

Approved for tabling. *But* SNA
26/6/19

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - THIRD SESSION

THE NATIONAL ASSEMBLY

REPORT OF
THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS
ON

CONSIDERATION OF AGREEMENT FOR THE SETTING UP OF A REGIONAL
MARITIME INFORMATION EXCHANGE AND SHARING MECHANISM IN THE
WESTERN INDIAN OCEAN REGION & EXPLANATORY MEMORANDUM AND THE
REGIONAL AGREEMENT ON THE CO-ORDINATION OF OPERATIONS AT SEA IN THE
WESTERN INDIAN OCEAN AND THE EXPLANATORY MEMORANDUM

Directorate of Committee Services
Clerk's Chambers
Parliament Buildings
NAIROBI


 THE NATIONAL ASSEMBLY PAPERS LAID	
JUNE, 2019	
DATE: 26 JUN 2019	
DAY: Wed	
TABLED BY:	Hon. Kato de Maito Chair Person
CLERK-AT THE-TABLE:	M. Mado

Table of Contents

LIST OF ABBREVIATIONS.....	1
CHAIRPERSON'S FOREWORD	2
EXECUTIVE SUMMARY	4
1.0 PREFACE	5
1.1 Establishment and Mandate of the Committee.....	5
1.2 Oversight	6
1.3 Committee Membership	7
1.4 Committee Secretariat	8
RECOMMENDATIONS.....	9
2.0 INTRODUCTION	10
Compliance with the procedure for approval of a treaty as stipulated under the Treaty Making and Ratification Act, 2012	10
A. The agreement for the setting up of a Regional Maritime Information Exchange and Sharing Mechanism in the Indian Ocean Region	12
2.1 Outline of the Agreement	12
2.2 Signing	16
2.3 Financial Implication.....	16
2.4 Legal Implication	16
B. The Regional agreement on the Co-ordination of Operations at Sea in the Western Indian Ocean and the Explanatory Memorandum	17
3.1 Outline of the Agreement	17
3.2 Signing	21
3.3 Financial Implication.....	21

3.4 Legal Implication	21
4.0 SUBMISSIONS BY THE MINISTRY OF DEFENCE, THE ATTORNEY GENERAL, STATE DEPARTMENT FOR SHIPPING & MARITIME AFFAIRS	22
4.1 Submission by the Ministry of Defence.....	22
4.2 Presentation by the Principal Secretary for Shipping & Maritime Affairs	24
5.0 COMMITTEE OBSERVATIONS	26
6.0 COMMITTEE RECOMMENDATIONS.....	27

LIST OF ABBREVIATIONS

IOC	Indian Ocean Commission
UNCLOS	United Nations Convention on the Law of the Sea
RCOC	Regional Coordination Operation Centre
RMIFC	Regional Maritime Information Fusion Centre
JOCC	Joint Operational Coordination Centre
IMO	International Maritime Organization
RZO	Regional Zone of Operations
LO	Liaison Officer
CS	Cabinet Secretary
MOD	Ministries of Defence
EMZ	Existing Maritime Zones
GOK	Government of Kenya
ROS	Republic of Seychelles
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
NA	National Assembly
AP	State Party
SA	Suspicious Vessel
TL	Territorial Limits
ESA-IO	Eastern & Southern Africa & Indian Ocean
TC	Technical Committee
MASE	Maritime Security

I

Report of the Departmental Committee on Defence and Foreign Relations on Consideration of agreement for the Setting up of a Regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region & Explanatory Memorandum and the Regional Agreement on the Co-ordination of Operations at Sea in the Western Indian Ocean and the Explanatory Memorandum

CHAIRPERSON'S FOREWORD

The Agreements seeks to establish a frame work for regional cooperation amongst state parties to enhance maritime safety and security in accordance with the national sovereignty, territorial integrity and non-interference in the internal affairs of the states in accordance with international law. The Agreements further seeks to establish a Regional Maritime Information Fusion Centre to facilitate the sharing of maritime information and a joint Operational Coordination Centre to coordinate joint interventions in the maritime zones of State Parties and the high seas.

The Agreement were negotiated under the auspices of the Indian Ocean Commission (IOC) to which Kenya is a Member. It was signed by Madagascar, Djibouti, Seychelles, Mauritius and Comoros on 29th April 2018.

Kenya and France signed the Agreement on 26th November 2018 on condition that Kenya's signature was subject to the approval of both Cabinet and the National Assembly. The Cabinet approved the signature and authorized the Ministry of Defence to seek the authority of the House to ratify the Agreement.

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings.

On behalf of the Committee, it is therefore my pleasant duty and privilege, to lay this report on **the Ratification of the Agreement for the setting up of a Regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region and Explanatory memorandum and the Regional Agreement on the Co-ordination of operations at Sea in the Western Indian Ocean and the Explanatory Memorandum** for consideration and approval by the House Pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012 and Standing Order 199.



THE HON. KATOO OLE METITO, EGH, MGH, M.P.
**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN
RELATIONS**

EXECUTIVE SUMMARY

The purpose of this report is to consider the ratification of the the Agreements for the setting up of a regional maritime information exchange and sharing mechanism in the western Indian ocean region & explanatory memorandum and the regional Agreement on the co-ordination of operations at sea in the western Indian ocean and the explanatory memorandum pursuant to Section 8 of the Treaty Making and Ratification Act, 2012

In considering agreement, the Committee held a total of two (2) sittings. The Committee received briefs on the Agreements from the Ministry of Defence and the Attorney General.

Pursuant to Article 118 (1)(b) of the Constitution on Public Participation and section 8(3) of the Treaty Making and Ratification Act of 2012, the Committee placed advertisements in two local dailies, on Friday 29th of March, 2019 (see Annex) requesting for submissions of memoranda on the subject matter. However there was no response from the public.

The Committee held sittings with the Ministry of Defence and the Auditor General as a key stakeholder in this matter.

The report concludes that the National Assembly approves the ratification of **the Agreement for the Setting up of A Regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region & Explanatory Memorandum and the Regional Agreement on the Co-Ordination of Operations at Sea in the Western Indian Ocean and the Explanatory Memorandum.**

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

The Departmental Committee on Defence and Foreign Relations is established under Standing Order No. 216. Its mandate pursuant to SO 216 (5) with the following terms of reference: -

- i) investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments;*
- ii) study the programme and policy objectives of the Ministries and Departments and the effectiveness of the implementation;*
- iii) study and review all legislation after First Reading subject to the exemptions under Standing Order 101 A (4);*
- iv) study and review all legislation referred to it;*
- v) study, assess and analyse the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;*
- vi) investigate and inquire into all matters relating to the assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House or a Minister; and*
- vii) make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.*

The Committee is mandated to consider the following subjects: -

- i. Defence
- ii. intelligence,
- iii. foreign relations
- iv. diplomatic and consular services,
- v. international boundaries,

5

Report of the Departmental Committee on Defence and Foreign Relations on Consideration of agreement for the Setting up of a Regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region & Explanatory Memorandum and the Regional Agreement on the Co-ordination of Operations at Sea in the Western Indian Ocean and the Explanatory Memorandum

- vi. international relations,
- vii. agreements,
- viii. treaties and
- ix. Conventions.

1.2 Oversight

In executing its mandate, the Committee oversees the following government Ministries, departments and or agencies, namely:

- i. Ministry of Defence
- ii. Ministry of Foreign Affairs
- iii. The National Intelligence Service
- iv. The State Department for East African Community Integration.

1.3 Committee Membership

- Chairperson** **1. The Hon. Katoo Ole Metito, M.P.**
- Vice Chairperson** **2. The Hon. Richard Tongi, M.P.**
3. The Hon. Yusuf Hassan Abdi, MP
 4. The Hon. Charles Kilonzo, MP
 5. The Hon. Patrick Makau, MP
 6. The Hon. Col. (Rtd.) Dido Ali Raso, MP
 7. The Hon. Peter Mungai Mwathi, MP
 8. The Hon. Beatrice Nkatha Nyagah, HSC, MP
 9. The Hon. Martha Wangari Wanjira, MP
 10. The Hon. Memusi Ole Kanchory, MP
 11. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP
 12. The Hon. (Dr.) Lillian Gogo, MP
 13. The Hon. Nelson Koech, MP
 14. The Hon. Moses Nguchine Kirima, MP
 15. Hon. Vincent Kipkurui Tuwei, MP
 16. The Hon. John Lodepe Nakara, MP
 17. The Hon. Ernest Ogesi Kivai, MP
 18. The Hon. Caleb Amisi, MP
 19. Hon. Asha Hussein Mohamed, MP

1.4 Committee Secretariat

Senior Clerk Assistant	Mr. Samuel Kalama
Third Clerk Assistant	Mr. Abdiaziz Shobay
Senior Sergeant-At-Arms	Mr. Andrew Shangarai
Legal Counsel II	Mr. Ronald Walala
Research Officer III	Ms. Grace Wahu
Fiscal Analyst	Mr. Edison Odhiambo
Audio Officer	Rodgers Kilungya

RECOMMENDATIONS

The Committee recommends **THAT**, Pursuant to the Section 8 of the Treaty Making and Ratification Act, the House approves the ratification of the **the Agreements for:-**

- 1. The Setting up of a Regional Maritime Information exchange and sharing mechanism in the Western Indian ocean region & explanatory memorandum and;**
- 2. The Regional Agreement on the Co-ordination of operations at sea in the western Indian ocean and the explanatory memorandum.**

2.0 INTRODUCTION

1. During the SBEC in Nairobi, the Cabinet Secretary Ministry of Defence on 26th November 2018 signed agreements for the establishment of the Regional Maritime Information Fusion Centre (RMIFC) and the Regional Coordination of Operations Centre (RCOC) domiciled in Madagascar and Seychelles respectively.
2. The agreements enjoined Kenya as a Cooperating State among nine Eastern Africa Nations to operationalize coordinated maritime security in the region under the EU funded Maritime Security (MASE) Promotion Programme, the agreements were negotiated under the auspices of the Indian Ocean Commission (IOC) to which Kenya is a Member.
3. These agreements complement the maritime security, safety and regulation enforcement mechanisms that remain key towards the sustainable exploitation of the Blue Economy.
4. Kenya and France signed the Agreement on 26th November 2018 on condition that Kenya's signature was subject the approval of both Cabinet and the National Assembly. The Cabinet approved the signature and authorized the Ministry of Defence to seek the authority of the House to ratify the Agreement.

Compliance with the procedure for approval of a treaty as stipulated under the Treaty Making and Ratification Act, 2012

5. The procedure for approval of Treaties is outlined in section 8 of the Treaty Making and Ratification Act, 2012 (hereinafter referred to as "the Act").
6. Section 8 (1) provides that where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.
7. Subsection (3) provides that the relevant committee shall ensure public participation in the ratification process in accordance with laid down parliamentary procedures.
8. Section 7 of the Act provides as follows—

7. Where Government intends to ratify a treaty, the Cabinet Secretary of the relevant State department shall, in consultation with the Attorney-General, submit to the Cabinet the treaty, together with a memorandum outlining—

- (a) the objects and subject matter of the treaty;
- (b) any constitutional implications including—
 - (i) any proposed amendment to the Constitution; and
 - (ii) that the treaty is consistent with the Constitution and promotes constitutional values and objectives;
- (c) the national interests which may be affected by the ratification of the treaty;
- (d) obligations imposed on Kenya by the treaty;
- (e) requirements for implementation of the treaty;
- (f) policy and legislative considerations;
- (g) financial implications;
- (h) ministerial responsibility;
- (i) implications on matters relating to counties;
- (j) the summary of the process leading to the adoption of the treaty;
- (k) the date of signature;
- (l) the number of states that are party to the treaty;
- (m) the views of the public on the ratification of the treaty;
- (n) whether the treaty sought to be ratified permits reservations and any recommendations on reservations and declarations;
- (o) the proposed text of any reservations that should be entered when ratifying the treaty in order to protect or advance national interests or ensure conformity with the Constitution; and
- (p) whether expenditure of public funds will be incurred in implementing the treaty and an estimate, where possible, of the expenditure.

A. The agreement for the setting up of a Regional Maritime Information Exchange and Sharing Mechanism in the Indian Ocean Region

2.1 Outline of the Agreement

9. **Article 1** contains definitions of terms used in the Agreement.
10. **Article 2** defines the Parties and Partners to the Agreement.
11. **Article 3** outlines the objectives of the Agreement. The Agreement seeks to lay the basis for a regional cooperation framework among its State Parties to enhance maritime safety and security. Specifically, it seeks to improve each Party's knowledge of its maritime situation, inform speedy operational responses to threats, allow state parties to master the knowledge and technology of, among others, maritime information fusion and promote the culture of maritime information sharing.
12. **Article 4** outlines the scope of the Agreement. The Agreement does not govern warships or State vessels that are not exercising commercial activities that are in transit. Parties are at liberty to choose which information to share.
13. **Article 5** establishes the Regional Maritime Information Fusion Centre ('the Centre'). The Centre is to enjoy legal personality and the protections, privileges and immunities granted by its host State, Madagascar. The Centre is mandated to receive, store, process, merge, share and exchange maritime information for the purpose of maritime security, safety of harbor and maritime approaches, protection of the marine environment and monitoring of maritime traffic. Each party to the Agreement is to designate a Liaison Officer within the Centre and all parties are to consider the financing of the Centre.
14. **Article 6** outlines the responsibilities of the parties to the Agreement. All parties are to enact regulations to allow for the sharing of data for purposes of implementing the Agreement. All parties also agree to increase the sources and quantity of information given to the Centre and to observe agreed confidentiality and integrity requirements attached to any information shared.

Each state also agrees to maintain its structures and installations in constant operational condition for purposes of fulfilling its obligations to share maritime information and data.

15. **Article 7** outlines the responsibility of the Host State, Madagascar, with regard to the Centre. Madagascar commits to establish the Centre and guarantee its independence and fund and capacitate it to enable it discharge its tasks. Madagascar further commits to inform parties of any change in its legislation or other circumstance which may affect the operations of the Centre.

16. **Article 8** provides for the fusion of all maritime information shared by the parties and partners to the agreement.

17. **Article 9** provides the modalities of access to shared maritime information and data. All information and data shared pursuant to the agreement is only to be accessed to specific persons authorized to access the information or data in accordance to procedures approved by the parties. As a principle, only State Parties providing information to the Centre for sharing are entitled to access the regional maritime database. Third parties may only access the shared information or data and the database with the prior approval of the Parties.

18. **Article 10** outlines the procedures relating to the exchange and sharing of maritime information and data. Information and data is to be shared electronically, verbally, in writing or in any other secured form. Any dispatch of the maritime status and analysis report by the Centre is to be done electronically in a secure and encrypted manner that is only accessible to authorized persons. Where the Centre receives maritime information and data electronically the same must be done securely and under encryption.

19. **Article 11** sets out the information and data protection measures that govern the Agreement. Such information and data is to be confidential and where third parties, the communicating party or the Centre must require such the procedures outlined under Article 10. A State Party or the Centre may instances where information or data is lost, suspected to be lost or disclosed authorized manner. Affected parties are to be apprised of the progress and findings of the

inquiry and retain the right to take any remedial action including suspension or termination of the Agreement.

20. **Article 12** governs the use of shared maritime information for judicial purposes. Information shared under the Agreement may only be provided for use in judicial proceedings with the consent of the sharing party and limited to the information required.

21. **Article 13** notes that the operation of the Agreement shall not affect the existing maritime boundaries of State Parties or be construed as an acceptance of any claim relating to maritime boundaries.

22. **Article 14** provides for the procedure of the amendment of the Agreement. Amendment s may be proposed any time in writing to the Indian Ocean Commission which is the Depository of the Agreement. The Depository is required to circulate any proposed amendment to State Parties and amendments can only be adopted unanimously. Any amendments come into force 30 days after the receipt of all instruments of approval from the State Parties.

23. **Article 15** provides for the settlement of all disputes under the agreement through consultations conducted through diplomatic channels.

24. **Article 16** allows reservations to be made to the Agreement on condition that the reservations are in line with the objectives of the Agreement.

25. **Article 17** allows State Parties to make declarations or communications when signing the Agreement for the purpose of observing their national laws on condition that such declarations or communications do not affect the substance of the Agreement. When signing the Agreement, the Cabinet Secretary for Defence appended a declaration to the Agreement to the effect that the signature was subject to approval of the Agreement by the Cabinet and its ratification by the National Assembly as per the requirements of the Constitution and the Treaty Making and Ratification Act, 2012.

26. **Article 18** provides for the suspension and termination of the Agreement. Where one or more state Parties fail in implementing the Agreement, it may be fully or partially suspended. In the event any dispute or a reported failing under the agreement is not resolved, any party may

serve a 3 months' notice of the termination of the Agreement. The exchange of data may be immediately suspended where a serious proven breach of confidentiality which undermines the entire data exchange system occurs. This immediate suspension is only to come into effect upon the written and substantiated request of a party or the Centre and may be extended through a decision made by two-thirds of the State Parties.

27. **Article 19** allows the withdrawal of any State Party from the Agreement after giving 3 months' notice. Upon withdrawal, the Agreement shall still apply with regard to any administrative or judicial proceedings arising from the operation of the Agreement.

28. **Article 20** incorporates the Annex on the Governance of Regional Centres as a part of the Agreement. The Annex provides for the organizational Structure of the Centre and the Regional Coordination Operation Centre (RCOC). The Annex establishes a Steering Committee for the Centre and the RCOC comprising State Parties which is to meet at least twice every year. Chairmanship of the Steering Committee is rotational with the exclusion of the representative of Madagascar, the Host Country. The Steering Committee is charged with providing strategic leadership and approving the programmes of the Centre and RCOC as submitted by their respective Directors. The Annex also establishes a Technical Committee for the Centre and the RCOC comprised of the Director, Deputy Director and Liaison Officer from each state party who plays a consultative role. The Technical Committee implements the decisions of the Steering Committee. Under the Annex, the designation of the Director and the Deputy Director are to be decided at a later date.

29. With regard to funding, the Centre and the RCOC are to be primarily funded by their host countries in addition to any contributions from State Parties and other bodies. The Steering Committee may authorize the Director of the Centre or the RCOC to accept any contributions, donations or grants on condition that the same do not affect the autonomy of the institutions, are compatible with the objectives and work of the institutions and are subject to their approval before disbursement.

30. **Article 21** establishes the Indian Ocean Commission as the Depositary for the Agreement.

31. **Article 22** provides for the entry into force of the Agreement upon notification of its signature by three State Parties.

2.2 Signing

32. The Agreement was first signed at Balaclava, Mauritius on **29th April, 2018** by representatives of Comoros, Djibouti, Madagascar, Mauritius and the Seychelles. It contains two Addenda evidencing the signature made on behalf of France and Kenya at Nairobi on **26th November 2018**. Cabinet Secretary for Defence signed the Agreement on behalf of the Government of Kenya and subject to approval by Cabinet and ratification by the National Assembly.

2.3 Financial Implication

33. The Host country, Madagascar, is required under the Agreement to cater for all the expenses related to the Centre. Kenya's express contribution to the Agreement is the delegation, at its cost, of a Liaison Officer to the Centre.

2.4 Legal Implication

34. The Agreement has already come into force. Upon ratification, the Agreement shall bind the Government of Kenya.

B. The Regional agreement on the Co-ordination of Operations at Sea in the Western Indian Ocean and the Explanatory Memorandum

3.1 Outline of the Agreement

35. **Article 1** contains definitions of terms used in the Agreement.
36. **Article 2** defines the Parties and Partners to the Agreement.
37. **Article 3** outlines the objectives of the Agreement. The Agreement seeks to lay the basis for a regional cooperation framework among its State Parties to enhance maritime safety and security. Specifically, it seeks to promote cooperation and coordination among member states to enable regional coordinated operations, strengthen individual and institutional capacities through trainings, to have coordinated interventions for security and safety measures, enable mutual support among member states and promote cooperation with other maritime agencies.
38. **Article 4** outlines the measures to facilitate the achievement of the objectives. All parties undertake to cooperate in the fight against foreseeable threats listed in Article 6, provide assistance to regional coordinated operations at sea in terms of material, human and legal means, provide for ad-hoc mutual assistance, facilitate clearance procedures, encourage effective coordination among law enforcement officers and provide logistical support.
39. **Article 5** outlines the scope of the Agreement. The agreement shall be consistent with the provisions of international instruments including United Nations Convention on the Law of the Sea (UNCLOS) and the agreement shall not affect vessels and aircrafts enjoying immunities under international law. Under the Agreement, law enforcement vessels and aircraft are not to be considered as suspected vessels or aircraft.
40. **Article 6** outlines the framework of regional coordinated operations. All parties undertake to fight against piracy and organized crime, assist in the exercise of state prerogatives with regard to vessels, participate in the search and rescue of human beings at sea, protect the maritime environment, restore safety of navigation at sea, protect under water sites and help in the event of disasters.

41. **Article 7** outlines coordinated operations of regional interest. The operations are those at sea that can lead to legal action. An operation at sea level is of regional interest if one party notifies the Regional Coordination Operation Centre (RCOC) that it cannot respond to a foreseeable threat unless supported by specialized resources of at least one other party; there exists a foreseeable threat that does not directly affect one of the parties but threatens their collective interest, the interests of a third state or the international community; or the nature of the operation is to prevent a foreseeable threat. The agreement does not grant any party to enter territorial waters of another state.

42. **Article 8** outlines actions that may be taken at the national level relating to suspicious vessels and aircraft. All parties commit to respond to requests for verification of nationality, allow the arrest and search of suspicious vessels and give prompt instructions on the continuation of operations concerning immobilized vessels. All parties also undertake to facilitate search of the flag state of a suspicious vessel where it does not fly the flag of any state.

43. **Article 9** outlines procedures for the designation of law enforcement officers for the purposes of the Agreement. Any party may designate qualified law enforcement officers to embark on vessels of another party to enforce laws of the designating party, seek authorization to facilitate entry and navigations of vessels and aircrafts and assist the other parties in the conduct of ship boarding. All state parties shall cooperate on the training of the law enforcement officers and the officers shall comply with the laws and customs of the state to which the vessel is in.

44. **Article 10** outlines boarding and search guidelines. Only authorized teams of state parties are allowed to carry out boarding and searches. However, visiting teams (who may carry weapons on a case by case basis) may only operate in accordance with the modalities that are to be agreed between the state parties.

45. **Article 11** outlines the modalities of jurisdictional and mutual legal assistance. All parties undertake to establish their jurisdiction over offences detected by their enforcement officers, recognize evidence brought by law enforcement officers from other states in their courts and adopt a mutual legal assistance arrangement in regional coordinated operations. The agreement does not affect the rights and privileges of any person in a legal proceeding.

46. **Article 12** outlines the manner in which state parties are to treat other vessels beyond the territorial waters of any state. A state party may board such a vessel for the purpose of providing assistance in cases of distress or with the authorization of the flag state to take repressive measures. International law is to guide a State Party.

47. **Article 13** establishes the Regional Coordination Operations Centre ('RCOC'). The RCOC is to enjoy legal personality and the protections, privileges and immunities granted by the Hosting agreement signed on 1st July 2017 between the Indian Ocean Commission and the Republic of Seychelles. The RCOC will work closely with the Regional Maritime Information Fusion Centre (RMIFC) and each party to the Agreement is to designate a Liaison Officer within the Centre. The functions of the Centre are to plan and coordinate the operations defined in Article 6 of the Agreement and parties are to study the possibilities of the financial sustainability of the Centre.

48. **Article 14** outlines the responsibility of the Host State. The Republic of Seychelles commits to establish the RCOC and guarantee its independence and fund and capacitate it to enable it discharge its tasks. The Republic of Seychelles further commits to inform parties of any change in its legislation or other circumstance which may affect the operations of the Centre.

49. **Article 15** outlines the effect of the Agreement on existing Maritime Zones and Territorial Limits. No act by all parties to the agreement is to be construed as implying acceptance by any state party of a claim to territory or maritime boundaries by another state.

50. **Article 16** provides for amendments. Amendments may be proposed any time in writing to the Indian Ocean Commission which is the Depositary of the Agreement. The Depositary is required to circulate any proposed amendment to State Parties and amendments can only be adopted unanimously. Any amendments come into force 30 days after the receipt of all instruments of approval from the State Parties.

51. **Article 17** provides for the settlement of all disputes under the agreement through consultations conducted through diplomatic channels.

52. **Article 18** allows reservations to be made to the Agreement on condition that the reservations are in line with the objectives of the Agreement
53. **Article 19** provides for Declarations and Communications. All parties are allowed to make declarations or communications when signing, ratifying, accepting or approving the agreement provided such declarations are not intended to modify the legal effect of the agreement.
54. **Article 20** provides for the suspension of the Agreement. Any party can suspend its obligations upon notification to the Depository and the parties. Any party may, in the event a dispute is not settled, also terminate this agreement by notifying the depository in writing at least three (3) months prior to termination taking effect.
55. **Article 21** provides for withdrawal from the Agreement. Withdrawal from the agreement is to take effect 3 months after receipt by the Depository of the notification of withdrawal from the member state.
56. **Article 22** incorporates the annex on Governance of Regional Centers as a part of the Agreement. The Annex provides for the organizational Structure of the RCOC and the RMIFC. The Annex establishes a Steering Committee for the two institutions comprising State Parties which is to meet at least twice every year. Chairmanship of the Steering Committee is rotational with the exclusion of the representative of the Seychelles, the Host Country. The Steering Committee is charged with providing strategic leadership and approving the programmes of the two institutions as submitted by their respective Directors. The Annex also establishes a Technical Committee for the RCOC and the RMIFC comprised of the Director, Deputy Director and Liaison Officer from each state party who plays a consultative role. The Technical Committee implements the decisions of the Steering Committee. Under the Annex, the designation of the Director and the Deputy Director are to be decided at a later date.
57. **Article 23** establishes the Indian Ocean Commission as the Depository for the Agreement.

58. **Article 24** provides for the entry into force of the Agreement upon notification of its signature by three State Parties.

3.2 Signing

59. The Agreement was first signed at BalACLava, Mauritius on 29th April, 2018 by representatives of Comoros, Djibouti, Madagascar, Mauritius and the Seychelles. It contains two Addenda evidencing the signature made on behalf of France and Kenya at Nairobi on 26th November 2018. The Cabinet Secretary for Defence signed the Agreement on behalf of the Government of Kenya and subject to approval by Cabinet and ratification by the National Assembly.

3.3 Financial Implication

60. The Host country, Seychelles, is required under the Agreement to cater for all the expenses related to the Centre. Kenya's express contribution to the Agreement is the delegation, at its cost, of a Liaison Officer to the Centre.

3.4 Legal Implication

61. The Agreement has already come into force. Upon ratification, the Agreement shall bind the Government of Kenya.

4.0 SUBMISSIONS BY THE MINISTRY OF DEFENCE, THE ATTORNEY GENERAL, STATE DEPARTMENT FOR SHIPPING & MARITIME AFFAIRS

4.1 Submission by the Ministry of Defence

62. The Regional Agreement on the Co-ordination of Operations at Sea in the Western Indian Ocean Region (the Agreement) was signed by the Cabinet Secretary for Defence on behalf of the Republic of Kenya on 26th November 2018 at the Blue Economy Conference held in Nairobi. The Agreement has been signed by the Union of Comoros, Republics of Djibouti, Mauritius, France, Madagascar and Seychelles. The Agreement was concluded within the auspices of the Indian Ocean Commission where the Republic of Kenya is a member.

63. Western Indian Ocean Coastal States observed that the existing maritime threats within the Western Indian Ocean such as illegal, unreported, and unregulated fishing, piracy and armed robbery at sea and unauthorised exploitation of maritime resources within the states territorial sea and exclusive economic zone required a coordinated response. The Agreement thus provides a framework for the conduct of joint co-ordinated operations by the West Indian Ocean States. It also provides a framework for coordinated search and rescue of persons at sea.

64. The State Parties agreed to establish a Regional Co-ordination Operations Centre in Seychelles. Seychelles is required to provide a budget for its day to day running. The Centre will co-ordinate joint operations between the State parties.

65. The joint co-ordinated operations will provide State Parties an opportunity to suppress maritime threats in the Western Indian Ocean and thus by extension contribute to the national security of the Republic of Kenya. It is observed that the enhancement of maritime security within the Western Indian Ocean will also enhance maritime traffic to the Port of Mombasa and thus enhance the overall economy of the Republic of Kenya.

66. Under the Agreement, State Parties commit to conduct joint training and exercises. This will enhance the capacity of the State Parties agencies to undertake maritime operations. The Kenya Navy and the Kenya Coast Guard will therefore benefit through capacity building.

67. The European Union has also undertaken to provide a budget to re-imburse state parties for participating in co-ordinated operations within the West Indian Ocean. State Parties will be

expected to pledge maritime capability assets for use in the joint co-ordinated operations and thus obtain reimbursement. In essence therefore, if the Kenya Navy and the Kenya Coast Guard Service pledge assets to the joint co-ordinated operations, the Republic of Kenya will be reimbursed for undertaking operations which they are already required to undertake as part of their core mandates.

68. It is recommended that the National Assembly approves the ratification of the Agreement.

69. The Regional Exchange and Sharing Mechanism in the Western Indian Ocean Region (the Agreement) was signed by the Cabinet Secretary for Defence on behalf of the Republic of Kenya on 27 November 2018 at the Blue Economy Conference held in Nairobi. The Agreement has been signed by the Union of Comoros, Republics of Djibouti, Mauritius, France, Madagascar and Seychelles. The Agreement was concluded within the auspices of the Indian Ocean Commission where the Republic of Kenya is a member.

70. The Agreement is primarily aimed at supporting the joint co-ordinated operations under the Regional Agreement on the Co-ordination of Operations at Sea in the Western Indian Ocean Region by providing a framework for state parties to share real-time or near real-time information on occurrence in the Western Indian Ocean. It seeks to ensure that State Parties improve their knowledge of the maritime situation through a common maritime picture. State parties however have the discretion to determine what information to share and may withhold information they consider to be sensitive.

71. The State Parties agree to Establish a regional Maritime Information Fusion Centre (RMIFC) in the Republic of Madagascar. The RMIFC is expected to receive information from a state party and disseminate the same to other state parties. The Republic of Madagascar is expected to provide a budget for the day to day running of the RMIFC.

72. The Republic of Kenya was elected unanimously to chair the Contact Group on Piracy off the Coast of Somalia during the 22nd Plenary Session in Mauritius for a period of 2 years with effect from 20 June 2019. The Agreement together with the Regional Agreement on the Co-ordination of Operations at Sea in the Western Indian Ocean Region provide essential tools for

the Republic of Kenya to develop and implement programmes within the Contact Group to suppress piracy off the coast of Somalia.

73. It is envisaged that the information received through the RMIFC will be shared with other internal agencies that require the same for their operations. This will in effect therefore enhance the national security of the republic of Kenya.

74. It is recommended that the National Assembly approves the ratification of the Agreement.

4.2 Presentation by the Principal Secretary for Shipping & Maritime Affairs

75. On Thursday, 20th June, 2019 the Principal Secretary for Maritime Affairs, Ms. Nancy Karigithu informed the Committee that:-

- i. Both the Agreement for the Setting up of a Regional Maritime Information Exchange And Sharing Mechanism in the Indian Ocean Region and the Regional Agreement on the Co-Ordination of Operations at Sea in the Western Indian Ocean And The Explanatory Memorandum seek to set up a Regional Maritime Information Fusion Center (RMIFC) in Madagascar and a Regional Coordination Operations Center (RCOC) in Seychelles respectively.
- ii. The limitations in collaboration on the areas of information sharing and coordination of action at sea as the agreements place more focus on Madagascar and Seychelles despite Kenya being a host to one of such regional centers, the Mombasa Regional Maritime Rescue Coordinator Center (RMRCC). During the drafting of the agreements, Kenya requested for consideration and recognition of the role each regional coordination center dealing with maritime surveillance including the RMRCC as recognized and accepted by consensus by the Ministerial meeting held in Mauritius 2018 and adopted in the meeting's final report. The inclusion of reservations that would cover these concerns would allow Kenya safeguard her national interest in the event it needs to do so in the process of implementation of the agreement

- iii. The agreements were developed under the EU Maritime Security (MASE) framework. The implementation framework of the MASE project constitutes six states in collaboration with one another. This includes, Kenya, the Seychelles, the Comoros, Mauritius, Madagascar and the Reunion Island, with the possibility of incorporating South Africa and Mozambique at their option to do so.
- iv. The liberal use of the word '*Shall*', in the agreements may result in intrusion on national sovereignty,
- v. The Government of the Republic of Kenya may consider '*Reserving the right to interpret any and all the articles in the agreement in the context of and with due regard to Kenya's Sovereignty and territorial integrity*'.

5.0 COMMITTEE OBSERVATIONS


76. The Committee made the following observations: - THAT;

1. the Constitution in Article 2 (6) provides for the entrenchment of this Agreements into the laws of Kenya;
2. the procedure for approval of a treaty as stipulated in the Treaty making and Ratification Act, 2012 was complied with. In that the Treaties were submitted with memoranda in line with provision of section 8 of the said Act;
3. the implementation of the provisions in the agreements will enable Kenya foster regional cooperation in order to enhance maritime safety and security. In particular the agreements will contribute to national security through sharing of information, coordinating operations, mutual legal support and suppressing trans-boundary threats;
4. the operationalization of the RCOC and RMIFC require the Cooperating States to attach Liaison Officers to the Centres. In this regard Kenya will second Liaison Officers to the centres at the cost of the Kenyan Government;
5. the EU through the IOC has made provisions for an initial funding amounting to €5,000,000.00 to support the coordination of Cooperating States' action at sea. The EU has committed to fund the operations under MASE programme up to 2022.

6.0 COMMITTEE RECOMMENDATIONS

77. The Committee recommends **THAT**, pursuant to Section 8 of the Treaty Making and Ratification Act, 2012 the House approves the ratification of the Agreements for the:-

1. **Setting up of a Regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region & Explanatory Memorandum and;**
2. **Regional Agreement on the Co-ordination of Operations at Sea in the Western Indian Ocean and the Explanatory Memorandum.**

Signed  Date 26/6/2019

THE HON. KATOO OLE METITO, EGH, MGH, M.P.

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN
RELATIONS**



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (THIRD SESSION)

THE NATIONAL ASSEMBLY

**MINUTES OF THE 44TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
DEFENCE & FOREIGN RELATIONS HELD ON SATURDAY, 22ND JUNE, 2019 IN
KARAHI CONFERENCE ROOM, ENGLISH POINT MARINA MOMBASA COUNTY
AT 10.30 AM**

PRESENT

1. The Hon. Katoo Ole Metito, EGH, MGH, MP (Chairperson)
2. The Hon. Richard Tong'i, MP (Vice Chairperson)
3. The Hon. Yusuf Hassan Abdi, MP
4. The Hon. Charles Kilonzo, MP
5. The Hon. Col. (Rtd) Dido Ali Raso, MP
6. The Hon. Peter Mungai Mwathi, MP
7. The Hon. Beatrice Nkatha Nyagah, HSC, MP
8. The Hon. John Lodepe Nakara, MP
9. The Hon. Memusi Ole Kanchory, MP
10. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP
11. The Hon. Moses Nguchine Kirima, MP
12. The Hon. Ernest Ogesi Kivai, MP
13. The Hon. Asha Hussein Mohamed, M.P

APOLOGY

1. The Hon. Patrick Makau King'ola, MP
2. The Hon. Martha Wangari Wanjira, MP
3. The Hon.(Dr.) Lilian Gogo, MP
4. The Hon. Nelson Koech, MP
5. The Hon. Vincent Kipkurui Tuwei, MP
6. The Hon. Caleb Amisi, MP

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Samuel Kalama	-	Senior Clerk Assistant
2. Mr. Abdiaziz Shobay	-	Third Clerk Assistant
3. Ms. Mercy Wanyonyi	-	Legal Counsel I
4. Ms. Grace Wahu	-	Research Officer III
5. Mr. Rodgers Kilungya	-	Audio Recording Officer
6. Mr. Said Wako	-	Sergeant At-Arm
7. Ms. Daphine Wambui	-	Parliamentary Intern

AGENDA

1. Preliminaries
 - (i) Prayers
 - (ii) Introductions
 - (iii) Communication from the Chair
 - (iv) Matters Arising
2. Consideration of the following Agreements:-
 - (i) **Agreement for the setting up of a regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region and Explanatory memorandum**
 - (ii) **Regional Agreement on the Co-ordination of operations at Sea in the Western Indian Ocean and the Explanatory Memorandum**
3. Any Other Business

MIN.NO.DC.DFR/2019/173: PRELIMINARIES & ADOPTION OF AGENDA

The Chairperson called the meeting to order at 10:40am and prayer was said by Hon. Beatrice Nkatha Nyagah, MP. The agenda of the meeting was adopted having been proposed and seconded by the Hon. Peter Mwachhi, MP and Hon. Dido Ali Rasso, MP respectively.

MIN.NO.DC.DFR/2019/174: CONSIDERATION OF THE REPORT ON THE AGREEMENT FOR THE SETTING UP OF A REGIONAL MARITIME INFORMATION EXCHANGE AND SHARING MECHANISM IN THE WESTERN INDIAN OCEAN REGION AND EXPLANATORY MEMORANDUM AND REGIONAL AGREEMENT ON THE CO-ORDINATION OF OPERATIONS AT SEA IN THE WESTERN INDIAN OCEAN AND THE EXPLANATORY MEMORANDUM

The Committee considered the report on the Agreement for the setting up of a regional maritime information exchange and sharing mechanism in the western Indian Ocean region and explanatory memorandum and Regional Agreement on the co-ordination of operations at sea in the western Indian Ocean and the explanatory memorandum paragraph by paragraph and made the following observations and recommendations

Committee Observations

THAT;

1. the Constitution in Article 2 (6) provides for the entrenchment of this Agreements into the laws of Kenya;
2. the procedure for approval of a treaty as stipulated in the Treaty making and Ratification Act, 2012 was complied with. In that the Treaties were submitted with memoranda in line with provision of section 8 of the said Act;
3. the implementation of the provisions in the agreements will enable Kenya foster regional cooperation in order to enhance maritime safety and security. In particular the agreements will contribute to national security through sharing of information, coordinating operations, mutual legal support and suppressing trans-boundary threats;
4. the operationalization of the RCOC and RMIFC require the Cooperating States to attach Liaison Officers to the Centres. In this regard Kenya will second Liaison Officers to the centres at the cost of the Kenyan Government;
5. the EU through the IOC has made provisions for an initial funding amounting to €5,000,000.00 to support the coordination of Cooperating States' action at sea. The EU has committed to fund the operations under MASE programme up to 2022.

Committee Recommendations

The Committee recommends **THAT**, pursuant to Section 8 of the Treaty Making and Ratification Act, 2012 the House approves the ratification of the Agreements for the:-

1. **Setting up of a Regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region & Explanatory Memorandum and;**
2. **Regional Agreement on the Co-ordination of Operations at Sea in the Western Indian Ocean and the Explanatory Memorandum.**

Subsequently, the Committee unanimously adopted the report having been proposed and seconded by the Hon. Peter Mungai Mwathi, MP and the Hon. Beatrice Nkatha Nyagah, HSC, MP respectively.

MIN.NO.DC.DFR/2019/174: ANY OTHER BUSINESS

The following issues were raised


- i. The status of the maritime border dispute between Kenya and Somalia.
- ii. The border dispute between Kenya and South Sudan

The Committee resolved that the Cabinet Secretary for the ministry of Foreign affairs be invited to appear before the Committee on Thursday, 27th June, 2019 to update the Committee on the status of the above matters.

MIN.NO.DC.DFR/2019/175:

ADJOURNMENT AND DATE OF NEXT MEETING

The time being forty five minutes past one o'clock the Chairperson adjourned the meeting and the next meeting shall be convened on notice.

Signed.....

Hon. Katoo Ole Metito, EGH, MGH, M.P
(CHAIRPERSON)

Date.....26/6/2019



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (THIRD SESSION)

THE NATIONAL ASSEMBLY

MINUTES OF THE 19TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
DEFENCE & FOREIGN RELATIONS HELD ON THURSDAY, 4TH APRIL, 2019 IN
THE MINI-CHAMBER, 1ST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS AT
11.00 AM

PRESENT

1. The Hon. Katoo Ole Metito, EGH, MGH, MP (Chairperson)
2. The Hon. Richard Tong’i, MP (Vice Chairperson)
3. The Hon. Yusuf Hassan Abdi, MP
4. The Hon. Dido Ali Raso, MP
5. The Hon. Charles Kilonzo, MP
6. The Hon. Peter Mungai Mwathi, MP
7. The Hon. Beatrice Nkatha Nyagah, HSC, MP
8. The Hon. John Lodepe Nakara, MP
9. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP
10. The Hon. Ernest Ogesi Kivai, MP
11. The Hon. Moses Nguchine Kirima, MP
12. The Hon. Asha Hussein Mohamed, M.P

APOLOGY

1. The Hon. Patrick Makau King’ola, MP
2. The Hon. Martha Wangari Wanjira, MP
3. The Hon. Memusi Ole Kanchory, MP
4. The Hon.(Dr.) Lilian Gogo, MP
5. The Hon. Nelson Koech, MP

6. The Hon. Vincent Kipkurui Tuwei, MP
7. The Hon. Caleb Amisi, MP

National Assembly Secretariat

- | | | |
|-------------------------|---|-------------------------|
| 1. Mr. Samuel Kalama | - | Senior Clerk Assistant |
| 2. Mr. Abdiaziz Shobay | - | Third Clerk Assistant |
| 3. Mr. Ronald Walala | - | Legal Counsel |
| 4. Ms. Wahu Karanja | - | Research Officer |
| 5. Mr. Rodgers Kilungya | - | Audio Recording Officer |

AGENDA

1. Preliminaries
 - (i) Prayers
 - (ii) Introductions
 - (iii) Communication from the Chair
 - (iv) Matters Arising
2. Consideration of Agreement for the setting up of a regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region and Explanatory memorandum
3. Consideration of the regional Agreement on the Co-ordination of operations at Sea in the Western Indian Ocean and the Explanatory Memorandum
4. Any Other Business

MIN.NO.DC.DFR/2019/073: PRELIMINARIES & ADOPTION OF AGENDA

The Chairperson called the meeting to order at 11:15am and prayer was said by Hon. Richard Tong'i, MP. The agenda of the meeting was adopted having been proposed and seconded by the Hon. Patrick Makau King'ola, MP and Hon. Martha Wangari Wanjira, MP respectively.

MIN.NO.DC.DFR/2019/074: CONSIDERATION OF THE AGREEMENT FOR THE SETTING UP OF A REGIONAL MARITIME INFORMATION EXCHANGE AND SHARING MECHANISM IN THE WESTERN INDIAN OCEAN REGION AND EXPLANATORY MEMORANDUM

The Legal Counsel took Members through the Agreement for the setting up of a regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region and Explanatory memorandum as follows :-

- (i) The Agreement was negotiated under the auspices of the Indian Ocean Commission (IOC) to which Kenya is a Member. It was signed by Madagascar, Djibouti, Seychelles, Mauritius and Comoros on 29th April 2018.
- (ii) Kenya and France signed the Agreement on 26th November 2018 on condition that Kenya's signature was subject the approval of both Cabinet and the National Assembly.

The Cabinet approved the signature and authorized the Ministry of Defence to seek the authority of the House to ratify the Agreement.

- (iii) **Article 1** contains definitions of terms used in the Agreement.
- (iv) **Article 2** defines the Parties and Partners to the Agreement.
- (v) **Article 3** outlines the objectives of the Agreement. The Agreement seeks to lay the basis for a regional cooperation framework among its State Parties to enhance maritime safety and security. Specifically, it seeks to improve each Party's knowledge of its maritime situation, inform speedy operational responses to threats, allow state parties to master the knowledge and technology of, among others, maritime information fusion and promote the culture of maritime information sharing.
- (vi) **Article 4** outlines the scope of the Agreement. The Agreement does not govern warships or State vessels that are not exercising commercial activities that are in transit. Parties are at liberty to choose which information to share.
- (vii) **Article 5** establishes the Regional Maritime Information Fusion Centre ("the Centre"). The Centre is to enjoy legal personality and the protections, privileges and immunities granted by its host State, Madagascar. The Centre is mandated to receive, store, process, merge, share and exchange maritime information for the purpose of maritime security, safety of harbor and maritime approaches, protection of the marine environment and monitoring of maritime traffic. Each party to the Agreement is to designate a Liaison Officer within the Centre and all parties are to study the possibilities of the financial sustainability of the Centre.
- (viii) **Article 6** outlines the responsibilities of the parties to the Agreement. All parties are to enact regulations to allow for the sharing of data for purposes of implementing the Agreement. All parties also agree to increase the sources and quantity of information given to the Centre and to observe agreed confidentiality and integrity requirements attached to any information shared. Each state also agrees to maintain its structures and installations in constant operational condition for purposes of fulfilling its obligations to share maritime information and data.
- (ix) **Article 7** outlines the responsibility of the Host State, Madagascar, with regard to the Centre. Madagascar commits to establish the Centre and guarantee its independence and fund and capacitate it to enable it discharge its tasks. Madagascar further commits to inform parties of any change in its legislation or other circumstance which may affect the operations of the Centre.
- (x) **Article 8** provides for the fusion of all maritime information shared by the parties and partners to the agreement.
- (xi) **Article 9** provides the modalities of access to shared maritime information and data. All information and data shared pursuant to the agreement is only to be accessed to specific persons authorized to access the information or data in accordance to procedures approved by the parties. As a principle, only State Parties providing information to the Centre for sharing are entitled to access the regional maritime database. Third parties may only access the shared information or data and the database with the prior approval of the Parties.

- (xii) **Article 10** outlines the procedures relating to the exchange and sharing of maritime information and data. Information and data is to be shared electronically, verbally, in writing or in any other secured form. Any dispatch of the maritime status and analysis report by the Centre is to be done electronically in a secure and encrypted manner that is only accessible to authorized persons. Where the Centre receives maritime information and data electronically the same must be done securely and under encryption.
- (xiii) **Article 11** sets out the information and data protection measures that govern the operation of the Agreement. Such information and data is to be confidential and where communicated to third parties, the communicating party or the Centre must require such recipients to observe the procedures outlined under Article 10. A State Party or the Centre may inquire into any circumstances where information or data is lost, suspected to be lost or disclosed in an unauthorized manner. Affected parties are to be apprised of the progress and findings of the inquiry and retain the right to take any remedial action including suspension or termination of the Agreement.
- (xiv) **Article 12** governs the use of shared maritime information for judicial purposes. Information shared under the Agreement may only be provided for use in judicial proceedings with the consent of the sharing party and limited to the information required.
- (xv) **Article 13** notes that the operation of the Agreement shall not affect the existing maritime boundaries of State Parties or be construed as an acceptance of any claim relating to maritime boundaries.
- (xvi) **Article 14** provides for the procedure of the amendment of the Agreement. Amendments may be proposed any time in writing to the Indian Ocean Commission which is the Depository of the Agreement. The Depository is required to circulate any proposed amendment to State Parties and amendments can only be adopted unanimously. Any amendments come into force 30 days after the receipt of all instruments of approval from the State Parties.
- (xvii) **Article 15** provides for the settlement of all disputes under the agreement through consultations conducted through diplomatic channels.
- (xviii) **Article 16** allows reservations to be made to the Agreement on condition that the reservations are in line with the objectives of the Agreement.
- (xix) **Article 17** allows State Parties to make declarations or communications when signing the Agreement for the purpose of observing their national laws on condition that such declarations or communications do not affect the substance of the Agreement. When signing the Agreement, the Cabinet Secretary for Defence appended a declaration to the Agreement to the effect that the signature was subject to approval of the Agreement by the Cabinet and its ratification by the National Assembly as per the requirements of the Constitution and the Treaty Making and Ratification Act, 2012.
- (xx) **Article 18** provides for the suspension and termination of the Agreement. Where one or more state Parties fail in implementing the Agreement, it may be fully or partially suspended. In the event any dispute or a reported failing under the agreement is not resolved, any party may serve a 3 months' notice of the termination of the Agreement. The exchange of data may be immediately suspended where a serious proven breach of confidentiality which undermines the entire data exchange system occurs. This

immediate suspension is only to come into effect upon the written and substantiated request of a party or the Centre and may be extended through a decision made by two-thirds of the State Parties.

- (xxi) **Article 19** allows the withdrawal of any State Party from the Agreement after giving 3 months' notice. Upon withdrawal, the Agreement shall still apply with regard to any administrative or judicial proceedings arising the operation of the Agreement.
- (xxii) **Article 20** incorporates the Annex on the Governance of Regional Centres as a part of the Agreement. The Annex provides for the organizational Structure of the Centre and the Regional Coordination Operation Centre (RCOC). The Annex establishes a Steering Committee for the Centre and the RCOC comprising State Parties which is to meet at least twice every year. Chairmanship of the Steering Committee is rotational with the exclusion of the representative of Madagascar, the Host Country. The Steering Committee is charged with providing strategic leadership and approving the programmes of the Centre and RCOC as submitted by their respective Directors. The Annex also establishes a Technical Committee for the Centre and the RCOC comprised of the Director, Deputy Director and Liaison Officer from each state party who plays a consultative role. The Technical Committee implements the decisions of the Steering Committee. Under the Annex, the designation of the Director and the Deputy Director are to be decided at a later date.
- (xxiii) With regard to funding, the Centre and the RCOC are to be primarily funded by their host countries in addition to any contributions from State Parties and other bodies. The Steering Committee may authorize the Director of the Centre or the RCOC to accept any contributions, donations or grants on condition that the same do not affect the autonomy of the institutions, are compatible with the objectives and work of the institutions and are subject to their approval before disbursement.
- (xxiv) **Article 21** establishes the Indian Ocean Commission as the Depositary for the Agreement.
- (xxv) **Article 22** provides for the entry into force of the Agreement upon notification of its signature by three State Parties.
- (xxvi) The Agreement was first signed at Balaclava, Mauritius on **29th April, 2018** by representatives of Comoros, Djibouti, Madagascar, Mauritius and the Seychelles. It contains two Addenda evidencing the signature made on behalf of France and Kenya at Nairobi on **26th November 2018**. Cabinet Secretary for Defence signed the Agreement on behalf of the Government of Kenya and subject to approval by Cabinet and ratification by the National Assembly.
- (xxvii) The Host country, Madagascar, is required under the Agreement to cater for all the expenses related to the Centre. Kenya's express contribution to the Agreement is the delegation, at its cost, of a Liaison Officer to the Centre.
- (xxviii) The Agreement has already come into force. Upon ratification, the Agreement shall bind the Government of Kenya.

MIN.NO.DC.DFR/2019/075:

CONSIDERATION OF THE REGIONAL
AGREEMENT ON THE CO-ORDINATION OF

OPERATIONS AT SEA IN THE WESTERN INDIAN OCEAN AND THE EXPLANATORY MEMORANDUM

The Legal Counsel took Members through the Consideration of Agreement for the setting up of a regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region and Explanatory memorandum as follows :-

- (i) The Agreement was negotiated under the auspices of the Indian Ocean Commission (IOC) to which Kenya is a Member. It was signed by Madagascar, Djibouti, Seychelles, Mauritius and Comoros on 29th April 2018.
- (ii) Kenya and France signed the Agreement on 26th November 2018 on condition that Kenya's signature was subject the approval of both Cabinet and the National Assembly. The Cabinet approved the signature and authorized the Ministry of Defence to seek the authority of the House to ratify the Agreement.
- (iii) **Article 1** contains definitions of terms used in the Agreement.
- (iv) **Article 2** defines the Parties and Partners to the Agreement.
- (v) **Article 3** outlines the objectives of the Agreement. The Agreement seeks to lay the basis for a regional cooperation framework among its State Parties to enhance maritime safety and security. Specifically, it seeks to promote cooperation and coordination among member states to enable regional coordinated operations, strengthen individual and institutional capacities through trainings, to have coordinated interventions for security and safety measures, enable mutual support among member states and promote cooperation with other maritime agencies.
- (vi) **Article 4** outlines the measures to facilitate the achievement of the objectives. All parties undertake to cooperate in the fight against foreseeable threats listed in Article 6, provide assistance to regional coordinated operations at sea in terms of material, human and legal means, provide for ad-hoc mutual assistance, facilitate clearance procedures, encourage effective coordination among law enforcement officers and provide logistical support.
- (vii) **Article 5** outlines the scope of the Agreement. The agreement shall be consistent with the provisions of international instruments including United Nations Convention on the Law of the Sea (UNCLOS) and the agreement shall not affect vessels and aircrafts enjoying immunities under international law. Under the Agreement, law enforcement vessels and aircraft re not to be considered as suspected vessels or aircraft.
- (viii) **Article 6** outlines the framework of regional coordinated operations. All parties undertake to fight against piracy and organized crime, assist in the exercise of state prerogatives with regard to vessels, participate in the search and rescue of human beings at sea, protect the maritime environment, restore safety of navigation at sea, protect under water sites and help in the event of disasters.
- (ix) **Article 7** outlines coordinated operations of regional interest. The operations are those at sea that can lead to legal action. An operation at sea level is of regional interest if one party notifies the Regional Coordination Operation Centre (RCOC) that it cannot respond to a foreseeable threat unless supported by specialized resources of at least one other

party; there exists a foreseeable threat that does not directly affect one of the parties but threatens their collective interest, the interests of a third state or the international community; or the nature of the operation is to prevent a foreseeable threat. The agreement does not grant any party to enter territorial waters of another state.

- (x) **Article 8** outlines actions that may be taken at the national level relating to suspicious vessels and aircraft. All parties commit to respond to requests for verification of nationality, allow the arrest and search of suspicious vessels and give prompt instructions on the continuation of operations concerning immobilized vessels. All parties also undertake to facilitate search of the flag state of a suspicious vessel where it does not fly the flag of any state.
- (xi) **Article 9** outlines procedures for the designation of law enforcement officers for the purposes of the Agreement. Any party may designate qualified law enforcement officers to embark on vessels of another party to enforce laws of the designating party, seek authorization to facilitate entry and navigations of vessels and aircrafts and assist the other parties in the conduct of ship boarding. All state parties shall cooperate on the training of the law enforcement officers and the officers shall comply with the laws and customs of the state to which the vessel is in.
- (xii) **Article 10** outlines boarding and search guidelines. Only authorized teams of state parties are allowed to carry out boarding and searches. However, visiting teams (who may carry weapons on a case by case basis) may only operate in accordance with the modalities that are to be agreed between the state parties.
- (xiii) **Article 11** outlines the modalities of jurisdictional and mutual legal assistance. All parties undertake to establish their jurisdiction over offences detected by their enforcement officers, recognize evidence brought by law enforcement officers from other states in their courts and adopt a mutual legal assistance arrangement in regional coordinated operations. The agreement does not affect the rights and privileges of any person in a legal proceeding.
- (xiv) **Article 12** outlines the manner in which state parties are to treat other vessels beyond the territorial waters of any state. A state party may board such a vessel for the purpose of providing assistance in cases of distress or with the authorization of the flag state to take repressive measures. International law is to guide a State Party.
- (xv) **Article 13** establishes the Regional Coordination Operations Centre ('RCOC'). The RCOC is to enjoy legal personality and the protections, privileges and immunities granted by the Hosting agreement signed on 1st July 2017 between the Indian Ocean Commission and the Republic of Seychelles. The RCOC will work closely with the Regional Maritime Information Fusion Centre (RMIFC) and each party to the Agreement is to designate a Liaison Officer within the Centre. The functions of the Centre are to plan and coordinate the operations defined in Article 6 of the Agreement and parties are to study the possibilities of the financial sustainability of the Centre.
- (xvi) **Article 14** outlines the responsibility of the Host State. The Republic of Seychelles commits to establish the RCOC and guarantee its independence and fund and capacitate it to enable it discharge its tasks. The Republic of Seychelles further commits to inform

parties of any change in its legislation or other circumstance which may affect the operations of the Centre.

- (xvii) **Article 15** outlines the effect of the Agreement on existing Maritime Zones and Territorial Limits. No act by all parties to the agreement is to be construed as implying acceptance by any state party of a claim to territory or maritime boundaries by another state.
- (xviii) **Article 16** provides for amendments. Amendments may be proposed any time in writing to the Indian Ocean Commission which is the Depository of the Agreement. The Depository is required to circulate any proposed amendment to State Parties and amendments can only be adopted unanimously. Any amendments come into force 30 days after the receipt of all instruments of approval from the State Parties.
- (xix) **Article 17** provides for the settlement of all disputes under the agreement through consultations conducted through diplomatic channels.
- (xx) **Article 18** allows reservations to be made to the Agreement on condition that the reservations are in line with the objectives of the Agreement
- (xxi) **Article 19** provides for Declarations and Communications. All parties are allowed to make declarations or communications when signing, ratifying, accepting or approving the agreement provided such declarations are not intended to modify the legal effect of the agreement.
- (xxii) **Article 20** provides for the suspension of the Agreement. Any party can suspend its obligations upon notification to the Depository and the parties. Any party may, in the event a dispute is not settled, also terminate this agreement by notifying the depository in writing at least three (3) months prior to termination taking effect.
- (xxiii) **Article 21** provides for withdrawal from the Agreement. Withdrawal from the agreement is to take effect 3 months after receipt by the Depository of the notification of withdrawal from the member state.
- (xxiv) **Article 22** incorporates the annex on Governance of Regional Centers as a part of the Agreement. The Annex provides for the organizational Structure of the RCOC and the RMIFC. The Annex establishes a Steering Committee for the two institutions comprising State Parties which is to meet at least twice every year. Chairmanship of the Steering Committee is rotational with the exclusion of the representative of the Seychelles, the Host Country. The Steering Committee is charged with providing strategic leadership and approving the programmes of the two institutions as submitted by their respective Directors. The Annex also establishes a Technical Committee for the RCOC and the RMIFC comprised of the Director, Deputy Director and Liaison Officer from each state party who plays a consultative role. The Technical Committee implements the decisions of the Steering Committee. Under the Annex, the designation of the Director and the Deputy Director are to be decided at a later date.
- (xxv) **Article 23** establishes the Indian Ocean Commission as the Depository for the Agreement.
- (xxvi) **Article 24** provides for the entry into force of the Agreement upon notification of its signature by three State Parties.

- (xxvii) The Agreement was first signed at Balaclava, Mauritius on 29th April, 2018 by representatives of Comoros, Djibouti, Madagascar, Mauritius and the Seychelles. It contains two Addenda evidencing the signature made on behalf of France and Kenya at Nairobi on 26th November 2018. The Cabinet Secretary for Defence signed the Agreement on behalf of the Government of Kenya and subject to approval by Cabinet and ratification by the National Assembly.
- (xxviii) The Host country, Seychelles, is required under the Agreement to cater for all the expenses related to the Centre. Kenya's express contribution to the Agreement is the delegation, at its cost, of a Liaison Officer to the Centre.
- (xxix) The Agreement has already come into force. Upon ratification, the Agreement shall bind the Government of Kenya.

Committee Concerns:-

The Committee raised the following concerns regarding the two Agreements

1. The Committee was concerned that the Agreements were initially entered into on 29th April, 2018 and Kenya signed on 26th November, 2018, why did the Kenyan Government wait for seven (7) months to sign the Agreements?
2. Since both Agreements deal with Maritime matters why were the agreements not condensed into one?
3. Whether there were other Agreements Kenya has entered into with other countries on the same subject matter, and whether these Agreements were taken into account during negotiations and finalization of the Agreements?
4. Why the Agreements exclude other countries with Indian Ocean Coastlines?
5. The parties to the Agreements are mainly Francophone Countries while Kenya is an Anglophone Country and whether this was considered during the negotiations?
6. What was the general background to the negotiation and finalization of the Agreement?
7. Whether then Agreement was open to other countries to join?

Committee Resolution

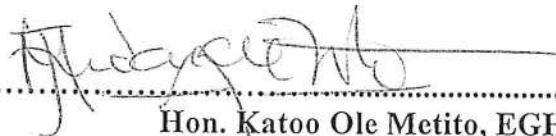
The Committee resolved to invite the Cabinet Secretary for Defence, the Attorney General, Director General Kenya Coast Guard Authority and Director General, Kenya Maritime Authority for a meeting on Monday 15th April, 2019 to appraise it on the Aforementioned Agreements.

MIN.NO.DC.DFR/2019/076:

ADJOURNMENT AND DATE OF NEXT MEETING

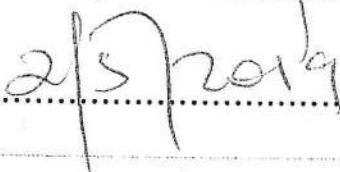
The time being half past noon the Chairperson adjourned the meeting and date of the meeting shall be Monday, 15th April, 2019 at 11.00am.

Signed.....



Hon. Katoo Ole Metito, EGH, MGH, M.P
(CHAIRPERSON)

Date.....





REPUBLIC OF KENYA



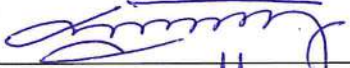
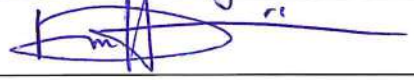

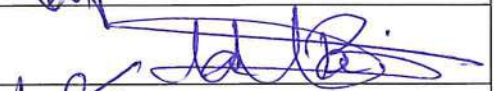
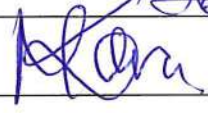


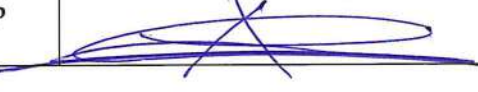
KENYA NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS
Adoption Schedule

REPORT OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS ON CONSIDERATION OF AGREEMENT FOR THE SETTING UP OF A REGIONAL MARITIME INFORMATION EXCHANGE AND SHARING MECHANISM IN THE WESTERN INDIAN OCEAN REGION & EXPLANATORY MEMORANDUM AND THE REGIONAL AGREEMENT ON THE CO-ORDINATION OF OPERATIONS AT SEA IN THE WESTERN INDIAN OCEAN AND THE EXPLANATORY MEMORANDUM

We, the undersigned ^{22nd} ~~21st~~ Members of the Departmental Committee on Defence & Foreign Relations, today ^{22nd} ~~21st~~ June, 2019 do hereby affix our signatures to this REPORT ON THE CONSIDERATION OF AGREEMENT FOR THE SETTING UP OF A REGIONAL MARITIME INFORMATION EXCHANGE AND SHARING MECHANISM IN THE WESTERN INDIAN OCEAN REGION & EXPLANATORY MEMORANDUM AND THE REGIONAL AGREEMENT ON THE CO-ORDINATION OF OPERATIONS AT SEA IN THE WESTERN INDIAN OCEAN AND THE EXPLANATORY MEMORANDUM to affirm our approval and confirm its accuracy, validity and authenticity:-

NO.	NAME	SIGNATURE
1.	The Hon. Katoo Ole Metito, EGH, MGH, M.P - Chairperson	
2.	The Hon. Richard Tong'i, M.P - Vice Chairperson	
3.	The Hon. Yusuf Hassan Abdi, M.P	
4.	The Hon. Charles Mutavi Kilonzo, M.P	

5.	The Hon. Patrick Makau, M.P	
6.	The Hon. Dido Ali Raso, M.P	
7.	The Hon. Peter Mungai Mwathi, M.P	
8.	The Hon. Martha Wangari Wanjira, M.P	
9.	The Hon. Major (Rtd.) Bashir Abdullahi, M.P	
10.	The Hon. Memusi Ole Kanchory, M.P	
11.	The Hon. Beatrice Nkatha Nyagah, HSC, M.P	
12.	The Hon. John Lodepe Nakara, M.P	
13.	The Hon. Nelson Koech, M.P	
14.	The Hon. (Dr.) Lilian Gogo, M.P	
15.	The Hon. Vincent Kipkurui Tuwei, M.P	
16.	The Hon. Moses Nguchine Kirima, M.P	
17.	The Hon. Ernest Ogesi Kivai, M.P	
18.	The Hon. Caleb Amisi, MP	
19.	The Hon. Asha Hussein Mohamed, MP	

MEMORANDUM TO THE

NATIONAL ASSEMBLY

ON THE AGREEMENT

FOR THE SETTING UP OF

A REGIONAL MARITIME

INFORMATION EXCHANGE

AND SHARING MECHANISM

IN THE WESTERN INDIAN

OCEAN REGION

THE NATIONAL ASSEMBLY
PAPER

DATE:

17 MAR 2019

TABLED

BY:

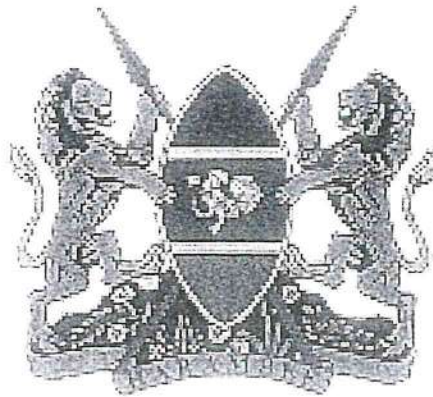
SECRETARY

TABLE:

COM

CONFIDENTIAL

REPUBLIC OF KENYA



MINISTRY OF DEFENCE

MEMORANDUM TO THE NATIONAL ASSEMBLY

ON

AGREEMENT FOR THE SETTING UP OF A MARITIME
INFORMATION EXCHANGE AND SHARING MECHANISM IN THE
WESTERN INDIAN OCEAN REGION

*Command
+ control
centre.*

1.0 OBJECTIVE OF THE MEMORANDUM

1.1 The purpose of this Memorandum is to apprise the National Assembly on the Agreement for the Setting Up of a Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region (hereinafter referred to as the Agreement) and to seek approval for its ratification.

2.0 BACKGROUND

2.1 The Agreement was negotiated under the auspices of the Indian Ocean Commission to which the Republic of Kenya is a member. The Agreement was signed by the Republics of Madagascar, Djibouti, Seychelles, Mauritius and Comoros on 29 April 2018.

2.2 The Republics of Kenya and France signed the Agreement on 26 November 2018 during the Sustainable Blue Economy Conference in Nairobi. The signature on behalf of the Republic of Kenya was made subject to a declaration which notified the other State Parties that the signature was subject to ratification by the Cabinet and approval by the National Assembly.

2.3 The Cabinet ratified the signature of the Agreement on behalf of the Republic of Kenya and further authorized the Ministry to seek the National Assembly's authority for ratification.

3.0 OBJECTIVES OF THE AGREEMENT

3.1 The objective of the Agreement is to foster regional co-operation framework between State Parties in order to enhance maritime safety and security. The Agreement seeks to ensure that State Parties have the same real time or near real time maritime picture through the sharing of information.

3.2 The Agreement further seeks to establish the Regional Maritime Information Fusion Centre which will facilitate the sharing of maritime information. The Agreement, if ratified, would permit the Republic of Kenya to obtain intelligence grade information on maritime threats.

4.0 CONTENTS OF THE AGREEMENT

4.1 The Agreement is divided into twenty two (22) Articles as follows:

- a. Article I contains the interpretation section.

- b. Article II identifies Parties to the Agreement and defines criteria for other State Parties to accede to the Agreement.
- c. Articles III and IV provide for the objective and scope of the Agreement.
- d. Articles V to XII provide for the modalities of exchange of information including information and data protection measures.
- e. Articles XIII to XXII contain the standard final provisions of the Agreement.

5.0 FINANCIAL IMPLICATION

5.1 In accordance with Article 6 of the Agreement, the Republic of Madagascar is required to underwrite all expenses incidental to the operations of the Regional Maritime Information Fusion Centre. However, the Republic of Kenya is required to delegate, at its cost, a liaison officer to the Regional Maritime Information Fusion Centre. The costs of delegating the liaison officer will be drawn from the Ministry's recurrent expenditure budget.

6.0 RECOMMENDATIONS

6.1 The National Assembly is invited to:

- a. Take note of this Memorandum outlining the contents of the present Agreement.
- b. Approve ratification of the Agreement.

Dated this 6th day of March 2019


AMB. RAYCHELLE OMAMO, SC, EGH
CABINET SECRETARY FOR DEFENCE

CONFIDENTIAL

ATTACHMENT

Agreement for the Setting Up of a Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region together with the declaration dated 27 November 2018.

CONFIDENTIAL

AGREEMENT FOR THE
SETTING UP OF
A REGIONAL MARITIME
INFORMATION EXCHANGE
AND
SHARING MECHANISM IN THE
WESTERN INDIAN OCEAN
REGION

AGREEMENT FOR THE SETTING UP OF A
REGIONAL
MARITIME INFORMATION EXCHANGE AND
SHARING MECHANISM
IN THE WESTERN INDIAN OCEAN REGION









ILAA

AGREEMENT FOR THE SETTING UP OF A REGIONAL
MARITIME INFORMATION EXCHANGE AND SHARING MECHANISM
IN THE WESTERN INDIAN OCEAN REGION

The Parties to this Agreement,

Noting the United Nations Convention on the Law of the Sea of 10th December 1982;

Noting the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20th December 1988;

Noting the Convention for the suppression of Unlawful Acts against the Safety of Maritime Navigation of 10th March 1988 and its Protocol of 2005;

Noting the Convention for the Prevention of Marine Pollution by ships of 2nd November 1973;

Noting the International Convention for the Safety of Life at Sea of 1st November 1974;

Noting the United Nations Convention against Transnational Organized Crime of 15th November 2000 and its Protocol against the Smuggling of Migrants by Land, Sea and Air;

Noting the relevant resolutions of the United Nations Security Council (UN Security Council) and the International Maritime Organisation (IMO) regulations;

Noting 2050 Africa's Integrated Maritime Strategy;

Noting the decision of the Eastern and Southern Africa and Indian Ocean region (ESA-IO) Council of Ministers, held in Djibouti on 15th May 2016, entrusting to Madagascar the hosting and creation of a Maritime Information Fusion Centre;

Recalling that:

- a) the Ministerial platform of the ESA-IO region, meeting in Grand Bay, Republic of Mauritius, in October 2010, decided to implement the Maritime Security Programme (MASE) and particularly Results 4 and 5, which recommend signatory States to pool their resources and to strengthen their regional operational cooperation in order to improve surveillance and control of their maritime domain;
- b) The Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden, done at Djibouti on 29 January 2009; and the Jeddah Amendment to the Djibouti Code of Conduct of January 12, 2017; and
- c) the responsibility of each Regional State to ensure by its own means the missions of State action at sea incumbent upon them in the areas under their sovereignty or sovereign rights or exclusive jurisdiction, as well as their obligations as regards ships under their flag, wherever they are;

Recognising the increased role of the Regional Economic Communities and Regional Organisations of the ESA-IO region in the fight against maritime threats in general and against maritime piracy in particular;

Considering the commitment of each State to the exchange and sharing of maritime information;

Considering that non-military navigation constitutes most of maritime navigation, likely to become the object or the instrument of illegal actions, the sharing of information on non-military navigation improves the understanding of maritime situation in general;






Considering that the 2050 African Integrated Maritime Strategy seeks to:

- a) encourage the implementation of joint regional surveillance operations and the establishment of naval or coast guard networks around Africa with an important cross-border pursuit function; and
- b) promote in collaboration with the relevant actors, continental and regional agreements, provisions and capacities, including the pulling of assets through the development of joint programmes, in particular on law enforcement, search and rescue services, humanitarian crisis and emergency rescue services;

Acknowledging that the opportunity to share information remains at the discretion of the Parties to this Agreement;

HAVE HEREBY AGREED that a regional cooperation programme shall be established between the States Parties to the MASE programme, signatories of this Agreement, for the exchange and sharing of maritime information, referred to as the "Agreement for the Setting up of a Regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region", or the "Agreement".

Its terms and conditions are defined as follows:

 ³    

NATURE AND SCOPE OF THE AGREEMENT

Article 1

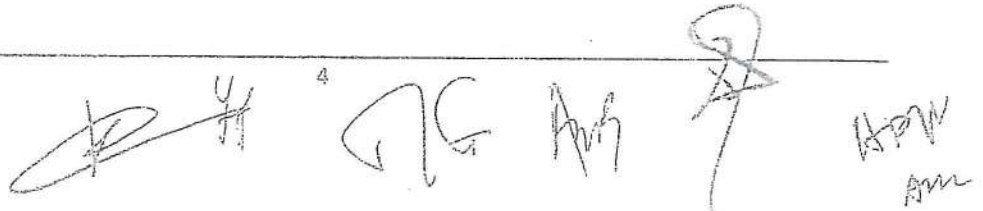
Interpretation

For the purposes of this Agreement:

1. "Abnormal situation" means the behaviour of one or more vessels outside of the rules of navigation;
2. "Data processing" means all operations relating to data performed by persons or other means and processes or using algorithms to extract the information needed to monitor maritime traffic and detect unusual situations;
3. "Depositary" means the Secretary General of the Indian Ocean Commission (IOC);
4. "Maritime information fusion" means the process used to analyse and centralise a visualization interface the maritime information collected;
5. "Maritime information" means any information and communication support, including documents and copies thereof, enabling the location or identification of a vessel or maritime event. It shall include the position, nature, registration, flag State, place of departure and destination, crew, passengers, cargo type, speed and any other information relating to the management of vessels and maritime safety and security;
6. "Need-to-know" means the absolute need to know a piece of information in the framework of a given function and for the proper execution of a precise operation;
7. "Protective marking" means a marking given to maritime information concerning its handling conditions;
8. "Recognised maritime picture" means a real-time or near-real-time maritime picture on which all maritime activities are identified;
9. "Regional maritime zone" means all of the maritime zones and superjacent airspace under the exclusive jurisdiction or sovereignty or sovereign rights of the State parties in line with their respective national legislation, and the high seas and the superjacent airspace, encompassed by the Regional Maritime Information Fusion Centre, defined by the following limits:

Latitudes 26° North and 37° South
Longitudes 20° East and 76.5° East
10. "Security clearance certificate" means the document proving a person's clearance to access and process protected information, data or communication support; and
11. "Sensitive information" means any maritime information which, because of its source or nature, bears a protective marking.

4

A series of handwritten signatures and initials are present at the bottom of the page, including a large signature on the left, a signature in the center, and the initials 'HDPW' and 'AMM' on the right.

Article 2

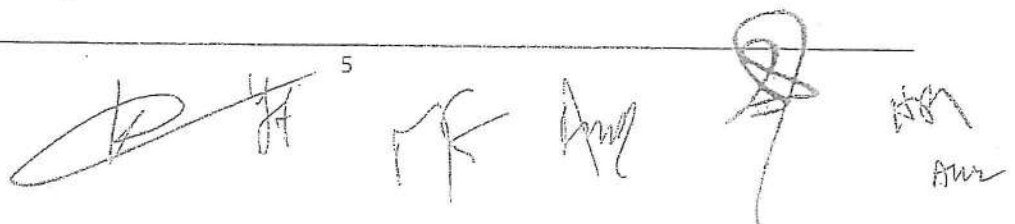
Parties and Partners

1. The Parties to this Agreement are States involved in the exchange and sharing of maritime information and participating in the implementation of Results 4 and 5 of the MASE programme.
2. The other States of the Eastern and Southern Africa and Indian Ocean (ESA-IO) may become Parties to this Agreement.
3. Subject to paragraph 4 and the conditions set thereunder, State Parties may decide to have as partners, in particular:
 - a) States desiring to contribute to promoting maritime security in the regional maritime zone;
 - b) international organisations in the field of maritime safety and security; and
 - c) internationally recognised funding organisations.
4. Where no State Party objects to the adhesion of a third party pursuant to this article, the latter shall become Party or Partner to this Agreement under set conditions. In this regard, any such request shall be made to the Depository who in turn informs State Parties.
5. The Parties and Partners agree to cooperate in good faith, in line with the commitments made as per the provisions of this Agreement.

Article 3

Objectives

1. The purpose of this Agreement is to lay the basis for a regional cooperation framework amongst the State Parties to enhance maritime safety and security in the regional maritime zones in accordance with the national sovereignty, territorial integrity and non-interference in the internal affairs of States in accordance with national and international law.
2. This Agreement aims specifically to:
 - a) improve the Parties' knowledge of the maritime situation through a single recognised maritime picture of the regional maritime zone;
 - b) monitor maritime activities in real-time or near-real-time in order to speed up the planning and organisation of operational responses to threats and to strengthen control operations through more foresight and better targeting;
 - c) build the capacities of the State Parties in order to master the knowledge and technology of maritime information fusion; among others;
 - d) promote the culture of sharing and exchanging maritime information in the ESA-IO region; and
 - e) enhance the sharing and exchange of maritime information between the Regional Maritime Information Fusion Centre (RMIFC) and national information and fusion centres and between RMIFC and Regional Cooperation Operations Centre (RCOC).





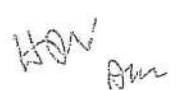


Handwritten signatures and initials are present at the bottom of the page, including a large signature on the left, several smaller initials in the center, and a signature on the right with the word 'Amr' written below it.

Article 4

Scope of the Agreement

1. This Agreement shall not apply to warships or equivalent, or to State vessels not exercising commercial activities belonging to the Parties and to non-regional States in transit in the regional maritime zone.
2. Nothing contained in this agreement shall be in contravention to the provisions of international instruments including UNCLOS. In case of any inconsistency between any provision of this agreement and any other international instrument, the latter shall prevail.
3. A State Party retains its full discretion as to which information it may communicate pursuant to this Agreement.

MODALITIES FOR THE EXCHANGE OF MARITIME INFORMATION

Article 5

Regional Maritime Information Fusion Centre

1. There is established a Centre, known as the Regional Maritime Information Fusion Centre (RMIFC).
2. The RMIFC **benefits from legal personality** under the terms of domestic and international law, as well as the protections, privileges and immunities provided for in the Hosting Agreement signed on 18th February 2016 between the Indian Ocean Commission and the Republic of Madagascar.
3. The RMIFC collaborates closely with the Regional Coordination Operations Centre (RCOC).
4. The State Parties shall designate a Liaison Officer within the RMIFC to establish a connection between their national structures and facilities and the Centre.
5. The RMIFC receives, stores, processes, merges, shares and exchanges maritime information for the sole purpose of maritime security, safety of harbour and maritime approaches, protection of the marine environment and monitoring of maritime traffic in conformity with rules and procedures as agreed by the Parties..it relies in particular on information from the Parties.
6. The Centre shall be governed by the rules set out in the Annex titled "Governance of Regional Centres" of this Agreement. This Annex shall also apply to the RCOC.
7. After the signing of this Agreement, the State Parties shall study the possibilities for the financial sustainability of the Centre

Article 6

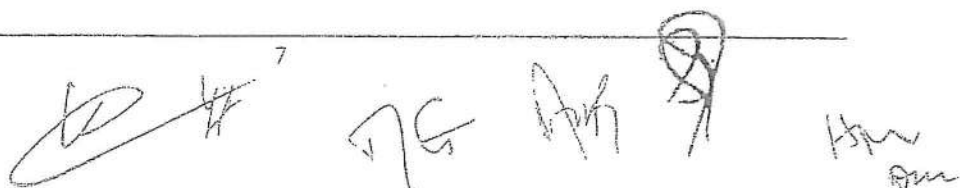
Responsibilities of the State Parties

1. Each State Party shall enact internal regulations that allow the sharing of data in order to fulfil the objectives of this Agreement.
2. Each State Party shall endeavour to multiply the sources and quantity of reliable information provided to the RMIFC.
3. Each State Party shall guarantee compliance with the confidentiality and integrity clauses on the access and use of the data shared under this Agreement.
4. Each State Party shall endeavour to ensure that the existing national structures and installations are maintained in constant operational condition in order to collect, process and protect maritime information and data.

Article 7

Responsibilities of the Host State

1. The Host State commits to establish the RMIFC in accordance with the call for expressions of interest, regarding in particular the independence of the Centre and the granting of a sufficient budget, a budget for the day-to-day running of operations, national human resources and suitable infrastructure to fulfil its tasks.

Handwritten signatures and initials at the bottom of the page, including a large signature on the left, several initials in the middle, and a signature on the right.

2. The Republic of Madagascar shall inform the other State Parties of any change in its legislation or circumstances, which may prejudice the operation of the RMIFC.

Article 8

Maritime information fusion

1. Subject to article 4 of this Agreement, the Parties and Partners shall exchange maritime information they collect during their missions to monitor maritime traffic. The collection of maritime information shall cover the regional maritime zone.
2. The fusion of maritime information shall be based on the various sources of information and data provided to RMIFC by the Parties and Partners.

Article 9

Access to maritime information and data

The State Parties agree that:

- a. access to shared data and their use shall be limited to those who hold specific access rights, possess the appropriate security clearance certificate and fulfil the need-to-know requirement.
- b. the modalities for obtaining, using or withdrawing from this certificate shall be determined by State Parties in accordance with the Annex to this Agreement;
- c. access to the regional maritime information database is available only to Parties which contribute information for exchange and sharing;
- d. each user shall have appropriate access rights, depending on the nature of data, based on bilateral and international agreements, or data licensing policy;
- e. State Parties shall agree on the criteria and grant of access rights, security clearance, copyright and intellectual property and licensing for the purpose of this Agreement; and
- f. no third party shall have access to the shared data and/or the regional maritime information database without the prior consent of the State Parties and the agreement of the latter on the terms and conditions of such access.

Article 10

Procedures for the exchange and sharing of maritime information and data

1. The sharing of maritime information shall take place electronically, verbally, visually in writing, or in any other secured form.
2. The dispatch of the maritime surface status and its analysis report by RMIFC to the State Parties shall, as reasonably practicable, take place securely and under encryption via electronic means, and accessible only to authorized personnel holding security clearance certificates.
3. The reception by RMIFC of the maritime information and data sent by the Parties shall take place as reasonably practicable securely and under encryption via electronic means, and only accessible to authorised personnel holding security clearance certificates.

Article 11

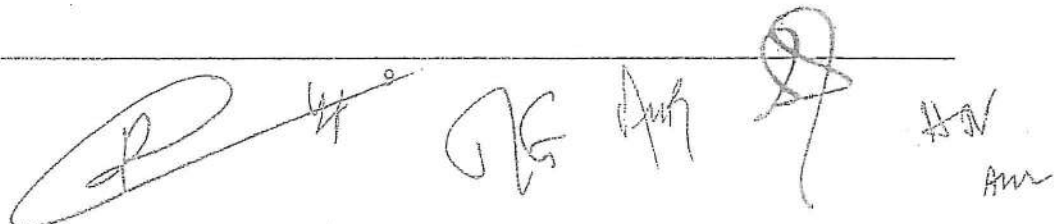
Information and Data protection measures

1. The information and data processed within RMIFC shall be confidential and may be used only for the purposes of maritime safety and security;
2. Where a Party or the RMIFC communicates information from the RMIFC to a third party, the Party or the RMIFC shall require the third party to use the information in accordance with article 10.1 of this Agreement;
3. Sensitive information shall systematically bear protective markings in order to inform the nature of the communications;
4. State Parties commit to adhere to the confidentiality rules of processed data in line with this Agreement.
5. Each Party and RMIFC shall ensure that sensitive information obtained shall remain confidential unless the disclosure of the information is permitted under this Agreement or that the information is already in the public domain.
6. In the event of an actual or suspected loss of data, or unauthorised disclosure of maritime information under para. 3, the relevant State Party and/or the RMIFC may inquire into same. When an inquiry is conducted, the relevant State Party and the RMIFC shall apprise each other of the updates and findings of the inquiry. Nothing in this Article shall prejudice the right of the State Party to take such action as may be deemed necessary pursuant to its national legislation or to seek to suspend or terminate the Agreement.

Article 12

Use of maritime information for judicial purposes

1. State Parties and the RMIFC shall only provide information necessary for a judicial inquiry after the consent of the State Party or Partner who shared the information and the State conducting the operation.
2. This transmission shall be limited to the data required by the judicial authority and be necessary for the investigation.

A series of handwritten signatures and initials are present at the bottom of the page, including a large signature on the left, a signature in the middle, and initials 'HON' and 'Amr' on the right.

FINAL PROVISIONS

Article 13

Maritime zones and Territorial limits

Nothing in this Agreement, nor any act or activity undertaken by the State Parties, the RMIFC, the RCOC, a Partner or third parties in the implementation of or as a consequence of the Agreement, shall be construed as implying acceptance by any State Party of a claim to territory or maritime boundaries by another State Party. This shall also apply to any protocol, annex or document made pursuant to or in connection with this Agreement.

Article 14

Amendment

1. At any time after having signed the Agreement and after this Agreement has come into force, a State Party may propose an amendment to this agreement by communicating the text of its proposed amendments to the Depositary, which shall forward it diligently to all State Parties.
2. An amendment shall be adopted by State Parties during one of their meetings unless one represented State Party expresses its opposition.
3. An amendment shall enter into force thirty (30) days after receipt by the Depositary of the instruments of acceptance or approval of the amendment by all State Parties unless the State Parties agree otherwise.

Article 15

Settlement of Disputes

In the event of any doubt or dispute between two or more State Parties arising from the interpretation or implementation of this Agreement, the State Parties shall consult among themselves in order to settle the dispute through diplomatic channels.

Article 16

Reservations

Each State Party may, formulate reservations to this Agreement, to the extent that these are compatible with the objectives of the Agreement.

Article 17

Declarations and communications

The foregoing article shall not prevent a State, when signing, ratifying, accepting or approving this Agreement, from making any declarations or communications, in whatever form or description, in particular so as to harmonize its laws and regulations with the provisions of this Agreement, provided that such declarations and communications are not intended to exclude or modify the legal effect of the provisions of this Agreement in their application to that State.

Article 18

Suspension and Termination

1. In the event of failings in the implementation of this Agreement by one or several Parties, particularly as regards the rules of confidentiality, usage restrictions, data access and updating of the database and ensuring the maintenance of infrastructure, the Parties shall be informed immediately in writing. This Agreement may be fully or partially suspended, including in the event of serious breaches of the principles contained herein.
2. In the event of non-settlement of a dispute or reported failings by one or several Parties, this Agreement may be terminated by one or more Parties that notify their intentions to the Depository in writing at least three (3) months prior to termination taking effect. Upon receipt of the notification, the Parties shall carry out consultations in order to resolve any disputes amicably within the notice period of three (3) months, or urgently if the conditions of confidentiality are affected.
3. A serious proven breach of one of the principles of confidentiality that could undermine the whole data exchange system may give rise to the immediate suspension of data exchanges between the Party concerned. This suspension shall take place upon the written, substantiated request of a Party or RMIFC and it is extended after a majority decision of two third of the State Parties. Immediate suspension should not be considered as being a sanction.

Article 19

Withdrawal

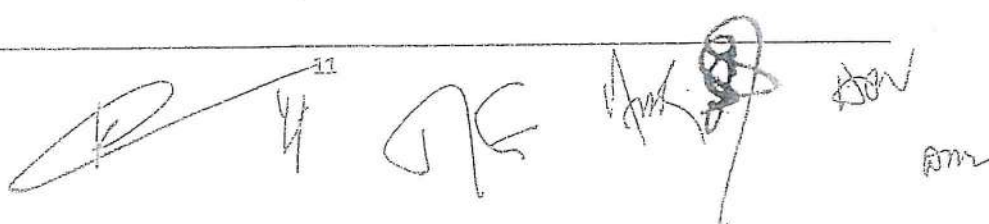
1. Any State Party may withdraw from this Agreement. Withdrawal shall take effect three (3) months after receipt, by the Depository, of the notification of withdrawal.
2. Upon reception of the notification of withdrawal, the Depository sends a copy of the withdrawal notification to other State Parties.
3. This Agreement will continue to apply after withdrawal for any administrative or judicial proceedings arising from measures taken under this Agreement concerning the withdrawing State Party.

Article 20

Annex to the Agreement

The Annex to this Agreement is considered an integral part of the Agreement.

11

Handwritten signatures and initials are present at the bottom of the page, including a large signature on the left, the number '11' in the center, and several other initials and signatures on the right.

Article 21

Depositary

1. The original version of this Agreement shall be deposited with the Indian Ocean Commission, which shall serve as the Depositary.
2. The Depositary shall transmit a certified copy of the Agreement to all signatories.

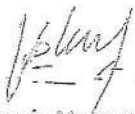
Article 22


Entry into force

This Agreement shall come into force on the date of its signature by at least three (3) State Parties. This Agreement comes into force as soon as the Depositary notifies the other State Parties of this third required signature.

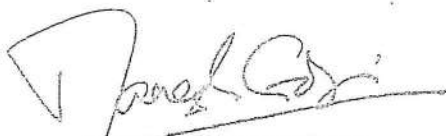
In witness whereof the undersigned, being duly authorised by the State Parties, have signed this Agreement.

Done at Balaclava, Mauritius, on April 29th 2018, in the English and French languages, both versions being equally authentic.


H.E.M. Youssouf Mohamed Ali
Secretary of Cabinet of the
Presidency
Minister of Defence
Union of Comoros


H.E.M. Ali Hassan Bahdon
Minister of Defence
in charge of relations with
Parliament
Republic of Djibouti


H.E.M. Henry Rabary-Njaka
Minister of Foreign Affairs
Republic of Madagascar


H.E.M. Manasseh Gobin
Attorney General
Minister of Justice, Human Rights
and Institutional Reforms
Republic of Mauritius


H.E. Mrs Macquzy Mondon
Designated Minister
Minister of Home Affairs and Local
Government
Republic of Seychelles



ANNEX TO THE AGREEMENT FOR THE SETTING UP OF REGIONAL MARITIME INFORMATION
EXCHANGE AND SHARING MECHANISM IN THE WESTERN INDIAN OCEAN

"GOVERNANCE OF REGIONAL CENTRES"

I. Subject

1. At the regional level, a governing structure is created with the aim of ensuring the organisational structure and operational framework of the Centres set up by the Agreement for the Setting up of a Regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region and the Regional Agreement on the Coordination of Operations at Sea in the Western Indian Ocean respectively.
2. The purpose of this Annex is to:
 - a) establish a structure for dialogue and discussion for the Regional Maritime Information Fusion Centre (RMIFC) and the Regional Coordination Operation Centre (RCOC) thereafter referred to as Centres or Regional Centres
 - b) define the roles and responsibilities of each stakeholder in the organisation, operation and decision-making process of the Centres;
 - c) promote a common vision for implementation of sustainable activities of the Centres.

II. Decision-making Structure of the Centres

1. At the strategic level, there is a single governing body, referred to as the "Steering Committee", common to both Centres set up by the Parties which defines their main orientation.
2. At the operational level, a structure, referred to as a "Technical Committee", for day-to-day matters is established for each Centre.

III. The Steering Committee

A. Membership and mandates

1. State Parties will constitute the Steering Committee.
2. Participation of Partners and other States to the meetings of the Steering Committee is governed by the provisions of the specific agreements entered into at the time of their admission.
3. The Steering Committee is represented by its Chairperson.
4. The Steering Committee meets twice a year. The Committee will meet in extraordinary session when necessary.
5. The chairmanship of the Steering Committee is held by Parties' representatives on a rotational basis chosen by the other Parties. The Host States cannot hold the Chairmanship.
6. Each State Party is represented by its National Focal Person in the Steering Committee.

B. Responsibilities of the Steering Committee

1. The Steering Committee has the overall responsibility to:
 - a) ensure that Regional Centres comply with and implement the mission entrusted to them by the State Parties;
 - b) ensure compliance with the confidentiality provisions in force in the Centres;
 - c) Ensure compliance or the adoption of national regulatory frameworks promoting the regional objectives set;
 - d) decides on the admission of new members;
 - e) set medium and long-term goals;
 - f) ensure monitoring and enforcement of decisions taken;
 - g) approve and control the budget of each Regional Centre;
 - h) define the profile and terms and conditions of appointment of the Director of each Regional Centre and validate his appointment on the proposal of the concerned country;
 - i) define the profile and terms and conditions of appointment of the deputy Director of each Regional Centre and validate his appointment; and
 - j) do such act ancillary to any of the above item.
2. Further, the Steering Committee shall examine and adopt, on the proposal of the Director of each of the Regional Centre:
 - a) strategic directions;
 - b) the strategic plan defining medium-and long-term goals;
 - c) the annual budget;
 - d) the annual activity report and the approval of the accounts;
 - e) the organisational structure of the Regional Centres; and
 - f) any organisational restructuring.

IV. The Technical committee

A. Membership

1. The Technical Committee is set up for each Centre:
2. Each Technical Committee is composed of the director of the Centre, the deputy director and the liaison officer of each of the State Parties. Liaison officers from other States and partner institutions attend only in a consultative role.
3. The Technical Committee holds regular meetings at the Centre under the chairmanship of the director of the Centre or his deputy.

B. Mandate of the Technical Committee

1. The Technical Committee is the implementing body for the decisions of the Steering Committee and is central to the functioning of the Centre.
2. The Technical Committee is responsible for:

- a) ensure the implementation, under the responsibility of the Director of the Centre, of the decisions of the Steering Committee;
- b) the development of the short-and medium-term work plans;
- c) the development and dissemination of deliverables;
- d) the development of protocols specially those relating to information security;
- e) the development of agreements, contracts and memoranda of understanding necessary for the Centre;
- f) the preparation of agreements relating to the admission of partners;
- g) the tasks distribution and day to day functioning of the Centre;
- h) the development of the internal rules of procedure of the Centre;
- i) the communication policy of the Centre;
- j) the development of training and capacity building plans.

V. The Director of the Centre:

1. The Director of the Centre is responsible for the operation of the Centre and reports to the Steering Committee on the implementation of the strategic directions and decisions set.
2. The Director is accountable to the Steering Committee.
3. The Director will ensure liaison with the authorities of the host country and will ensure the implementation of the Hosting Agreement.
4. In his capacity as Director, the holder of the position is responsible for:
 - a) implementing the decisions of the Steering Committee;
 - b) developing strategic plans for implementing the goals set by the Steering Committee;
 - c) developing exchanges with other Centres, naval forces in the region, maritime bodies and sea users;
 - d) ensuring compliance with the confidentiality provisions in place at the Centres, in particular with regard to the exchange and sharing of maritime information;
 - e) ensuring compliance with data confidentiality clauses and access restrictions at the Centre;
 - f) developing and presenting the budget to the Steering Committee and ensuring that the budget caters for the needs of the Centre and implement the approved budget; and
 - g) Validating an annual report analysing trends and issues relating to maritime safety in the Eastern and Southern Africa -Indian Ocean region.
5. The modalities for the designation of the Director of the RMIFC and RCOC will be decided at a later date.

VI. The Deputy Director

1. The Deputy Director supports the Director of the Centre in the exercise of the latter's functions.
2. The Deputy Director is responsible for the internal organisation and coordination of the different operational units of the Centre.

The bottom of the page features several handwritten signatures and initials. On the left, there is a large, stylized signature. In the center, the number '15' is printed. To the right of the number, there are several sets of initials and signatures, including what appears to be 'S/S', 'AH', and 'SW'. A small signature is also visible at the bottom right corner.

3. In absence of the Director, the Deputy Director ensures his replacement. To this end, he will take into account the functions listed in a delegation of authority established by the Director.
4. The modalities for the designation of the Deputy Director of the RMIFC and RCOC will be decided at a later date.

VII. The financial resources of the Centres

1. In addition to the financial contribution of the Host countries to the Centres, the Centre's budget may be financed by contributions from:
 - a) State Parties
 - b) other State Parties and Partner Organisations;
 - c) Intergovernmental organisations or non-governmental organisations; and
 - d) other sources, such as its own revenues
2. The diversity of funding sources is a guarantee for the long-term financial sustainability of the Centres. As such, the Centres can conduct *ad hoc* or specific studies for the benefit of other organisations or actors on the evolution of maritime threats and trends as well as risks related to regional maritime security. These *ad hoc* or specific studies will be undertaken in line with the clauses relating to the use of the maritime information and data mentioned in the Agreement.
3. The Steering Committee may authorise the Director of the Centre, in accordance with the guidelines previously set in this regard, to accept contributions as well as donations or grants, subject to the following conditions:
 - a) Autonomy of the Centre is not threatened;
 - b) Compatibility with the objectives and mandate of the Centre and
 - c) Formal and systematic approval by the Steering Committee before disbursement.

ADDENDA

Pursuant Article 2. of this Agreement, the French Republic becomes a Party to this Agreement for the Setting up of a Regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean.

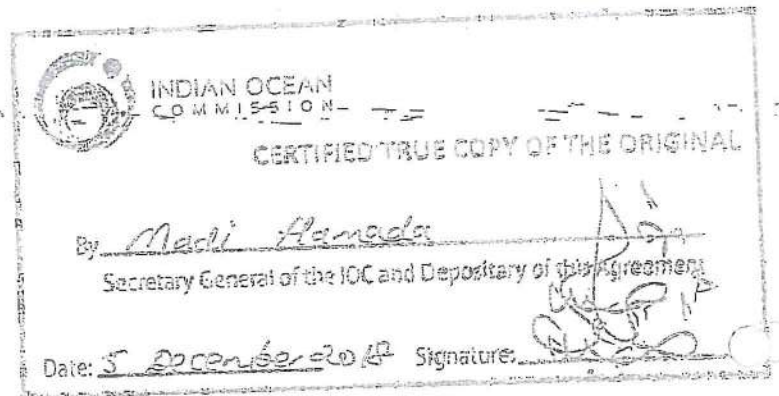
In witness whereof, the undersigned Authority duly mandated by the French Republic have signed this Agreement.

Done in Nairobi, Republic of Kenya, on November 26th 2018, in English and French languages, both versions being equally authentic.

Signature subject to approval



H.E. Mrs Aline Kuster-Ménegar
Ambassador of France in Kenya
French Republic



ADDENDA

Pursuant to Article 2 of this Agreement, the Republic of Kenya becomes a Party to this Agreement for the Setting up of a Regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean.

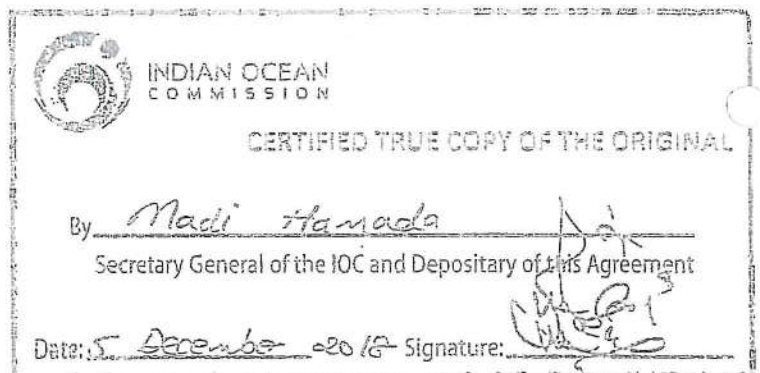
In witness whereof, the undersigned Authority duly mandated by the Republic of Kenya have signed this Agreement.

Done in Nairobi, Republic of Kenya, on November 26th 2018, in English and French languages, both versions being equally authentic.


Amb. Raychelle Omario, SC, EGH

Cabinet Secretary for Defence
Republic of Kenya

Subject to the
Declaration dated
27th Nov 2018



DECLARATION
ON THE AGREEMENT
FOR THE SETTING UP OF
A REGIONAL MARITIME
INFORMATION EXCHANGE
AND SHARING MECHANISM
IN THE WESTERN INDIAN
OCEAN REGION

SECRET



MINISTRY OF DEFENCE

Telegrams: "DEFENCE", Nairobi
Telephone: Nairobi 020-2721100

DEFENCE HEADQUARTERS
ULINZI HOUSE
P.O Box 40668, NAIROBI
KENYA

When replying please quote

DECLARATION

Pursuant to Article 17 of the Agreement for the Setting up of a Regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region, it is hereby declared that the signature on behalf of the Republic of Kenya is subject to subsequent Cabinet approval and ratification by the Kenya National Assembly in accordance with Kenya's Constitution, 2010 and the Treaty Making and Ratification Act, Act No. 45 of 2012.

Dated at Nairobi this 27th day of November 2018


ANNE RACHELLE ORLAMO, SC, EGH
CABINET SECRETARY

SECRET

MEMORANDUM TO THE
NATIONAL ASSEMBLY
ON THE
REGIONAL AGREEMENT
ON THE
CO-ORDINATION OF
OPERATIONS AT SEA
IN THE WESTERN INDIAN

THE NATIONAL ASSEMBLY
PAPERS LAID
ON THE
12/11/2010
Tabled
BY:
CLERK-AT-TABLE
L O M
DAY:
Tuesday

CONFIDENTIAL

REPUBLIC OF KENYA



MINISTRY OF DEFENCE

MEMORANDUM TO THE NATIONAL ASSEMBLY

ON

THE REGIONAL AGREEMENT ON THE CO-ORDINATION OF
OPERATIONS AT SEA IN THE WESTERN INDIAN OCEAN

1
CONFIDENTIAL

1.0 OBJECTIVE OF THE MEMORANDUM

- 1.1 The purpose of this Memorandum is to apprise the National Assembly on the Regional Agreement on the Co-ordination of Operations at Sea in the Western Indian Ocean (hereinafter referred to as the Agreement) and to seek approval for its ratification.

2.0 BACKGROUND

- 2.1 The Agreement was negotiated under the auspices of the Indian Ocean Commission to which the Republic Kenya is a member. Even though the Republic of Kenya through the Ministry of Defence participated in the negotiation of the Agreement, the Ministry did not sign the Agreement at the close of the conference as the Ministry's delegates were not authorized to sign the Agreement. The Republics of Madagascar, Djibouti, Seychelles, Mauritius and Comoros however signed the Agreement.
- 2.2 The Republics of Kenya and France signed the Agreement on 26 November 2018 during the Sustainable Blue Economy Conference in Nairobi. The signature on behalf of the Republic of Kenya was made subject to a declaration which notified the other State Parties that the signature was subject to ratification by the Cabinet and approval by the National Assembly.
- 2.3 The Cabinet ratified the signature of the Agreement on behalf of the Republic of Kenya and further authorized the Ministry to seek the National Assembly's authority for ratification.

3.0 OBJECTIVES OF THE AGREEMENT

- 3.1 Article 3 of the Agreement identifies the objective of the Agreement as providing a framework for regional co-operation between the State Parties to enhance maritime safety and security. The Agreement further provides for the establishment of a Joint Operational Co-ordination Centre to co-ordinate joint interventions in the maritime zone and the high seas.
- 3.2 The Agreement further requires State Parties to establish jurisdiction on offences committed in the maritime zone within their sovereign

jurisdiction, on stateless vessels and on vessels or aircrafts registered by a State Party or flying the flags of the State Party. It further commits State Parties to provide mutual legal assistance to each other in the prosecution of such offences.

3.3 The Agreement will enhance the national security of the Republic of Kenya as it provides a framework for co-ordinated policing of the West Indian Ocean by coastal states.

4.0 CONTENTS OF THE AGREEMENT

4.1 The Agreement is divided into twenty four articles as follows:

- a. Article I provides for the interpretation of terms.
- b. Article II provides defines which state Parties are eligible to accede to the Agreement.
- c. Articles III and IV identify the purpose of the Agreement and measures to achieve the purpose of the Agreement.
- d. Articles V and VI identify the scope of the Agreement and identifies threats which may be subject to co-ordinated joint operations.
- e. Articles VII to XII prescribe the manner in which joint co-ordinated operations would be taken including mutual legal co-operation.
- f. Articles XIII and XIV establishes the Regional Co-ordination Operations Centre and sets out the responsibilities of the Host State.
- g. Articles XV to XXIV contain standard final provisions.

5.0 FINANCIAL IMPLICATION

5.1 Kenya's participation in the Agreement will occasion negligible additional financial cost. The Republic of Seychelles will be required to underwrite the administrative costs of operating the Regional Co-ordination Operations Centre. The Ministry will however be required to delegate a liaison officer to the Regional Co-ordination Operations Centre at its cost. The costs of

delegating the liaison officer will be drawn from the Ministry's recurrent expenditure budget.

6.0 RECOMMENDATIONS

6.1 The National Assembly is invited to:

- a. Take note of this Memorandum outlining the contents of the present Agreement.
- b. Approve ratification of the Agreement.

Dated this^{6th}..... day of^{March}..... 2019


AMB. RAYCHELLE OMAMO, SC, EGH
CABINET SECRETARY FOR DEFENCE

ATTACHMENT

Regional Agreement on the Co-ordination of Operations at Sea in the Western Indian Ocean together with the declaration dated 27 November 2018.

REGIONAL AGREEMENT

ON THE

COORDINATION OF

OPERATIONS AT SEA

IN THE

WESTERN INDIAN OCEAN

REGIONAL AGREEMENT ON THE COORDINATION OF
OPERATIONS AT SEA
IN THE WESTERN INDIAN OCEAN

[Handwritten signatures and initials]

REGIONAL AGREEMENT ON THE COORDINATION OF OPERATIONS AT SEA
IN THE WESTERN INDIAN OCEAN

The Parties to this Agreement,

Noting the United Nations Convention on the Law of the Sea of 10 December 1982;

Noting the Convention against illicit traffic in Narcotic Drugs and Psychotropic Substances of 10 December 1988;

Noting the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 10 March 1988 and its Protocol of 2005;

Noting the International Convention for the Prevention of Pollution from Ships adopted on 2nd November 1973;

Noting the International Convention for the Protection of human life at sea of 1st November 1974;

Noting that the Strategy for the promotion of security in the ESA-OI region (MASE), adopted on 7th October 2010 in Grand Bay, Republic of Mauritius, particularly in the field of results 4 and 5, encourages the signatory States to pool the resources and strengthen the monitoring and control of regional maritime operations.

Recalling the responsibility of each regional State to ensure, by its own means, for State action at sea in the zones under its sovereignty, sovereign rights or exclusive jurisdiction as well as obligations of ships flying its flag, wherever they are;

Noting that the strengthening of cooperation between the Parties must be carried out in accordance with national sovereignty, territorial integrity and non-interference in internal affairs;

Noting that the integrated African Strategy for the seas and oceans – Horizon 2050:

- a) encourages the implementation of joint regional monitoring operations and the establishment of marine or coastguard networks around Africa with an important cross-border prosecution function; and
- b) encourages the establishment, in collaboration with the relevant actors, of continental and regional agreements, provisions and capacities aimed, inter alia, at mobilization of assets through the elaboration of joint programs, on the application of Law, search and rescue services, humanitarian crises, emergency relief services;

Recalling the Code of conduct of Djibouti concerning the suppression of Acts of piracy and armed robbery against ships in the western Indian Ocean and the Gulf of Aden adopted in Djibouti on 29th January 2009 and the Jeddah Amendment to the Djibouti Code of Conduct of 12th January 2017;

Bearing in mind the code of Conduct on the prevention and suppression of acts of piracy, armed robberies against ships and illicit maritime activities in West and Central Africa adopted in Yaoundé, Cameroun, on 25th June 2013;

Bearing in mind the International Plan of Action to Prevent, Deter and Eliminate Illegal, unreported and unregulated fisheries of the Food and Agriculture Organization of the United Nations adopted on 23rd June 2001;

2



Recalling United Nations General Assembly resolution 67/78 of 5th December 2012 on Oceans and the Law of the Sea recognising the crucial role of cooperation at the global regional, sub-regional and bilateral levels in combatting maritime crime and threats in accordance with international law;

Recalling that the Assembly of the International Maritime Organization (IMO) adopted, on 2nd December 2009 at its 26th ordinary session, Resolution A. 1025 (26) on the Code of good practice for the conduct of investigations into offences of piracy and Armed robbery against ships, which invites, inter alia, Governments to develop, as appropriate, agreements and procedures to facilitate cooperation in the implementation of effective and efficient measures aimed at preventing Acts of piracy and armed robbery against ships;

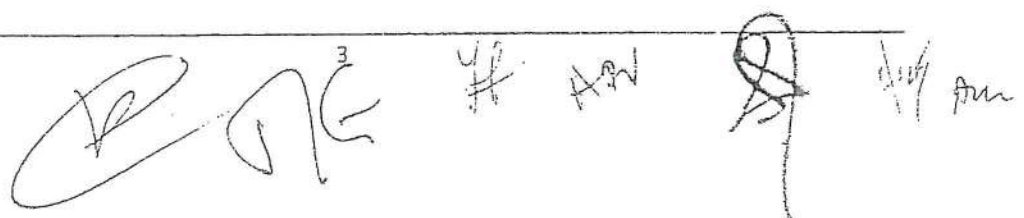
Aware that the participation of each Party in the regional operational coordination for sea operation of the state derives directly from the principle of international cooperation laid down in the relevant international legal instruments applicable, inter alia, for the protection of the marine environment, the search and rescue at sea, the fight against piracy, the fight against terrorism, the prohibition of the financing of terrorism, and to the relevant resolutions of the Council of Security of the United Nations (UN);

Convinced that the success of regional operational coordination is based initially on the political will of each Party and on the complementarity and mobilisation at the regional level of the material, human and legal means of the state's Partners in a second time, allowing to drive the necessary actions in time where a need has been identified;

Convinced that the Parties may enter into bilateral or multilateral cooperation or partnership agreements to enhance regional maritime safety and security;

HAVE HEREBY AGREED that a regional framework for operational coordination at sea known as the "Regional Agreement on the Coordination of Operations at Sea in the Western Indian Ocean" or "Agreement", shall be established between the State Parties of the MASE Program, signatories of this Agreement.

Its terms and conditions are defined below:

A series of handwritten signatures and initials are written below a horizontal line. From left to right, there is a large, stylized signature, followed by the letters 'JG' with a small '3' above the 'G', then a signature that appears to be 'H', followed by 'AN', and finally a signature that looks like 'S' followed by 'duy' and 'an'.

NATURE AND SCOPE OF THE AGREEMENT

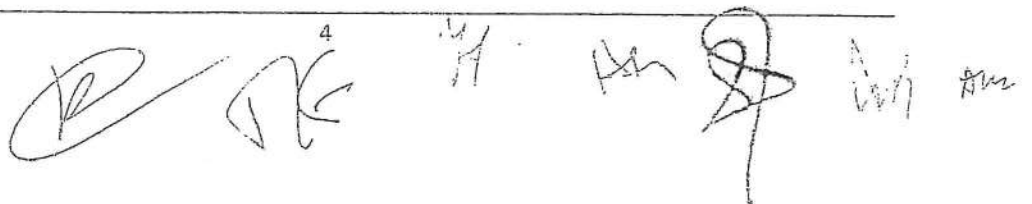
Article 1

Interpretation

For the purpose of this Agreement, terms are defined as follows:

1. "Aircraft of repressive service" means aircraft visibly bearing an external mark and identified as being at the service of the State, used for law enforcement purposes and duly authorized to do so on boarded by law enforcement officers;
2. "Airspace of a party" means airspace as defined in the Convention on International Civil Aviation signed in Chicago on 7th December 1944;
3. "Depositary" means the Secretary General of the Indian Ocean Commission;
4. "Foreseeable threat" means circumstances which may negatively affect the maritime safety and/or security, as noted and reported by the Regional Maritime Information Fusion Centre (RMIFC) of Madagascar;
5. "Human resources" refers to all human resources provided by the Parties within the framework of regional coordinated operations;
6. "Legal means" means the national and international legal instruments used by the Parties for enabling and facilitating judicial outcomes of the interventions carried out in the framework of the regional coordinated operations;
7. "Material means" means all equipment, sea, air and land facilities adapted to duties assigned to Parties and those likely to be used by the State Parties, in the framework of regional coordinated operations;
8. "Regional Zone of Operation" means all of the maritime zones and superjacent airspace under the exclusive jurisdiction or sovereignty or sovereign rights of the State parties in line with their respective national legislation, and the high seas and the superjacent airspace, encompassed by the Regional Coordination Operation Centre, defined by the following limits:
 - a. Longitudes 20° East and 76.5° East -
 - b. Latitudes 26° North and 37° South
9. "Suspicious aircraft" means any aircraft in respect of which there are reasonable grounds to suspect that it is engaged in an illicit activity;
10. "Suspicious vessel" is defined as any vessel or floating structure which is reasonably suspected of undertaking an illicit activity;
11. "Vessel of repressive services" means vessels visibly bearing an external mark and identified as being at the service of the State, used for repressive purposes and duly authorized to do so, including vessels and aircraft on these ships boarded by law enforcement officers; and
12. "Waters of a party" means maritime zones as defined in the United Nations Convention on the Law of the Sea signed at Montego Bay on 10 December 1982.

4



Article 2

Parties and Partners

1. The Parties to this Agreement are States committed to the coordination of operations at sea for the purpose of maritime security and safety.
2. The other States of the Eastern and Southern Africa and Indian Ocean (ESA-IO) may become Parties to this Agreement.
3. Subject to paragraph 4 and the conditions set thereunder, State Parties may decide to have as partners, in particular:
 - a) States desiring to contribute to promoting maritime security in the regional maritime zone,
 - b) International organisations in the field of maritime safety and security,
 - c) Internationally recognised funding organisations.
4. Where no State Party objects to the adhesion of a third party pursuant to this article, the latter shall become Party or Partner to this Agreement under set conditions. In this regard, any such request shall be made to the Depository who in turn informs State Parties.
5. The Parties and Partners agree to cooperate in good faith, within the framework of the commitments made in accordance with the provisions of this Agreement.

Article 3

Objectives

1. The purpose of this Agreement is to lay the basis for a regional cooperation framework amongst the State Parties to enhance maritime safety and security in the regional maritime zones in accordance with the national sovereignty, territorial integrity and non-interference in the internal affairs of States in accordance with national and international law.
2. The Parties agree to the setting up of a regional operational coordination aiming at:
 - a) promoting cooperation and coordination to enable vessels and aircraft of the law enforcement departments of the Parties to conduct regional coordinated operations in the maritime zones under the jurisdiction of Parties and on the high seas in accordance with international law, national legislation and the provisions of the present Agreement;
 - b) strengthening individual and institutional capacities through training and experience exchange programmes;
 - c) organising joint and/or coordinated interventions at sea and above the sea to prevent acts affecting maritime security and safety, and to stop such acts or their consequences;
 - d) enabling and facilitating mutual support between regional States, where an international or regional maritime security interest is affected in the regional zone of operation; and

A series of handwritten signatures and initials are present at the bottom of the page. From left to right, there is a large, stylized signature, followed by the initials 'DG', 'H', 'HM', a signature that appears to be 'S', another signature, and the initials 'Am'.

- e) promoting cooperation with other maritime agencies operating in the field of maritime security and safety.

Article 4

Measures to facilitate the achievement of the objectives

To achieve the objectives of this Agreement, the Parties undertake to:

- a. cooperate in the fight against foreseeable threats, listed in a non-exhaustive manner in Article 6 below, affecting maritime security and safety in the regional zone of operation;
- b. provide their assistance to regional coordinated operations at sea, in terms of material, human resources and legal means as defined in article 1 of this Agreement within the limits of their resources pursuant to future framework agreements with the Parties and to their priorities;
- c. to establish a mechanism for ad-hoc mutual assistance, both in terms of human resources and law, in the event of a foreseeable threat, using the resources committed by the Parties, for a duration and pre-established conditions laid down to enable interventions at sea;
- d. accelerate and facilitate clearance procedures allowing timely, ad hoc and systematic responses to law enforcement vessels and aircraft, aircraft used in support of operations and law enforcement officers of other State Parties and Partners to allow them to enter their waters, their airspace and their ports and airports;
- e. facilitate the process for the authorisation permitting the exercise of the right to pursue fully or partially in their territorial waters and archipelagic vessels or aircraft of the law enforcement services of the State Parties and Partners in regional coordinated operations;
- f. facilitate and encourage effective coordination among law enforcement officers and promote the exchange of law enforcement officers and other experts, including liaison officers with the RCOC;
- g. provide logistical support to regional coordinated operations at sea in terms of within their resource capacity and availability and in line with their respective legislation and policy, to law enforcement vessels and aircraft engaged in regional coordinated operations, persons rescued at sea, victims of smuggling of migrants or human trafficking, hijacked ships and detainees.

Article 5

Scope

1. Nothing contained in this Agreement shall be in contravention to the provisions of international instruments including UNCLOS. In case of any inconsistency between any provision of this Agreement and any other international instrument, the latter shall prevail.
2. Nothing in this Agreement shall be deemed to affect the immunities of vessels and aircraft that benefit from such immunities by virtue of international law provisions.
3. For the purposes of this Agreement, law enforcement vessels and aircraft shall in no circumstances be considered as suspected vessels or aircraft.

Article 6

Framework of regional coordinated operations

The operations of regional scope falling within the ambit of this Agreement shall also include the following tasks:

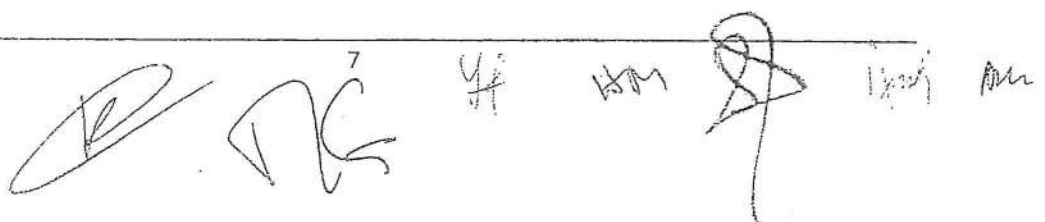
- a. the fight against piracy;
- b. the fight against organised crime and the perpetration of illegal acts at sea;
- c. assistance in the exercise of State prerogatives by States towards vessels flying their flag or flying no flag;
- d. participation in the Search and Rescue of human beings at sea, within the framework of existing schemes;
- e. protection of marine environment in the event of a foreseeable threat;
- f. participation in restoring safety and security of navigation at sea or near seaports;
- g. protection of underwater sites of cultural value; and
- h. cooperation in the event of natural or environmental disasters.

COORDINATED OPERATIONS OF REGIONAL INTEREST

Article 7

Coordinated operations of regional interest

1. The operations carried out within the framework of the Regional Operational Coordination are operations at sea which may lead to legal action.
2. An operation at sea shall be of regional interest within the meaning of this Agreement when one of the following situations occurs in the regional operation zone:
 - a) one State Party notifies the Regional Coordination Operational Center (RCOC) that it cannot respond to a foreseeable threat against its maritime security and safety unless it is supported by specialised resources of at least one other party;
 - b) a foreseeable threat to persons, property or the marine environment that does not directly and individually affect one of the Parties, but threatens their collective interest, that of third States, or the interests of the international community; and
 - c) the nature of the operation to be carried out is to prevent the foreseeable threat or to put an end to it as provided for in article 6 of this Agreement and in paragraph 1 of this article.
3. Regional coordinated operations may be requested and undertaken against or for the benefit of any person or any vessels at sea or aircraft located in the superjacent airspace whether or not it is a national Party or a State Party registered with the RCOC.
4. The resources committed in the framework of Regional Operational Coordination are resorted to in line with international law, national laws and regulations and under the sole political, diplomatic, legal and financial responsibility of State Parties and Partners.

 7

5. Nothing in this Agreement authorises or may be construed as granting an authorisation to a State Party or Partner to enter the territorial waters or superjacent airspace of another State, in conformity with UNCLOS and as per the State's legislation, without the express consent of that State.

Article 8

Action at national level relating to suspicious vessels and aircraft

1. To facilitate coordinated operations, the State Parties shall endeavour to undertake on a case-by-case basis to equip themselves with the capacity to enable them at any time and as soon as possible to:
 - a) to respond to requests for verification of nationality;
 - b) to allow the arrest and search of suspicious vessels; and
 - c) to give prompt instructions on the continuation of the operations concerning vessels immobilised on its behalf.
2. The State Parties undertake to facilitate the search and agreement of the flag State where the suspicious vessel does not fly the flag of any of the State Parties to this Agreement.
3. Each State Party shall communicate to the RCOC the name of the competent national authority or authorities to which applications are to be addressed in accordance with paragraph 1 of this Article.

Article 9

Law enforcement officers

1. A State Party may designate qualified Law Enforcement Officers to embark on vessels and/or aircraft of another Party for the purpose of this Agreement.
2. A State Party may authorise the officers of the designated law enforcement agencies of another Party to embark on vessels of its own law enforcement agencies on such terms and conditions deemed adequate by the State Party.
3. Subject to the internal laws and regulations of the Party making the designation specified at paragraph 1, these law enforcement officers, once duly authorised, shall:
 - a) enforce the laws of the party making the designation in order to suppress the illicit acts committed in the waters of the said party or, beyond such waters in the exercise of the right of prosecution or in any other manner in accordance with international law;
 - b) seek due authorisation to facilitate the entry and navigation of law enforcement vessels and aircraft on which they are embarked in the waters of the State Party;
 - c) seek due authorisation to facilitate patrols by the vessels and aircraft of the law enforcement agencies, on which they are embarked to carry out patrols in the waters of the Party making the designation;
 - d) where paragraph (1) applies, the law enforcement officer shall assist in the enforcement of the legislation of the party designating the officer for the purpose of suppressing illicit action or trafficking; and
 - e) advise and assist law enforcement officers of other State Parties in the conduct of ship boarding to enforce the laws of the said Parties to suppress illicit activities or trafficking.



4. Where law enforcement officers are in the waters, on the territory or on board a vessel or aircraft of the law enforcement agencies of another State Party, they shall comply with the laws and customs and traditions of naval and air of that other State Party.
5. Each boarding of law enforcement officers of a State Party onboard the enforcement vessel or aircraft of another Party is notified to the RCOC when the boarding is not a result of a mission order from the RCOC.
6. The State Parties shall cooperate on the training of law enforcement officers in the conduct of maritime security and safety operations pursuant to this Agreement.

Article 10

Boarding and Search

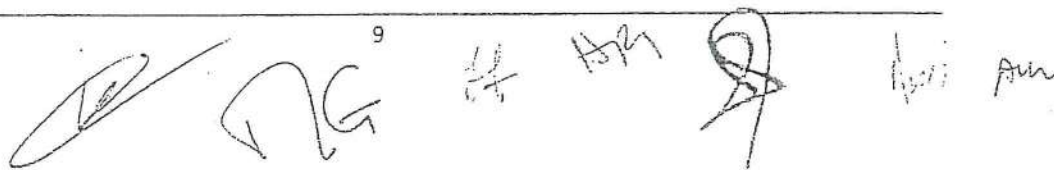
1. Boarding and searches carried out and coordinated in accordance with this Agreement may only be made by teams of authorised law enforcement officers of State Parties from law enforcement vessels.
2. Visiting, boarding and search teams may operate from the vessels and aircraft of the law enforcement officers of any of the Parties and from the vessels and aircraft of the law enforcement officers of other States in accordance with the modalities to be agreed between the State Parties.
3. These visiting teams may on a case-by-case basis carry weapons during boarding and search operations subject to compliance with national legislation.

Article 11

Jurisdictional and mutual legal assistance

1. To facilitate legal proceedings initiated within the framework of Regional Operational Coordination, the Parties undertake to consider:
 - a) the adoption of the necessary measures to establish their jurisdiction over offences detected by their law enforcement officers when:
 - i. the offence is committed in the waters under its sovereignty or contiguous zone, where it exists;
 - ii. the offence is committed on a vessel flying its flag or an aircraft nationally registered at the time the offence is committed;
 - iii. the offence is committed on board an aircraft devoid of nationality or assimilated to a vessel devoid of nationality in accordance with international law, and which lies beyond the territorial sea of any State;
 - iv. the offence is committed on a vessel flying the flag or bearing the registration or other mark of the nationality of another State Party, and which lies beyond the territorial waters of any of the States;
 - b) recognition and/or admissibility of evidence before their courts of law of law enforcement officers of other State Partners;

9

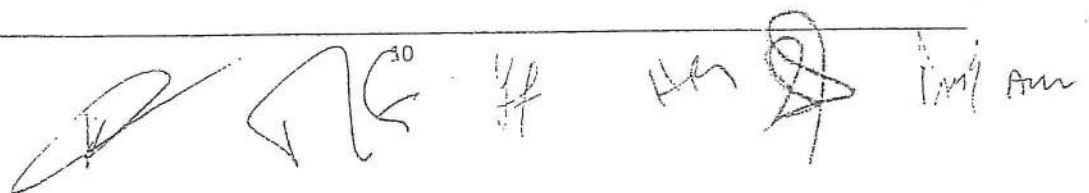
 Several handwritten signatures and initials are present at the bottom of the page, including a large signature on the left, the letters 'G' in the center, and other illegible marks on the right.

- c) the adoption of mutual legal assistance arrangements with the State Parties and Partners in regional coordinated operations, including:
- i. accepting on their territory of the transit of suspects to another Partner State for judgment or for the execution of the sentence;
 - ii. **accepting** to initiate criminal proceedings of a suspect when required;
 - iii. extraditing a suspect to a State Party or Partner; and
 - iv. transmitting to an entity or a State personal data or evidence collected at sea or after transfer.
2. Nothing in this Agreement shall be construed to affect the rights and privileges of any person in a legal proceeding. A State Party reserves all its rights where the State Party is of the view that there may be a breach of its national legislation, any of its commitments in the field of Human Rights and any contravention to its national policy.

Article 12

Other cases in accordance with international law

Except if the contrary is expressly provided in this Agreement, its provisions shall not apply or impose any restriction on the boarding of vessels carried out by any of the Parties in accordance with international law, beyond the territorial waters of any State whether such boarding is based, inter alia, on the right of access, the provision of assistance to persons, vessels and property in distress, or on an authorisation by the flag State to take repressive measures.

A series of handwritten signatures and initials are located at the bottom of the page, below a horizontal line. From left to right, there is a large, stylized signature, a signature with the number '10' written above it, a signature that appears to be 'H', a signature that appears to be 'HM', a signature that appears to be 'S', and a signature that appears to be 'Am'.

REGIONAL COORDINATION OPERATIONS CENTRE (RCOC)

Article 13

Establishment of the Regional Coordination Operations Centre

1. To ensure the implementation of this Agreement, the Regional Coordination Operations Centre (RCOC) is established.
2. The RCOC benefits from legal personality under the terms of domestic and international law, as well as the protections, privileges and immunities provided for in the Hosting Agreement signed on 1st July 2017 between the Indian Ocean Commission and the Republic of Seychelles.
3. The RCOC shall work closely with the Regional Maritime Information Fusion Centre (RMIFC).
4. Each State Party shall designate a liaison officer within the RCOC for maintaining linkage between its national structure and the Centre.
5. The functions of the Centre are to plan and coordinate the operations defined in Article 6 of this Agreement.
6. The Centre is governed by the terms and conditions contained in the Annex known as the "Regional Governance of the Centres" of this Agreement. This Annex also applies to the RMIFC.
7. The Parties shall study the possibilities for the financial sustainability of the Centre.

Article 14

Responsibilities of the Host State

1. The Host State commits to establish the RCOC in accordance with the call for expressions of interest, regarding in particular the independence of the Centre and the granting of a sufficient budget, a budget for the day-to-day running of operations, national human resources and suitable infrastructure to fulfil its tasks.
2. The Republic of Seychelles shall inform the other State Parties of any change in its legislation or circumstances, which may prejudice the operation of the RCOC.

FINAL PROVISIONS

Article 15

Maritime zones and Territorial limits

Nothing in this Agreement, nor any act or activity undertaken by the State Parties, the RCOC, the RMIFC, a Partner or third parties in the implementation of or as a consequence of the Agreement, shall be construed as implying acceptance by any State Party of a claim to territory or maritime boundaries by another State Party. This shall also apply to any protocol, annex or document made pursuant to or in connection with this Agreement.

11

Article 16

Amendments

1. At any time after having signed the Agreement and after this Agreement has come into force, a State Party may propose an amendment to this agreement by communicating the text of its proposed amendments to the Depository, which shall forward it diligently to all State Parties.
2. An amendment shall be adopted by State Parties during one of their meetings unless one represented State Party expresses its opposition.
3. An amendment shall enter into force thirty (30) days after receipt by the Depository of the instruments of acceptance or approval of the amendment by all State Parties unless the State Parties agree otherwise.

Article 17

Settlement of Disputes and Remedies

1. In the event of any doubt or dispute between two or more State Parties arising from the interpretation or implementation of this Agreement, the State Parties shall consult each other in order to settle the dispute through diplomatic channels
2. Notwithstanding the above paragraph, the State Parties shall initiate discussions on any provision of compensation where damages have arisen from a coordinated mission or measure undertaken pursuant to this Agreement.

Article 18

Reservations

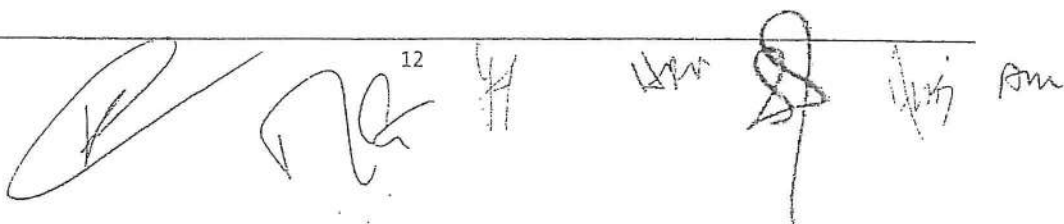
Each State Party may formulate reservations to this Agreement to the extent that these are compatible with the objectives of the Agreement.

Article 19

Declarations and communications

The foregoing article shall not prevent a State, when signing, ratifying, accepting or approving this Agreement, from making any declarations or communications, in whatever form or description, in particular so as to harmonise its laws and with the provisions of this Agreement, provided that such declarations and communications are not intended to exclude or modify the legal effect of the provisions of this Agreement in their application to that State.

12





Article 20

Suspension

1. The Parties to this Agreement may temporarily suspend their obligations in zones under their sovereignty if such suspension is necessary for compelling national security reasons. Such suspension takes effect at the moment of notification to the Depository and the Parties.
2. In the event of non-settlement of a dispute or reported failings by one or several Parties, this Agreement may be terminated by one or more Parties that notify their intentions to the Depository in writing at least three (3) months prior to termination taking effect. Upon receipt of the notification, the Parties shall carry out consultations in order to resolve any disputes amicably within the notice period of three (3) months, or urgently if the conditions of confidentiality are affected.

Article 21

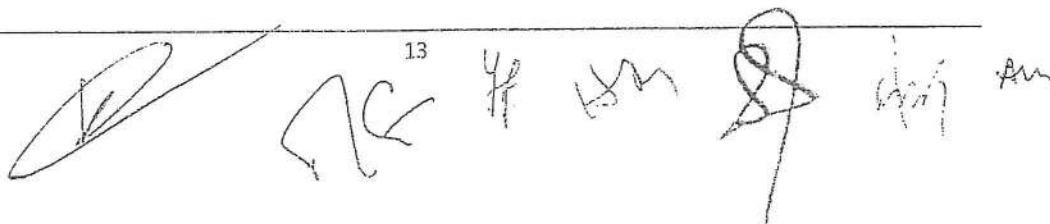
Withdrawal

1. Any State Party may withdraw from this Agreement. Withdrawal shall take effect three (3) months after receipt, by the Depository, of the notification of withdrawal.
2. Upon reception of the notification of withdrawal, the Depository sends a copy of the withdrawal notification to other Parties.
3. This Agreement will continue to apply after withdrawal for any administrative or judicial proceedings arising from measures taken under this Agreement concerning the withdrawing State Party.

Article 22

Annex to the Agreement

The Annex to this Agreement is considered an integral part of the Agreement.

A horizontal line is drawn across the page. Below the line, there are several handwritten signatures and initials. From left to right, there is a large, stylized signature, followed by the initials 'AK', '48', 'SM', a signature that looks like 'S', another signature, and the initials 'AM'.

Article 23

Depositary

1. The original version of this Agreement shall be deposited with the Secretary General Indian Ocean Commission, who shall serve as the Depositary.
2. The Depositary shall transmit a certified copy of the Agreement to all signatories.

Article 24

Entry into force

This Agreement shall come into force on the date of its signature by at least three (3) States Parties. This Agreement comes into force as soon as the Depositary notifies the other Parties of this third required signature.

In witness whereof the undersigned, being duly authorised by the Parties, have signed this Agreement.

Done at Balaclava, Mauritius, on April 29th 2018, in English and French languages, both versions being equally authentic.

H.E.M. Youssoufa Mohamed Ali
Secretary of Cabinet of the
Presidency
Minister of Defence

Union of Comoros

H.E.M. Ali Hassan Bahdon
Minister of Defence
in charge of relations with
Parliament

Republic of Djibouti

H.E.M. Henry Rabary-Njaka
Minister of Foreign Affairs

Republic of Madagascar

H.E.M. Maneesh Gobin
Attorney General
Minister of Justice, Human Rights
and Institutional Reforms
Republic of Mauritius

H.E. Mrs Macsuzy Mondon
Designated Minister
Minister of Home Affairs and Local
Government
Republic of Seychelles



INDIAN OCEAN
COMMISSION

CERTIFIED TRUE COPY OF THE ORIGINAL

By

Madi Hanada

Secretary General of the IOC and Depositary of this Agreement

Date: 7 May 2018

Signature:

ANNEX TO THE AGREEMENT FOR REGIONAL AGREEMENT ON THE COORDINATION OF OPERATIONS AT SEA IN THE WESTERN INDIAN OCEAN

"GOVERNANCE OF REGIONAL CENTRES"

I. Subject

1. At the regional level, a governing structure is created with the aim of ensuring the organisational structure and operational framework of the Centres set up by the Agreement for the Setting up of a Regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region and the Regional Agreement on the Coordination of Operations at Sea in the Western Indian Ocean respectively.
2. The purpose of this Annex is to:
 - a) establish a structure for dialogue and discussion for the Regional Maritime Information Fusion Centre (RMIFC) and the Regional Coordination Operation Centre (RCOC) thereafter referred to as Centres or Regional Centres
 - b) define the roles and responsibilities of each stakeholder in the organisation, operation and decision-making process of the Centres; and
 - c) promote a common vision for implementation of sustainable activities of the Centres.

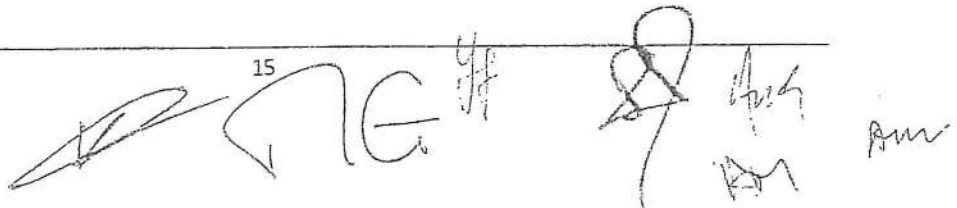
II. Decision-making Structure of the Centres

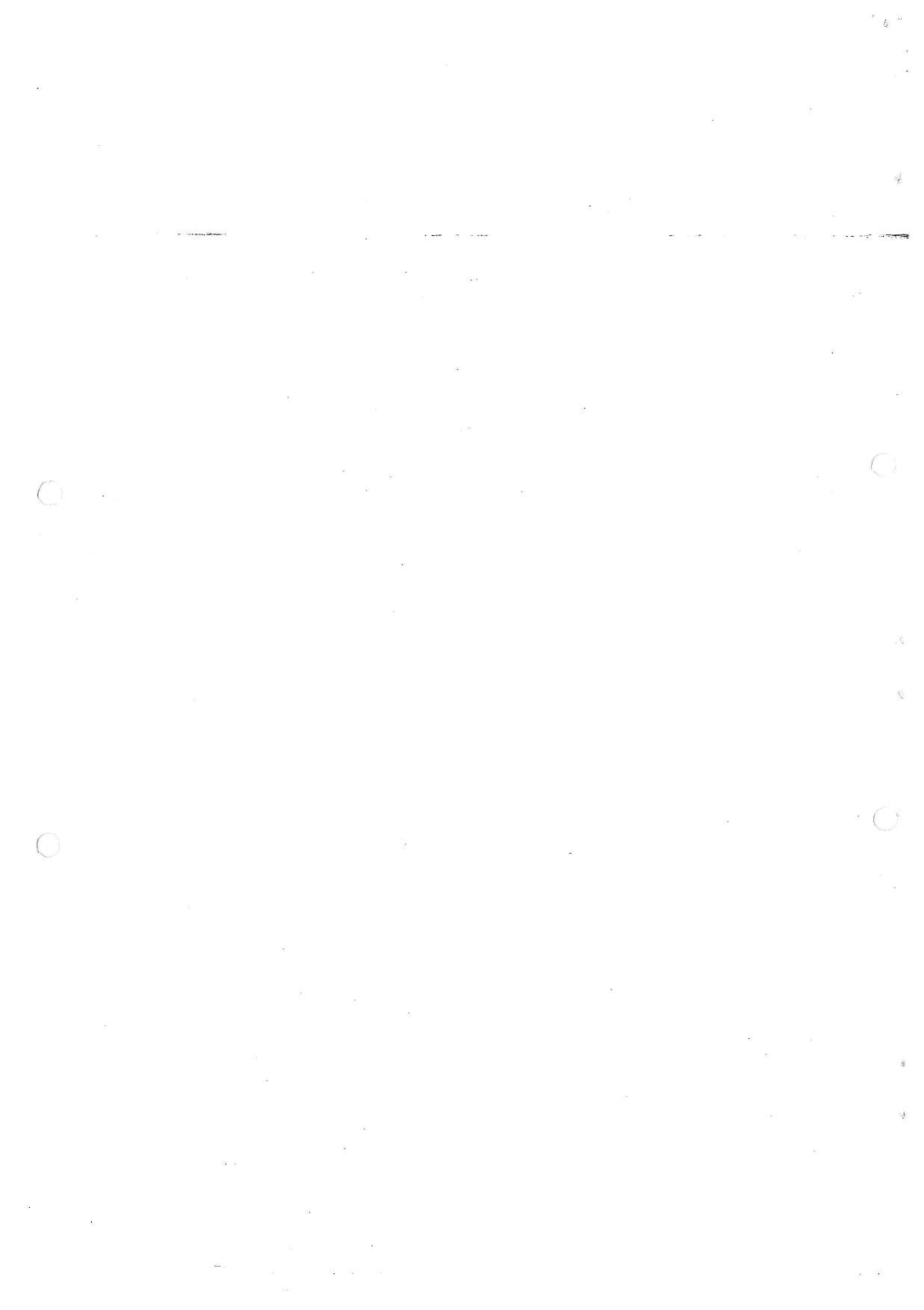
1. At the strategic level, there is a single governing body, referred to as the "Steering Committee", common to both Centres set up by the Parties which defines their main orientation.
2. At the operational level, a structure, referred to as a "Technical Committee", for day-to-day matters is established for each Centre.

III. The Steering Committee

A. Membership and mandates

1. State Parties will constitute the Steering Committee.
2. Participation of Partners and other States to the meetings of the Steering Committee is governed by the provisions of the specific agreements entered into at the time of their admission.
3. The Steering Committee is represented by its Chairperson.
4. The Steering Committee meets twice a year. The Committee will meet in extraordinary session when necessary.
5. The chairmanship of the Steering Committee is held by Parties' representatives on a rotational basis chosen by the other Parties. The Host States cannot hold the Chairmanship.
6. Each State Party is represented by its National Focal Person in the Steering Committee.





B. Responsibilities of the Steering Committee

1. The Steering Committee has the overall responsibility to:
 - a) ensure that Regional Centres comply with and implement the mission entrusted to them by the State Parties;
 - b) ensure compliance with the confidentiality provisions in force in the Centres;
 - c) Ensure compliance or the adoption of national regulatory frameworks promoting the regional objectives set;
 - d) decides on the admission of new members;
 - e) set medium and long-term goals;
 - f) ensure monitoring and enforcement of decisions taken;
 - g) approve and control the budget of each Regional Centre;
 - h) define the profile and terms and conditions of appointment of the Director of each Regional Centre and validate his appointment on the proposal of the concerned country;
 - i) define the profile and terms and conditions of appointment of the deputy Director of each Regional Centre and validate his appointment; and
 - j) do such act ancillary to any of the above item.
2. Further, the Steering Committee shall examine and adopt, on the proposal of the Director of each of the Regional Centre:
 - a) strategic directions;
 - b) the strategic plan defining medium-and long-term goals;
 - c) the annual budget;
 - d) the annual activity report and the approval of the accounts;
 - e) the organisational structure of the Regional Centres; and
 - f) any organisational restructuring.

IV. The Technical committee

A. Membership

1. The Technical Committee is set up for each Centre:
2. Each Technical Committee is composed of the director of the Centre, the deputy director and the liaison officer of each of the State Parties. Liaison officers from other States and partner institutions attend only in a consultative role.
3. The Technical Committee holds regular meetings at the Centre under the chairmanship of the director of the Centre or his deputy.

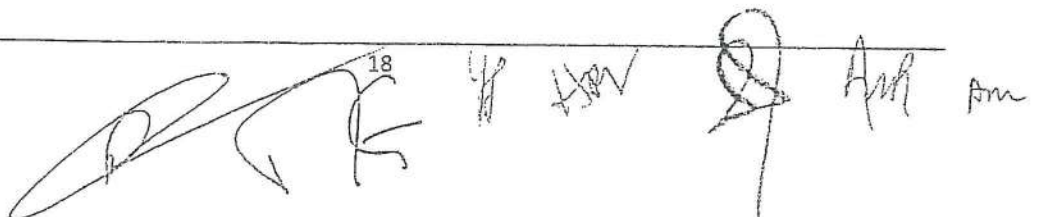
B. Mandate of the Technical Committee

1. The Technical Committee is the implementing body for the decisions of the Steering Committee and is central to the functioning of the Centre.
2. The Technical Committee is responsible for:
 - a) ensure the implementation, under the responsibility of the Director of the Centre, of the decisions of the Steering Committee;

4. The modalities for the designation of the Deputy Director of the RMIFC and RCCC will be decided at a later date.

VII. The financial resources of the Centres

1. In addition to the financial contribution of the Host countries to the Centres, the Centre's budget may be financed by contributions from:
 - a) State Parties
 - b) other State Parties and Partner Organisations;
 - c) intergovernmental organisations or non-governmental organisations; and
 - d) other sources, such as its own revenues
2. The diversity of funding sources is a guarantee for the long-term financial sustainability of the Centres. As such, the Centres can conduct *ad hoc* or specific studies for the benefit of other organisations or actors on the evolution of maritime threats and trends as well as risks related to regional maritime security. These *ad hoc* or specific studies will be undertaken in line with the clauses relating to the use of the maritime information and data mentioned in the Agreement.
3. The Steering Committee may authorise the Director of the Centre, in accordance with the guidelines previously set in this regard, to accept contributions as well as donations or grants, subject to the following conditions:
 - a) Autonomy of the Centre is not threatened;
 - b) Compatibility with the objectives and mandate of the Centre and
 - c) Formal and systematic approval by the Steering Committee before disbursement.

A series of handwritten signatures and initials are present at the bottom of the page, including a large signature on the left, the number '18' in the center, and several other initials and signatures on the right.

ADDENDA

Pursuant Article 2 of this Agreement, the French Republic becomes a Party to this Regional Agreement on the Coordination of Operations at Sar in the Western Indian Ocean.

In witness whereof, the undersigned Authority duly mandated by the French Republic have signed this Agreement.

Done at Nairobi, Republic of Kenya, on November 26th 2018, in English and French languages, both versions being equally authentic.

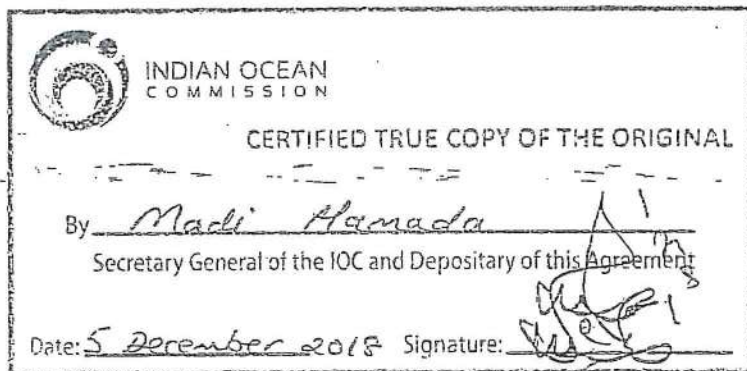
Signature subject to approval

[Handwritten signature]

H.E. Mrs Aline Kuster-Ménager

Ambassador of France in Kenya

French Republic



DECLARATION
ON THE REGIONAL
AGREEMENT ON THE
CO-ORDINATION OF
OPERATIONS AT SEA
IN THE WESTERN
INDIAN OCEAN



MINISTRY OF DEFENCE

Telegrams: "DEFENCE", Nairobi
Telephone: Nairobi 020-2721100


DEFENCE HEADQUARTERS
ULINZI HOUSE
P.O. Box 40668, NAIROBI
KENYA

When replying please quote

DECLARATION

Pursuant to Article 19 of the Regional Agreement on the Coordination of Operations at Sea in the Western Indian Ocean, it is hereby declared that the signature on behalf of the Republic of Kenya is subject to subsequent Cabinet approval and ratification by the Kenya National Assembly in accordance with Kenya's Constitution, 2010 and the Treaty Making and Ratification Act, Act No. 45 of 2012.

Dated at Nairobi this 27th day of November 2018


AMB. RAYCHELLE OMAMO, SC, EGH
CABINET SECRETARY

SECRET

