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**The Second Negotiations Meeting
on the Integrated Coastal Zone Management (ICZM) Protocol
of the Nairobi Convention**

Ebène, Mauritius, 21 – 22 March, 2016.

The Nairobi Convention Secretariat's Definition of "ICZM Instruments"

Introduction

The Contracting Parties to the Nairobi Convention held the First Negotiations Meeting on the ICZM Protocol on 23-24 September, 2013 in Cape Town, South Africa.

After the negotiations, a number of issues and definitions remained unresolved including, but not limited to: Geographical Coverage (protocol area), Objectives of the ICZM, ICZM instruments, Conservation and Rehabilitation of Coastal Ecosystems, Biodiversity and Landscapes, and Disaster Risk Management.

A number of Contracting Parties offered to develop text for the articles where there was no agreement and further, requested the Secretariat to define the term “instruments” and communicate the definition to the Contracting Parties and get feedback from them.

The explanations below provide the Secretariat’s definition of “ICZM Instruments” for consideration at the Second Negotiations Meeting on the ICZM protocol on 21 to 22 March, 2016 in Mauritius.

Article 9: Various ICZM Instruments

The correct understanding of “ICZM Instruments” is contextual: there is the ordinary and simple English meaning of the word “instruments” or a puritan interpretation of the term, and there is contextual use of the word. General contextual examples include: “international legal instruments”, “legal instruments”, “policy instruments”, “surgical instruments”, “musical instruments”, “instrumentation instruments”, “ratification instruments”, etc.

The English use of the word “instrument” is a tool or device used for a particular purpose; a tool or device designed to do careful and exact work; a device that measures something (such as temperature or distance).

For legal puritans”, the word is ambiguous, imprecise, and indefinable: and therefore should be excluded from legal drafting and usage. However, languages evolve and now the word “instrument” is frequently used in international legal drafting, including in multilateral environmental agreements, and those dealing with economic and trade issues. Examples include the 1992 Convention on Biological Diversity (CBD) and the Basel Convention.

With regard to the draft ICZM protocol to the Nairobi Convention, the term “ICZM Instruments” (Draft Article 9) is used contextually. “The Guideline for Drafters” which was prepared to guide the negotiation process of the ICZM Protocol attempted to provide an understanding of the term “ICZM instruments” as follows:

The rationale for this article [9] is to provide guidance to the States concerning the range of available “ICZM instruments” which the States could choose to implement ICZM at the national level. Without being exhaustive, examples of “ICZM instruments” may include strategic environmental assessments; zoning and spatial planning; sensitivity mapping and vulnerability assessment; coastal setback lines; monitoring and evaluation; ecosystem valuation; environmental impact assessments; environmental auditing; coastal strategy, plans and programmes; marine and coastal protected areas; contingency planning and disaster risk management. States may utilize some or all or a combination of the foregoing “ICZM instruments” according to their national convenience or preference. However, some of the instruments are invariably more effective or even famous, thus necessitating their more common usage or detailed coverage in the Protocol. Responding to coastal environmental issues involves two distinct but inter-related approaches. The first is to proactively plan the use of coastal areas to promote their optimal use and to minimize the potential for future conflicts. The second is to

manage development which typically involves a system whereby developers are required to obtain prior authorization before initiating development in a particular area.

Planning, administrative and legal instruments can be used in this regard. For example, planning instruments can be used to guide future construction and development of coastal areas, primarily by dictating or influencing where certain activities may or may not be sited. Secondly, legal instruments can be used to set up authorization regimes. This is most useful where a particular activity is considered to be socially useful but to have undesirable consequences if the scale, frequency or manner of undertaking the activity in question is not limited.

The list and variety of "ICZM instruments" in the Protocol are open ended and it should also be within the discretion of the States to utilize any combination of them to suit their national circumstances.

In the Secretariat's view it is proper to maintain the pluralistic aspect of the term "instrument". This is because the context in which it is used necessarily implies multiple or a variety of "ICZM instruments".

Finally, the term "ICZM instruments" should be treated as a technical term among the myriad ICZM terminology/vocabulary. The word "instrument" can also be substituted by an equally well defined technical term if available.

The 2nd meeting of negotiators of the ICZM Protocol should accordingly be guided by the Guidelines to Negotiators cited above.

The secretariat has meanwhile provided below some explanations of the use of the term "instruments" as commonly used in legal and policy discourse:

Legal Instruments

A legal instrument is a formally executed written document. A legal instrument states some contractual relationship or grants some rights. It formally expresses a legally enforceable act, process, or contractual duty, obligation, or right. Additionally, a legal instrument evidences the act and the process of preparing a legal instrument or an agreement. A legal instrument secures a legal right. The ICZM protocol once adopted will be a legal instrument.

Policy Instruments

Policy instruments: is the term used to describe some methods used by governments to achieve a desired effect. The two basic types of policy instruments are regulatory and economic instruments.

Regulatory instruments are based in law, i.e. enforceable, and are aimed at reaching desired, prescribed environmental quality targets or performance standards by regulating the behaviour of individuals and/or firms (Seik, 1996).

In the ICZM Protocol, the term "Instrument" in our opinion should be used in reference to policy instruments and legal instruments.