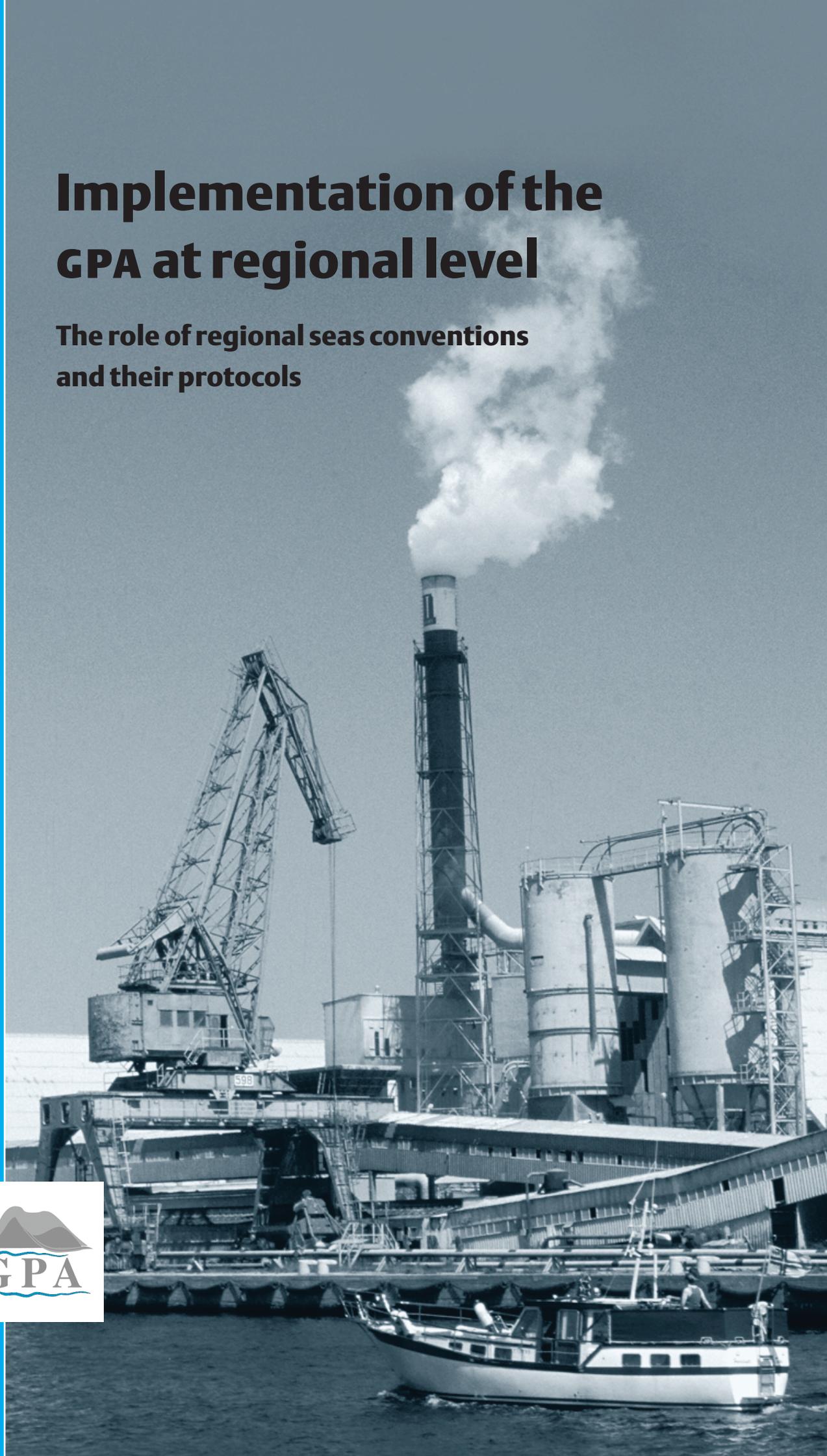


# Implementation of the GPA at regional level

The role of regional seas conventions  
and their protocols



# **Implementation of the GPA at regional level**

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## Foreword

Pollution of the sea from land-based sources and activities has been addressed at the regional level through Protocols for the Protection of the Marine Environment from Land-based Sources and Activities (LBSA Protocols). In 1995, when the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (GPA) was adopted, Chapter III on Regional Cooperation, recommended that States should strengthen existing regional conventions and programmes and where appropriate negotiate anew. In addition, most regional seas conventions call upon countries to take all appropriate measures to prevent, reduce and control pollution caused by land-based activities, including coastal disposal or discharges emanating from rivers, estuaries, coastal establishments, outfall structures, or any other sources on their territories.

Agenda 21, the GPA and the Johannesburg Plan of Implementation are central to new approaches in more recent LBSA Protocols. While the first generation of regional LBSA agreements, developed before 1995, apply typically to a marine area that coincides with the jurisdictional sea area under relevant conventions and a land area up to the freshwater limit, the more recent 'second generation' agreements are more comprehensive both in terms of the area of application and the sources of pollution under regulation.

The UNEP/GPA Coordination Office has commissioned this review of existing binding and non-binding instruments that address the protection of the marine environment from land-based activities to show the opportunities and challenges of both legally binding instruments and non-binding mechanisms. The aim of the review is to provide a guide to more effective implementation of the GPA, primarily at the regional level, through existing, new or amended binding and non-binding legal mechanisms.

The review highlights the role of international law in supporting sustainable ocean development and prevention of marine pollution from activities on land. It demonstrates increasingly close interaction between binding and non-binding instruments and differences in implementation in various regions. LBSA Protocols are covered as a way of translating the GPA in the framework of regional seas conventions. The GPA recommendations are compared to key features of LBSA Protocols. The report describes how the GPA source categories – sewage, persistent organic pollutants, radioactive substances, heavy metals, oils, nutrients, sediment mobilization, litter and physical alteration and destruction of habitats – are addressed. It looks also at how elements such as funding mechanisms, capacity building, monitoring and assessment and international and regional cooperation are taken into consideration in LBSA Protocols.

This report is addressed not only to legal professionals, but also to international institutions, government agencies and individuals involved in marine environment and resources. The UNEP/GPA Coordination Office and its partners are pleased to provide this analysis and hope that it is a useful guide to further regional implementation of the GPA.

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## Acronyms and agreements

Agenda 21	Programme of Action for Sustainable Development. Adopted at UNCED (or 'Earth Summit')
BAT	Best available technique
BEP	Best environmental practice
FAO	Food and Agriculture Organization of the United Nations
GEF	Global Environment Facility
GPA	Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities. Adopted in Washington DC, November 1995
ICZM	Integrated Coastal Zone Management
IUCN	The World Conservation Union
JPOI	Johannesburg Plan of Implementation. Adopted at the WSSD.
LBSA	Land-based sources and activities
OSPAR	Convention for the Protection of the Marine Environment of the North-East Atlantic 1992
PARCOM	Paris Commission under the Paris Convention for the prevention of marine pollution from land-based sources. Adopted in Paris 4 June 1974
PERSGA	Regional Organization for the Conservation of the Environment of the Red Sea and the Gulf of Aden
POP	Persistent Organic Pollutant
SAP	Strategic Action Plan/Programme
TDA	Transboundary Diagnostic Analysis
UNCED	United Nations Conference on Environment and Development, held in Rio de Janeiro, June 1992
UNEP	United Nations Environment Programme
UNCLOS	United Nations Convention on the Law of the Sea. Adopted in Montego Bay, 10 December 1982. In force since 16 November 1994
Washington Declaration	Washington Declaration on Protection of the Marine Environment from Land-Based Activities. Adopted in Washington DC, November 1995
WSSD	World Summit on Sustainable Development, held in Johannesburg, September 2002

# Introduction

## 1

Measures aimed at curbing pollution of the sea resulting from land-based sources and activities (LBSA) are seen as the principal means of achieving a healthy status of the marine environment and contributing to the sustainable use of coastal and ocean resources. At present, cooperation exists in various forms, using different tools that help to define the scope, direction and extent of national and local actions to prevent, control, reduce and eliminate marine pollution from land-based sources and activities.

**LBSA related instruments operate at two levels: global and regional**

The existing international regimes operate on two levels, global and regional, through a combination of legally binding (conventions and protocols) and non-binding (action plans – general and LBSA-specific) instruments. These are supplemented and implemented by national action plans that employ internationally tested and accepted measures and mechanisms at the level of individual States.

**Before 1995 ‘hard law’ dominated LBSA regimes through regional seas conventions and protocols**

The broad array of instruments employed by States at the global, regional and sub-regional levels can be divided into two principal groups that govern inter-state cooperation and individual actions of the various actors in their efforts to control and reduce pollution from land-based sources and activities. The first group includes global and regional treaties that apply to a specific jurisdictional area of the marine environment and a land area determined by the Contracting Parties (such as the freshwater limit, inter-tidal zones and salt-water marshes). This category contains predominantly compulsory requirements or legal obligations for the participating States and is commonly known as ‘hard law’. Examples include the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and regional conventions and protocols such as for the Northeast Atlantic, the Southeast Pacific, the Baltic Sea, the Mediterranean Sea, the Black Sea and the ROPME Sea Area.

**The GPA charter shapes new LBSA protocols**

A second group concerns non-binding, but still very influential instruments such as the 1995 Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities (GPA) itself, as well as a broad family of regional strategic action plans and programmes. This second category is often called ‘soft law’ and usually encompasses a significant number of non-binding declarations, resolutions, and recommendations adopted by global and regional conferences, intergovernmental organizations and other international institutions. These instruments are more comprehensive and usually more specific in terms of the activities and polluting substances included. They typically contain provisions for national plans and programmes as well as regional or sub-regional cooperation, guidelines, recommended practices and procedures. The recommendations of the 1995 GPA, among others resulted in revisions of various agreements, or adoption of new ones, including for the Mediterranean Sea, the Wider Caribbean, the Red Sea and the Gulf of Aden, and many more revisions and/or new agreements are in progress.

The division of international instruments into ‘hard law’ and ‘soft law’ is particularly common in the field of environmental protection, be it protection of the atmosphere, from the effects of climate change, or prevention and control of land-based pollution of the marine environment.

**Boundaries between 'hard law' and 'soft law' are often undefined**

Although these two types of instruments are different from the point of view of their legal validity and effect (binding and non-binding), the boundary between them in terms of their substantive content is rather hazy and porous. As is usually the case, many principles, rules, norms and standards that first appear as recommendations later acquire the status of 'legal obligations' through their incorporation into global and regional agreements and national legal regimes. Often particularly important non-binding acts, such as the 1992 Rio Declaration on Environment and Development, serve as restatements of already existing or just emerging legal principles and rules, thus providing them with additional authority and value in the eyes of the international community.

**All instruments together form a complex web of regulations and guidelines**

All the instruments together create an increasingly tight web of rules, regulations, standards, recommended practices and procedures that affect the behaviour of both sovereign governments and national entities, companies and individuals. This legal framework for combating marine pollution from land-based sources and activities has expanded quite significantly over the last ten years and is becoming ever more complex and sophisticated. In addition to the numerous existing regional conventions and six regional instruments dealing specifically with land-based pollution, which will be discussed further in this document, there are more than a dozen action plans and programmes covering the most affected and over-utilized regional seas regions. All these require closer examination, especially with a view to identifying their interlinkages with the GPA and other global policy documents, as well as determining their comparative advantages and weaknesses as the most popular tools of regional cooperation to tackle marine pollution that originates from land.

**Report objectives: show advantages and disadvantages of different instruments...**

The main objective of this document is to review existing binding and non-binding instruments that address the protection of the marine environment from land-based sources and activities (LBSA protocols and action plans and programmes), and to show the advantages and disadvantages of both legally-binding and non-binding instruments in order to further support the regional implementation of the GPA.

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