

## **Amended Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean.**

**Adopted in Nairobi, Kenya on 31 March, 2010**

### **Preamble**

#### **The Contracting Parties,**

*Fully aware* of the economic and social value of the marine and coastal environment of the Western Indian Ocean region;

*Conscious* of our responsibility to manage our marine and coastal environment and natural heritage, including its biological diversity, for the sustainable use and benefit of present and future generations;

*Aware* of the impacts of climate change on marine and coastal environment resulting in, *inter alia*, sea-level rise, increase of sea water temperature, ocean acidification, weather and climate variability that affect or are likely to affect coastal communities;

*Recognizing* the special hydrographical and ecological characteristics of the region, which require special care and responsible management;

*Recognizing further* the threat to the marine and coastal environment, its ecological equilibrium, resources and legitimate uses posed by pollution and the insufficient integration of an environmental dimension into the development process;

*Seeking* to ensure that resource development shall be in harmony with the maintenance of the environmental quality of the region and the evolving principles of rational environmental management, including, but not limited to, the ecosystem based management, polluter pays and precautionary principles;

*Conscious* of the need to adopt integrated policies and practices of sustainable coastal zone management to improve the quality of life of our people;

*Realizing fully* the need for co-operation amongst the Contracting Parties and with competent international and regional organizations in order to ensure a coordinated and comprehensive development of the natural resources of the region;

*Taking* into account the relevant provisions of the 1982 United Nations Convention on the Law of the Sea, the 1992 Convention on Biological Diversity (1992), the 1992 United Nations Framework Convention on Climate Change, the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the 1991 Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, other relevant international conventions, outcomes and decisions of the 1992 United Nations Conference on Environment and Development;

*Further taking into account* the special circumstances and vulnerability of the small island states of the region reflected in, among others, the 2005 Mauritius Strategy for Further Implementation of the Programme of Action for Sustainable Development of Small Island Developing States;

*Recognizing* the desirability of promoting the wider acceptance and national implementation of existing international environmental agreements;

*Noting* the role of non-governmental organizations, civil society and other major groups in the promotion of sound environmental management;

*Noting*, however, that existing international conventions concerning the marine and coastal environment do not cover all aspects and sources of marine pollution and environmental degradation and do not entirely meet the special requirements of the Western Indian Ocean region;

*Desirous* to adopt a regional convention elaborated within the framework of the Action Plan for the Protection Management and Development of the Marine and Coastal Environment of the Western Indian Ocean region, and;

*Convinced* that the purposes of this Convention would be better achieved by amending the Original Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (1985).

*Have agreed* as follows,

Article 1: Geographical Coverage

Article 2: Definitions

Article 3: General Provisions

Article 4: General Obligations

Article 5: Pollution from ships

Article 6: Pollution caused by dumping

Article 7: Pollution from Land-Based Sources and Activities

Article 8: Pollution from SeaBed activities

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### **Article 1: Geographical Coverage**

This Convention shall apply to the Western Indian Ocean covering the Eastern and Southern Africa region, hereinafter referred to as “the Convention area” as defined in paragraph (b) of Article 2.

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### **Article 2: Definitions**

For the purposes of this Convention:

- “Contracting Party” means any state or regional inter-governmental integration organization located within the Convention area as defined in this Convention and which is a party to this Convention or its protocols;
- The “Convention area” shall comprise the riparian, marine and coastal environment including the watershed of the Contracting Parties to this Convention. The extent of the watershed and of the coastal environment to be included within the Convention area shall be indicated in each protocol to this Convention, taking into account the objectives of the protocol concerned;
- “Pollution” means the introduction by human intervention, directly or indirectly, or through river flows, of substances, organisms or energy into the marine and coastal environment, including estuaries, resulting in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities, including fishing, impairment of quality for use of sea water and reduction of amenities;
- “Organization” means the body designated as responsible for carrying out secretariat functions pursuant to article 17 of this Convention; and
- “Original Convention” means the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region adopted in Nairobi in 1985.

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### **Article 3: General Provisions**

1. The Contracting Parties may enter into bilateral or multilateral agreements, including regional or sub-regional agreements, for the protection and management of the marine and coastal environment of the Convention area. Such agreements shall be consistent with this Convention and Protocols made therein and in accordance with international law. Copies of such agreements shall be communicated to the Organization, and, through the Organization, to all Contracting Parties to this Convention.
1. Nothing in this Convention or its protocols shall be deemed to affect obligations assumed by a Contracting Party under agreements previously concluded and, in particular, the 1982 United Nations Convention on the Law of the Sea.
1. This Convention and its protocols shall be construed in accordance with international law relating to their subject matter. Nothing in this Convention and its protocols shall prejudice the present or future claims and legal views of any Contracting Party concerning the nature and extent of its maritime jurisdiction.
1. Nothing in this Convention and its protocols shall affect the immunity of warships and other government ships operated for non-commercial purposes. Nonetheless, each Contracting Party shall ensure that its vessels and aircraft, entitled to sovereign immunity under international law, act in a manner consistent with this Convention.

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#### **Article 4: General Obligations**

1. The Contracting Parties shall, individually or jointly, take all appropriate measures in conformity with international law and in accordance with this Convention and those of its protocols in force to which they are party, to prevent, reduce and combat pollution of the Convention area and to ensure sound environment management of natural resources, using for this purpose the best practicable means at their disposal, and in accordance with their capabilities.
1. The Contracting Parties shall co-operate in the formulation and adoption of protocols to facilitate the effective implementation of this Convention.
1. The Contracting Parties shall take all appropriate measures in conformity with international law for the effective discharge of the obligations prescribed in this Convention and its protocols and shall endeavor to harmonize their policies and laws in this regard.
1. The Contracting Parties shall co-operate with the competent international, regional and sub-regional organizations to ensure the effective implementation of this Convention and its protocols. They shall assist each other in fulfilling their obligations under this Convention and its protocols.
1. In taking the measures referred to in paragraph 1, the Contracting Parties shall ensure that the application of each of such measures does not cause pollution of the marine environment outside the Convention area, and in this regard shall endeavour to apply relevant environmental principles including but not limited to the precautionary principle, the polluter pays principle, and the promotion of integrated coastal zone management.

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#### **Article 5: Pollution from ships**

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat pollution of the Convention area caused by discharge from ships and, for this purpose, to ensure the effective implementation of the applicable international rules and standards established by, or within the framework of, the competent international organization.

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#### **Article 6: Pollution caused by dumping**

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat pollution of the Convention area caused by dumping of wastes and other matter at sea from ships, aircraft, or manmade structures at sea, taking into account applicable international rules and standards and recommended practices and procedures.

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#### **Article 7: Pollution from Land-Based Sources and Activities**

The Contracting Parties shall endeavor to take all appropriate measures to prevent, reduce and combat pollution of the Convention area caused by coastal disposal or by discharges emanating from rivers, estuaries, coastal establishments, outfall structures, or any other land-based sources and activities within their territories.

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#### **Article 8: Pollution from SeaBed activities**

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat pollution of the Convention area resulting directly or indirectly from exploration and

exploitation of the seabed and its subsoil.

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#### **Article 9: Pollution resulting from Transboundary Movement of Hazardous Wastes**

1. The Contracting Parties shall take all appropriate measures to prevent, abate and, to the fullest possible extent, eliminate pollution of the Convention area which may be caused by the transboundary movement and disposal of hazardous wastes, and to reduce to a minimum and, if possible, eliminate such transboundary movements.
1. The measures taken by the Contracting Parties under paragraph 1 shall be without prejudice to the obligations of the Parties resulting from their participation in the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the 1991 Bamako Convention on the Ban of the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes within Africa.

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#### **Article 10: Airborne Pollution**

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat pollution of the Convention area resulting from discharges into the atmosphere from activities under their jurisdiction.

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#### **Article 11: Biological Diversity**

1. The Contracting Parties shall, individually or jointly, take appropriate measures to conserve biological diversity and protect and preserve rare or fragile ecosystems as well as rare, endangered or threatened species of fauna and flora and their habitats in the Convention area.
1. The Contracting Parties shall, in areas under their jurisdiction, establish protected areas, such as parks and reserves, and shall regulate and, where required and subject to the rules of international law, prohibit any activity likely to have adverse effects on the species, ecosystems or biological processes that such areas are established to protect.
1. The establishment of such areas shall not affect the rights of other Contracting Parties and third States and in particular other legitimate uses of the sea.

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#### **Article 12: Co-operation in combating pollution in cases of emergency**

1. The Contracting Parties shall co-operate in taking all necessary measures to respond to pollution emergencies in the Convention area and to reduce or eliminate pollution or the threat of pollution resulting there from. To this end, the Contracting Parties shall, individually and jointly, develop and promote contingency plans for responding to incidents involving pollution or the threat thereof in the Convention area.
1. When a Contracting Party becomes aware of a case 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 effected by such pollution, as well as competent international organizations. Furthermore, it shall inform, as soon as feasible, such other States and the Organization of any measures it has taken to minimize or reduce pollution or the threat thereof.

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**Article 13: Environmental damage from engineering activities**

The Contracting Parties shall take all appropriate measures to prevent, reduce and combat environmental damage in the Convention area in particular the destruction of marine and coastal ecosystems, caused by engineering activities such as land reclamation and dredging.

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**Article 14: Environmental Impact Assessment**

1. As part of their environmental management policies, the Contracting Parties shall, in co-operation with competent regional and international organizations if necessary, develop technical and other guidelines to assist in the planning of their major development projects in such a way as to prevent or minimize harmful impacts on the Convention area.
1. Each Contracting Party shall assess, within its capabilities, the potential environmental impacts of major projects, which it has reasonable grounds to expect may cause substantial pollution of, or significant and harmful changes to the Convention area.
1. With respect to the assessments referred to in paragraph 2, the Contracting Parties shall, if appropriate in consultation with the Organization, develop procedures for the dissemination of information and, if necessary, for consultations among the Contracting Parties concerned.

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**Article 15: Scientific and technical co-operation**

1. The Contracting Parties shall co-operate, directly or with the assistance of competent regional and international organizations, in scientific research, monitoring, and the exchange of data and other scientific information relating to the purposes of this Convention and its protocols.
1. To this end, the Contracting Parties shall develop and co-ordinate their marine and coastal research and monitoring programmes to include, inter alia, biophysical and socio-economic aspects in the Convention area.
1. The Contracting Parties shall establish, in co-operation with competent regional and international organizations, a regional network of national research centres and institutes to ensure compatible results.
1. The Contracting Parties shall endeavor to participate in international arrangements for research and monitoring outside the Convention area.
1. The Contracting Parties shall co-operate, within their available capabilities, directly or through competent regional and international organizations, in the provision to other Contracting Parties of technical and other assistance in fields relating to pollution and sound environmental management of the Convention area.

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**Article 16: Liability and Compensation**

The Contracting Parties shall co-operate, directly or with the assistance of competent regional and international organizations, with a view to formulating and adopting appropriate rules and procedures, which are in conformity with international law in the field of liability and compensation for damage resulting from pollution of the Convention area.

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**Article 17: Institutional and Financial Arrangements**

1. The Contracting Parties designate Executive Director of the United Nations Environment Programme as the secretariat of the Convention to carry out the following functions:
  - a. to prepare and convene the meetings of Contracting Parties and Conferences

provided for in articles 18,19 and 20;

- a. to transmit to the Contracting Parties the information received in accordance with articles 3,12,14 and 24;
  - a. to perform the functions assigned to it by protocols to this Convention;
  - a. to consider enquiries by, and information from , the Contracting Parties and to consult with them on questions relating to this Convention and its protocols;
  - a. to coordinate the implementation of co-operative activities agreed upon by the meetings of Contracting Parties;
  - a. to ensure the necessary co-ordination with other regional and international bodies that the Contracting Parties consider competent; and
  - a. to enter into such administrative and financial arrangements as may be required for the effective discharge of the secretariat functions.
1. Each Contracting Party shall designate an appropriate authority to serve as the channel of communication with the Organization for the purposes of this Convention and its protocols.

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#### **Article 18: Meetings of the Contracting Parties**

1. The Contracting Parties shall hold ordinary meetings once every two years. It shall be the function of the ordinary meetings of the Contracting Parties to keep under review the implementation of this Convention and its protocols and, in particular to:
  - a. consider information submitted by the Contracting Parties under article 24;
  - a. adopt, review and amend annexes to this Convention and to its related protocols, in accordance with the provisions of article 21; make recommendations regarding the adoption of any additional protocols or amendments to this Convention or its protocols in accordance with the provisions of articles 19 and 20;
  - a. establish working groups as required to consider any matters concerning this Convention and its protocols;
  - a. assess periodically the state of the environment in the Convention Area;
  - a. consider co-operative activities to be undertaken within the framework of this Convention and its protocols; including their financial and institutional implications, and to adopt decisions relating thereto; and
  - a. consider and undertake any additional action that may be required for the achievement of the purposes of this Convention and its protocols.
1. Extraordinary meetings shall be convened at the request of any Contracting Party or the Organization, provided that such requests are supported by a two -thirds majority of the Contracting Parties. It shall be the function of the extraordinary meeting of the Contracting Parties to consider only those items proposed in the request for the holding of the extraordinary meeting.

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#### **Article 19: Adoption of Protocols**

1. The Contracting Parties, at a conference of plenipotentiaries, may adopt additional protocols to this Convention pursuant to paragraph 2 of article 4.
1. If so requested by a two-third majority of the Contracting Parties, the Organization shall convene a conference of plenipotentiaries for the purpose of adopting additional protocols to this Convention.

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#### **Article 20: Amendment of the Convention and its Protocols**

1. Any Contracting Party may propose amendments to this Convention. Amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the

Organization at the request of a two-thirds majority of the Contracting Parties.

1. Any Contracting Party to this Convention may propose amendments to any protocol. Such amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the Organization at the request of a two-third majority of the Contracting Parties to the protocol concerned.
1. The text of any proposed amendment shall be communicated by the Organization to all Contracting Parties at least ninety days before the opening of the conference of plenipotentiaries.
1. Any amendment to this Convention shall be adopted by a two-thirds majority vote of the Contracting Parties to the Convention, which are present and voting at the conference of plenipotentiaries and shall be submitted by the Depositary for acceptance by all Contracting Parties to the Convention. Amendments to any protocols shall be adopted by a two –thirds majority vote of Contracting Parties to the protocol which are present and voting at the conference of plenipotentiaries and shall be submitted by the Depositary for acceptance by all Contracting Parties to the protocol.
1. Instruments of ratification, acceptance or approval of amendments shall be deposited with the Depositary. Amendments adopted in accordance with paragraph 4 shall enter into force between Contracting Parties having accepted such amendments on the thirtieth day following the date of receipt by the Depositary of the instruments of at least six of the Contracting Parties to this Convention or to the protocol convened, as the case may be. Thereafter the amendments shall enter into force for any other Contracting Party on the thirtieth day after the date on which that Party deposits its instrument.
1. After the entry into force of an amendment to this Convention or to a protocol, any new Contracting Party to this Convention or such protocol shall become a Contracting Party to the Convention or protocol as amended.

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**Article 21: Annexes and amendment of annexes.**

1. Annexes to this Convention or to a protocol shall form an integral part of the Convention or, as the case may be, such protocol.
1. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the adoption and entry into force of amendments to annexes to this Convention or to annexes to a protocol:
  - (a) any Contracting Party may propose amendments to annexes to this Convention or annexes to any protocol at the meetings convened pursuant to article 18;
  - (b) such amendments shall be adopted by a two-thirds majority vote of the Contracting Parties to the instrument in question;
  - (c) the Depositary shall without delay communicate the amendments so adopted to all Contracting Parties to this Convention;
  - (d) any Contracting Party that is unable to accept an amendment to annexes to this Convention or to annexes to any protocol shall so notify the Depositary in writing within a period determined by the Contracting Parties concerned when adopting the amendment;
  - (e) the Depositary shall without delay notify all Contracting Parties of notifications received pursuant to the preceding subparagraph;
  - (f) on expiry of the period determined in accordance with sub-paragraph (d) above, the amendment to the annex shall become effective for all Contracting Parties to this Convention or to the protocol concerned which have not submitted a notification in accordance with the provisions of that subparagraph; and
  - (g) a Contracting Party may at any time substitute an acceptance for a previous declaration of objection, and the amendment shall thereupon enter into force for that Party.
1. The adoption and entry into force of a new annex to this Convention or to any protocol shall be subject to the same procedure as that for the adoption and entry into force of an amendment to an annex, provided that, if it entails an amendment to the Convention or a protocol, the new annex shall not enter into force until such time as



that amendment enters into force.

1. Any amendment to the Annex on Arbitration shall be proposed and adopted, and shall enter into force, in accordance with the procedures set out in article 20.

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#### **Article 22: Rules of procedure and financial rules**

1. The Contracting Parties shall adopt rules of procedures for their meetings.
1. The Contracting Parties shall adopt financial rules, prepared in consultation with the Organization, to determine, in particular, their financial participation in the co-operative activities undertaken for the purposes of this Convention and of protocols to which they are parties.

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#### **Article 23: Special exercise of the right to vote**

In their fields of competence, the regional intergovernmental integration organizations referred to in article 27 shall exercise their right to vote with a number of votes equal to the number of their member States which are Contracting Parties to this Convention and to one or more protocols. Such organizations shall not exercise their rights to vote if the member States concerned exercise theirs and *vice versa*.

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#### **Article 24: Transmission of information**

The Contracting Parties shall transmit every two years to the Organization, at least six weeks before the Conference of Parties next following, information on the measures adopted by them in the implementation of this Convention and of protocols to which they are parties, in such form as the meetings of Contracting Parties may determine.

#### **Article 25: Settlement of disputes**

1. In case of a dispute between Contracting Parties as to the interpretation or application of this Convention or its protocols, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.
1. If the Parties concerned cannot settle their dispute through the means mentioned in the preceding paragraph, the dispute shall, upon common agreement of the Parties concerned, be submitted to arbitration under the conditions set out in the Annex on Arbitration.

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#### **Article 26: Relationship between the Convention and its Protocols**

No State or regional intergovernmental integration organization may become a Contracting Party to this Convention unless it becomes at the same time a Contracting Party to at least one protocol to the Convention. No State or regional intergovernmental integration organization may become a Contracting Party to a protocol unless it is, or becomes at the same, a Contracting Party to this Convention.

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#### **Article 27: Compliance and Enforcement**

1. Each Contracting Party shall take all measures at its disposal, and in accordance with its capacities, and consistent with its obligations and prevailing international law, to enforce and comply with this Convention.
1. The Contracting Parties shall, through decisions of the Contracting Parties, establish

and adopt procedures and mechanisms necessary to assess and promote compliance with and enforcement of this Convention, including mechanisms for open exchange of information between the parties.

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#### **Article 28: Sovereignty Claims And Rights**

1. Nothing in this Convention or any of its protocols, nor any act adopted on the basis of this Convention or its protocols shall prejudice the rights, the present and future claims or legal views of any state relating to the law of the sea, in particular, the 1982 United Nations Law of the Sea Convention, concerning the nature and the extent of marine areas, the delimitation of marine areas between states with opposite or adjacent coasts, freedom of navigation on the high seas, the right and the modalities of passage through straits used for international navigation and the right of innocent passage in territorial seas, as well as the nature and extent of jurisdiction of the coastal State, island or archipelagic States, the flag States and the port States.
1. No act or activity undertaken on the basis of this Convention or its protocols shall constitute grounds for claiming, contending or disputing any claim to national sovereignty or jurisdiction.

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#### **Article 29: Signature**

This Convention shall be open for signature at Nairobi, Kenya from the first day of April two thousand and ten .to the first day of April two thousand and eleven by any Contracting Party and any non-contracting party that has been invited to the Conference of Plenipotentiaries. It shall also be open for signature between the same dates by any regional intergovernmental integration organization exercising competence in fields covered by the Convention and such protocols and having at least one member State which belongs to the Convention area region, provided that such regional organization has been invited to participate in the Conference of Plenipotentiaries.

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#### **Article 30: Ratification, Acceptance, Approval And Depositary**

This Convention and its protocols shall be subject to ratification, acceptance or approval by the States and organizations referred to in article 29. Instruments of ratification, acceptance or approval shall be deposited with the Government of the Republic of Kenya, which will assume the functions of Depositary.

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#### **Article 31: Accession**

1. This Convention and its protocols shall be open for accession by the States and organizations referred to in article 26 as from the day following the date on which the Convention or the protocol concerned is closed for signature.
1. No State or regional intergovernmental integration organization may become a Contracting Party to this Convention unless it becomes at the same time a Contracting Party to at least one protocol to the Convention. No State or regional intergovernmental integration organization may become a Contracting Party to a protocol unless it is, or becomes at the same, a Contracting Party to this Convention.
1. Decisions concerning any protocol shall be taken only by the Contracting Parties to the protocol concerned.
1. After the entry into force of this Convention and of any protocol, any State or regional intergovernmental integration organization not referred to in article 29 may accede to the Convention and to any protocol, subject to prior approval by three-fourths of the Contracting Parties to the Convention or the protocol concerned.

1. Instruments of accession shall be deposited with the Depositary.

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#### **Article 32: Entry into force**

1. This Convention shall govern relationships among Contracting Parties and shall replace the Original Convention.
1. This Convention shall enter into force on the ninetieth day following the date of deposit of the sixth instrument of ratification, acceptance, or approval of, or accession to, this Convention by the States and organizations referred to in article 30.
1. Any protocol to this Convention, except as otherwise provided in such protocol, shall enter into force on the ninetieth day following the date of deposit of the sixth instrument of ratification, acceptance, or approval of, or accession to, such protocol by the States and organizations referred to in article 29.
1. Thereafter, this Convention and any protocol shall enter into force with respect to any State or organization referred to in article 29 or in article 31 on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

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#### **Article 33: Withdrawal**

1. At any time after three years from the date of entry into force of this Convention with respect to a Contracting Party, that Contracting Party may withdraw from this Convention by giving written notification to the Depositary.
1. Except as may be otherwise provided in any protocol to this Convention, any Contracting Party may, at any time after three years from the date of entry into force of such protocol with respect to that Contracting Party, withdraw from such protocol by giving written notification to the Depositary.
1. Withdrawal shall take effect one year after the date on which notification of withdrawal is received by the Depositary.
1. Any Contracting Party which withdraws from the Convention shall be considered as also having withdrawn from any protocol to which it was a Contracting Party.
1. Any Contracting Party which, upon its withdrawal from a protocol, is no longer a Contracting Party to any Protocol to this Convention, shall be considered as also having withdrawn from the Convention itself.

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#### **Article 34: Responsibilities of the Depositary**

1. The Depositary shall inform the Signatories and the Contracting Parties, as well as the Organization, of:
  - a. The signature of this Convention and of its protocols and the deposit of instruments of ratification, acceptance, approval or accession;
  - a. the date on which the Convention or any protocol will come into force for each Contracting Party;
  - a. the notification of withdrawal and the date on which it will take effect;
  - a. the amendments adopted with respect to the Convention or to any protocol, their acceptance by the Contracting Parties and the date of their entry into force; and
  - a. all matters relating to new annexes and to the amendment of any annex.
1. The original of this Convention and of any protocol shall be deposited with the Depositary, which shall send certified copies thereof to the Signatories, the Contracting Parties and the Organization.
1. As soon as the Convention or any protocol enters into force, the Depositary shall

transmit a certified copy of the instrument concerned to the Secretary –General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

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**IN WITNESS WHEREOF** the undersigned, being duly authorized by their respective Governments or organizations, have signed this Convention.

ADOPTED BY THE CONFERENCE OF THE PLENIPOTENTIARIES OF THE CONTRACTING PARTIES TO THE ORIGINAL CONVENTION IN NAIROBI, KENYA ON THIS THIRTY FIRST DAY OF MARCH TWO THOUSAND AND TEN IN SINGLE COPIES IN THE ENGLISH AND FRENCH LANGUAGES, THE TWO TEXTS BEING EQUALLY AUTHENTIC.

Please click [here](#) to download the list of the countries that signed the Convention.

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## ***ANNEX ON ARBITRATION***

### **Article 1**

Unless the agreement referred to in article 25 of the Convention provides otherwise, the arbitration procedure shall be conducted in accordance with article 2 to 10 below.

### **Article 2**

The claimant party shall notify the Organization that the parties agree to submit the dispute to arbitration pursuant to paragraph 2 of article 25 of the Convention. The notification shall state the subject matter of arbitration and include, in particular, the articles of the Convention or the protocol, the interpretation or application of which are at issue. The Organization shall forward the information thus received to all Contracting Parties to the Convention or to the protocol concerned.

### **Article 3**

The arbitration shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

### **Article 4**

- If the chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of either party, designate him within a further two months' period.
- If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the Secretary –General of the United Nations who shall designate the chairman of the arbitral tribunal within a further two months' period. Upon designation, the chairman of the arbitral tribunal shall request the party, which has not appointed an arbitrator to do so within two months. After such period he shall inform the Secretary-General of the United Nations, who shall make this appointment within a further two months' period.

### **Article 5**

- The arbitral tribunal shall render its decision in accordance with international law and in accordance with the provisions of the Convention and the protocol or protocols concerned.
- Any arbitral tribunal constituted under the provisions of this annex shall draw up its own rules of procedure.

### **Article 6**

- The decision of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.
- The arbitral tribunal may take all appropriate measures in order to establish the facts. It may, at the request of one of the parties, recommend essential interim measures of

protection.

- The parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings.
- The absence or default of a party to the dispute shall not constitute an impediment to the proceedings.

#### **Article 7**

The arbitral tribunal may hear and determine counterclaims arising directly out of the subject-matter of the dispute.

#### **Article 8**

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final settlement thereof to the parties.

#### **Article 9**

Any Contracting Party that has an interest of legal nature in the subject-matter of the dispute which may be effected by the decision in the case, may intervene in the proceedings with the consent of the arbitral tribunal.

#### **Article 10**

1. The arbitral tribunal shall render its award within five months of the date on which it is established unless it finds it necessary to extend the time limit for a period, which should not exceed five months.
1. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon the parties to the dispute.
1. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the tribunal which made award or, if the latter cannot be seized thereof, to another arbitral tribunal constituted for this purpose in the same manner as the first.

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#### **PDF version of the Amended Nairobi Convention**

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