CMM 2007-01); (m) Boarding and Inspection Procedures (CMM 2006-08); (n) Illegal, Unreported and Unregulated Fishing Activities Vessel List (CMM 2007-03); (o) Sea Turtles (CMM 2008-03); (p) Prohibition on the Use of Large Scale Driftnets on the High Seas (CMM 2008-04); (q) the Application of High Seas Fish Aggregation Device ("FAD") Closures and Catch Retention (CMM 2009-02); (r) Prohibition on Fishing on Data Buoys (CMM 2009-05); (s) Regulation of Transshipment (CMM 2009-06); (t) Pacific Bluefin Tuna (CMM 2009-07); (u) Charter Notification Scheme (CMM 2009-08); (v) Vessels Without Nationality (CMM 2009-09); and (w) the Monitoring of Landings of Purse Seiners at Ports to Ensure Reliable Catch Data by Species (CMM 2009-10). The Commission has also passed non-binding resolutions on the incidental catch of seabirds (Res. 2005-01), the reduction of overcapacity (Res. 2005-02), non-target fish species

[1286] WCPFC6 Summary Report, at 2.

(Res. 2005-03), and on the Aspirations of Small Island Developing States and Territories (Res. 2008-01).[1287]

18. Websites and References

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