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# **The Convention On The Sustainable Management Of Lake Tanganyika**

**(Working Draft No. 4)**

## **Pollution Control and Other Measures to Protect Biodiversity in Lake Tanganyika (RAF/92/G32)**

## **Lutte contre la pollution et autres mesures visant à protéger la biodiversité du Lac Tanganyika (RAF/92/G32)**

Le Projet sur la diversité biologique du lac Tanganyika a été formulé pour aider les quatre Etats riverains (Burundi, Congo, Tanzanie et Zambie) à élaborer un système efficace et durable pour gérer et conserver la diversité biologique du lac Tanganyika dans un avenir prévisible. Il est financé par le GEF (Fonds pour l'environnement mondial) par le biais du Programme des Nations Unies pour le développement (PNUD)”

The Lake Tanganyika Biodiversity Project has been formulated to help the four riparian states (Burundi, Congo, Tanzania and Zambia) produce an effective and sustainable system for managing and conserving the biodiversity of Lake Tanganyika into the foreseeable future. It is funded by the Global Environmental Facility through the United Nations Development Programme.



Prepared by *EnAct* International Limited under contract to MRAG Limited for the purposes of the GEF funded project: "Pollution Control and Other Measures to Protect Biodiversity in Lake Tanganyika."

## INTRODUCTORY NOTE

A first working draft of the Lake Tanganyika Convention was prepared, in English and French, in June 1999 on the basis of the recommendations of the Regional Legal Workshop held in Lusaka, Zambia in February 1998.

The first draft formed the basis of discussions at the Anglophone Sub-regional Legal Workshop (Tanzania and Zambia) held in Dar es Salaam during the last week of August 1999 and the Francophone Sub-regional Legal Workshop (Burundi and the D.R. Congo) held in Arusha the following week. By the end of each workshop a new second draft of the Convention had been prepared: an English language second working draft and a French-language second working draft.

A consolidated third working draft, incorporating the amendments made at both of the Sub-regional workshops, formed the basis of the discussions at the Regional Legal Workshop held in Arusha during the first week of November 1999 and which was attended by delegations from all of the four riparian States.

This document, the fourth working draft, is the latest English language version of the draft Convention, now re-named the 'Convention on the Sustainable Management of Lake Tanganyika' and purports to contain the amendments and alterations agreed at the Regional Workshop. It should be noted that for logistical reasons it was not possible to print out the agreed final text at the workshop for consideration by the workshop delegates. The delegates are therefore asked to carefully review this fourth draft, to compare it with their notes so as to ensure the accuracy of the text, and to forward any comments or observations they may have to MRAG<sup>1</sup>.

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# THE CONVENTION ON THE SUSTAINABLE MANAGEMENT OF LAKE TANGANYIKA (Working Draft 4)

## PREAMBLE

The Contracting States,

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

Recognising that Lake Tanganyika is the shared heritage of the riparian States;

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

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

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

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

Recognising that integrated management of the Lake environment by the riparian States is essential to ensure its conservation and the sustainable use of its natural resources and to optimise the benefits derived from it by the riparian States;

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

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

Have agreed as follows:

### Article 1. USE OF TERMS

For the purposes of this Convention:

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

**“Authority”** means the Lake Tanganyika Authority established under Article 24;

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

**“Conference of the Parties”** means the Conference of the Parties established by Article 23;

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

**“Environment”** includes, but is not limited to, the whole or any component of:

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

**“Genetic resources”** means any material of plant or animal, microbial or other origin containing functional units of heredity of actual or potential value;

**“Lake environment”** means the whole or any component of the aquatic environment of Lake Tanganyika and those ecosystems and aspects of the environment that are associated with, affect or are dependent on, the aquatic environment of Lake Tanganyika, including the system of surface waters and ground waters that flow into the Lake from the four riparian States and the land submerged by these waters.

**“Management Committee”** means the Management Committee of the Authority described in Article 25;

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

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

**“Secretariat”** means the Secretariat of the Authority described in Article 26;

**“Transboundary adverse impact”** means any adverse impact that extends beyond the territory of the Contracting State in which the physical origin of the adverse impact is situated.

## **Article 2. OBJECTIVE**

1. The objective of this Convention is to ensure the protection and conservation of the biological diversity and the sustainable use of the natural resources of Lake Tanganyika and its environment by the Contracting States on the basis of integrated and co-operative management.
2. In order to achieve this objective, the Contracting States shall:
  - a. co-operate in the development and implementation of harmonised laws and standards concerning the management of Lake Tanganyika and its environment; and
  - b. accord particular attention to ensuring that present and future communities living near the Lake benefit from the sustainable use of the Lake's natural resources and amenities.

## **Article 3. JURISDICTIONAL SCOPE**

This Convention applies to Lake Tanganyika and to its environment in the riparian States as well as to all human 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.

## **Article 4. CO-OPERATION**

1. The Contracting States shall co-operate in good faith in the management of Lake Tanganyika and the Lake environment in a manner that most effectively promotes the attainment of the objective referred to in Article 2 paragraph 1, and that gives effect to the guiding principles set out in Article 5.
2. Such co-operation shall include:
  - a. planning and managing activities under the jurisdiction or control of a Contracting State which have an adverse impact or which may have an adverse impact on the Lake and its environment;
  - b. supporting the activities and building the capacity of the institutions established under this Convention;
  - c. formulating and adopting protocols to this Convention as stipulated in Article 34;
  - d. exchanging information concerning the state of the Lake environment, the results of the monitoring of activities in the Lake basin that may affect the Lake environment, and experience concerning the protection, sustainable use and management of Lake Tanganyika;
  - e. keeping the other Contracting States informed of planned and on-going activities that have or are likely to have an adverse impact on the Lake and its environment;
  - f. engaging in joint research; and
  - g. implementing this Convention.

## **Article 5. GUIDING PRINCIPLES**

The natural resources of Lake Tanganyika shall be protected, conserved, managed, and used for sustainable development to meet the needs of present and future generations in an equitable manner. To this end the following principles shall be applied.

- a. The precautionary principle, by virtue of which preventive measures are to be taken when there are reasonable grounds for concern that an actual or planned activity within the territory or under the jurisdiction and control of a Contracting State may bring about an adverse impact, even if there is no conclusive scientific evidence of a causal relationship between the activity and the adverse impact.
- b. The polluter pays principle, by virtue of which the costs of pollution prevention, control and reduction measures are to be borne by the polluter.
- c. The principle of preventive action, by virtue of which action shall be taken to prevent adverse impacts arising by taking timely action to address the actual or potential causes of the adverse impacts.
- d. The principle of participation by virtue of which concerned and affected natural and legal persons and Lake side communities must be given the opportunity to participate, at the appropriate level, in decision-making and management processes that affect the Lake environment and are given appropriate access to information concerning the environment that is held by public authorities and effective access to judicial and administrative proceedings to enable them to exercise their rights effectively.
- e. The principle of equitable benefit sharing by virtue of which local communities are entitled to share in the benefits derived from local natural resources.
- f. Lake Tanganyika and any related installations, facilities and works shall be used exclusively for peaceful purposes in accordance with the Charter of the United Nations and shall not be violated in time of international or internal armed conflicts.

## **Article 6. PREVENTION AND MINIMISATION OF TRANSBOUNDARY ADVERSE IMPACTS**

1. The Contracting States shall ensure that activities within their jurisdiction or control do not cause transboundary adverse impacts.
2. The Contracting States shall take appropriate measures to address the causes or potential causes of adverse impacts within their jurisdiction or control, to prevent adverse impacts and to mitigate those adverse impacts that cannot be prevented, and thereby reduce the risk and magnitude of transboundary adverse impacts.

## **Article 7. FISHERIES MANAGEMENT**

1. The Contracting States shall co-operate to promote sustainable fisheries management on Lake Tanganyika and shall take, as a matter of priority, appropriate measures to prevent and reduce as far as possible adverse impacts from fishing activities under their jurisdiction or control.
2. In order to promote sustainable fisheries management the Contracting States, acting separately and jointly, shall:



- a. develop, implement and enforce a framework fisheries management plan for Lake Tanganyika which shall conform with the strategic action programme prepared in accordance with Article 13;
- b. develop harmonised 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;
- c. develop, adopt, implement and enforce harmonised legal, administrative and technical measures to manage fisheries and to eliminate unsustainable fishing practices and to reduce the pressure on over-exploited fisheries by, in particular, regulating fishing effort, practices and capacity; and
- d. promote broad participation in fisheries management including the development of community based management structures with due regard to local conditions.

#### **Article 8. PREVENTION AND CONTROL OF POLLUTION**

1. The Contracting States shall, as a matter of priority, take appropriate measures to prevent and reduce pollution of Lake Tanganyika and its environment arising from activities within their jurisdiction or control.
2. In particular, each Contracting State shall:
  - a. to the extent possible, construct and maintain installations within their territory to reduce the risk of pollution of the Lake and its environment ;
  - b. ensure that waste is not disposed of into Lake Tanganyika except under, and in accordance with, a permit issued by the relevant authority of the Contracting State concerned ; and
  - c. develop, adopt, implement and enforce appropriate legal, administrative and technical measures to prevent, control and reduce pollution:
    - i. from both point and non-point sources;
    - ii. from vessels navigating on the Lake; and
    - iii. from the manufacture, handling, transportation, use and disposal of toxic or hazardous materials in the Lake environment.
3. The Contracting States shall develop and adopt a protocol to this Convention specifying the minimum measures and standards to be adopted by each Contracting State in order to ensure the harmonised implementation of pollution prevention and mitigation measures to protect human health and achieve a high level of protection for the Lake environment.

#### **Article 9. PREVENTION OF SEDIMENTATION**

Each Contracting State shall, as a matter of priority, take appropriate legal, administrative and technical measures to prevent all causes of excessive sedimentation in the Lake, such as deforestation, land degradation and the destruction of wetlands.

## **Article 10. CONSERVATION OF BIOLOGICAL DIVERSITY**

1. The Contracting States, acting separately or jointly, shall develop, adopt, implement and enforce appropriate legal, administrative and technical measures:
  - a. to conserve rare, fragile and representative ecosystems and rare, depleted, or threatened species and populations of flora and fauna and their habitats that form part of the Lake environment;
  - b. to prevent the introduction of, control and eradicate exotic species that threaten ecosystems, habitats or species and the genetic resources that form part of the Lake environment;
  - c. to prevent the deliberate or accidental introduction of species into areas of the Lake environment in which they do not naturally occur.
2. A Contracting State shall not permit the introduction of any exotic species of organism into the Lake environment or into any other place where there is an appreciable risk of the organism entering the Lake environment, unless the other Contracting States have been consulted and have given their consent, which shall not be withheld unreasonably.

## **Article 11. ACCESS TO GENETIC RESOURCES**

1. The Contracting States shall co-operate through the Authority:
  - a. to develop, implement and enforce legislative, administrative, policy and other measures to control access to the genetic and biochemical resources of the Lake and its environment;
  - b. to promote research into the protection and utilisation of the genetic and biochemical resources of the Lake and its environment; and
  - c. to share in a fair and equitable way the results of research and development and the benefits arising from the utilisation of the genetic and biochemical resources of the Lake and its environment in accordance with the Convention on Biological Diversity.
2. For the purposes of this article:
  - a. "access to genetic and biochemical resources" means access to obtain samples of biological and other materials containing genetic material for the purposes of the conservation of, research on, or the commercial or industrial application of, the genetic material or biochemicals; and
  - b. "biochemicals" means unimproved or unmodified chemical compounds, other than deoxyribonucleic acids or ribonucleic acids, formed by the metabolic processes of a living organism.

## **Article 12. NAVIGATION**

1. Subject to paragraphs 4, 5 and 6 of this article, each Contracting State shall accord any vessel flying the flag of a Contracting State the freedom to navigate on those parts of Lake Tanganyika under its jurisdiction and control.
2. In the exercise of the freedom of navigation referred to in the previous paragraph, the nationals, property and vessels flying the flags of all Contracting States shall be treated

equally in all respects and no exclusive rights of navigation shall be accorded to any natural or legal person.

3. Each Contracting State shall implement and enforce appropriate legal, administrative and technical measures in accordance with relevant international standards to prevent and reduce the risk of pollution from any vessels flying its flag.
4. A Contracting State has the right to reserve to its own flag the right to transport passengers and goods that are both loaded and discharged at ports under its jurisdiction.
5. A Contracting State shall not be obliged to accord freedom of navigation to a warship of another Contracting State.
6. Each Contracting State may without discrimination restrict or prohibit the navigation by vessels flying the flag of a Contracting State on those parts of Lake Tanganyika under its jurisdiction where this is necessary for the protection of the environment, safety, human health or for reasons of national security.

### **Article 13. STRATEGIC ACTION PROGRAMME**

1. The Contracting States shall collaborate in the preparation and implementation of a strategic action programme to give effect to the measures set out in this Convention.
2. The strategic action programme shall include specific aims directed at achieving the objective of this Convention, strategies for achieving these aims, specific measures to be taken by the Contracting States separately or jointly to achieve these aims and details of the means to be used to monitor progress toward the achievement of these aims.
3. The Contracting States shall monitor the effectiveness of the strategic action programme and shall revise it as necessary.
4. The Contracting States shall ensure that the measures contained in the strategic action programme are integrated into relevant national policies, strategies, programmes and plans.

### **Article 14. PRIOR NOTIFICATION**

1. The Contracting State or States under whose jurisdiction or control a proposed activity listed in Part A of Annex I is planned to take place or a public policy, plan or programme that is likely to give rise to transboundary adverse impacts has been prepared, shall notify the Secretariat as early as possible which shall notify the other Contracting States without delay.
2. The notification shall contain information on the proposed activity, programme or policy, including any available information on its possible transboundary adverse impacts and effects.
3. Any Contracting State that considers that it should have received prior notification under this article of a proposed activity, public policy, plan or programme under the jurisdiction of another Contracting State, shall request the Secretariat to intercede on its behalf with that Contracting State.
4. The Contracting States undertake to define the modalities of notification in a Protocol to this Convention.

## **Article 15. ENVIRONMENTAL IMPACT ASSESSMENT**

1. Each Contracting State, in order to avoid and minimise adverse impacts, shall:
  - a. adopt and implement appropriate legal, administrative and other measures requiring an assessment to be conducted of the environmental impacts of proposed projects and of activities within its jurisdiction or control, that are likely to give rise to adverse impacts;
  - b. adopt and implement appropriate legal and administrative procedures and institutional arrangements to ensure that when public policies, plans and programmes are being developed and implemented, the consequences for the Lake environment are taken into account including any comments received from other Contracting States;
  - c. monitor compliance with and enforce any conditions in development consents or other authorisations that were imposed for the purpose of protecting the Lake environment.
2. The Contracting State within whose jurisdiction a proposed activity listed in Part A of Annex I is planned to take place, shall ensure that the environmental impact assessment procedure results in the production of documentation conforming with Part B of Annex I.
3. A Contracting State that may be affected by a proposed activity listed in Part A of Annex I shall, at the request of a Contracting State under whose jurisdiction the proposed activity is planned to take place, promptly provide the latter through the Management Committee, with all information relevant to the assessment of the potential transboundary adverse impacts within the jurisdiction of the affected Contracting State as is reasonably obtainable.
4. The Contracting State or States under whose jurisdiction a proposed activity is planned to take place shall, after completion of the environmental impact assessment documentation, consult with the other Contracting States and the Management Committee on measures to prevent, reduce or eliminate transboundary and other impacts including any post-project monitoring and analysis that may be required. At the commencement of the consultation the Contracting States shall agree a reasonable time-table for the duration of the consultation period.
5. The Contracting States shall ensure that in reaching the final decision on the proposed activity, due account is taken of the outcome of the environmental impact assessment procedure, including the environmental impact assessment documentation, comments on it and objections to it and the consultations under this article. The Contracting State under whose jurisdiction the final decision is made shall provide the Secretariat with a copy of the final decision .
6. If after an activity has been authorised in accordance with this article, the Secretariat or a Contracting State obtains additional information on the transboundary adverse impact of the activity which was not available at the time the decision was made and which could have materially affected the decision, this information shall be communicated immediately to the other Contracting States through the Secretariat and the Contracting States shall consult to decide whether or not the decision should be reviewed or additional measures taken to reduce or eliminate the impact.
7. The Contracting States shall co-operate in the development of technical, legal and other measures concerning joint transboundary environmental impact procedures.

**Article 16**  
**EDUCATION AND PUBLIC AWARENESS**

Each Contracting State shall:

- a. promote and encourage public awareness of the importance of the ecosystem of Lake Tanganyika and its environment;
- b. elaborate and implement a programme of education and public awareness of the lakeside population through all possible means in respect of the importance of the biological diversity of the Lake environment and its management for sustainable development;
- c. develop a sense of awareness in the lakeside population that they are an integral part of the Lake environment.

**Article 17. PUBLIC PARTICIPATION IN DECISION MAKING PROCESSES**

1. Each Contracting State shall adopt and implement legal, administrative and other appropriate measures to ensure that the public, and in particular those individuals and communities living within the Lake environment:
  - a. have the right to participate at the appropriate level, in decision-making processes that affect the Lake environment or their livelihoods, including participation in the procedure for assessing the environmental impacts of projects or activities that are likely to result in adverse impacts; and
  - b. are given the opportunity to make oral or written representations before a final decision is taken.
2. Each Contracting State shall ensure that appeal or review procedures exist in respect of any decision by a public body to authorise an activity that is likely to give rise to an adverse impact.

**Article 18. ACCIDENTS AND EMERGENCIES**

1. If an accident or emergency arises within the territory of a Contracting State that causes or is likely to cause an adverse impact, the Contracting State concerned shall immediately notify the Secretariat which shall in turn notify the other Contracting States as soon as possible.
2. The Contracting States shall establish co-ordinated or joint warning and emergency response plans to reduce the risk of adverse impacts and to deal effectively with potential accidents and emergencies that are likely to cause adverse impacts, including humanitarian emergencies, major pollution incidents and shipping accidents.

**Article 19. PUBLIC ACCESS TO INFORMATION**

1. The Contracting States shall ensure that, subject to Article 20, adequate information is made available to the public concerning the state of the Lake environment, planned development activities, measures taken or planned to be taken to prevent, control and reduce adverse impacts, and the effectiveness of those measures. For this purpose each Contracting State shall ensure that information is made available to the public on the following:
  - a. water and environmental quality objectives to be achieved throughout that part of Lake Tanganyika that falls under the jurisdiction of that Contracting State;

- b. the results of monitoring compliance with permits and the attainment of water and environmental quality objectives;
  - c. any notifications received by that Contracting State under Article 14 concerning proposed activities listed in Part A of Annex I;
  - d. reports on the environmental impact assessment of any of the proposed activities listed in Part A of Annex I.
2. The Contracting States shall ensure that any information referred to in paragraph 1 that is held by a public body is available to the public for inspection at all reasonable times free of charge and shall provide members of the public with facilities for obtaining, on payment of reasonable charges, copies of such information.

#### **Article 20. EXCHANGE OF INFORMATION**

1. The Contracting States shall exchange through the Authority data and information concerning the sustainable management of the Lake environment and the implementation of this Convention, as is available including *inter alia* data and information on:
- a. the state of the Lake environment and its biological diversity, in particular monitoring data and information of a hydrological, hydro-geological, meteorological and ecological nature and related to water quality, as well as related forecasts;
  - b. the results of research relevant to the management of the Lake environment;
  - c. legal, administrative and other measures taken and planned to be taken to prevent, control and reduce adverse impacts;
  - d. accidents and emergencies that have given or are likely to give rise to adverse impacts;
  - e. actions taken to monitor, control and enforce legal provisions or administrative measures used to give effect to this Convention, including any conditions imposed on activities listed in Part A of Annex I that were imposed for the purpose of protecting the Lake environment, and any fisheries conservation and management measures.
2. If a Contracting State is requested by any other Contracting State or by the Authority to provide data or information that is not readily available, the former shall employ its best efforts to comply with the request.

#### **Article 21. PROTECTION OF CONFIDENTIAL INFORMATION**

1. This Convention shall not affect rights or obligations of the Contracting States established in accordance with their domestic laws, regulations, administrative provisions or accepted legal practices and international agreements to protect information relating to personal data, intellectual property, including confidential industrial or commercial information or national security.
2. Contracting States that receive confidential industrial or commercial information or other confidential information in the course of the exchange of information required under this Convention shall respect the confidentiality of the information received and the conditions under which it is supplied and shall use that information only for the purposes for which it was supplied.

## Article 22. REPORTING

1. Each Contracting State shall report periodically to the Authority on measures which it has taken to implement this Convention and on the effectiveness of these measures in meeting the objective of this Convention and on any other matters determined by a decision of the Conference of the Parties. These reports shall include in particular:
  - a. information on the laws and administrative procedures of the Contracting State regulating, or relevant to the prevention, control and reduction of adverse impacts;
  - b. legal, administrative and other measures taken relating to the assessment of the environmental impact of proposed activities and measures to give effect to the obligations envisaged in Article 15;
  - c. information on the state of the Lake environment within the territory of the Contracting State; and
  - d. measures taken to implement the provisions of this Convention or to further the attainment of its objective.
2. The Secretariat shall submit recommendations to the Contracting States regarding the reports that are required for the effective implementation of this Convention, the information to be included in the reports, the frequency with which they should be submitted and how reporting should be done, for consideration by the Contracting States at the second meeting of the Conference of the Parties and at subsequent meetings.

## Article 23. CONFERENCE OF THE PARTIES

1. A Conference of the Parties is hereby established. The first meeting of the Conference of the Parties shall be convened by the President of [*the name of the country in which this Convention is signed*] not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held in rotation in the Contracting States at least once a year, unless the Conference of the Parties decides otherwise.
2. Each meeting of the Conference of the Parties shall be chaired by the Head of the delegation of the Contracting State that is hosting the meeting.
3. Extraordinary meetings of the Conference of the Parties shall be held at any other time decided by the Conference, or at the written request of any Contracting State, provided that, within three months of the request being communicated to the other Contracting States by the Secretariat, it is supported by at least one other Contracting State.
4. The first Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and the Authority. At each ordinary meeting it shall adopt a budget for the Authority for the period until the next ordinary meeting.
5. The Conference of the Parties shall regularly evaluate the implementation of this Convention, and, for this purpose, shall:
  - a. consider and adopt protocols to be concluded in accordance with Article 34;
  - b. consider and adopt in accordance with Article 35 additional annexes to this Convention;
  - c. consider and adopt in accordance with Article 36 amendments to this Convention and its annexes;

- d. consider amendments to any protocol as well as to annexes to a protocol and, if so decided, recommend their adoption to the parties to the protocol concerned;
  - e. establish whatever subsidiary bodies may be considered necessary for the effective implementation of this Convention;
  - f. undertake any additional action that may be required for the effective achievement of the objectives of this Convention in the light of experience gained in implementing it.
6. The Organisation of African Unity, the United Nations and their specialised agencies may be represented as observers at meetings of the Conference of the Parties. Any state not party to this Convention and any other body or agency, whether governmental or non-governmental, qualified in fields relating to the subject matter of this Convention, which has informed the Secretariat of its wish to be represented as an observer may be admitted unless two or more of the Contracting States present, object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.
  7. Each Contracting State shall be represented at the Conference of the Parties by a delegation led by a Minister.

#### **Article 24. LAKE TANGANYIKA AUTHORITY**

1. The Lake Tanganyika Authority is hereby established comprising the Management Committee and the Secretariat.
2. The function of the Authority is to co-ordinate the implementation of this Convention by the Contracting States and, in accordance with this Convention and the decisions of the Conference of the Parties, to advance and represent the common interests of the Contracting States in matters concerning the management of Lake Tanganyika and its environment.
3. The Authority shall have international legal personality and such legal capacity as may be necessary to perform its functions and objectives and having its headquarters at the place designated by the Conference of the Parties. The Authority shall enter into a headquarters agreement approved by the Conference of the Parties with the host government.
4. The Authority may with the approval of the Conference of the Parties establish regional offices within the territory of any of the Contracting States.
5. The Executive Director of the Secretariat shall be the chief executive officer of the Authority and shall represent the Authority in the exercise of its legal personality.
6. Each Contracting Party shall, having regard to the diplomatic rules governing international organisations, grant to: the Lake Tanganyika Authority and its property, funds and assets, the privileges, immunities and facilities that it needs to carry out its activities; and the members of the Management Committee and of the Secretariat the privileges, immunities and facilities that they need to perform their official functions.

#### **Article 25. LAKE TANGANYIKA MANAGEMENT COMMITTEE**

1. The Lake Tanganyika Management Committee consists of three members appointed by each Contracting State. The Executive Director of the Secretariat shall serve as the secretary of the Management Committee and shall attend its meetings but shall not have the right to vote.



2. Each Contracting State shall appoint persons with expertise relevant to the sustainable management of the Lake environment and the implementation of the strategic action programme as members of the Management Committee.
3. The first meeting of the Management Committee shall be convened by the first chairperson of the Conference of the Parties not later than eighteen months after the entry into force of this Convention. This meeting shall be presided over by a member of the Management Committee from the host country who shall hold office for a period of three years. At the end of this mandate, the position of Chairperson of the Management Committee shall be rotated among the representatives of the Contracting States in the alphabetical order of the countries starting with the first Chairperson. Thereafter the Management Committee shall hold ordinary meetings at least once a year.
4. Extraordinary meetings of the Management Committee may be held at such other time decided by the Management Committee and shall be convened at the written request of any Contracting State by the Chairperson of the Management Committee.
5. Decisions of the Management Committee shall be made by consensus. If the Management Committee cannot reach consensus on a particular issue, it shall be re-considered at the next meeting. If consensus is still not reached, a decision may be made by a two thirds' majority of the votes of the members present and voting either in person or by proxy. The Management Committee shall propose rules of procedure for itself and for any subsidiary bodies for approval by the Conference of the Parties.
6. Subject to the provisions of any rules of procedure approved by the Conference of the Parties for the Management Committee, the latter may form temporary or permanent sub-committees and working groups and may request technical advice from third parties.
7. The Management Committee shall support, co-ordinate and monitor the implementation of this Convention. To this end it shall:
  - a. implement the policies and decisions of the Conference of the Parties and undertake tasks assigned to it by the Conference of the Parties;
  - b. provide scientific and technical advice to the Conference of the Parties;
  - c. prepare and propose for approval of the Conference of the Parties a strategic action programme for Lake Tanganyika in accordance with Article 13 and review and revise the strategic action programme and propose any new or amended programme for approval by the Conference of the Parties;
  - d. co-ordinate and supervise the implementation of any strategic action programme approved by the Conference of the Parties;
  - e. prepare and propose for approval by the Conference of the Parties, additional protocols, annexes to this Convention and annexes to protocols, and amendments to this Convention or to any related protocol or annex;
  - f. negotiate with donors interested in supporting the implementation of this Convention with a view to developing donor-funded programmes and projects for consideration by the Conference of the Parties;
  - g. commission studies and assessments to enable this Convention to be effectively implemented and to monitor and evaluate its effectiveness;

- h. supervise the activities of the Secretariat including assigning tasks to it, approving annual work programmes and monitoring the execution of that programme and the budget of the Secretariat;
- i. undertake, at the request of the Chairperson of the Conference of the Parties, any urgent or important task under this Convention that may arise between sessions of the Conference of the Parties and report back to the Conference of the Parties at its next meeting.

**Article 26. SECRETARIAT OF THE LAKE TANGANYIKA AUTHORITY**

1. The Secretariat of the Lake Tanganyika Authority shall comprise an Executive Director, a Deputy Executive Director and any other staff that may be required for its operation.
2. The Secretariat is the executive organ of the Authority and shall be under the supervision of the Management Committee. The Secretariat shall be under the direction of the Executive Director who shall be assisted by the Deputy Executive Director.
3. The functions of the Secretariat are:
  - a. to carry out the tasks assigned to it by the Management Committee;
  - b. to provide technical and scientific services and advice required by the Management Committee and the Conference of the Parties;
  - c. to perform the financial and other administrative, services required for the proper and efficient operation of the Conference of the Parties, the Management Committee and the Secretariat;
  - d. to formulate annual work programmes and budgets for the Authority;
  - e. to prepare plans, projects, assessments, reports and the like as required by the Management Committee;
  - f. to regularly obtain and update information relevant to the implementation of this Convention and ensure that it is disseminated to all Contracting States;
  - g. to maintain databases of information as required by the Management Committee or the Conference of the Parties and to facilitate the exchange of information under this Convention;
  - h. to arrange and support meetings of the Conference of the Parties and of the Management Committee;
  - i. to perform the functions assigned to it by any protocol;
  - j. to prepare reports on the execution of its functions under this Convention and to present them to the Management Committee; and
  - k. to perform any other functions as may be determined by the Conference of the Parties.
4. The Conference of the Parties shall appoint the Executive Director and the Deputy Executive Director of the Secretariat subject to terms and conditions of service (including provisions on removal) approved by the Conference of the Parties for a period not exceeding three years. An Executive Director or Deputy Executive Director may, at the discretion of the Conference of the Parties, be appointed for one further term of three years.

5. The first Executive Director and Deputy Executive Director shall be appointed from a list of suitably qualified candidates. Subsequent Executive Directors and Deputy Executive Directors shall be appointed by the Conference of the Parties from suitably qualified candidates nominated by the Contracting State which in alphabetical order follows the Contracting State that nominated the previous Executive Director or Deputy Executive Director. If an Executive Director or a Deputy Executive Director does not complete a term of office a replacement Executive Director or Deputy Executive Director nominated by the same Contracting State shall be appointed to complete the term of office. Each Executive Director and Deputy Executive Director shall be a national of a Contracting State.
6. The Executive Director of the Secretariat with the approval of the Management Committee shall appoint the staff of the Secretariat on the basis of technical competence but with due regard to the need to appoint, as far as possible, equal numbers of technical professional staff from each of the Contracting States.

#### **Article 27. TECHNICAL COMMITTEES**

1. The Management Committee shall be assisted in the performance of its functions by:
  - a. a Socio-economic Technical Committee comprising one representative from each of the Contracting States, which shall advise the Management Committee on socio-economic aspects of the sustainable management and protection of the Lake environment;
  - b. a Fisheries Management Technical Committee comprising one representative from each of the Contracting States, which shall advise the Management Committee on management measures to conserve the fisheries of Lake Tanganyika and to develop the traditional and commercial fishing sectors on a sustainable basis; and
  - c. a Biological Diversity Technical Committee comprising one representative from each of the Contracting States, which shall advise the Management Committee on management measures to protect and conserve the biological diversity of the Lake environment and on access to the genetic resources of the Lake environment and related matters.
2. The Management Committee may, with the consent of the Conference of the Parties, establish other technical committees to assist it in the performance of its functions.
3. Technical committees shall be governed by procedures approved by the Conference of the Parties pursuant to Article 25 paragraph 7.

#### **Article 28. FINANCIAL RESOURCES**

1. The Contracting States shall contribute in equal proportions to the budget of the Authority unless otherwise agreed.
2. The Authority shall seek to obtain funds for its operation and for projects from donors and other sources.
3. The Authority shall, as far its financial resources permit, fund:
  - a. the incremental costs to each Contracting State of managing the Lake environment on a co-operative basis; and
  - b. activities undertaken to implement the strategic action programme in as far as these benefit more than one of the Contracting States.

4. Each Contracting State shall fund those activities related to the implementation of this Convention that are undertaken within its territory or for its exclusive benefit, unless otherwise agreed by the Conference of the Parties.
5. The Conference of the Parties shall, no later than its third meeting, discuss the adoption of a protocol to establish a fund or other financial mechanism to support the implementation of this Convention.

#### **Article 29. SETTLEMENT OF DISPUTES**

1. In the event of a dispute between Contracting States concerning the interpretation or implementation of this Convention, the States concerned shall notify this to the Secretariat of the Authority and shall seek a solution through negotiation. The Secretariat shall notify the other Contracting States of the existence and nature of the dispute.
2. If the States concerned cannot settle the dispute through negotiation they shall agree in good faith a dispute resolution procedure which may include:
  - a. jointly seeking the good offices of, or mediation by, a third party (which shall be a Contracting State that is not involved in the dispute);
  - b. submitting the dispute to impartial fact-finding in accordance with the provisions of Annex III; and/or
  - c. submitting the dispute to arbitration in accordance with the procedure laid down in Annex IV.
3. The provisions of this article shall apply with respect to any protocol unless otherwise provided in the protocol concerned.

#### **Article 30. LIABILITY OF OPERATORS OF DANGEROUS ACTIVITIES**

1. Each Contracting State shall ensure that each Operator that undertakes on its territory one or more of the activities listed in Annex II:
  - a. is regularly monitored to ensure that such activities comply with applicable laws and administrative requirements concerning the protection of the Lake environment;
  - b. is required to participate in a financial security scheme or to have and maintain a financial guarantee up to a certain limit, of a type and on terms specified by the domestic laws of that State, to cover liability under this Convention;
  - c. is bound by the provisions of this article.
2. For the purposes of this article and article 31:

“Operator” means any person, association, public or private body, whether corporate or not, including the State and any of its entities which exercises control over dangerous activities; and

“dangerous activity” means any activity listed in Annex II.
3. An Operator undertaking a dangerous activity shall take necessary and timely response action, including prevention, containment, clean up and removal measures, if the activity

results in or threatens to result in an adverse impact. The Operator shall notify the Secretariat of action taken pursuant to this paragraph and the Secretariat shall circulate the notification to all the Contracting States.

4. An Operator shall be strictly liable for:
  - a. any adverse impacts arising from its dangerous activities, and shall be liable to pay compensation if the Lake environment is not restored to the condition it was in prior to such adverse impacts;
  - b. loss of or impairment to any legitimate use of the Lake such as navigation, tourism, or fishing, arising directly from an adverse impact referred to in paragraph (a);
  - c. loss of or damage to the property of a third party or loss of life of or personal injury to a third party arising directly from an adverse impact referred to in paragraph (a); and
  - d. reimbursement of reasonable costs incurred by any person relating to any necessary response action, including prevention, containment, clean up, removal measures and action taken to restore the Lake environment to the condition it was in prior to the adverse impact.
5. An Operator shall not be liable pursuant to paragraph 4 if and to the extent that it proves that the adverse impact has been caused by:
  - a. a natural disaster which could not reasonably have been foreseen; or
  - b. armed conflict or an act of terrorism directed against the activities of the Operator, against which no reasonable precautionary measures could have been effective.
6. If an Operator proves that the adverse impact has been caused wholly or in part by an intentional or grossly negligent act or omission of the party seeking redress, that Operator may be relieved wholly or in part from its obligation under paragraph 4 to reimburse costs incurred by such a party or to pay compensation in respect of any loss, damage or personal injury suffered by such a party.
7. The Contracting States may elaborate in a separate protocol further rules and procedures in respect of liability under this article, which rules and procedures shall be designed to enhance the protection of the Lake environment and to facilitate the effective implementation of this Convention.

#### **Article 31. LIABILITY AND COMPENSATION**

1. A Contracting State shall be liable in accordance with international law for any transboundary adverse impacts arising from its failure to fulfil its obligations under this Convention, including any failure to fulfil its obligations under paragraph 1 of Article 30 of this Convention with respect to an Operator.
2. The liability of a Contracting State for transboundary adverse impacts arising from the undertaking within its territory of an activity listed in Annex II shall be reduced by the extent to which compensation is paid, restoration is made or expenses are reimbursed by the Operator in accordance with paragraph 4 of Article 30, or this liability is otherwise satisfied.

### **Article 32. ACCESS TO COURTS**

1. Each Contracting State shall grant any person claiming compensation or other relief arising from an adverse impact caused by activities carried out within its territory, including claims made pursuant to paragraph 4 of Article 30, access to legal remedies in accordance with its legal system.
2. In granting the rights and access referred to in paragraph 1 a Contracting State shall not discriminate on the basis of nationality, residence, or place where the injury occurred.

### **Article 33. RIGHT TO VOTE**

Each Contracting State to this Convention or to any protocol shall have one vote.

### **Article 34. PROTOCOLS TO THIS CONVENTION**

1. The Contracting States shall co-operate in the formulation and adoption of any protocols to this Convention that they consider appropriate to further the attainment of the objective of this Convention.
2. Protocols shall be adopted at a meeting of the Conference of the Parties.
3. The text of any proposed protocol shall be communicated to the Contracting States by the Secretariat at least six months before such a meeting.
4. A State may not become a Party to a protocol unless it is, or becomes at the same time, a Contracting State to this Convention.
5. Decisions under any protocol shall be taken only by the parties to the protocol concerned. A Contracting State that has not ratified, accepted or approved a protocol may participate as an observer in any meeting of the parties to that protocol.

### **Article 35. ANNEXES**

1. The annexes to this Convention or to any protocol form an integral part of this Convention or the protocol to which it is annexed and, unless expressly provided otherwise, a reference to this Convention or to a protocol refers also to any annexes to that instrument.
2. Except as otherwise provided in any protocol, annexes to this Convention or to any protocol shall be proposed and adopted according to the procedure laid down in Article 34.

### **Article 36. AMENDMENT OF THE CONVENTION OR PROTOCOLS**

1. Any Contracting State may propose amendments to this Convention or to any protocol to which it is a signatory.
2. Amendments to this Convention shall be adopted by the Conference of the Parties. Amendments to a protocol shall be adopted at a meeting of the Contracting States that are parties to that protocol. The Secretariat shall communicate the text of any amendment to all the Contracting States at least six months before the meeting, unless the amendment is to a protocol which prescribes an alternative procedure.

3. The Contracting States shall make every effort to reach consensus on any proposed amendment to this Convention or to a protocol. If all efforts to reach consensus have been exhausted, as a last resort the amendment may be adopted by a majority vote of the parties to the instrument in question and shall be submitted by the Depositary to all the Contracting States for ratification, acceptance or approval.
4. Each Contracting State shall notify the Depositary in writing of the ratification, acceptance or approval of any amendment. Amendments to this Convention and to a protocol shall, except as otherwise provided in the protocol being amended, enter into force on the ninetieth day after the date of deposit of the second instrument of ratification, acceptance, approval or accession.

#### **Article 37. RELATIONSHIP WITH OTHER INTERNATIONAL AGREEMENTS**

This 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.

#### **Article 38. RELATIONSHIP WITH NATIONAL LAWS**

This Convention shall not affect the right of any Contracting State to adopt national measures that are more stringent than those of this Convention provided they are compatible with this Convention.

#### **Article 39. SIGNATURE**

This Convention shall be open for signature by the Republic of Burundi, the Democratic Republic of Congo, the United Republic of Tanzania and the Republic of Zambia, at [*insert place at which Convention will be signed, and where the first meeting of Conference of the Parties is to take place*] from [*insert date*] until [*insert date*].

#### **Article 40. RATIFICATION AND ACCESSION**

1. This Convention and any protocol shall be subject to ratification, acceptance or approval by the Contracting States which shall deposit instruments of ratification, acceptance or approval with the Depositary.
2. This Convention and any protocol shall be open for accession by the riparian States, from the date on which this Convention or the protocol concerned is closed for signature. The instruments of accession shall be deposited with the Depositary.

#### **Article 41. ENTRY INTO FORCE**

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the second instrument of ratification, acceptance, approval or accession.
2. Any protocol shall enter into force on the ninetieth day after the date of deposit of the number of instruments of ratification, acceptance, approval or accession, specified in that protocol.
3. For each Contracting State, which ratifies, accepts or approves this Convention or accedes to it after it has entered into force in accordance with paragraph 1 of this article, this Convention shall enter into force on the ninetieth day after the date of deposit by that Contracting State of its instrument of ratification, acceptance, approval or accession.

4. For each Contracting State which ratifies, accepts or approves a protocol to this Convention after it has entered into force in accordance with paragraph 2 of this article, unless the protocol otherwise provides, this Convention shall enter into force on the ninetieth day after the date of deposit by that Contracting State of its instrument of ratification, acceptance, approval or accession, or on the date on which this Convention enters into force for that Contracting State, whichever is the later date.

#### **Article 42. RESERVATIONS**

No reservations may be made to this Convention.

#### **Article 43. WITHDRAWALS**

1. At any time after three years from the date of entry into force of this Convention with respect to a Contracting State, that Contracting State may withdraw from this Convention by giving written notification to the Depositary.
2. Except as may be otherwise provided in any protocol to this Convention, any Contracting State may, at any time after three years from the date of entry into force of such protocol with respect to that Contracting State, withdraw from such protocol by giving written notification to the Depositary.
3. Withdrawal shall take effect one year after the date on which notification of withdrawal is received by the Depositary.
4. Any Contracting State which withdraws from this Convention shall be considered as also having withdrawn from any protocol to which it was a Contracting State.

#### **Article 44. DEPOSITARY**

1. The Secretary-General of the Organisation of African Unity shall assume the functions of Depositary of this Convention and any protocols.
2. The originals of this Convention and its protocols shall be deposited with the Depositary.

In witness whereof the undersigned, being duly authorized by their respective Governments, have signed the English and French texts of this Convention, both texts being equally authentic.

Done at [insert name of place where Convention is signed] this [date].

For the Republic of Burundi

For the Democratic Republic of Congo

*(Insert name and title)*

*(Insert name and title)*

For the United Republic of Tanzania

For the Republic of Zambia

*(Insert name and title)*

*(Insert name and title)*



## Annex I

### ENVIRONMENTAL IMPACT ASSESSMENT

#### **PART A: List of activities which will be presumed to result in adverse impacts**

1. Exploration for, the extraction of, and large-scale transportation of hydrocarbons in the Lake and its environment.
2. The construction and operation of crude oil refineries in the Lake environment.
3. The construction and operation of major storage facilities for petroleum, petrochemical and chemical products in the Lake environment.
4. The construction and operation of oil and gas pipelines in the Lake environment.
5. Major mining operations and the on-site extraction and processing of metal ores or coal in the Lake environment.
6. The construction of major roads, railways, or airports in the Lake environment.
7. The construction and operation of waste-disposal installations for the incineration, chemical treatment or landfill of toxic and dangerous wastes within the Lake environment.
8. The construction and operation of large dams, reservoirs or hydro-electric power schemes on any part of Lake Tanganyika or on any river that forms part of the Lake environment or that flows out of the Lake.
9. [Large scale water abstraction activities from Lake Tanganyika or from any river that forms part of the Lake environment where the annual volume of water to be abstracted amounts to .... ].
10. The opening up of large forested areas within the Lake environment to development.
11. The conversion or destruction of large areas of wetland forming part of the Lake environment.
12. The development of large-scale aquaculture or fish farming operations that use surface or ground water from the Lake environment, or that are situated within the Lake environment and involve the culturing of species that are not indigenous to the Lake.
13. The collecting from the Lake or culturing of ornamental fish for commercial purposes that involves moving species to parts of the Lake in which they do not naturally occur.
14. The construction of large-scale hotels or tourist facilities on or near the Lake.
15. Any activity within or outside the Lake environment which, by virtue of its scale, location, nature, or potential effects, is likely to create a significant risk of serious adverse impacts or transboundary adverse impacts.

## **PART B: Minimum Content of Environmental Impact Assessment Documentation**

Environmental Impact Assessment Documentation required under Article 15 paragraph 2(b) shall contain the following information as a minimum.

1. A description of the proposed activity and its purpose.
2. A description, where appropriate, of reasonable alternatives and also of the no-action alternative.
3. A description of the environment likely to be significantly affected by the proposed activity and its alternatives.
4. A description of the potential environmental impacts of the proposed activity and its alternatives and an evaluation of the significance of these impacts.
5. A description of prevention and mitigation measures to keep adverse impacts to a minimum (for all alternatives).
6. An analysis of the alternatives, including a comparison of the expected environmental impacts of each option after all mitigating actions have been implemented, and a selection of the preferred alternative.
7. A comprehensive mitigation plan in relation to the preferred alternative, which should contain a description of the mitigation measures to be implemented that would prevent, reduce or otherwise manage the adverse impacts of the proposed activity including an outline of monitoring and management programmes, post project analysis and community liaison procedures.
8. The results of any consultations with the public, interested and affected persons, communities, organisations, and government agencies in the course of conducting the environmental impact assessment.
9. An explicit indication of the predictive methods employed and underlying assumptions made as well as the relevant environmental data used.
10. An identification of gaps in knowledge and uncertainties encountered in compiling the required information.
11. A non-technical summary with visual aids, such as maps, graphs, tables and figures, as appropriate, that is suitable for explaining the findings of the assessment to the public.

## **Annex II**

### **LIST OF ACTIVITIES DANGEROUS TO THE LAKE ENVIRONMENT**

For the purposes of this Annex the term “dangerous substance” means a substance or preparation which has properties which constitute a significant risk for humans, the environment or property, including a substance or preparation which is radioactive, ionising, explosive, oxidising, extremely flammable, highly flammable, flammable, very toxic, toxic, harmful, corrosive, irritant, sensitising, carcinogenic, mutagenic, toxic for human or animal reproduction or dangerous for the environment.

1. Prospecting for, and exploiting hydrocarbons within Lake Tanganyika and its environment.
2. The production, handling, storage, use or discharge into the Lake environment of a dangerous substance in such a manner, or in such quantities and/or concentrations that a significant risk of serious damage to the Lake environment is created.

## **Annex III**

### **FACT FINDING COMMISSIONS**

For the purposes of this Annex “Party” means any Contracting State that is involved in a dispute with another Contracting State under this Convention which dispute has been submitted to impartial fact-finding in accordance with paragraph 2(b) of Article 29 of this Convention.

#### **Article 1: Submission to fact finding**

Any party to the dispute may notify the Secretariat that the parties have agreed to submit the dispute to impartial fact finding pursuant to paragraph 2(b) of Article 29 of this Convention and request the Executive Director of the Secretariat to establish a fact-finding Commission. The notification shall state the subject-matter of the dispute and include the facts in dispute. If the parties in dispute do not agree on the subject matter of the dispute the fact-finding Commission shall determine the subject matter. The Secretariat shall forward the information received to all Contracting States to this Convention or to the protocol concerned.

#### **Article 2: Appointment of the members of a Fact-Finding Commission**

1. The Executive Director of the Secretariat shall convene a fact-finding Commission composed of one person nominated by each Party. None of these persons shall be a national of one of the Contracting States.
2. The designated members shall agree on the appointment of a Chairperson who shall be a national of a third State.
3. If the members nominated by the parties are unable to agree on a Chairperson within three months of the request for the establishment of the Commission, any Party may request the Secretary-General of the Organisation of African Unity to appoint the Chairperson who shall not have the nationality of any of the Contracting States.
4. If one of the parties fails to nominate a member within three months of the initial request pursuant to Article 1 of this Annex, any other Party may request the Secretary-General of the Organisation of African Unity to appoint a person who does not have the nationality of any of the Contracting States, as a single member Commission.

#### **Article 3: Procedural Matters**

1. The Commission shall determine its own rules of procedure.
2. The Commission shall adopt its report by a majority vote, unless it is a single-member Commission, and shall submit that report to the parties setting out its findings and the reasons for them and whatever recommendations it considers appropriate for the equitable settlement of the dispute.

#### **Article 4: Duties of the Parties**

1. The parties shall provide the Commission with such information as it may require and, on request, shall permit the Commission to have access to its territory to inspect facilities, equipment, construction or natural features relevant to its enquiry.
2. The parties shall consider the recommendation of the Commission in good faith with a view to reaching agreement on the settlement of the dispute.
3. The parties shall bear the expenses of the Commission equally.

## **Annex IV**

### **ARBITRATION**

For the purposes of this Annex "Party" means any Contracting State that is involved in a dispute with another Contracting State under this Convention which dispute has been referred to arbitration in accordance with paragraph 2(c) of Article 29 of this Convention.

#### **Article 1: Submission to arbitration**

The claimant Party shall notify the Secretariat that the parties agree to submit the dispute to arbitration pursuant to paragraph 2(c) of Article 29 of this Convention. The notification shall state the subject-matter of arbitration and include, in particular, the articles of this Convention or the protocol, the interpretation or application of which are at issue. If the parties in dispute do not agree on the subject matter of the dispute the arbitral tribunal shall determine the subject matter. The Secretariat shall forward the information received to all Contracting States to this Convention or to the protocol concerned.

#### **Article 2: Composition of the arbitral tribunal and appointment of arbitrators**

1. The arbitral tribunal shall consist of three members.
2. In disputes between two parties, each Party to the dispute shall nominate one arbitrator; the two arbitrators so appointed shall in turn designate by common agreement a third arbitrator who shall be the President of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.
3. In disputes between more than two parties, parties with the same interest shall appoint one arbitrator jointly by agreement.
4. Any vacancy shall be filled in the manner prescribed for the initial appointment set out in point 2 of this article.

#### **Article 3: Failure to appoint arbitrators**

1. If the President of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the Organisation of African Unity shall, at the request of either Party, designate the President within a further two-month period.
2. 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 Organisation of African Unity who shall designate the President of the arbitral tribunal within a further two-months period. Upon designation, the President of the arbitral tribunal shall request the Party, which has not appointed an arbitrator to do so within two months. After such period, the President shall inform the Secretary-General of the Organisation of African Unity who shall appoint this arbitrator within a further two-month period.

#### **Article 4: Procedural Rules**

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

#### **Article 5: Powers of the Tribunal**

1. The arbitral tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.
2. 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.

#### **Article 6: Duty to co-operate with the Tribunal**

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

- a. provide it with all relevant documents, information and facilities necessary for the effective conduct of the proceedings; and
- b. enable it, when necessary, to call witnesses or experts and receive their evidence.

#### **Article 7: Confidentiality**

The parties and the arbitrators shall protect the confidentiality of any information they receive in the course of their investigations and during closed hearings of the arbitral tribunal.

#### **Article 8: Non-appearance at hearings**

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other Party may request the tribunal to continue the proceedings and to make its award. Absence of a Party or a failure of a Party to defend its case shall not constitute a bar to proceedings. Before making its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

#### **Article 9: Decisions of the Tribunal**

1. The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention, any protocol concerned, and international law.
2. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.

#### **Article 10: Costs**

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

#### **Article 11: Intervention in proceedings**

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

### **Article 12: Award**

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.
2. 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.
3. Any dispute which may arise between the parties concerning the interpretation or implementation of the award may be submitted by either Party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another arbitral tribunal constituted for this purpose in the same manner as the first.