



UNITED NATIONS ENVIRONMENT PROGRAMME

*Legal aspects of  
protecting and managing  
the marine and coastal environment  
of the East African region*

*UNEP Regional Seas Reports and Studies No. 38*

*Prepared in co-operation with*



FAO

## PREFACE

The Regional Seas Programme was initiated by UNEP in 1974. Since then the Governing Council of UNEP has repeatedly endorsed a regional approach to the control of marine pollution and the management of marine and coastal resources and has requested the development of regional action plans.

The Regional Seas Programme at present includes eleven regions 1/ and has over 120 coastal States participating in it. It is conceived as an action-oriented programme having concern not only for the consequences but also for the causes of environmental degradation and encompassing a comprehensive approach to controlling environmental problems through the management of marine and coastal areas. Each regional action plan is formulated according to the needs of the region as perceived by the Governments concerned. It is designed to link assessment of the quality of the marine environment and the causes of its deterioration with activities for the management and development of the marine and coastal environment. The action plans promote the parallel development of regional legal agreements and of action-oriented programme activities. 2/

Decision 8/13(C) of the eighth session of the Governing Council of UNEP called for the development of an action plan for the protection and management of the marine and coastal environment of the East African region. As a first activity in the region, UNEP organized in October and November 1981 a joint UNEP/UN/UNIDO/FAO/UNESCO/WHO/IMCO/IUCN exploratory mission which visited the region.

The findings of the mission were used to prepare the following six sectoral reports:

- UN/UNESCO/UNEP: Marine and Coastal Area Development in the East African Region. UNEP Regional Seas Reports and Studies No. 6. UNEP 1982;
- UNIDO/UNEP: Industrial Sources of Marine and Coastal Pollution in the East African Region. UNEP Regional Seas Reports and Studies No. 7. UNEP 1982;
- FAO/UNEP: Marine Pollution in the East African Region. UNEP Regional Seas Reports and Studies No. 8. UNEP 1982;
- WHO/UNEP: Public Health Problems in the Coastal Zone of the East African Region. UNEP Regional Seas Reports and Studies No. 9. UNEP 1982;

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1/ Mediterranean Region, Kuwait Action Plan Region, West and Central African Region, Wider Caribbean Region, East Asian Seas Region, South-East Pacific Region, South Pacific Region, Red Sea and Gulf of Aden Region, East African Region, South-West Atlantic Region and South Asian Seas Region.

2/ UNEP: Achievements and planned development of UNEP's Regional Seas Programme and comparable programmes sponsored by other bodies. UNEP Regional Seas Reports and Studies No. 1. UNEP 1982.

- IMO/UNEP: Oil Pollution Control in the East African Region. UNEP Regional Seas Reports and Studies No. 10. UNEP 1982; and
- IUCN/UNEP: Conservation of Coastal and Marine Ecosystems and Living Resources of the East African Region. UNEP Regional Seas Reports and Studies No. 11. UNEP 1982.

The six sectoral reports prepared on the basis of the mission's findings were used by the UNEP secretariat in preparing a summary overview entitled:

- UNEP: Environmental Problems of the East African Region. UNEP Regional Seas Reports and Studies No. 12. UNEP 1982.

The overview and the six sectoral reports were submitted to the UNEP Workshop on the Protection and Development of the Marine and Coastal Environment of the East African Region (Mahé, Seychelles, 27-30 September 1982) attended by experts designated by the Governments of the East African region.

The Workshop:

- reviewed the environmental problems of the region;
- endorsed a draft action plan for the protection and development of the marine and coastal environment of the East African region;
- defined a priority programme of activities to be developed within the framework of the draft action plan; and
- recommended that the draft action plan, together with a draft regional convention for the protection and development of the marine and coastal environment of the East African region and protocols concerning (a) co-operation in combating pollution in cases of emergency, and (b) specially protected areas and endangered species, be submitted to a conference of plenipotentiaries of the Governments of the region with a view to their adoption.

In consultation with the Governments of the East African region the further development of the action plan was focused on activities directly related to preparations for the conference of plenipotentiaries and to other regional activities which received a first priority rating in the programme recommended by the Mahé workshop.<sup>3/</sup> This included the preparation of a series of country reports by experts from the region on:

- national legislation;
- national resources and conservation; and
- socio-economic activities that may have an impact on the marine and coastal environment.

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<sup>3/</sup> Report of the Workshop on the protection and development of the marine and coastal environment of the East African region, Mahé, 27-30 September 1982, (UNEP/WG/77/4).

The national reports were synthesized in regional reports 4/ 5/ 6/ which were prepared with a view to assisting the Governments of the East African region in their negotiations on the regional convention and its protocols. In addition, a technical training Workshop on the control of pollution from ships in the East African region will be convened jointly by the International Maritime Organization (IMO) and UNEP in November 1983.

The present document is the regional report on legal aspects of protecting and managing the marine and coastal environment of the East African region. It was prepared by D. Alheritiere, Legal Officer, and Ch. O. Okidi, consultant, FAO Legal Office, and their assistance is gratefully acknowledged. The report is based on eight national reports written by the following experts under project FP/0503-82-04: C. L. d'Arifat (Mauritius), B. Georges (Seychelles), M. Jardin (France), J. L. Kateka (Tanzania), F. Muslim (Kenya), Ph. Randrianarijaona and E. Razafimbelo (Madagascar), A. Salim (Comoros), and M. I. Singh (Somalia). No expert was designated by Mozambique, and references to this country are based on information collected by the authors.

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4/ FAO/UNEP: Legal aspects of protecting and managing the marine and coastal environment of the East African region. UNEP Regional Seas Reports and Studies No. 38. UNEP, 1983.

5/ IUCN/UNEP: Marine and coastal conservation in the East African region. UNEP Regional Seas Reports and Studies No. 39. UNEP, 1983.

6/ UNEP: Socio-economic activities that may have an impact on the marine and coastal environment of the East African region. UNEP Regional Seas Reports and Studies No. 41. UNEP, 1983.

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## INTRODUCTION

1. For the purposes of the action plan for the protection and management of the marine and coastal environment of the East African region, the region has been provisionally defined 1/ as including the waters of the Indian Ocean within the jurisdiction of Comoros, France, Kenya, Madagascar, Mauritius, Mozambique, Seychelles, Somalia and Tanzania. The region also includes coastal areas, the specific geographic limits of which will be determined by the Governments concerned on an ad hoc basis, taking into account the particular activity to be carried out.
2. Among the general objectives and activities of the action plan are the promotion of appropriate legislation for the protection and management of the marine and coastal environment on a national and regional basis, and the adoption of a regional Convention and related protocols to the same effect.
3. The main objective of this report is to provide background information for a meeting of experts to be convened by UNEP in December 1983 to begin negotiations, at the expert level, on the text of a regional convention for the protection and management of the marine and coastal environment of the East African region, a protocol concerning protected areas and wild fauna and flora in the East African region and a protocol on co-operation in combating marine pollution incidents in the East African region.
4. This report is divided into three parts. The first part analyses international legal aspects, both as regards existing treaty law and draft texts currently in preparation 2/; the second part describes applicable national legislation in the States of the region, and the third part sets forth evaluations and conclusions based on the information presented in the report.

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1/ Report of the Workshop on the Protection and Development of the Marine and Coastal Environment of the East African Region, Mahé, 27-30 September 1982 (UNEP/WG.77/4, Annex III, paragraph 3) and subsequent negotiations with the Government of France.

2/ This part is an updated, amended version of Part I of a report by the FAO Legal Office based on the work of A. Piquemal and M. Savini, prepared in 1979 (FAO/UNEP Joint Project No. FP/0503-77-02).

## PART I: INTERNATIONAL LEGAL ASPECTS

### GLOBAL LEVEL

#### Current treaty law

5. A number of conventions, applicable on a global level, have been adopted to control the various forms of marine pollution. Only some of the States of the East African Region are parties to these conventions, (see the table in the annex, indicating membership and source references), although two or three have made known their intention of acceding to them in the near future.

6. The conventions concerning pollution from shipping will first be examined, followed by those relating to pollution from land-based sources, from operations on the seabed and the continental shelf, from waste dumping, and from military activities.

#### Pollution from shipping

7. International law has been concerned with this source of marine pollution since 1954, when the International Convention for the Prevention of Pollution of the Sea by Oil was adopted in London (OILPOL). This convention, which was amended on several occasions, aims principally at preventing intentional pollution from normal shipping operations. It has been replaced on 2 October 1983 by the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL), for those Parties to this more recent convention. The frequency of accidental pollution has also led to the drawing up of a series of conventions intended to cope with pollution from accidents. Both these cases will be examined here, together with related agreements on liability and compensation for pollution damage.

#### Prevention of pollution from normal shipping activities

8. The control of this type of pollution mainly comes under the 1954 OILPOL Convention cited above. The text was subsequently amended in 1962, 1969 and 1973.

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