

**IUCN  
Environmental  
Law  
Programme**

# **International Environmental Governance An International Regime for Protected Areas**

Edited by  
John Scanlon and Françoise Burhenne-Guilmin



**IUCN Environmental Policy and Law Paper No. 49**



**IUCN**  
The World Conservation Union

# **International Environmental Governance**

## **An International Regime for Protected Areas**

# **International Environmental Governance**

## **An International Regime for Protected Areas**

**Edited by  
John Scanlon and Françoise Burhenne-Guilmin**

**IUCN Environmental Law Programme**

**IUCN Environmental Policy and Law Paper No. 49**

**IUCN – The World Conservation Union  
2004**

The designation of geographical entities in this book, and the presentation of the material, do not imply the expression of any opinion whatsoever on the part of IUCN or Parks Canada concerning the legal status of any country, territory, or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

The views expressed in this publication do not necessarily reflect those of IUCN or Parks Canada.

This publication has been made possible by funding from Parks Canada.

Published by: IUCN, Gland, Switzerland and Cambridge, UK in collaboration with Parks Canada

**IUCN**  
The World Conservation Union



Parks  
Canada

Parcs  
Canada

Copyright: © 2004 International Union for Conservation of Nature and Natural Resources

Reproduction of this publication for educational or other non-commercial purposes is authorized without prior written permission from the copyright holder provided the source is fully acknowledged.

Reproduction of this publication for resale or other commercial purposes is prohibited without prior written permission of the copyright holder.

Citation: Scanlon, John and Burhenne-Guilmin, Françoise (Eds.) (2004). *International Environmental Governance: An International Regime for Protected Areas*. IUCN, Gland, Switzerland and Cambridge, UK. x + 75pp.

ISBN: 2-8317-0768-4

Cover design by: IUCN Publications Services Unit

Cover photo: IUCN<sup>V</sup> World Parks Congress, Final Day. *IUCN/Scanlon*

Layout by: IUCN Publications Services Unit

Produced by: IUCN Publications Services Unit

Printed by: Henry Ling Ltd, UK

Available from: IUCN Publications Services Unit  
219c Huntingdon Road, Cambridge CB3 0DL, United Kingdom  
Tel: +44 1223 277894, Fax: +44 1223 277175  
E-mail: [info@books.iucn.org](mailto:info@books.iucn.org)  
[www.iucn.org/bookstore](http://www.iucn.org/bookstore)

A catalogue of IUCN publications is also available

# Contents

---

Preface <i>Achim Steiner</i>	vii
Acknowledgements	ix
<b>Executive Summary</b> <i>John Scanlon and Françoise Burhenne-Guilmin</i>	1
<b>An International Legal Regime for Protected Areas</b> <i>Professor Michael Jeffery, QC</i>	9
Appendix I	37
Appendix II	38
<b>Protected Areas and Certification</b> <i>Nigel Dudley</i>	41
<b>International Funds, ‘Partnerships’ and other Mechanisms for Protected Areas</b> <i>Tomme Young</i>	57

# Preface

---

IUCN – The World Conservation welcomes the publication of this timely and thought provoking work, which reinforces the relevance of the outstanding work done by the IUCN Environmental Law Programme (ELP).

‘Good governance’ is now firmly entrenched on the international agenda. This is evident from the outcomes of the World Summit on Sustainable Development, with the Johannesburg Plan of Implementation stating that “good governance within each country and at the international level is essential for sustainable development”. This link was further reinforced in the context of protected areas at the V<sup>th</sup> IUCN World Parks Congress (WPC) which included ‘Governance’ as one of the seven WPC Workshop Streams.

This publication analyses the trends affecting protected area governance at the international level, and goes on to explore emerging issues concerning certification, standards, partnerships and funding mechanisms. It does not seek to prescribe the answers, rather it seeks to clearly articulate the issues, the competing arguments, and the challenges that all need to be addressed as we strive for the optimal protected area governance arrangements. In doing so the IUCN ELP has provided an excellent platform for critical thinking and debate.

This publication has been produced through the collaboration of members of the IUCN Commission on Environmental Law and staff of the IUCN Environmental Law Centre, who work together to deliver an integrated global environmental law programme. It demonstrates in a tangible way what is possible through the collective efforts of IUCN volunteers and staff.

We are most grateful to Parks Canada for the outstanding support it provided to the Governance Workshop Stream at the WPC, and most particularly for funding this publication.

*Achim Steiner*  
*IUCN, Director General*

# Acknowledgements

---

We would like to address special thanks to Parks Canada, and to Jim Johnston in particular, for funding this work and for strongly supporting the importance of governance issues in the lead up to the Vth IUCN World Parks Congress, where the papers published in this volume were presented and discussed.

The draft papers were sent out to a number of people and institutions for peer review. We wish to acknowledge the following peer reviewers for commenting on all or part of the work prior to the finalization of the papers:

*Conventions/Programmes:*

Convention on Biological Diversity:	Marjo Vierros
UNESCO Division of Ecological Sciences:	Mireille Jardin, Jane Robertson
Ramsar Convention:	Delmar Blasco
World Heritage Convention:	Sarah Titchen

*Individuals:*

Charles Di Leva  
Lee Kimball  
Tony La Viña  
Jon Lindsay  
Estherine Lisinge  
Ali Mekouar  
Tom Rotherham  
Pedro Solano

We are also grateful to Abi Srikhanta and Elaine Johnson, Macquarie University Division of Law (Centre for Environmental Law) for the research assistance they provided with regard to Section 2.

The authors have also requested the editors to acknowledge and to express thanks to Parks Canada for supporting this valuable work and the many researchers and peer reviewers who invested significant time and effort in providing feedback.

*The Editors  
August 2003*

# Executive Summary

*John Scanlon and Françoise Burhenne-Guilmin*

---

## A. Overview

This body of work on governance in the lead up to the Vth IUCN World Parks Congress was commissioned by Parks Canada and was undertaken by the IUCN Environmental Law Programme as a collaborative effort of the IUCN Environmental Law Centre, Bonn and the IUCN Commission on Environmental Law.

The results of this work are divided into four sections:

***Executive Summary.*** John Scanlon and Françoise Burhenne-Guilmin draw upon the contributions from the authors, and related publications, to reflect on the international trends affecting governance of protected areas at the international level, including the possible impact of emerging issues such as certification.

***An International Legal Regime for Protected Areas.*** Professor Michael Jeffery QC carries out a comprehensive review and analysis of the relevant global instruments, and a select few regional instruments, together with key global initiatives, to identify any discernible trends in protected area governance at the international level.

***Protected Areas and Certification.*** Nigel Dudley provides a substantive examination of the emerging issue of certification, with an analysis of the current range of possible mechanisms and the potential issues of concern relative to the development of such a system for protected areas.

***International Funds, ‘Partnerships’ and other Mechanisms for Protected Areas.*** Tomme Young undertakes a critical review of the governance framework for ongoing financing for protected areas and possible options for future mechanisms. Various options for advancing action through partnerships, and related governance implications, are also reviewed.

The views expressed are those of the editors and authors alone and do not necessarily represent the views of IUCN. They are presented to stimulate critical thinking and discussion.

## B. What is meant by governance

1. Governance of protected areas cannot be considered in isolation from contemporary thinking on governance issues generally or from the international debate on ‘good governance’ that has been vigorously pursued in other fora – with ‘good’ governance now being firmly entrenched on the international agenda. This is evident from the outcomes of the World Summit on Sustainable Development,<sup>1</sup> with the Johannesburg

---

<sup>1</sup> See also the UN Millennium Declaration where States committed “to promote democracy and strengthen the rule of law” and the Report of the International Conference on Financing for Development (‘the Monterrey Consensus’) where States committed themselves to “good governance at all levels and the rule of law”, and the outcomes of the 3<sup>rd</sup> World Water Forum, Kyoto, 2003.



Plan of Implementation stating that “good governance within each country and at the international level is essential for sustainable development”.

2. Governance can be described as the means by which society defines goals and priorities and advances cooperation; be it globally, regionally, nationally or locally. Governance arrangements are expressed through legal and policy frameworks, strategies, and action plans; they include the organizational arrangements for following up on policies and plans and monitoring performance. Governance covers the rules of decision-making, including who gets access to information and participates in the decision-making process, as well as the decisions themselves.<sup>2</sup>
3. Governance has also been described as fundamentally about “power, relationships and accountability: who has influence, who decides, and how decision-makers are held accountable”.<sup>3</sup>
4. Most fundamentally, governance is the means to an end, not an end in itself.
5. There are certain elements of ‘good’ governance which are universal, such as the need for transparency and accountability. The purpose of this work is not to repeat these general principles.<sup>4</sup>
6. In order to most effectively achieve sustainable development, governance at all levels – local, national, regional, and global – should be mutually reinforcing. International governance does not produce results in the absence of good national governance, and good national governance is essential for meaningful participation and results at the international level.
7. Who is involved and how decisions are made affect the commitment and ability to follow through. Once decisions are taken, steps are needed at all levels to implement them. If the capacity for governance is weak at any level, this will undermine results. The need for structured devolution of authority to the local and community level necessitates good governance at national and local levels – but devolution will fail unless it is accompanied by the capacity to organize, fund and carry out the devolved responsibilities. Building governance capacity is vital for implementing national and international decisions.
8. It is important to remember that governance is not the province of governments alone. It includes informal institutional arrangements like voluntary codes of conduct for private business and partnerships among governments, intergovernmental organizations, business, civil society, and professional associations. These partnerships include numerous varied and innovative arrangements.
9. Increasingly, new models are being explored to find ways of building civil society and the private sector into international policy-making.<sup>5</sup>

---

<sup>2</sup> See IUCN Position Paper: Governance for Sustainable Development, May 2002. Available from the IUCN ELP website: [www.iucn.org/themes/law](http://www.iucn.org/themes/law)

<sup>3</sup> See ‘Governance Principles for Protected Areas in the 21<sup>st</sup> Century’, Institute on Governance in collaboration with Parks Canada prepared for the Vth IUCN World Parks Congress.

<sup>4</sup> For a good review of general principles, see the IUCN Position Paper and the paper ‘Governance Principles for Protected Areas in the 21<sup>st</sup> Century’ referred to above.

<sup>5</sup> Recent initiatives such as the World Commission on Dams provide a good example of achieving this. See IUCN ELP Newsletter, Issue 1, 2003 available from [www.iucn.org/themes/law](http://www.iucn.org/themes/law) (and IUCN is itself a 54-year-old experiment in global governance).

10. Part C of this Executive Summary first addresses the sizeable amount of international guidance that is provided by current international hard and soft law in the field of protected areas<sup>6</sup> and then goes on to consider the informal governance arrangements for protected areas that are also starting to emerge at the international level.<sup>7</sup>

## C. International governance and protected areas

1. International environmental law has been developing at an increasingly rapid pace for over three decades. Its very purpose is to provide international governance for environmental and natural resources conservation. While this is undeniable, the question here is whether, and to what extent, this body of rules contains elements of international governance specific to protected areas.
2. International law has various sources, which each generate elements of international governance, but whose mandatory nature varies: treaties, as well as customary law and general principles, are binding (hard law); resolutions and declarations issued by international institutions and international conferences are non-binding (soft law), but have a powerful guidance character, especially for those states having participated in their elaboration. To-day, international environmental law governance is provided by a complex body and interaction of hard and soft law. This situation also applies to the specific subject of protected areas.
3. There are a number of legal techniques which enable the protection of particular areas. Some are 'site specific' in that they address geographically delimited areas, designated for a particular purpose, and managed according to that purpose. Others are 'non site-specific' in that they address areas belonging to a certain ecosystem type (eg wetlands) wherever they are located and without requiring a case by case designation. This technique, while it permits controlling through a permit system on all those areas, does not seek to address targeted management.
4. IUCN defines a protected area as '*An Area of land and/or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means*'. It is this definition which is followed in this work. Thus, only site-specific protection is taken into account. In addition, only the goal of protecting and maintaining biological diversity is considered. This includes species, genetic and ecosystem diversity.
5. Tracing the evolution of international law instruments pertaining to protected areas leads to the observation that, generally, protected areas are increasingly recognised by treaties as well as soft law, including international programmes, as a critical tool within the array of measures required for the conservation of biological diversity. This is illustrated by the obligations and guidelines which consistently mandate the maintenance of existing protected areas, and the establishment of new ones. Such guidance was already part and parcel of early regional biological diversity-related conventions, such as the 1940 Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, and has continued to be an important feature of all those which followed in the next two decades, eg for Africa (Algiers, 1968 and revised in 2003); South Pacific (Apia, 1976);

---

<sup>6</sup> In paragraphs 6.1 to 6.5.

<sup>7</sup> In paragraph 6.6.

Europe (Berne, 1979); Asean (Kuala Lumpur, 1985), as well as for the most recent ones (Protocol to the Alpine Convention, 1994; protocols to the Regional Seas Conventions 1989, 1990, 1996...). This general guidance became global in character with the adoption of the Convention on Biological Diversity in 1992, i.e. relatively late, in the wake of the recognition of biological diversity as a global concern, calling for global responses.

6. Beyond this general level, an array of specific guidance is provided on a variety of aspects of protected areas. Important to note is the evolution which takes place in each case, as newer international instruments adapt their requirements to the evolution of the concept and the role of protected areas in the scientific and socio-economic fields.

Among these aspects are:

#### 6.1 *Objectives and corresponding level of action*

Concerted international action is usually called for to achieve particular objectives regarding biological diversity, including protected areas, and the level at which it should take place evolves with the changing perception of which level – regional or global – is appropriate for which objective.

In the field of protected areas, historically, regional action was first called for, leading to broadly based requirements for protected areas to be created as needed to conserve species and representative samples of unique ecosystems regionally.

Global requirements started later, first in relation to specific objectives which clearly could not be achieved without commitments of the global community of states, namely:

- one ecosystem type threatened globally (Ramsar);
- globally important sites (Ramsar and World Heritage); and
- sites important for species migrating across borders (Convention on Migratory Species).

These rather specific global instruments did not focus on protected areas but considered them, explicitly or implicitly, as one, if not the most important, tool to achieve their respective objectives.

Global requirements expanded to increasingly broader objectives as a result of the recognition of global environmental interdependence and as a consequence of globalization, culminating in the recognition, by the adoption of the Biodiversity Convention, that:

- biological diversity conservation is a common concern of humankind in spite of or, depending on the view one takes, because of, states' sovereign rights over their biological resources; and
- states are responsible for their biological diversity, and for using their biological resources sustainably.

As the standards for biological diversity conservation became global, so did the standards for techniques and tools to conserve it, including protected areas.

6.2 *Objectives of protected areas: where, and how?*

Various requirements have evolved significantly over the years, in particular regarding the following:

- originally purely a tool used on land, the requirement to create protected areas in coastal and marine areas has become standard;
- standard also has become the call for applying an ecosystem approach in determining the boundaries of protected areas;
- equally important has become the requirement to avoid ecological isolation, and achieve protected areas connected in networks and parts of coordinated systems; and
- also striking the evolution of objectives, originally focussed on preservation, protected areas now include substantial roles regarding the sustainable use of ecosystems and their resources.

6.3 *Relationships of protected areas with the landscape*

Early on, requirements to protect protected areas from negative impacts from outside have played an important role in international instruments, starting with the concept of buffer zones, in which activities having the potential to affect the protected area considered are to be prohibited.

The Biosphere Reserve concept broadened and refined this approach, providing for a transition area, which can be used to operate linkages between core areas in the protected area and the landscape, including ecological corridors.

Another step has been the requirement, independently of zoning techniques as indicated above, to regulate processes and activities occurring outside a protected area, but likely to affect it.

Requirements for protected area networks and systems also underline the necessity to move from single isolated areas to a concept of integration of protected areas and protected area planning into a general physical planning process sensitive to the requirements of biological diversity conservation.

6.4 *The socio-economic requirements*

The need to take into account the social and economic factors surrounding protected areas has become an important component of protected area design and policies. This is also reflected at an international level, with requirements aimed at social acceptability, transparency, and support for sustainable development. Standard setting trends aim at:

- targeting/limiting regulation of human activities in protected areas to the purpose for which the protected area has been created, thus tuning prohibitions to ecological needs, while allowing human activities which do not run against these needs;
- empowering local stakeholders to play an active role in individual protected area management, and providing incentives i.e. through benefit sharing to their interest in achieving the purpose for which the protected area was created;

- building capacity of stakeholders, in particular local or indigenous communities, in providing, and benefiting from, such management; and
- providing sufficient support, including financial support, in order to achieve both ecological and socio-economic goals.

#### 6.5 *The surrounding legal environment*

In addition to standard setting or guidance related to protected areas *per se*, a number of broader international legal principles, tools and techniques are relevant to them.

These may address the national or international levels. Of relevance to the national level are, in particular:

- the international requirements to subject projects, plans and programmes to an environmental impact assessment, with a view to providing decision-makers with all the information needed when taking decisions; and
- the requirement to provide for procedural rights (right to information, public participation, access to justice) in the environmental field generally, is also of great relevance to protected areas.

Of relevance to the international level are, *inter alia*, the recognition of:

- common but differentiated responsibilities (and related funding mechanisms – see below) which bind states to the same obligations, but differentiate the level of implementation according to evolving national capabilities;
- equity considerations, leading to requirements for equitable sharing of benefits deriving from the use of genetic resources between those husbanding these resources, and those using their potential to manufacture intellectual property rights protected products;
- the precautionary approach, enabling states to take restrictive measures also in the absence of scientific established certainty;
- transfrontier obligations, whenever action, or lack of action, in a particular state may significantly affect the environment of another; or joint management obligation, when resources are shared;
- accountability at international level, through periodic reports by individual Parties to the conference of parties of each international treaty,

and a number of others, constituting the fabric of an evolving international environmental law.

#### 6.6 *Emerging issues*

The implementation of most of the international governance principles and standards is dependent on action taken at national level. This in turn depends on the political will and capacity of individual states.

Implementation and compliance are therefore crucial, and now increasingly receive priority attention, as is reflected in the outcomes of the World Summit on Sustainable Development.

Compliance mechanisms, for instance, have become a welcome feature of international environmental instruments, as they focus on reviewing specific critical situations upon request (by the state concerned, affected state(s) or the secretariat of the international instrument at stake). The advantage of such mechanisms is their emphasis on solving problems of implementation in a non-confrontational manner.

In addition, other techniques are emerging in parallel. This is the case in the protected areas field for management effectiveness and standards, and certification. This reflects not only the generally growing interest in implementation, but also an attempt to assist in how to measure compliance. While certification is not a novel concept, its application to protected areas is problematic, and the implications of developing a global scheme may outweigh any potential benefits.

Added to this are moves to explore new financial mechanisms and ways of creating and supporting partnerships. Much of this is not new, but new approaches are being considered as the importance of both gathers renewed momentum. How this is best advanced in the context of protected areas remains open, including whether support for additional financing to address specific threats, such as alien invasive species, and specific instruments, such as the World Heritage Convention, is a preferable option.

## **D. Conclusions**

1. A sizeable amount of international guidance is provided by current international hard and soft law, constituting a true body of standards for 'good' governance in the field of protected areas.
2. Informal governance arrangements for protected areas are also starting to emerge at the international level as management effectiveness and standards, certification, new financial mechanisms and ways of creating and supporting partnerships are further explored and/or developed.
3. As is usually the case with international guidance, most of it is directed at the national level, thus leaving the burden of implementation to individual states.
4. Recent moves to look at certification of protected areas reflect a growing interest in looking more closely at the means used for implementation at the national level, and at their results. How far they will, or should, progress, and whether they will be voluntary or mandatory, remains open to debate.
5. Ongoing issues regarding the means of providing on-going financing for protected areas, and its relationship to the principle of common but differentiated responsibilities remain unresolved, with new options for additional global financing mechanisms being considered.
6. Partnerships, the foundation upon which IUCN has been built, have re-emerged to centre stage, with all means of advancing them across all sectors being explored to enhance implementation.
7. The theme of the Vth IUCN World Parks Congress is '*Benefits Beyond Boundaries*'. How emerging issues of certification, new financial mechanisms and partnerships for protected areas serve to progress this theme also remains open to debate.

8. Is all of this sufficient? Should the international community be diving deeper into national governance and/or implementation issues, and if so which ones and how – or is effort better placed elsewhere?

These are the sorts of questions that now need to be discussed.

# An International Legal Regime for Protected Areas

*Professor Michael I. Jeffery, QC\**

---

## Introduction

Protected areas are by their nature subject to national governance arrangements which stem from national sovereignty over the land or seas. Protection of natural areas in recent years has been an increasingly important issue both domestically and within international environmental law. Individual states have the sovereign right to exploit or protect their own land and resources pursuant to their own environmental policies, and many states had enacted measures providing for parks and protected areas by the middle of the 20<sup>th</sup> century.

There are many global and regional instruments and initiatives that either directly provide for the establishment of protected areas or rely upon their establishment and effective management to achieve specific objectives. In addition, many 'soft law' instruments such as detailed declarations, guidelines and standards may also provide for establishment of protected areas or criteria and guidelines for their establishment and management. Both national and international measures are reinforced by evolving principles of international environmental law and customary law.<sup>1</sup> Some principles originating in soft law, frequently repeated principles appearing in global and regional treaties,<sup>2</sup> and provisions in draft treaties or treaties not yet in force<sup>3</sup> may eventually attain the status of international customary law.

With the emergence of international environmental law, the protection of the environment has been considered from a global perspective. Concepts such as sustainable use, biological diversity and climate change have become the subject matter of global research, co-operation and the creation of international regimes of proactive action and protection, particularly where a specific result could not be achieved by a single state – either because a resource was shared (migratory species), a threat could not be effectively tackled single-handedly (CITES) or a desired goal could not be achieved without unilateral, but concerted, actions.<sup>4</sup> New principles

---

\* Professor and Director, Centre for Environmental Law, Macquarie University; Deputy Chair, IUCN Commission on Environmental Law. The author is indebted to his student research assistants, Abi Srikhanta and Elaine Johnson, Macquarie University Division of Law (Centre for Environmental Law) for their cheerful and dedicated assistance in the preparation of this paper.

<sup>1</sup> Soft law instruments such as the 1972 Stockholm Declaration on the Human Environment, UN DOC. A/CONF/48/14/REV.1; the 1992 Declaration of the UN Conference on Environment and Development (Rio Declaration), UN DOC. A/CONF.151/26/REV.1 and the 2000 55/2 United Nations Millennium Declaration [Resolution adopted by the General Assembly without reference to a Main Committee (A/55/L.2)] have provided the basis for general application of environmental principles as well as the development of customary international law.

<sup>2</sup> An example of such a principle might be intra and inter-generational equity.

<sup>3</sup> The best known examples are certain provisions of the United Nations Convention on the Law of the Sea (UNCLOS) UN DOC. A/CONF.62/122 which were considered to reflect customary law and therefore had binding effect prior to UNCLOS coming into force as a global treaty in 1994.

<sup>4</sup> Observation provided by Françoise Burhenne-Guilmin, July 2003.



and approaches have rapidly evolved.<sup>5</sup> This in turn has resulted in the proliferation of international treaties, soft law and other global initiatives aimed at protecting the environment.<sup>6</sup> Confusion is sometimes generated by the sheer volume and lack of coherence in applying these international regimes to specific geographic areas and/or issues. This confusion is further exacerbated by the fact that treaties are each governed by independent Conferences of the Parties (COP) and coordination and integration of strategies at the international level is often lacking.

In the mid 1980's, in the lead up to the World Commission on Environment and Development's (WCED) report *Our Common Future*, commonly known as the Brundtland Report,<sup>7</sup> the legal expert advisers to WCED recommended that a serious attempt be made to alleviate this confusion and provide a stronger international legal basis for sustainable development comprised of clear, coherent global principles through a new umbrella treaty. The former Secretary-General of the United Nations, Javier Perez de Cuellar, stated in 1991 that "[t]he Charter of United Nations governs relations between States. The Universal Declaration of Human Rights pertains to relations between the State and the individual. The time has come to devise a covenant regulating relations between humankind and nature."<sup>8</sup> At the same time, the IUCN Commission on Environmental Law (CEL) began drafting a new model treaty to serve as an umbrella agreement for this purpose. This resulted in the first version of the IUCN Draft International Covenant on Environment and Development (draft Covenant).<sup>9</sup>

The draft Covenant has been under constant review and revision since its inception over the last ten years. Some of the world's leading environmental law experts have participated intensively in the drafting sessions. Many parts of the draft Covenant represent a more coherent and powerful statement of often repeated principles contained in international environmental treaties and/or that have attained the status of international customary law or *jus cogens*. Therefore, a considerable part of the draft Covenant is an articulation of established principles of international environmental law. Other parts of the draft Covenant, for example, the detailed articulation of the various rights associated with humans and the environment and the responsibility and liability principles, arguably go beyond this and provide a wider aspirational framework that may be included in a new treaty at some point in the future.

Although state sovereignty is a principal factor in international law, this paper will explore the trend in international environmental law towards an increasing tendency to review the soundness of the rights of States to do as they wish within their territories, and in particular in situations where the wider interests of the international community might be at stake. International environmental governance comprises the body of international rules and institutions. Implementation of international objectives, however, takes place at the national level.

---

<sup>5</sup> For example, the Polluter Pays principle and the Precautionary principle provide the framework within which international environmental law and domestic environmental legislation is now defined.

<sup>6</sup> See Nicolas de Sadeleer, *From political slogans to legal rules*, Oxford University Press (2002) and Zillman, Donald, Lucas, Alastair and Pring, George, *Human rights in natural resource development*, Oxford University Press (2002).

<sup>7</sup> WCED, *Our Common Future*, Oxford, (1987).

<sup>8</sup> See *Report of the Secretary-General on the Work of the Organization*, UN GAOR, 45<sup>th</sup> Sess., Supp. No. 1 at 11, U.N. Doc. A/45/1 (1991).

<sup>9</sup> See Nicholas A. Robinson "Colloquium: The Rio Environmental Law Treaties' IUCN's Proposed Covenant on Environment and Development" *Pace Environmental Law Review*, Vol 13, Fall 1995, p. 134.

## **What is international environmental governance for protected areas?**

Before proceeding with an analysis of the role of international law in the governance of protected areas it is useful to explore what is meant by the term “governance” in this context. In recent years the term has been inexorably entwined with the concept of environmental management that results in the desired environmental, social and economic outcomes. Governance of protected areas is exercised over a broad spectrum of management options that must be firmly anchored within appropriate legal and policy frameworks designed to respond to different goals and priorities. It should provide guidance on the whole spectrum of specific issues related to them – including the way they are selected, created, altered, managed and monitored.

Whilst policy-makers, governments, NGOs, citizens and other stakeholders provide civil society with the direction in which to go by setting the objectives (including how to determine them) of good environmental management, governance is primarily about how to get there, i.e. how to both determine and attain these objectives by providing the necessary elements that will best assure the desired results. More fundamentally, governance is the means to an end, not an end in itself.<sup>10</sup> Thus, rights such as public participation in both policy formation and decision-making, including that of indigenous peoples; access to justice; access to information; due process; an informed, independent and unbiased judiciary; transparency and accountability, are all part of the concept of good governance and, in the context of protected areas, good governance must be present as well as integrated, at the local, state, regional and indeed global levels of civil society. These rights have both a procedural and substantive content.

Future trends may show an international *standard of governance* that could be applied especially where there is international assistance, as the donors can set conditions of their assistance. If this would be the case, donors should ensure that such standards of governance are fully applied in their own situations, so as to avoid rejection on the basis of “double standards” or disguised trade conditionalities. These standards may also be relevant, as ‘best practice’ for instance, through IUCN guidelines or other international non-binding standards and evolving customary law even where there is no outside factor such as international assistance. Implementation of and compliance with such standards may also be influenced by various incentives (financial, such as aid, or others, such as labels of excellence).

Any discussion of environmental governance with respect to protected areas will necessarily entail the consideration of the traditional sources of international environmental law comprising (i) treaties, customs and general principles of international law that create binding legal obligations for States including mechanisms for determining international law such as judicial decisions and the writings of eminent publicists (often referred to as hard law), and, (ii) international soft law, that has been described as ‘not yet law or not only law’ and refers to the normative process involving a much broader range of actors including NGOs, industry, academic specialists, scientific organizations and international institutions in addition to States.<sup>11</sup>

---

<sup>10</sup> See “IUCN and Governance for Sustainable Development” prepared for the WSSD Bali Prep Com, 16 May, 2002, p. 1.

<sup>11</sup> See David Hunter, James Salzman and Durwood Zaelke, *International Environmental Law and Policy*, (2<sup>nd</sup> ed.), Foundation Press, New York, 2002, p. 348 *et seq.*

**Part I** will contain a review of what constitutes a protected area, and a discussion of the principal global initiatives together with a few key global treaties and regional instruments to identify any discernable trends and their elements for protected area governance at the international level.

**Part II** will focus on the evolving international governance of protected areas through an analysis of the general principles of international environmental law.

**Part III** will discuss some of the challenges raised by the foregoing discussion in Parts I and II and the extent to which the elements of good governance in relation to protected areas is reflected in the existing law. Some potential themes for future discussion will be set out in Appendix II to this paper.

## **Background concerning protected areas**

Whilst the concept of protected areas may be considered as old as natural resource management itself and thus encompass the entire realm of human history, a notable milestone in recent times is the creation of the world's first national parks, Yellowstone in the United States of America and the Royal National Park (then known as the National Park) in Australia in the 1870s. The concept of a "national park" can be traced back as far as 1832, when American landscape painter George Catlin, concerned about the preservation of the buffalo as well as Native American culture, suggested the idea of a "nation's park, containing man and beast, in all the wild[ness] and freshness of their nature's beauty".<sup>12</sup> Since then the concept of protected areas has undergone considerable revision. Originally, national parks were set aside for recreational purposes. For example, in the Royal National Park a guest house was built and exotic trees were planted. Later, conservationists began to recognise the intrinsic value of protected areas and there was a push to preserve them as areas of pristine wilderness.

Protected areas around the world are extremely diverse. There are over 68,000 protected areas around the world that satisfy The World Conservation Union's (IUCN) definition and are held in the database kept by the United Nations Environment Programme's World Conservation Monitoring Centre at Cambridge, UK.<sup>13</sup> IUCN's definition of protected areas, adopted from the 1992 IV<sup>th</sup> World Congress on National Parks and Protected Areas in which it specifically recognises the obligation to protect and maintain biological diversity, is set out as follows:

'An area of land and/or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources and managed through legal or other effective means.'<sup>14</sup>

Protected areas are created for a wide variety of purposes, which include the following:

- Preservation of species diversity

---

<sup>12</sup> National Park Service, U.S. Dep't of Interior, *The National Park: Shaping the System* 10 (1991). See also Michael I. Jeffery, "Public Lands Reform: A Reluctant Leap into the Abyss", *Virginia Environmental Law Journal*, Vol. 16, Fall 1996, Number 1, p. 80.

<sup>13</sup> Phillips, Adrian "Turning Ideas On Their Head – The New Paradigm for Protected Areas," January, 2003; see also *2003 United Nations List of Protected Areas*, IUCN and UNEP-WCMC (2003).

<sup>14</sup> Barbara Lausche, *IUCN Environmental Policy and Law Paper No. 16: Guidelines for Protected Areas Legislation* (1994) 7; Biological diversity entails genetic, species and ecosystem diversity which makes the definition broader than it appears at first sight.

- Preservation of genetic diversity
- Preservation of genetic material for human industry
- Preservation of ecosystem diversity
- Preservation of ecosystems' functions and values, including areas supporting human activity such as watersheds
- Economic reasons such as tourism
- Recreational purposes
- Research purposes
- Preservation of sites of cultural significance
- Preservation of aesthetics

In 1978 the IUCN's Commission on National Parks and Protected Areas (CNPPA) published a report entitled *Categories, Objectives and Criteria for Protected Areas*, which proposed a system of ten protected area management categories.<sup>15</sup> Because of confusion over the nomenclature applied within states for protected areas, IUCN categories are now defined by the objectives of management, not by the title of the area. Protected areas should be established according to national legislation, pursuant or not to international agreements, to meet objectives consistent with global, national, local or private goals and needs. When using the IUCN classification they can only be labelled with an IUCN category according to the management objectives pursued.

The original IUCN ten categories have since been reduced to six, with the first five being retained, namely: (I) Scientific Reserve/Strict Nature Reserve, (II) National Park, (III) Natural Monument/Natural Landmark, (IV) Nature Conservation Reserve/ Managed Nature Reserve/Wildlife Sanctuary, and (V) Protected Landscape. The five together with an additional category (VI) Sustainable Use of Natural Ecosystems are now found in the IUCN *Guidelines for Protected Area Management Categories*.<sup>16</sup> These guidelines provide general advice on the protected area management categories, describe the categories and outline a number of brief case studies to show how the categories are being applied around the world.

It should be noted that protected areas that are part of international networks, such as biosphere reserves, or which are recognised under international conventions, such as the World Heritage Convention<sup>17</sup> (Paris, 1972) and the Wetlands Convention<sup>18</sup> (Ramsar, 1971) should fall into any of the above categories and are no longer treated as separate categories in their own right.<sup>19</sup>

---

<sup>15</sup> The ten categories namely: I Scientific Reserve/Strict Nature Reserve, II National Park, III Natural Monument/ Natural Landmark, IV Nature Conservation Reserve/Managed Nature Reserve/Wildlife Sanctuary, V Protected Landscape, VI Resource Reserve, VII Natural Biotic Area/Anthropological Reserve, VIII Multiple Use Management Area/Managed Resource Area, IX Biosphere Reserve, X World Heritage Site (natural) have been extensively used and incorporated in the organizational structure of the *UN List of National Parks and Protected Areas*.

<sup>16</sup> Gland, Switzerland and Cambridge, UK (1994).

<sup>17</sup> UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, 11 *ILM* (1972), 1358.

<sup>18</sup> 1971 The Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar), 996 *UNTS* 245.

<sup>19</sup> See Lyle Glowka, Françoise Burhenne-Guilmin and Hugh Synge *et al.*, IUCN: *A Guide to the Convention on Biological Diversity*, Gland, Switzerland and Cambridge, UK (1994), p. 23.

The purposes of the original 1978 and current guidelines have been to alert governments to the importance of protected areas; to encourage governments to develop systems of protected areas with management aims tailored to national and local circumstances; to reduce the confusion that has arisen from the adoption of many different terms to describe different kinds of protected areas; to provide international standards to help global and regional accounting and comparisons between countries; to provide a framework for collection, handling and dissemination of data about protected areas; and generally to improve communication and understanding between all those engaged in conservation.<sup>20</sup>

Over the years there has been a gradual shift from the classic model to what Phillips refers to as the ‘modern paradigm’ for protected areas. The thrust of this new paradigm is evident from a comparison of the former and emerging objectives. Protected areas in the past were generally set aside for conservation; established mainly for spectacular wildlife and scenic protection; managed mainly for visitors and tourists; valued as wilderness and were concerned primarily about protection. In contrast protected areas are now managed with environmental, social and economic objectives; often set up for scientific, economic, cultural and ecosystems’ functions reasons; managed with the interests and visions of local people more in mind, including their active participation in decision-making; valued for the cultural importance of so-called “wilderness”; and are also about restoration and rehabilitation.<sup>21</sup>

The greatest push for conserving protected areas has come with the recognition that biodiversity is also crucial for human survival. As noted by Bernie and Boyle, ‘biodiversity is a non-renewable resource’.<sup>22</sup> Along with this concept came a change in the view of what should comprise a protected area. Instead of untouched wilderness, current protected areas are frequently made up of areas of supervised human activity. This can be clearly seen in the ‘biosphere reserves’ established by UNESCO’s Man and the Biosphere programme, which will be discussed later in this paper.

## **Part I**

The purpose of this section is to provide a brief discussion of selected soft law, programmes and related initiatives that provide the background and context for evolving global and regional environmental treaties and programmes relevant to protected areas. Selected global and regional treaties will then also be briefly summarised in this section.

### **A. Soft law instruments and other related initiatives**

#### **Man and the Biosphere Programme (MAB)**

The MAB’s Biosphere Reserve concept is an important early initiative in biodiversity conservation and supports the objectives in international conventions such as the CBD, Ramsar, and the Migratory Species Convention.<sup>23</sup>

---

<sup>20</sup> IUCN (1994) *Guidelines for Protected Area Management Categories*, CNPPA with the assistance of WCMC, IUCN, Gland, Switzerland and Cambridge, UK, p. 5.

<sup>21</sup> *Supra* note 13, pp. 12, 13.

<sup>22</sup> Patricia Birnie and Alan Boyle, *International Law & the Environment* (2<sup>nd</sup> ed, 2002), pp. 545–6.

<sup>23</sup> UNESCO’s Man and the Biosphere (MAB) Programme arose from the 1968 Conference on the Conservation and Rational Use of the Biosphere.

Biosphere reserves comprise multiple-use areas and can be described as areas of terrestrial and coastal/marine ecosystems where, through appropriate zoning patterns and management mechanisms, the conservation of ecosystems and their biodiversity can be ensured. Three primary functions are assigned to such reserves – a conservation function, a development function and a logistic function. Each reserve typically has three zones for management purposes – a core zone which is a strictly protected area with very little human influence which is used to monitor natural changes in representative ecosystems and serves as a conservation area for biodiversity; a buffer zone being an area surrounding the core zone where only low impact activities are allowed, such as research, environmental education, and recreation; and a transition zone being the outer zone where sustainable use of resources by local communities is encouraged and these impacts can be compared to zones of greater protection.

Biosphere reserves are designated by their national governments to provide examples of sustainable development, through integrating conservation, research and the use of natural resources to meet human needs. They are considered as being an “incarnation” of the ecosystem approach in practice and as a means to make linkages in the landscape amongst protected areas. There are over 425 biosphere reserves in 95 countries forming a world network promoting exchanges of scientists and natural resource managers and experiences working to maintain the long-term survival of fragile ecosystems. They are designed to answer one of the most challenging questions of the 21<sup>st</sup> century: how can we conserve the diversity of plants, animals and micro-organisms which make up the living biosphere and maintain healthy natural systems while, at the same time, meet the material needs and aspirations of an increasing number of people?<sup>24</sup>

## **The Stockholm Declaration**

The 1972 UN Conference on the Human Environment in Stockholm was another one of the early international environmental conferences to make an impact in this arena. The effects of relentless development and the Industrial Revolution forced the environment to take a back seat. In the 1960s, countries such as the United States, Canada, Sweden, and other European nations felt the consequences of heavy pollution in the air and waterways containing toxins killing marine life among other symptoms. In particular, in 1968, it was Sweden’s concern with acid rain effects from transboundary pollution that led them to suggest a conference at the international level to address global environmental problems.<sup>25</sup>

113 countries attended the United Nations conference held in Stockholm, Sweden in 1972. Three major products of the Conference were the Stockholm Declaration on the Human Environment, an Action Plan, and the establishment of the United Nations Environment Programme (UNEP).

---

<sup>24</sup> See UNESCO Biosphere Reserves in Craig *et al.* (Eds.), *Capacity Building for Environmental Law in the Asian and Pacific Region*, Asian Development Bank Vol. II, pp. 642–644; the World Network is governed by a Statutory Framework approved by a 1995 Resolution of the General Conference of UNESCO. It contains the main provisions regarding the concept of biosphere reserve, its application (criteria), the designation procedure, the participation of Member States to the regional and the world network, and the periodic review. The same Resolution also endorsed the “Seville Strategy,” a text which gives objectives and guidance to the Member States and local authorities.

<sup>25</sup> *Supra* note 11 p.171

Although the Stockholm Declaration does not set out provisions specific to protected areas, it did, however, initiate the recognition of the need to “protect and improve the human environment.” This, in turn, has allowed this concept to evolve into protection for the natural environment that is fundamental to many global treaties today. There is a strong argument that Principle 3 which states “The capacity of the earth to produce vital renewable resources must be maintained and where practicable, restored or improved,” contains the seeds implicit in the concept of sustainable development.<sup>26</sup>

## **The World Charter for Nature**

The World Charter for Nature was adopted as a Resolution in the United Nations General Assembly in 1982. Although it has no legally binding force, the Charter was clearly intended by the UN to be a contribution to the creation of new binding international law on conservation.<sup>27</sup> The Charter states, “All areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all the different types of ecosystems and to the habitat of rare or endangered species”. This provides some of the rationale for the establishment of protected areas. The Charter also includes fundamental ideals for implementation, such as formulation of strategies, inventories, assessment of effects of policies and activities, and public participation.

## **Our common future**

The UN in the mid 1980s asked the World Commission on Environment and Development, also known as the Brundtland Commission,<sup>28</sup> to review its policies and programmes up to that point in time. The report produced under the title “Our Common Future” is often referred to as the Brundtland Commission Report.<sup>29</sup> The report reinforced the principles of Stockholm and the World Charter<sup>30</sup> and proved to be the catalyst that brought the concept of sustainable development to the forefront of the world stage.<sup>31</sup>

Specific to protected areas, *Our Common Future* noted that historically national parks were established “somehow isolated from greater society”.<sup>32</sup> It recommended that parks take a different focus, one that incorporated “parks for development” and which served the dual purpose of protection for species habitats and development processes at the same time.<sup>33</sup> Examples are given illustrating how serving only protection needs and supporting only management needs of national parks are by and large unsuccessful and are contributing factors to encroaching populations who need the land. However, the report also acknowledges that, “development patterns must be altered to make them more compatible with the preservation of the extremely valuable biological diversity of the planet.”<sup>34</sup>

---

<sup>26</sup> Ibid, p.176.

<sup>27</sup> *Supra* note 22, p. 563.

<sup>28</sup> The Commission was chaired by Gro Harlem Brundtland, the then Prime Minister of Norway.

<sup>29</sup> The World Commission on Environment and Development, *Our Common Future*, Oxford University Press, 1987.

<sup>30</sup> *Supra* note 22, p. 562.

<sup>31</sup> *Supra* note 11, p. 180.

<sup>32</sup> *Supra* note 29 p. 157.

<sup>33</sup> Ibid, p. 159.

<sup>34</sup> Ibid, p. 157.

## **Rio Declaration**

In 1992 the United Nations Conference on the Environment and Development (UNCED), also known as the Earth Summit, was held in Rio de Janeiro. It was aimed at addressing the environment from all aspects. With the attendance of 178 nations and over seven thousand delegates, it was the worlds' largest assemblage of people concerned for the environment.

This Summit sought to produce an Earth Charter based on the recommendations set out in *Our Common Future*. However, it became clear that this was not realistic.<sup>35</sup> Instead, a non-binding instrument called the Rio Declaration on Environment and Development was adopted.

The Rio Declaration does not contain provisions directly relating to protected areas. Instead, its focus is on assuring developed and developing countries are afforded adjusted levels of responsibility due to varying circumstances and also focuses on the promotion of sustainable development.<sup>36</sup> An example of the latter is Principle 4, which states: "In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."

This declaration tends to replicate the outcomes from Stockholm regarding environmental protection and the use of protected areas. The Earth Summit did, however, produce Agenda 21 and the Convention on Biological Diversity, with the latter arguably being the most influential legally binding instrument for protected areas.

## **Agenda 21**

Like the Rio Declaration itself, another soft law instrument developed during the Earth Summit was Agenda 21. An 800-page document and perhaps the most definitive non-binding international legal instrument on sustainable development, Agenda 21 provides States with a domestic implementation handbook for introducing sustainable development into their laws and policies. Section 2, entitled "Conservation and Management of Resources for Development," contains chapters on Combating Deforestation, Managing Fragile Ecosystems, Combating Desertification and Drought, and Conservation of Biological Diversity.

It sets out that a State should, in terms of the management-related activities it prescribes "establish, expand and manage, as appropriate to each national context, protected area systems that includes systems of conservation units for their environmental, social and spiritual functions and values..."<sup>37</sup> Agenda 21 continues to be a useful tool that has been used by many governments at the implementation level, including by local/municipal governments.

## **Draft IUCN International Covenant on Environment and Development**

The IUCN's Commission on Environmental Law (CEL), in co-operation with the International Council of Environmental Law (ICEL), has responded to UNCED's recommendations. CEL perceived, as early as 1982, a need for a comprehensive 'hard law' umbrella treaty for all environment and development issues in order to consolidate the existing *ad hoc* situation that governs international environmental law. By 1995, the first draft Covenant was ready to be

---

<sup>35</sup> *Supra* note 11, p. 196.

<sup>36</sup> *Ibid*, p. 197.

<sup>37</sup> Agenda 21, Chapter 11.13b.



presented to the United Nations. It is currently undergoing further amendments and a third version will be published shortly.<sup>38</sup>

The general principles of international environmental law, discussed throughout the draft Covenant, will be dealt with in more detail in Parts II and III of this paper. Of particular relevance to protected areas is Article 21 entitled “Biological Diversity” which states in 1(b): “Parties shall take all appropriate measures to conserve biological diversity...especially through *in-situ* conservation. To this end, Parties shall... establish a system of protected areas, where appropriate, with buffer zones and inter-connected corridors...”

This provision reinforces Article 8 of the CBD, and it introduces the notion of multiple-use protected areas, a concept that has been further refined by the Man and the Biosphere Programme.

### **Millennium Declaration, WSSD Political Declaration and WSSD Plan of Implementation**

The so-called “Rio + 10”, the World Summit on Sustainable Development (WSSD), was held in Johannesburg in late August 2002. Two years prior to this, the Millennium Declaration,<sup>39</sup> resulting from a Resolution adopted by the General Assembly, attempted to bring together concerns of the States that need to be addressed coming into the new millennium. The specific value and principle relevant to protected areas is ‘Respect for Nature’.

Part IV of the Millennium Declaration “Protecting our Common Environment” states that “a new ethic of conservation and stewardship” is necessary and that the first steps to do so is by reaffirming the UN’s support for Agenda 21, the Kyoto Protocol and the CBD.

The importance and relevance of the WSSD Political Declaration to protected areas is primarily in terms of its support for the values contained in the Millennium Declaration.

The WSSD Plan of Implementation, unlike some of the other declarations, provides key practical steps that need to be undertaken in order to address global concerns. Part IV “Protecting and managing the natural resource base of economic and social development” addresses marine, wetlands and forest protection, sustainable development, and biological diversity, amongst other areas of environmental needs. There is no specific provision to promote or specify methods of implementing protected areas, however, it does support the provisions of the CBD.

---

<sup>38</sup> The second version of the draft Covenant was published in IUCN Gland, Switzerland and Cambridge, UK, 2000. This version was further reviewed following the WSSD at a meeting convened at the IUCN Environmental Law Centre in Bonn, 2003.

<sup>39</sup> United Nations Millennium Declaration [Resolution adopted by the General Assembly without reference to a Main Committee (A/55/L.2)] 2000.

## Public Trust Doctrine

This legal concept involves the idea of States holding property in trust for the public. This can comprise both public and to a limited extent, the private realm. Already in the USA, Courts have held States responsible for protecting public property and thus preventing degradation of the trust resource which would otherwise diminish the utility obtained from the resource. The doctrine has expanded from protection of waterways to land resources protection.<sup>40</sup>

On the one hand, advocates see the public trust doctrine as an essential tool for improving protection of natural areas. Court cases in the USA assist the progress towards the objectives of protection of public areas.<sup>41</sup> On the other hand, the expansion of the public trust doctrine, impinging on private ownership rights, could weaken current conservation efforts that have proven to be successful with private land owners.<sup>42</sup> Ultimately, this legal notion has the ability to develop protection of the environment, as States are the only entity in the position to exercise jurisdiction over lands they hold in trust and subsequently can create protected areas while weighing the needs of public and/or private usage.

## B. Global Treaties

### Convention on Biological Diversity

#### *Brief history*

The Convention on Biological Diversity<sup>43</sup> (CBD) was the final agreement produced after ten years of in-depth research and negotiations. In 1981, at its 15th General Assembly, IUCN started preliminary studies on the idea of a global agreement that solidified the need for conservation of biological diversity. Six years later, an 'Ad Hoc Working Group' consisting of a panel of experts was established by UNEP. After lengthy discussions, a final draft was prepared in February 1991 with consideration of submissions made by IUCN, UNESCO and FAO. Three years of negotiations led to 158 countries signing the Convention on 5th of June 1992.

The primary need for the CBD arose out of the necessity for an instrument that would cover genetic, species and ecosystem diversity globally. To that was added during the negotiation process the need to cover both wild and domesticated/cultivated diversity, to cover *in-* and *ex-situ* measures, and to deal with all socio-economic aspects, i.e. not only conservation but also sustainable use. Until then, patchwork conservation existed for ecosystems due to the nature of regional treaties and because of the limited scope of existing global treaties.<sup>44</sup> Also, lack of

<sup>40</sup> Paul M. Bray, *An Introduction to Public Trust Doctrine*, Government Law Center, Albany Law School, New York, USA, unpublished. [www.responsiblewildlifemanagement.org/an\\_introduction\\_to\\_public\\_trust\\_doctrine.htm](http://www.responsiblewildlifemanagement.org/an_introduction_to_public_trust_doctrine.htm) last updated on 30/3/03, accessed on 28/05/03.

<sup>41</sup> For more information on USA Court cases, see James P. Power, "Reinvigorating Natural Resource Damage Action Through the Public Trust Doctrine" *New York University Environmental Law Journal*, 1995.

<sup>42</sup> See for example, Burling, Jim *et al.*, "Round Table Discussion: Conservation and the Public Trust Doctrine" by Center for Private Conservation [www.privateconservation.org](http://www.privateconservation.org) last accessed 30<sup>th</sup> May 2003.

<sup>43</sup> Convention on Biological Diversity, 31 *ILM* (1992), 818.

<sup>44</sup> Treaties such as the Convention of Wetlands of International Importance (Ramsar) UNTS 245 1971, World Heritage Convention (UNESCO Convention Concerning the Protection of the World Cultural

finances to support global conservation through a treaty had not yet materialized, resulting in previous initiatives proving inadequate. Furthermore, the need for a comprehensive framework to co-ordinate future actions was evident.

This convention has now been signed by 168 signatories and is in force in more than 140 States. This illustrates the truly global nature of the CBD, although its success has been tempered somewhat by the United States' refusal to ratify.

The CBD establishes a comprehensive approach and concepts with respect to biodiversity conservation. It acknowledges the precautionary principle, the need for *in situ* conservation, scientific development and technology transfer, traditional ecological knowledge and benefit sharing and intergovernmental co-operation. The strategies under the CBD for national implementation and management regimes are useful but much more detail, research and resources are needed before these innovative provisions become fully effective.

### ***Key provisions related to protected areas***

#### *Article 2: Definition of Term "protected areas"*

The definition given to protected areas by the CBD in Article 2 is as follows:

"Protected area means a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives"<sup>45</sup>

This definition for protected areas is problematic. It produces ambiguity and introduces criteria that work against effective management of protected areas and even biodiversity conservation. According to this definition, a site is considered a protected area if it is either designated *or* regulated and managed.<sup>46</sup> The word "designated" does not in this context mean named but rather legally defined by geographic coordinates.<sup>47</sup> More uncertainty exists, as States appear to be given the choice of calling a site protected if it is either 'designated' or if it is 'regulated *and* managed'.<sup>48</sup> If this were the intention of the definition it would produce a ridiculous polarity in the criteria, asking States to either have an area that is simply *called* (designated) protected, or requiring an area that has established legal frameworks, finances and other resources (regulated and managed). The former has no apparent meaningful conditions while the latter places a heavy burden on the State before establishing protected area status over a site.

The widely integrated IUCN management categories of protected areas (developed through CNPPA), although not specifically referred to in the CBD, have influenced the CBD.<sup>49</sup> The acceptance of protected areas being used for a wide variety of purposes, such as sustainable use

and Natural Heritage), 11 *ILM* 1358 (1972) consisted of specific purposes that employed protected areas to fulfil their primary objectives.

<sup>45</sup> Phillips argues that in practical terms there is little difference between the CBD definition of protected areas in the CBD and the definition adopted by the IUCN. *Supra* note 13.

<sup>46</sup> F. Burhenne-Guilmin is of the view that the word 'or' in this sentence is a mistake and should have instead been the word 'and'.

<sup>47</sup> Protected areas as referred to in all conventions are site specific, i.e. they are sites which are geographically defined. This is in contrast to the legal technique of protection of ecosystem types (e.g. all wetlands), which do not need such designation, and thus may be referred to as non site-specific.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Supra* note 19, p.23; comment by F. Burhenne-Guilmin, 8 July 2003.

(Category VI) and eco-tourism (Category II) is illustrated by the scope of the definition of ‘specific conservation objectives’ as each IUCN defined category entails some form of conservation.

*Article 8: In-situ conservation*

Protected areas play a vital role in preserving biodiversity. Without protected areas, it would be difficult to maintain biodiversity at ecosystem, species and genetic levels.

Within this Article, subsections directly relevant to protected areas require the Contracting Parties to:

- (a) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;
- (b) Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;
- (d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;
- (e) Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas.

Subsections (a) and (b) endorse the concept of a system of areas that are developed towards conserving biological diversity which have been selected, then established and managed, according to specific guidelines. This is an important concept to implement and achieve because without it, for example, a State could have fragmented protected areas that are not representative of high levels or important types of biodiversity. Also, without continued management of whatever areas have been chosen, there would be little point in establishing protected areas.

The CBD is weakened by its use of ‘qualifiers’ to important obligations as in Article 8b, which states ‘develop, where necessary, guidelines...’ By giving States a choice to create guidelines for the identification, establishment and management of protected areas, it results in scenarios such as the previously mentioned example. Weakening the legal obligations of States, to unambiguously require them to follow a set of important principles in order to successfully protect and manage areas of biological value, hampers the development of an international standard for protected areas.

Subsection (d) affords protection to ecosystem types and natural habitats, rather than site specific areas which are the traditional types of protected areas discussed by subsections (a) and (b). There are examples where an ecosystem type approach can achieve protection, such as in Sweden, Denmark and France, where they prohibit some types of activities regardless of private or public ownership and for which they do not provide compensation (although Sweden does provide compensation in some circumstances.) Ultimately, the CBD provides for use both ecosystem and site specific protection to preserve biodiversity, although subsection (d), like (b) undermines any implied legal obligation, by the use of the word ‘promote’ – an indefinable requirement on the State.

Subsection (e) implicitly recognises that the activities which occur adjacent to protected areas, may be critical to the protected area's success.<sup>50</sup> By asking States to consider sound and sustainable development activities adjacent to protected areas, an important concept for better management of protected areas is incorporated into the CBD.

The question nevertheless arises: does the CBD establish a legal framework by which protected areas are created and managed by States, specifically for the purpose of biodiversity conservation? The answer to this question is yes, but as a framework convention all of the details are not yet clear!

Without the requirement of *in-situ* conservation in the CBD, the integration of biodiversity conservation with the establishment of protected areas would not have gained global recognition, as previous instruments did not appreciate the importance and role of protected areas. Though the World Parks Congress has held global forums on this matter even before the CBD came into force, the CBD provided the catalyst to enable Nation States to implement more effective biological conservation and to focus on a variety of mechanisms designed to enhance the establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity.<sup>51</sup>

In Australia, the National Strategy for Conservation of Australia's Biological Diversity,<sup>52</sup> to which each State and Territory within the nation is a signatory, set up the first holistic and responsible framework to instil the principles of the CBD in Australia.<sup>53</sup> Protected areas are identified through a 'comprehensive, adequate and representative system' which is the primary tool used to enhance the existing network of protected areas. The strategy states that in 1996, 6.4% of total land area was classified as part of this system, which includes multiple use zoning. Co-operation between Commonwealth and State/Territory bodies is emphasised as a necessary feature towards responsible management of protected areas. The Strategy also recognises existing gaps of the coverage of protected areas, especially for marine areas.

## **World Heritage Convention**

### ***Brief history***

In 1972, the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted The Convention Concerning the Protection of the World Cultural and Natural Heritage<sup>54</sup> (The World Heritage Convention). Three years later the treaty came into force. To date, more than 160 countries have ratified the convention.

The Convention arose from renewed interest in human cultural features after events such as WWII destruction of monument sites; Egypt's efforts to relocate ancient temples because of the Aswan High Dam and rescue and restoration efforts of paintings, manuscripts and churches in

<sup>50</sup> Ibid.

<sup>51</sup> See Article 8 of the Convention on Biological Diversity (1992).

<sup>52</sup> Commonwealth of Australia, *National Strategy For Conservation of Australia's Biological Diversity* 1996, available at [www.ea.gov.au/biodiversity/publications/strategy/index.html](http://www.ea.gov.au/biodiversity/publications/strategy/index.html) last accessed 30th May, 2003.

<sup>53</sup> Robert F. Blomquist, "Protecting Nature Down Under: An American Law Professor's View of Australia's Implementation of the Convention on Biological Diversity – Laws, Policies, Programs, Institutions and Plans, 1992–2000" 9 *Dick. J. Env. L. Pol* 227, Fall 2000, p. 9.

<sup>54</sup> UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, 11 *ILM* (1972), 1358.

Florence after floods. This highlighted the importance of certain national sites having global significance.<sup>55</sup>

It provides for an Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, composed of 21 State Parties to the Convention, called the World Heritage Committee.<sup>56</sup> The Committee is charged with establishing and maintaining under the title of “World Heritage List,” a list of properties forming part of the cultural and natural heritage which it considers as having outstanding universal value in terms of such criteria as it shall have established.<sup>57</sup> The Committee shall also establish and maintain a second list entitled “List of World Heritage in Danger” comprising a list of the property appearing in the World Heritage List for the conservation of which major operations are necessary and for which assistance has been requested under the Convention.<sup>58</sup> The inclusion of a property on the World Heritage List requires the consent of the State concerned.<sup>59</sup>

### ***Key provisions related to protected areas***

Examining the text of the Convention, Articles 4 and 5 directly articulate the roles of State in terms of protection.

#### *Articles 4 and 5: Cultural and Natural Heritage*

##### *Article 4*

“Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage... situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation...which it may be able to obtain.”

Here, the two important elements recognised by the Convention are that firstly; States are still directly responsible for protection of any sites listed and secondly; States must do as much as their resources allow, to identify, protect, conserve, etc.

##### *Article 5*

“To ensure that effective and active measures are taken for the protection, conservation, and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavour, in so far as possible, and as appropriate for each country...”

This article lists five subsections aimed at identification, research, and the establishment of administrative, financial and legal frameworks.

Although terminology such as ‘to the utmost of its own resources’ and ‘in so far as possible’ might be seen as adding a subjective mechanism from which States can easily escape responsibility, it still places a legal obligation on each contracting party.<sup>60</sup>

<sup>55</sup> *Supra* note 11, p. 1038.

<sup>56</sup> *Ibid*, Article 8.

<sup>57</sup> *Ibid*, Article 11(2).

<sup>58</sup> *Ibid*, Article 11(4).

<sup>59</sup> *Ibid*, Article 11(5).

<sup>60</sup> Marc McC. Denhez, *Pacta Sunt Servanda: Reinterpreting the World Heritage Convention*, in *Old Cultures in New Worlds* 869 (8<sup>th</sup> General Assembly and International Symposium, International Council on Monuments and Sites, Symposium Papers Vol. II, Washington, D.C., Oct. 10–15, 1987).

In fact, an Australian case, *Commonwealth of Australia v State of Tasmania*<sup>61</sup> (the Franklin Dams case) provided interpretation on the apparent qualifications of Article 4 and 5. Justice Mason stated “Indeed, there would be little point in adding qualifications ‘in so far as possible’ and ‘as appropriate for each country’ unless the article imposed an obligation.”<sup>62</sup>

This language, often seen in other pieces of legislation, seeks to place the State in a position of responsibility, although it may be difficult or impossible to hold any nation to a precise standard of conduct in relation to the preservation and/or management of protected areas. Each State’s capacity and political will to effectively provide protection of a natural area will depend on its specific circumstances, such as its financial, expert resource status and developmental priorities. However, in light of each situation, a State is still required to do as much as is possible. Where necessary, if evidence is found that a State did not do all that was in its power to do, or exhibited a blatant disregard for the protection of a site, it could held in breach of this Convention.

Indeed the WHC is holistically a document with little room for about-face by contracting parties. It prescribes methods for protection within its provisions and is further supported by the General Assembly of State Parties, the World Heritage Committee, the Bureau of the World Heritage Committee, advisory bodies such as IUCN and also the World Heritage Fund.

## **Ramsar Convention**

### ***Brief history***

The Convention on Wetlands of International Importance especially as Waterfowl Habitat (The Ramsar Convention) was created on the 2<sup>nd</sup> of February 1971 in Ramsar, Iran. The convention came into force on the 21st of December 1975.

The convention is still the only treaty to address a specific ecosystem. It was also the first globally applicable environmental convention. It must be noted that it took considerable time and effort for the idea of a global treaty protecting wetlands to become accepted. In 1963 the First European Conference on the Conservation of Wildfowl, organized by the then International Waterfowl Research Bureau (IWRB) (now Wetlands International) endorsed the idea to actually protect habitats of wildfowl, which are primarily wetlands. Three years later, a draft of the convention produced by IWRB was considered in the Second European Conference on the Conservation of Wildfowl. The following year a second draft containing amendments by IWRB and prepared by the Dutch Government was presented at the International Conference on the Conservation of Waterfowl and their Resources in 1968. After submission of a final draft to a technical panel, negotiations commenced with the adoption of the Convention at Ramsar.

Parties to the Ramsar Convention are required to place at least one site on the List of Wetlands of International Importance (Article 2.4).<sup>63</sup>

This reference was found in Ben Boer, “World Heritage Disputes in Australia”, 7 *J. Envtl. L. & Litig.* 247 1992, p. 3.

<sup>61</sup> *Commonwealth of Australia v State of Tasmania* 46 ALR (1983).

<sup>62</sup> Ben Boer, “World Heritage Disputes in Australia”, 7 *J. Envtl. L. & Litig.* 247 1992, p. 3.

<sup>63</sup> Veit Koester, “The Ramsar Convention on the Conservation of Wetlands”, 1989 found in Myron L. Scott, *Integrated Pollution Control: A Symposium: Book Review; Two Models for International Environmental Cooperation...* 22 *Envtl. L.* 349, Fall 1992, p.3.

As noted by Shine and de Klemm,<sup>64</sup> Contracting Parties have three main groups of obligations under the Convention:

- Site-specific measures requiring promotion of conservation of listed sites (Article 3.1) and establishment of nature reserves and providing adequately for their wardening (Article 4.1)
- Non-site-specific measures seeking formulation and implementation of planning that promotes “wise-use” of all wetlands in the territory of each Party (Article 3.1)
- International co-operation implementation obligations in respect to transboundary wetlands, shared watercourses and co-ordinating policies for the conservation of flora and fauna (Article 5)

It should be noted that such obligations apply equally to inland and coastal wetlands and water systems.

### ***Key provisions related to protected areas***

The Ramsar Convention uses open-ended language and does not include legal definitions of terminology within the treaty.

For example, Article 2.6.d makes reference to “wise use of wetlands and their flora and fauna”. However, no definition had been given. It was the first time usage of this term was brought into a global treaty. All that can be inferred is that ‘wise use’ alludes to the idea of using the resources of wetlands in an astute manner that does not disregard conservation attempts to maintain these habitat areas. This concept illustrates the fundamental idea behind what we now know as sustainable development.

The treaty itself makes provisions for States to remove sites placed on the List of Wetlands of International Importance in situations of “urgent national interest” (Article 2.5). The treaty then requires in the event that an area is deleted from the list, “it should as far as possible compensate for any loss of wetland resources, and in particular it should create additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original habitat” (Article 4.2).

Nevertheless, the Conference of the Parties, by adopting at each COP since 1987 a number of instruments, mainly in the form of policy and technical guidelines, to assist Parties in the interpretation and implementation of the treaty, has sought to directly address these weaknesses. They have been grouped in a series of Ramsar Handbooks for the Wise Use of Wetlands. The application of the guidance adopted by the COP has been reflected in the Strategic Plans adopted by the COP for six-year periods (the first one was adopted in 1996). Parties have accepted the obligation to report every three years on the basis of the specific actions identified in the Strategic Plan, rather than on the basis of the general principles contained in the text of the treaty.

---

<sup>64</sup> *Supra* note 49, p.29.



The overall aim of this Convention is to prevent the net loss of wetlands<sup>65</sup> consistent with Articles 2.5 and 4.2 requiring compensatory measures to be taken if a wetland area is removed, by replacing it with another site.

So far, the only country that has invoked the “urgent national interests” clause has been Germany, when it decided to remove 80 hectares from the area of a Ramsar site for the expansion of an industrial complex. The decision was actively fought by German NGOs and others, to the extent that the case reached the highest court in Germany, which ruled in favour of the Government.<sup>66</sup>

## **UN Convention on the Law of the Sea 1982 (UNCLOS)**

### ***Brief history***

The first UN Conference on the Law of the Sea (UNCLOS I) was held in 1958 in response to the emerging practice of States extending their jurisdiction to the continental shelf. This trend was highly contentious because it was seen as a restriction on the accepted ‘freedom of the seas’ doctrine, re-introduced by Grotius in 1609, which held that the freedom of use of the seas was a basic human right.<sup>67</sup> Out of this first conference came four marine conventions, all of which entered into force, but were seen as indicative of emerging customary international law. They covered the Territorial Sea and Contiguous Zone, High Seas, Continental Shelf, and Fishing. The High Seas Convention on the High Seas addressed some environmental issues such as pollution from ships (Articles 24 and 25) and the Fishing Convention covered conservation and management.

UNCLOS III was set in motion by UN General Assembly resolutions adopted in 1967 and 1970. Formal negotiations began in 1973 and ended in 1982 with adoption and signature of the UN Convention on the Law of the Sea (UNCLOS) which entered into force in 1994.<sup>68</sup> By the time it came into force, a large share of its principles and rules had been accepted as customary international law by most countries.<sup>69</sup>

### ***Key provisions related to protected areas***

In its pertinent parts UNCLOS focuses on prevention, reduction and control of pollution, and conservation and management of marine living resources. It does not refer to specific areas or species but rather addresses States’ obligations to conserve marine living resources and protect and preserve the marine living environment, both within and beyond national jurisdiction.<sup>70</sup> It looks at pollution from various sources including land-based pollution (Article 207), pollution

<sup>65</sup> Lisa Courtney, “International Protection of Wetlands: Protection of a German Wetland Under the Ramsar Convention and the European Habitats Directive”, *2001 COLO.J. INT’L ENVTL. L. & POL’Y* 129, p. 4.

<sup>66</sup> The author is indebted to Delmar Blasco, Secretary-General of the Ramsar Convention Bureau, for his ~~helpful comments on this and other sections of this paper.~~

<sup>67</sup> *Supra* note 11, p. 656.

<sup>68</sup> UN Convention on the Law of the Sea (UNCLOS) UN Doc A/CONF.62/122, reprinted at 21 *I.L.M.* 1261 (1982). Adopted and open for signature 10 December 1982 with 117 signatories, entered into force 16 November 1994.

<sup>69</sup> *Supra* note 10, p. 659.

<sup>70</sup> *The Law of the Sea: priorities and responsibilities in implementing the convention*, Marine Conservation and Development Report, IUCN, Gland, Switzerland, 1995, p. 84.

from vessels (Article 211), dumping (Article 210), pollution from or through the air, pollution from activities on the continental shelf and pollution from minerals development activities in the deep seabed area beyond national jurisdiction (Article 209).

UNCLOS does support a more holistic or ecosystem approach by requiring that marine pollution must be prevented, reduced or controlled in order to “protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life” (Article 194(5)) and through its provisions on marine living resources where relationships with interdependent fish stocks, other dependent and associated species, and environmental factors are to be taken into account (articles 61, 119).

These provisions are elaborated through a number of regional seas agreements and regional fishery management bodies as well as more detailed global instruments such as the 1995 UN Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and the FAO Code of Conduct for Responsible Fisheries, the latter a non-binding agreement.

There are now twelve regional seas conventions, six of which have specific protocols that provide for protection of special protected areas and species and/or biodiversity. As noted above, the WSSD target on representative networks of marine protected areas will reinforce these instruments, and several of the conventions are already in the process of developing regional networks. In addition, protected areas and sanctuaries are provided for in global agreements on shipping, through the conventions of the International Maritime Organization (IMO); under the International Whaling Convention; and through coastal areas protected under the Ramsar and World Heritage Conventions.<sup>71</sup>

### ***Common but differentiated responsibilities***

The UNCLOS, like many other international environmental instruments, recognises the differing levels of capacity for environmental protection of developed and developing nations. For example, Article 207(4) requires global and regional initiatives on land-based pollution to take into account “regional features, the economic capacity of developing states and their need for economic development”.<sup>72</sup> In addition, Article 202 ensures that States shall provide technical assistance to developing nations to promote conservation of marine resources, whilst Article 203 provides that developing States shall be given preferential treatment by international organizations (by way of funding or provision of expertise) in their efforts to prevent, reduce and control marine pollution. Similarly, Article 194(1) sets out that States shall take all measures to prevent and manage pollution of their marine environment according to “the best practicable means at their disposal and in accordance with their capabilities”.

## **Migratory Species Convention**

### ***Brief history***

---

<sup>71</sup> Comments provided by Lee Kimball and Tony La Viña with respect to this and other sections of this paper were most helpful.

<sup>72</sup> See Dzidzornu David M., “Coastal State Obligations and Powers Respecting EEZ Environmental Protection Under Part XII of the UNCLOS: A Descriptive Analysis”, *Colorado Journal of International Environmental Law and Policy*, Summer 1997, Vol 8, p. 283.

The Convention on the Conservation of Migratory Species of Wild Animals (also known as the CMS or the Bonn Convention)<sup>73</sup> aims to conserve terrestrial, marine and avian migratory species throughout their range. Since its entry into force on 1 November 1983, its membership has grown steadily to include 81 Parties from Africa, Central and South America, Asia, Europe and Oceania. Parties work together to conserve migratory species and their habitats by providing strict protection for the endangered migratory species listed in Appendix I of the Convention; by concluding multilateral Agreements for the conservation and management of migratory species listed in Appendix II; and by undertaking cooperative research activities.<sup>74</sup>

The Convention has been criticised for its two-tier system requiring Agreements to be separately negotiated, signed and ratified by the Contracting Parties concerned, entailing delay, and for meetings of the Contracting Parties taking place only once every three years. As well many countries of major importance for migratory birds are still outside the Convention as are many Range States for species included in Appendix I and Appendix II.<sup>75</sup>

The Bureau of the Ramsar Convention and the Secretariat of the Bonn Convention signed a Memorandum of Understanding in February 1997 to provide for closer institutional co-operation and joint conservation action.<sup>76</sup>

### ***Key provisions related to protected areas***

Under Article II Parties to the Convention acknowledge the importance of migratory species being conserved and of Range States agreeing to take action to this end whenever possible and appropriate, paying special attention to migratory species the conservation of which is unfavourable, and taking individually or in cooperation appropriate and necessary steps to conserve such species and their habitat.

The principal obligations of the Parties are to protect certain endangered species listed in Appendix I and to endeavour to conclude agreements for the protection and management of migratory species listed in Appendix II whose conservation status is unfavourable and of those whose conservation status would benefit from the international cooperation deriving from such an agreement. Article IV (2) provides that if circumstance warrant, a migratory species may be listed in both Appendix I and Appendix II.<sup>77</sup>

Article V provides guidelines for the provisions to be included in international agreements for the conservation and management of those species listed in Appendix II.

## **C. Regional Treaties**

By way of general comment, it should be noted that regional treaties (concluded among countries having much in common) are different in nature from global ones and tend to be more detailed and comprehensive. The ones referred to below are meant to provide a brief overview of some of the treaties having a significant impact on the governance of protected areas.

<sup>73</sup> See [www.wcmc.org.uk/cms/intro/htm](http://www.wcmc.org.uk/cms/intro/htm) last accessed 8 July 2003.

<sup>74</sup> *Ibid.*

<sup>75</sup> Cyrille de Klemm, *Biological Diversity Conservation and the Law*, Environmental Policy and Law Paper No. 29, IUCN, Gland, Switzerland and Cambridge UK, 1993, p. 42.

<sup>76</sup> See [www.ramsar.org/key\\_cmsmou.htm](http://www.ramsar.org/key_cmsmou.htm) last accessed 8 July 2003.

<sup>77</sup> *Supra* note 78, p. 40.

## **Antarctic Treaty**

The Antarctic is a unique nature reserve and is the largest and most important such reserve protected by treaty.<sup>78</sup> As part of the ‘global commons’, the region was subject to claims of sovereignty during the early 20<sup>th</sup> Century, and by 1950, seven nations had made territorial claims over it.<sup>79</sup> Emerging conflicts over sovereignty, as well as intensive scientific study of the area in what was declared the International Geographical Year (1957–58), led to the adoption in 1959 of the Antarctic Treaty.<sup>80</sup> The treaty was a cooperative effort to create the Antarctic as a global protected area, although it is not legally regarded as a World Park.<sup>81</sup> Efforts were made through discussion by the UN General Assembly<sup>82</sup> and by proposals of New Zealand and Greenpeace in 1983–4 to declare Antarctica a World Park, or Common Heritage of Mankind (CHM), but were ultimately unsuccessful.<sup>83</sup>

The treaty has two main purposes: maintenance of peace in the area and conservation of its resources. The preservation purpose of the treaty revolves largely around the need to conserve it for present and future scientific research, for the benefit of the “interests of science and the progress of all mankind.”<sup>84</sup> This purpose is reflected in the 1991 Madrid Protocol on Environmental Protection to the treaty that states that the area should be protected “in the interest of mankind as a whole”.<sup>85</sup>

The concept of conservation introduced in the Treaty has been updated by the 1991 Protocol to include protection in terms of ecological, rather than political boundaries, by calling for the “protection of the Antarctic environment and dependent and associated ecosystems”.<sup>86</sup> This is important for protected areas as it applies a more holistic approach to their management than advocated by the Treaty itself, and reflects the interconnectedness of aspects of the biological environment. In addition the Protocol provides for the establishment of a Committee for Environmental Protection with one of its functions being to provide advice on the operation and further elaboration of the Antarctic Protected Area system.<sup>87</sup>

---

<sup>78</sup> *Supra* note 22, p. 612.

<sup>79</sup> Argentina, Australia, Chile, France, New Zealand, Norway and the UK. Hunter *et al.*, *supra* note 11, p. 1046.

<sup>80</sup> *Ibid*, pp. 1046–1047, The Antarctic Treaty, December 1 1959, 402 U.N.T.S. 71 (1959), reprinted at 19 *I.L.M.* 860. Entered into force 23 June 1961.

<sup>81</sup> *Supra* note 11, p.1059.

<sup>82</sup> GA Res. 38/77, UN Doc A/38/69 (1983); G.A. Res. 39/152, UN Doc. A/39/51 (1984).

<sup>83</sup> *Supra* note 11, pp. 1054–55.

<sup>84</sup> The Antarctic Treaty 1959, *supra* note 83, (Preamble).

<sup>85</sup> Protocol on Environmental Protection to the Antarctic Treaty, adopted 3 October 1991, entered into force 14 January 1998, reprinted at 13 *I.L.M.* 1461 (1991).

<sup>86</sup> *Ibid*, Preamble (emphasis added).

<sup>87</sup> *Ibid*, Articles 11, 12(g).

## **African Convention**

The 1968 African Convention,<sup>88</sup> drafted on the recommendation of the Organization of African Unity (OAU)<sup>89</sup> and currently with 43 signatories,<sup>90</sup> became the first treaty to consider protection of a continent as a whole.<sup>91</sup> The treaty's approach to protected areas is both site-specific and species-specific. It provides that parties shall maintain and extend existing 'conservation areas', and assess the necessity of new areas, in order to: (a) protect ecosystems that are most representative of, or peculiar to, their territory;<sup>92</sup> and (b) protect all species, especially those listed in its annex.<sup>93</sup> Species protection under the convention is divided into classes, with each level requiring a different standard of protection. Similarly, 'conservation areas' are separated into 'strict nature reserves', 'national parks' and 'special reserves' such as game reserves, 'partial reserves or sanctuaries', all with varying protective measures.<sup>94</sup> The treaty also requires states to control activities detrimental to a conservation area in zones around its borders.

Whilst the 1968 African Convention's fundamental objective is conservation (for both economic and ecological reasons),<sup>95</sup> it has been criticised for failing to provide effective means of ensuring implementation.<sup>96</sup> Its deficiencies arise from the lack of a central administrative body<sup>97</sup> and its failure to create new methods of cooperation between parties to ensure regional protection of conservation areas<sup>98</sup> and it is currently under review.<sup>99</sup> Proposed amendments as part of this review include reference to the IUCN management categories as the guiding principles for protected areas.

## **Alpine Convention**

The Convention for the Protection of the Alps (the Alpine Convention)<sup>100</sup> resulted from the first Alpine Conference of Ministers of the Environment on 11 October 1989, and was adopted in 1991 in response to pressures on the Alpine region from human activity, in particular sporting

---

<sup>88</sup> African Convention on the Conservation of Nature and Natural Resources, adopted 15 September 1968, entered into force 16 June 1969. Hereinafter known as the 1968 African Convention.

<sup>89</sup> Now the African Union, as of the final summit of the OAU in Durban, South Africa on 9 July 2001.

<sup>90</sup> As of 5 May 2003. See [www.ecolex.org/TR/TR/comply/state/EN/002353.htm](http://www.ecolex.org/TR/TR/comply/state/EN/002353.htm), last accessed 25 May 2003.

<sup>91</sup> See IUCN Statement on the occasion of OAU meeting of experts for revision of the African Convention, UNEP Nairobi, 14 January 2002 at .

<sup>92</sup> *Supra* note 91, Article X(1)(i).

<sup>93</sup> *Ibid*, Article X(1)(ii).

<sup>94</sup> *Ibid*, Article III(4).

<sup>95</sup> *Ibid*, Article II. See also Preamble.

<sup>96</sup> See Kassenoff, Jarred "Treaties in the Mist", *Cardozo Journal of International and Comparative Law*, Fall 1999, Vol 7, p. 359, pp. 371–372.

<sup>97</sup> *Ibid*.

<sup>98</sup> *Supra* note 22, p. 607.

<sup>99</sup> IUCN Statement, *supra* note 94.

<sup>100</sup> Convention on the Protection of the Alps, 7 November 1991, reprinted in 31 I.L.M. 767 (1992) (English) translated from official French text in La Convention Alpine, 7 December 1995, *Journal Officiel*, No. 95, at 1270. Entered into force 6 March 1995. Hereinafter known as "the Alpine Convention".

and recreation.<sup>101</sup> It is a framework Convention and a number of Protocols have already been adopted one of which deals with nature conservation and protected areas.

The convention covers the Alpine region described in its annex, and became the first treaty to address protection of an entire terrestrial ecosystem,<sup>102</sup> spanning the jurisdiction of seven member states.<sup>103</sup> The purpose of the convention is to harmonize “economic interests and ecological exigencies”,<sup>104</sup> and the treaty approaches protection as a balance between human use and a healthy environment. It sets up a framework for protection that relies on agreement to protocols for its application.<sup>105</sup> The Alpine Convention requires parties to maintain comprehensive policies for protection based on the general principles of “prevention, cooperation and the-polluter-pays.”<sup>106</sup> Nine protocols have been adopted to date including the Nature Conservation and Landscape Management Protocol in 1994 having particular relevance to protected areas. Under Principle 5, the Alpine Convention takes into account that protection of the functioning ecosystem is of greater significance in terms of long-term maintenance than just protection of species. The connection of alpine national parks into a network of protected areas expresses the understanding that ecosystems have to be protected as a whole.<sup>107</sup>

## Part II

The brief review and analysis of the selected international law instruments and initiatives in the previous section indicates that some of the more recent treaties, such as the CBD together with the WSSD Plan of Implementation and Agenda 21, place protected areas in the wider context of sustainable development, ecosystem management and sustainable use. Some older treaties, such as the Ramsar Convention, have embraced these new concepts through resolutions of the Conferences of the Parties and are being implemented under this new paradigm. In addition human rights and the rights of peoples within protected areas and the importance of meeting basic needs have also been incorporated.

This is true of Ramsar but also of other instruments. Most of the older conventions have evolved to take into account sustainable development, and many are beginning to incorporate ecosystem-based management. Many decisions taken under the conventions adopt binding and non-binding guidance that elaborates these concepts. These documents reflect emerging prin-

<sup>101</sup> Roberto, J. and Salom, P. “Sustainable Tourism: Emerging Global and Regional Regulation”, 13 *Georgetown International Environmental Law Review* 801, pp. 828–829.

<sup>102</sup> *Ibid.*

<sup>103</sup> The seven member states of the Alpine Convention are the Federal Republic of Germany, the French Republic, the Republic of Italy, the Socialist Federal Republic of Yugoslavia, the Principality of Liechtenstein, the Republic of Austria and the Swiss Confederation. The European Union is also a member.

<sup>104</sup> Alpine Convention, *supra* note 103, Preamble.

<sup>105</sup> Alpine Convention, Article 2(3). See for example Protocol for the Implementation of the Alpine Convention in the Field of Nature Protection and Landscape Conservation, adopted 20 December 1994, entered into force 18 December 2002.

<sup>106</sup> Alpine Convention, Article 2(1).

<sup>107</sup> See Institute for Biodiversity “Applying the Ecosystem Approach in High-Mountain Ecosystems: Experiences with the Alpine Convention” [www.biodiv.de/prjct/konzeptebiodiv/berg\\_e.html](http://www.biodiv.de/prjct/konzeptebiodiv/berg_e.html) last accessed 8 July 2003.

ciples, improved tools and measures that draw on new scientific findings, innovative approaches, and lessons learned.

Increasingly therefore, protected area governance can be seen in the larger canvas of an emerging international law regime, whereas in the past, protected area governance has been in the sole jurisdiction of individual States. This ‘domestic’ focus has been weakened and is, to some extent, being supplanted by the global concern of the need to promote sustainability and to preserve biodiversity. Thus while protected area governance will remain predominantly as the province of individual states, international conventions increase the accountability of individual states to the global community.

Some of the leading commentators and scholars have attempted to identify the key principles shaping global environmental and developmental instruments.<sup>108</sup> Some of these principles are new and dynamic. Some of them, for example, the principle of good neighbourliness and duty to co-operate, reflect the general application of international environmental principles to general issues. Others, such as the obligation not to cause environmental harm outside national jurisdiction, have long been considered binding customary international environmental law. The review of the instruments set out in Part I reveals that many of these principles are now incorporated into legally binding treaties. However, the level of national implementation varies across the regions of the world and varies according to the subject matter and complexity of the issue. Hunter, Salzman and Zelke have identified and categorized by function the key emerging principles of international environmental law. These are set out in Appendix I.<sup>109</sup>

Birmie and Boyle, in their most recent publication, identify similar general principles within international environmental law.<sup>110</sup> Some of these principles put forward by Hunter *et al.* serve more than one function. Reviewing this list, however, it could be argued for example, that the precautionary principle should be listed in all four categories. It is recognised that principles and concepts do not need to be binding to have a significant impact on international environmental law and policy. In addition many of these principles in the current state of development of international environmental law will also have a persuasive moral influence on the approach to environmental issues and good governance.<sup>111</sup> And finally, although many of these principles have relevance to protected areas, some do not.

A strong argument can also be made that many of these principles can have a significant impact on international environmental law and policy by providing a framework for negotiating and implementing new and existing agreements; establishing rules of decision for resolving transboundary environmental disputes; creating legal structures for the development and convergence of national and subnational environmental laws and assisting in the integration of international environmental law with other fields such as international trade or human rights.<sup>112</sup>

---

<sup>108</sup> *Supra* note 11; see also *supra* note 22.

<sup>109</sup> *Supra* note 11 at p. 378.

<sup>110</sup> See also Nicolas de Sadeleer, *From Political Slogans to Legal Rules*, Oxford University Press, 2002.

<sup>111</sup> See Parvez Hassan, “Elements of Good Environmental Governance,” keynote address presented at the Asia Pacific Forum on Environmental Governance and Sustainable Development: *Toward Partnership Building Among Parliamentarians, Civil Society Organisations, Private Sector and Government*, at United Nations University, Tokyo, Japan, UNDP, ESCAP and the Government of Japan, May 2001 available from Donna Craig *et al.*, “*Capacity Building for Environmental Law in the Asia and Pacific Region*”, Volume II, Asia Development Bank, (2002).

<sup>112</sup> *Supra* note 11, p. 376.

Eventually some or all of these principles may be codified into a covenant of international environmental law. To a certain extent, as mentioned earlier, this ambitious task has been undertaken by IUCN's Commission on Environmental Law in co-operation with the International Council of Environmental Law (ICEL) and is reflected in its draft International Covenant on Environment and Development.

Increasingly governments, managers and other stakeholders will need to have regard to these emerging principles of international environmental law. Considerable discretion and flexibility will, nevertheless, remain with States in their national implementation of protected area governance. This is the reality of North and South differentiated responsibilities and resources. It is likely, however, that the emerging international law regime applicable to protected areas will continue to develop, as it has in so many other areas of human activity such as labour relations, human rights, transboundary movement of hazardous waste, marine environmental protection, ozone depletion, trade in endangered species and most other globally significant areas of environmental concern.

## **Part III**

The foregoing discussion highlights a number of challenges for protected area governance that will need to be addressed if states are to give effect to the identified principles of international environmental law in national and international instruments.

Whilst most of the principles set out in Appendix 1 are applicable in varying degrees to protected areas, it is nevertheless evident that some of these principles will be difficult to implement. For one thing protected areas are not homogeneous in their nature, purpose or management requirements. Moreover the significant disparity in the capacity of States to effectively implement these principles will inevitably require a common but differentiated approach to environmental governance of protected areas.

The analysis to this point has revealed the emergence of an international environmental law regime that is based upon a number of fundamental principles, many of which establish international norms of rights and obligations. Some of the key challenges facing protected area governance in the future include public participation, access to justice, access to information, capacity building, access to funding, state sovereignty, sustainable development, enforcement, not all the major players being involved, global commons and transboundary issues. Some of these will be briefly discussed below.

It should be noted at the outset, however, that the application of these principles to protected areas will vary according to the category of protected areas as well as whether or not the protected area is located in the North or South.

### **State sovereignty**

The strengthening of the international environmental law regime will inevitably exacerbate the issue of state sovereignty as nation states will be unwilling to cede, what had been more or less exclusive jurisdiction over their resources, to the collective will of the international community.<sup>113</sup> Such tensions may be particularly great in countries that have federal systems of government with constitutionally delineated spheres of power. In some cases international

<sup>113</sup>For example, the proposed creation of a Global Park in the Antarctic was unsuccessful due primarily to the fact that the seven nations involved were reluctant to give up their territorial claims.



conventions can encourage and facilitate state action on protected areas as an effective conservation tool and have influence to help ensure that states maintain the integrity of objectives for internationally-designated protected areas.<sup>114</sup>

In addition, conventions can also encourage effective and ecologically-coherent national and regional protected area networks and they can encourage national frameworks for protected areas that respect the devolution of authority and stakeholder participation yet ensure effective enforcement providing, in effect, a national governance framework.

---

<sup>114</sup>It has been noted by one commentator that some of the existing transboundary parks have their origin in political solutions for historical conflicts between countries, and this could be seen as an element being used like a goodwill mechanism for international conflict resolution (Pedro Solano, 8 July 2003).

## **Stakeholder participation and community involvement**

Under the new management paradigm involving decentralization and greater stakeholder participation and community involvement, the issues relating to public participation and access to information are principles of environmental law relating to both the international and national law regimes. These principles, in the context of the development of environmental policy and environmental decision-making, exert additional demands upon management systems that already are under pressure from a lack of financial resources and trained personnel. Whilst participatory democracy on the part of citizens in protected area management fulfils their right to information and their right to play a meaningful role in the decisions affecting protected areas, the pressures placed upon poorly resourced managers necessarily increase with the result that in some cases the quality of management is compromised.

In many parts of the world there has been a devolution of power from the centre to regional and local tiers of government as well as to the private sector, so that management of protected areas is increasingly in the hands of several actors. Although decentralization of management with respect to protected areas appears to be the trend of the future, and co-management as well as privatization are evolving at a rapid pace, there have been unfortunate results in some countries where there has been a breakdown of central control which has been aggravated, in some cases, by widespread corruption.<sup>115</sup>

Legal and political calls for more participatory approaches and co-management are enduring features of protected area governance. The challenge is to give indigenous and local community rights real meaning. Given the trend in recent years, it is unlikely that protected area governance will revert to more centralized forms of control, in spite of the pressures discussed above.

A strong feature of the modern governance of protected areas is collaborative management by multiple stakeholders and indigenous co-management regimes. The best-known examples of indigenous co-management protected areas are in Australia and Canada. The Australian examples have some significant legal and institutional innovations with an Aboriginal majority on joint management boards implementing detailed Plans of Management. In many ways the Australian co-management regimes have relied on good practice and goodwill rather than strong indigenous rights frameworks. The Canadian indigenous co-management regimes for protected areas are often integral parts of comprehensive land claims settlements. This provides a much stronger, constitutionally protected legal framework for co-management. Thus national practice and comparative experiences are very important in demonstrating the importance of the participation in particular area governance. The challenge is to develop approaches that are more strongly supportive of indigenous rights to self-determination in accord with international norms such as ILO 169, Concerning Indigenous and Tribal Peoples in Independent Countries.<sup>116</sup> A further challenge is the need to develop effective co-management regimes

---

<sup>115</sup>See Phillips *supra* note 13 where he refers to a number of sites in Indonesia facing destruction as the result of the break-up of some protected area agencies.

<sup>116</sup>See Donna Craig, *Global Sustainable Development: Human Rights, Environmental Rights and Indigenous Peoples*, Paper presented 17 May 2003 at Australian Human Rights Centre Seminar Series: Human Rights in a Globalising World, p. 29. Unpublished at time of writing.

when there is often inadequate legal recognition of indigenous rights or enforcement of those rights.<sup>117</sup>

## **Capacity building**

Capacity building is directly related to the principle of common but differentiated responsibilities, particularly as it pertains to developing countries and countries with economies in transition. Most of the global and regional treaties as well as soft law initiatives provide for both capacity building and the transfer of technology. This is particularly the case in the context of the CBD<sup>118</sup> and the UNFCCC.<sup>119</sup> Protected area management, particularly in the context of sites designated under the World Heritage or Ramsar Conventions, is increasingly considered to be more of a global or international responsibility, and consequently the need for capacity building and the transfer of both knowledge and technology becomes increasingly important. In the context of protected areas, particularly for developing countries and countries with economies in transition, there continues to be limited governmental and institutional capacity to effectively support conservation and sustainable development. How to deal effectively with international law at national levels where authorities (and local communities) are lacking the knowledge and resources, and, in some cases, the political will to manage protected areas in accordance with sustainable use principles will remain a formidable challenge requiring innovative solutions.<sup>120</sup>

## **Not all major players are involved**

Notwithstanding that the preservation of biological diversity, the destruction of fish stocks, the destruction of tropical forests and the reduction of greenhouse gases are some of the most pressing global environmental issues facing humankind in need of urgent resolution, not all of the major players are involved in the initiatives of the international community to deal collectively with these issues. The United States, for example, continues to remain outside both the CBD and the Kyoto Protocol and other countries such as Australia have used the US position as a basis for withholding their own commitment to move forward in a concerted, unified manner.<sup>121</sup>

A real danger of fragmented application now exists for some of the key international law treaties that took years to negotiate and this situation has added to the political tensions that have arisen recently between the United States and the European Union in particular.

## **Further observations**

The management of protected areas presents such serious and difficult challenges requiring, in many cases, a considerable amount of technical expertise that regrettably, there is a temptation

<sup>117</sup> See Donna Craig, "Recognising Indigenous Rights Through Co-Management Regimes: Canadian and Australian Experiences," *New Zealand Journal of Environmental Law*, 2002, Vol 6 for an informative discussion of these issues.

<sup>118</sup> See for example Articles 17 and 18 of the CBD.

<sup>119</sup> Article 4(3), 4(5) of the UNFCCC.

<sup>120</sup> Comment provided by Pedro Solano, 8 July 2003.

<sup>121</sup> The USA, which generates nearly a third of all global greenhouse gas emissions, has refused to ratify the Kyoto Protocol on the basis that no binding targets have been placed upon some of the larger developing countries such as India and China. Australia has sided with the USA and also refused to ratify the Protocol.

for States to compromise legal requirements. This may well lead to the central question: what is the value of developing international environmental law principles as the basis of protected area governance in the future? Particularly in the ‘South’, the same question will perhaps be phrased slightly differently: what practical effect will the development of an international environmental legal regime have on the ground?

## **Themes for future discussion**

It is difficult to set out in a paper of this nature on so broad a topic, all of the issues that may be considered relevant and important to the concept of good governance as it relates to protected areas. This task is made all the more difficult when one considers that protected areas span the entire globe and involve stakeholders encompassing all segments of society. Those individuals who have graciously participated in the peer review of the earlier drafts of the paper have provided this author with an abundance of insightful comments and suggestions for potential themes for future discussion. Time and space constraints will not permit many of these useful suggestions to be incorporated into the paper itself, either by way of text or footnote. There are many more international law instruments, principles and initiatives and examples of how they have been applied to the issues of protected area governance that could have, and some will argue, should have been included, however to do so, would turn this paper into a book and not suitable for presentation at this Congress. A list of themes to stimulate future discussion has therefore been listed in Appendix II.<sup>122</sup>

## **Concluding comments**

The example of indigenous participation and co-management highlights the importance of legal recognition of rights and legal standard-setting, to ensure that political pressures, inequalities and managerial constraints do not seriously erode the human and ecological dimensions of protected area governance.

Protected areas are not immune from the pressures of an increasingly globalized world. The ability to attract staff, financial resources and technical expertise may depend on demonstrating that protected area governance meets international standards. The tourism value may be diminished as the ecosystem deteriorates because of failure to meet these standards. Modern approaches to international environmental law draw it closer to modern principles of ecosystem management as demonstrated by the CBD. The failure to meet international standards may become a key indicator of poor ecosystem management. Most importantly, most nation states assert that protected area governance is adequately resourced and effective in protecting the ecological values and the rights of affected communities. International environmental law can play a crucial role as a basis for serious evaluation of such claims. It can be expected that the next few decades will be an elaboration and exploration of the most appropriate ways of applying international environmental law to protected area governance in a wide variety of contexts in the ‘North’ and ‘South’.

<sup>122</sup>The author wishes to thank Lee Kimball for providing the proposed themes for future discussion set out in Appendix II.

## **Appendix I**

### **Functions of international environmental law principles and concepts**

#### **I. Principles shaping global environmental and developmental instruments**

1. Right to life and a healthy environment
2. State sovereignty
3. Right to development
4. Sustainable development
5. Common heritage of humankind
6. Common concern
7. The obligation not to cause environmental harm
8. Inter-generational and intra-generational equity
9. Common but differentiated responsibilities
10. Precautionary principle
11. Duty to assess environmental impacts
12. Principle of subsidiarity
13. Right to public participation

#### **II. Principles relating to transboundary environmental disputes**

1. Peaceful resolution of disputes
2. Good neighbourliness and duty to cooperate
3. The duty not to cause environmental harm
4. State responsibility
5. Duty to notify and consult
6. Duty to assess environmental impact assessment
7. Equitable utilization of shared resources
8. Non-discrimination of environmental harms
9. Equal right of access to justice

#### **III. Principles for developing national environmental laws**

1. Duty to implement effective environmental legislation
2. Polluter and user pays principle
3. Pollution prevention
4. Public participation
5. Access to information

6. Duty to assess environmental impacts
7. Access to justice

#### **IV. Principles governing international institutions**

1. Duty to assess environmental impacts
2. Public participation
3. Access to information
4. Sustainable development

## **Appendix II**

### **Potential themes for future discussion**

- Need for national sovereignty vs. international accountability;
- national implementing legislation embedded in a well-functioning national legal and governance framework (capable of effective administration and enforcement; participation and accountability, etc.);
- national level decision-making vs. local/community level ownership and decision-making;
- costs involved in promoting stakeholder involvement;
- public trust doctrine as steward of public lands vs. possible backlash if infringes on private lands;
- role of debt for nature swaps;
- growing recognition of biodiversity conservation as the natural resource base for economic and social development (Millennium Declaration, WSSD), and of protected areas as an important tool, has reinforced PAs conventions and vice-versa;
- trend toward ecological coherence in PAs and more systematic (CBD, WSSD), larger-scale approaches to maintain ecosystem productivity and function – regarding terrestrial, marine and interface between the two;
- coordination among international instruments at national and regional levels;
- need to integrate PAs into larger-scale planning and management (implementation projects) in order to address threats that originate outside the area;
- need to integrate protected areas into local and national legal frameworks to address threats that originate outside the area;
- with more systematic approach to PAs through CBD, regional seas, and links to FCCC ‘sinks’, possible effect of increasing donor support for PAs (GEF, bilaterals, etc.);
- issue of ecological coherence (larger-scale) vs. local community/stakeholder choice;

- capacity-building – for PAs *per se* and for integrating PAs into larger-scale approaches;
- funding mechanisms (World Heritage Convention precedent, Natura 2000, GEF and MDBs supporting PAs under conventions);
- enforcement issues (national level capacity, legal frameworks, and political will; international support for);
- PAs as part of toolbox for dealing with disputed territories and boundaries;
- recognition of PAs in international conventions as a means to draw public and political attention and resources and to educate the public about conservation goals and PAs;
- how non-PA international instruments may affect/promote PA designations (Kyoto, with example of Australian land-clearing; GPA references to ‘areas of concern’; MDG goals and indicators; WSSD marine PA goals);
- how evolving international environmental law (principles and custom) can reinforce effective PA governance;
- how good governance (participation, accountability, etc.) frameworks (national, international) can reinforce effective PA governance;
- how good PA governance can influence larger national and international frameworks for good governance (e.g., stakeholder participation, etc.);
- desirability of all states being party to all relevant agreements (global, regional) to promote consistency of state practice and facilitate transboundary PAs;
- how treaties and soft laws are used like principles or models to inform national regulations.

# Protected Areas and Certification

Nigel Dudley\*

---

Current discussions about the certification of protected areas have raised considerable debate and a fair amount of resistance within the protected area community. Yet certification schemes are already being used in protected areas and are likely to increase in the future. This section looks at why certification has been raised as an option, at different approaches to certification (including with respect to both type of certification and to what is certified) and at some of the pros and cons of any certification scheme. It ends with some proposals for how the issue might be progressed over the next few years.

## Introduction: why protected area effectiveness has become an issue

Following the rush to create protected areas during the latter part of the twentieth century, there is now increasing recognition of the importance of managing and maintaining such areas in perpetuity. Although governments and non-governmental conservation organizations continue to devote a major part of their attention to the issue of creating new protected areas and the “completion” of protected area networks, the question of management effectiveness is already central to the debate about protected areas, and is now a major theme for the IUCN World Commission on Protected Areas (WCPA).

The whole concept of protected areas is based on the assumption that protection continues in perpetuity. In part, development of interest in management effectiveness has come through recognition that this is not always happening in practice and of the extent to which many protected areas are protected in name only. A number of reports stretching back almost twenty years have identified *threats* to particular protected areas or to protected areas in a specific geographical location.<sup>1</sup> Two different issues have been recognised: first the existence of protected areas that have been announced by governments but not yet implemented – so-called *paper parks* – and second the fact that even when protected areas are managed, the pressures facing them in some situations are so intense that they continue to lose some of their values.

The issue of paper parks, although serious, is in many cases a transitional problem; the rate of protected area creation may have temporarily outstripped the capacity of a particular govern-

---

\* Equilibrium Consultants, Bristol, UK.

<sup>1</sup> See for example: The Commission on National Parks and Protected Areas (1984): *Threatened Protected Areas of the World*, IUCN, Gland; Machlis, Gary E. and Tichnell David L. (1985); *The State of the World's Parks: International Assessment for Resource Management, Policy and Research*, Westview Press; MacKinnon, John and MacKinnon, Kathy (1986); *Review of the Protected Areas System of the Indo-Malayan Realm*, IUCN, Gland; MacKinnon, John and MacKinnon, Kathy (1986); *Review of the Protected Areas System of the Afro-Tropical Realm*, IUCN, Gland; Thorsell, Jim (1990); *The IUCN Register of Threatened Protected Areas of the World*, IUCN, Gland; McNeely, J., Harrison, Jerry and Dingwall, P. (Eds.) (1994): *Protecting Nature – Regional Reviews of Protected Areas*, IUCN, Gland; Thorsell, Jim and Sigaty, Todd (1997) *A Global Overview of Forest Protected Areas on the World Heritage List*, IUCN, Gland.



ment to implement protection, leaving a gap before protection is fully implemented in fact as well as in theory. Several commentators have pointed out that even “paper protection” often stops a proportion of pressures on natural systems, for example by deterring companies from seeking logging permits or starting mining operations: indeed the announcement by a government that an area will be protected has practical implications even before the legal process of protection is underway. Situations where management is insufficient to ensure protection are more serious because this problem is often more difficult to address. Threats range from immediate pressures such as poaching or encroachment to others that are beyond the control of individual managers, such as the impacts on long-range pollution: for example many of the protected areas in Europe receive levels of air pollution in excess of the critical loads of many plant species,<sup>2</sup> and there are both immediate and underlying causes of such problems. Ministries of Environment, or their equivalents, are often politically weak within government structures and funding for conservation is usually in short supply. New emphasis on poverty alleviation amongst many in the donor community has further reduced the funds available for protection and the increasing number of protected areas being created means that available resources are spread more thinly. As economic and social pressures mount, even governments with a strong commitment to conservation may find it difficult to maintain good management in their protected areas.

## **Identification of threats – an increasingly standardized approach**

A review published in 2000 concluded that few protected areas were fully secure and that although there were regional differences in degree of threat (with for example African protected areas being particularly at risk), there were stresses in the richest countries as well. Furthermore, many protected areas are currently only protected by their isolation and will come under increasing pressure as the development frontier progresses further into “wilderness” areas.<sup>3</sup> Recognition of these problems led, amongst other reactions, to a call for better information about the status of, and threats to, protected areas.

Although identification of protected areas under threat started on an *ad hoc* basis, with studies by academics and advocacy groups and with surveys carried out under the auspices of conservation NGOs, more standardized approaches were soon introduced. Two institutions have led the way: the UNESCO World Heritage Convention through its *World Heritage in Danger* listing and the Ramsar Convention by highlighting Ramsar-listed sites under threat in the so-called *Montreux List*.

World Heritage sites are nominated by countries and approved by the UNESCO World Heritage Committee. They cover both cultural sites such as cities and monuments and an increasing number of natural sites. Natural World Heritage Sites can be listed under a number of criteria, such as their importance to biodiversity, and include both existing protected areas and large landscapes with smaller protected areas contained within them. The fact that governments themselves apply for World Heritage listing implies a commitment to their conservation and World Heritage status is usually backed up by laws within a country. Threats

---

<sup>2</sup> Tickle, A. with Fergusson, M. and Drucker, G. (1995); *Acid Rain and Nature Conservation in Europe: A preliminary study of protected areas at risk from acidification*, WWF International, Gland.

<sup>3</sup> Carey, Christine, Dudley, Nigel and Stolton, Sue (2000); *Squandering Paradise? The Importance and Vulnerability of the World's Protected Areas*, WWF International, Gland.

are identified in the “*World Heritage in Danger*” list, which includes sites considered by the World Heritage Committee to be “in danger” of losing conservation values. However, criteria for inclusion remain fairly vague; some countries ask for protected areas to be added to gain political support for improvement while in others enormous efforts are made to avoid a listing. The most recent example of the latter reaction was with respect to the issue of uranium mining in an area contained within but excised from Kakadu National Park in Australia. The current listing is highly political and probably not even-handed. In recognition of this the Convention also requires periodic reporting on the status of sites by region and the World Heritage Committee is moving to a more structured and rigorous method of regional reporting through development of a monitoring system in cooperation with the United Nations Foundation.

In a similar development, the Ramsar Convention – the UN convention that provides a focus for protection of key wetland sites – has maintained the Montreux Record since 1990, which lists Ramsar sites where an adverse change in ecological character has occurred including an identification of major problems. This is a much longer list and probably as a result carries less political weight: as of February 1999 for example, 380 sites were listed on the Montreux Record; the commonest criteria were drainage, pollution and eutrophication.<sup>4</sup>

There have also been some NGO efforts to list threats. For example, in the USA the National Parks Conservation Association publishes an annual list of the ten most threatened parks and the Wilderness Society publishes a report on fifteen most endangered wildlands, many of which are protected areas.

All of these approaches have their limitations. Criteria for inclusion usually remain fairly vague and hard to use across national boundaries and danger lists also have the disadvantage of only stressing the negative rather than reflecting or rewarding good performance.

## The issue of management effectiveness

At the same time, protected area managers were recognising the complexity of management, particularly with respect to local communities, growing calls for greater transparency and participation in management and a collection of immediate and underlying pressures. They were therefore looking for information on status and threats from a slightly different perspective – as information for agreeing adaptive management.

One result was an increasing emphasis on *management effectiveness*, including development of methodologies for assessment, and a range of existing assessment methods have now been developed by a range of institutions, for example:

- Queensland National Park Service, Australia<sup>5</sup>
- Indian Institute for Public Administration<sup>6</sup>

---

<sup>4</sup> Stone, D. and Gujja, B. (1999); *The Ramsar Convention: A Reflection on 27 years*, WWF International, Gland.

<sup>5</sup> Hockings, Marc and Hobson, Rod (1999 draft); *Fraser Island World Heritage Area: Monitoring and Management Effectiveness Project Report*, The University of Queensland, Brisbane.

<sup>6</sup> Singh, Shekhar (2000); Assessing management effectiveness of national parks in India, *Parks* 9 (2), 34–49; and Kothari, A., Pande, P., Singh, S. and Variava, D. 1989. *Management of National Parks and Sanctuaries in India, A Status Report*, Environmental Studies Division, Indian Institute of Public Administration, New Delhi, India.

- The Nature Conservancy<sup>7</sup>
- Conservation International<sup>8</sup>
- CATIE University with WWF in Central America<sup>9</sup>
- WWF Brazil<sup>10</sup>
- WWF International<sup>11</sup>

The numerous different attempts at assessment were reviewed in 2000;<sup>12</sup> more have emerged since then and more experience has been built up with the existing approaches. A review of around twenty approaches took place in Melbourne, Australia in February 2003, in preparation for the V<sup>th</sup> IUCN World Parks Congress. To develop some coherence and standards for such assessments, WCPA developed technical guidance on assessment. It proposed that all assessments should as much as possible include consideration of the full elements in the management cycle including: (1) **context** (importance, threats); (2) **planning** (design and planning); (3) **inputs** (resources needed); (4) **process** (how management is conducted); (5) **outputs** (meeting targets); and (6) **outcomes** (meeting overall objectives).<sup>13</sup> Significantly, WCPA stressed the need to look beyond management itself to whether management was working – such “outcome” assessments are inevitably more difficult to perform. This framework has since been amplified by development of a number of different assessment “toolkits”, ranging from rapid site-level scorecards to detailed assessment systems that require research, stakeholder meetings and the development of monitoring systems. The key elements in the WCPA framework are given in Table 1 below.

---

<sup>7</sup> Brandon, Katrina, Redford, Kent, H. and Sanderson, Steven, E. (Eds.) (1998); *Parks in Peril: People, politics and protected areas*, Island Press, Washington DC and Covelo, California.

<sup>8</sup> Bruner, Aaron G., Gullison, Raymond E., Rice, Richard E. and da Fonseca, Gustavo A. B. (2001); Effectiveness of parks in protecting tropical biodiversity, *Science* 291, 125–128.

<sup>9</sup> Cifuentes, Miguel A, Arturo, Izurieta V. and Henrique De Faria, (Helder 1999); *Medición de la Efectividad del Manejo de Areas Protegidas*, Forest Innovations Project, WWF, IUCN and GTZ, Turrialba, Costa Rica.

<sup>10</sup> See for example Ferreira, Leandro V., Lemos de Sá, Rosa M., Buschbacher, Robert, Batmanian, Garo, Bensusan, Nurit R. and Lemos Costa, Kátia [edited by] Barbosa, Ana Claudia and Lacava, Ulisses (1999); *Protected Areas or Endangered Spaces? WWF Report on the Degree of Implementation and the Vulnerability of Brazilian Federal Conservation Areas*, WWF Brazil, Brasilia (available in English and Portuguese).

<sup>11</sup> See for example Ervin, Jamison (2003); *A Rapid Assessment of Protected Area Management* and Stolton, Sue, Hockings, Marc, Dudley, Nigel, MacKinnon, Kathy and Whitten, Tony (2003); *A Tracking Tool for Protected Area Management Effectiveness*, World Bank-WWF Alliance.

<sup>12</sup> Hockings, M. (2000); *Evaluating Protected Area Management: A review of systems for assessing management effectiveness of protected areas*, University of Queensland with the IUCN/WWF Forest Innovations project.

<sup>13</sup> Hockings, Marc with Stolton, Sue and Dudley, Nigel (2000); *Evaluating Effectiveness: A Framework for Assessing Management of Protected Areas*, IUCN and the University of Cardiff.

**Table 1. WCPA framework for assessing management effectiveness**

<b>Elements of evaluation</b>	<b>Context</b>	<b>Planning</b>	<b>Input</b>	<b>Process</b>	<b>Output</b>	<b>Outcome</b>
<i>Explanation</i>	<i>Where are we now?</i>	<i>Where do we want to be?</i>	<i>What do we need?</i>	<i>How do we go about it?</i>	<i>What were the results?</i>	<i>What did we achieve?</i>
What is being assessed	Importance, threats and policy environment	Protected area design and planning	Resources needed to carry out management	The way in which management is conducted.	The quantity of achievement	The quality of achievement
<b>Criteria that are assessed</b>	Significance  Threats Vulnerability National policy	Legislation and policy  Site and system design Management planning	Resources of agency  Resources of site  Partners	Suitability of management processes	Results of management actions  Services and products	Impacts: effects of management in relation to objectives
<b>Focus of evaluation</b>	Status	Appropriateness	Economy	Efficiency	Effectiveness	Effectiveness Appropriateness

To date, such assessments have been voluntary. They have usually been implemented on a site-by-site basis; one exception to this approach is the Rapid Assessment system developed by WWF, which addresses system-wide assessments and has been implemented by a number of countries and regions.<sup>14</sup>

There are clear limitations to the voluntary approach, in terms of accuracy, extent of cover, the degree to which different stakeholder groups get to participate and to voice their opinions, and comparability between sites. This has led to calls for some more standardized way of reporting management effectiveness and of providing some assurance of a *guarantee of good management*, including suggestions that protected areas should be the subject of a kind of certification system.

## Identifying standards for management

However, before any kind of system of guarantee can be considered, another step is needed, to agree on what we should be aiming for; in other words what constitutes good management. While the WCPA framework identifies the issues that should be addressed by management it only gives general guidance about what standards are required: in other words it sets the criteria and indicators but not the benchmarks. Whether or not this can be achieved on a general basis, across countries and ecosystems, is a matter for debate. To test this, and to strengthen the tools for good management, WCPA is currently cooperating on a project being run as part of the *Ecosystem, People and Protected Areas* (EPP) project to develop agreed standards for protected areas.<sup>15</sup>

Workshops have been held in Latin America, Africa and Asia to examine different needs of managers and other stakeholders and the range of perspectives on protected areas. The standards for management, once agreed, could create a basis for other forms of reporting (and

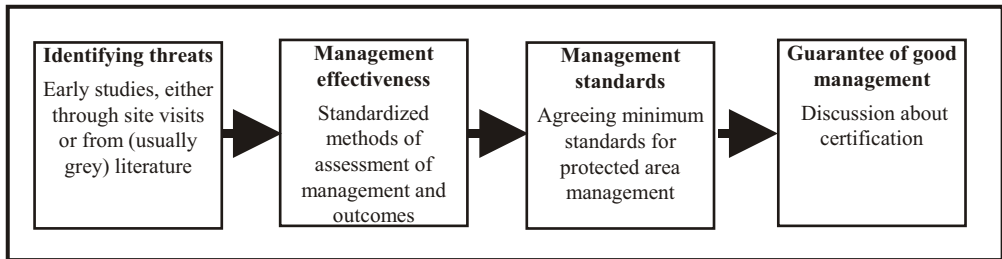
<sup>14</sup> Including Bhutan and the Cape Province of South Africa.

<sup>15</sup> Carabias, J., de la Maza, J. and Cadena, R. (draft, 2003); Developing capacity to manage protected areas, draft chapter for a report arising from the World Parks Congress.

indeed provide a basis for the two systems described immediately above). The EPP project aims to initiate a growing network of field learning sites to promote experimentation with ways of adapting to threats, or to make the best use of opportunities presented by global change factors. Lessons will be shared through a website, with five groups of experts coordinating lessons on global change, building a global protected area system, management effectiveness, equity and local communities and developing the capacity to manage.

We can therefore trace a development from interest in standard ways of reporting threats, through agreement on the steps needed for management effectiveness to standard-setting for what management should aim to achieve. This transition is illustrated in Figure 1 below.

**Figure 1. Stages in development of interest in monitoring protected area status**



It would be disingenuous to claim that this progression has been methodical or even particularly sequential: to some extent all the elements listed above are still under development. Nor is the logic joining the various stages intact, as good management alone does not guarantee that a protected area is effective. An excellently managed park can still lose values if pressures (such as poaching or encroachment) are too powerful for managers to control or if threats beyond the capacity of an individual protected area, such as pollution and climate change, undermine management efforts. Assessment of risk and protected area effectiveness therefore both need to look beyond management at the overall status of the park, as identified by the WCPA framework. (Until recently most assessment systems focused on management capacity, which is relatively easy to measure, and left out the trickier question of whether or not long-term biodiversity and cultural values were being maintained.)

## **Different interest groups**

One additional problem in considering management effectiveness is the existence of different stakeholders interested in the performance of protected areas, all with their own, sometimes opposing, viewpoints. Because of the strong emotions that protected areas create, many stakeholders feel a degree of ownership or at least user rights towards these areas of land or sea and therefore that they have a particular right to have their voices heard in any debate. Some of these will be local stakeholders; others will live a long way away and may never have visited the site itself. This means that any assessment will have to address a wide range of interests and points of view. For instance, protected area managers and authorities are sometimes, although not invariably, antipathetic towards assessment unless it is something that they control themselves; other stakeholders are often specifically calling for assessment that is outside the control of the management authority. From this it follows that different stakeholders also have different reasons for being interested in protected area assessment.

In Table 2, an attempt is made to identify some of these different groups and assign them with issues that are likely to be of particular importance: the general nature of any such assessment should be stressed.

**Table 2. Different stakeholders interested in management effectiveness of protected areas**

<b>Stakeholders</b>	<b>Likely key areas of interest</b>
Protected area managers	Information to help plan adaptive management; local communication and improved relationship with neighbours
Protected area authorities	Identification of strengths and weaknesses in the protected area network decisions with respect to funding; reporting to ministers; publicity
Governments	International reporting (e.g. to the World Heritage Convention and the Convention on Biological Diversity); information for donors; assessment of use of state funds
Local communities	A voice in management; a grievance procedure; interest in progress of areas of local significance
Donor community	Value of investments; report-back to their own governments, electorate or (for private foundations) boards of trustees
Non-governmental organizations and civil society	Accountability; information to help advocacy; reassurance that protection strategies are working
Corporations	Reassurance that controls on commercial activity are justified; interest in use of commercial donations

## Could we certify protected areas?

In the last two decades, certification schemes have increasingly been seen as a way of ensuring good environmental management. They existed long before this in other contexts and there is for example a large worldwide business in certification of product worthiness and management efficiency.

The use of certification, on a voluntary basis, to provide environmental and social guarantees is more recent and includes, for instance, certification of farming through organic standards grouped under the auspices of the International Federation of Organic Agriculture Movements (IFOAM), certification of forest management through such schemes as the Forest Stewardship Council (FSC) and Pan European Forest Certification Scheme (PEFC) and guarantees of good fisheries management through the Marine Stewardship Council (MSC). These examples provide for standards relating to a wide range of social and environmental issues (including for example worker safety, relationships with local communities and ecological footprint). Other labelling schemes are far more specific, such as ones for tuna caught in ways that do not kill dolphins, or fair trade labels that address workers' rights. Certification schemes have been further boosted by the requirements of ethical investment schemes, where investors are demanding assurances that their money is invested in socially and environmentally acceptable businesses.

These schemes have a rather tenuous connection to legal standards. They are voluntary and have thus far survived examination by the World Trade Organization, although their status as potential trade barriers is occasionally raised and dolphin-friendly tuna was the subject of a long dispute. However, as claims and descriptors, certification schemes carry legal weight in many countries. For example it is illegal in European Community countries to sell food labelled as “organic” if it has not gone through an organic certification scheme approved by the EC and false claims can be prosecuted by trading standard officers. Certification therefore provides a voluntary scheme with legal backing. In most cases, commercial interest in certification is either stimulated or at least helped by a perception that certified products will give increased market access and/or product value. Certification of forest products was boosted enormously by the decision of some major European and North American retailers to give precedence to certified timber products and organic food markets increased quickly when a few major retailers started stocking organic lines.

Various commentators have suggested that certification could also provide one way of providing a guarantee of management effectiveness and minimum standards for protected areas. Others have reacted with howls of outrage, both because of the implied loss of control by management agencies and because they fear that a certification scheme would provide little value but cost a great deal of time and money.

## **What would certification mean?**

A certification scheme is a way of measuring conformity against existing criteria and standards, with assessment carried out by an independent assessor. Certification schemes can either be pass/fail or have a rating system. Certification of this sort is known as “third party” assessment to distinguish it from two other approaches:

- First party assessment – assessment by the individual or management authority concerned
- Second party assessment – assessment by interested parties
- Third party assessment – assessment by disinterested or independent parties

Examples of the other two assessments already exist for protected areas. The World Bank, Global Environment Facility and WWF have all been using a tracking tool scorecard for managers to assess protected area management effectiveness on a regular basis.<sup>16</sup> This provides a simple means for both managers and others to chart progress towards improved management, but is clearly open to misinterpretation, bias or even outright fraud if an individual manager is either dishonest or self-deluding. The International Organization for Standardization (ISO) has also provided an important forum for developing international standards, although here there are greater controls in place in that any assessor (including a self-assessor) needs to have passed a test by a recognised accreditation agency: most governments have such agencies. Second party assessment, where interested parties work together to measure progress, has also occurred with more detailed assessment schemes in protected areas, for example one being developed for UNESCO World Heritage Convention Natural World Heritage Sites, where managers, staff and local stakeholders all collaborate on assessing the status of the protected area.

---

<sup>16</sup> Stolton, Sue; Dudley, Nigel; Hockings, Marc; MacKinnon, Kathy and Whitten, Tony (2003) *op cit*.

All of these approaches have their strengths and weaknesses. From the perspective of managers, first or second party assessments probably in most cases offer good enough information for the purposes of adaptive management. Third party certification offers two additional advantages: a *fresh perspective* by bringing in an outside consultant and an *independent guarantee* that assessment is fair and accurate. However, it is also costly and potentially divisive; its net value therefore depends on whether the advantages outweigh the costs. This issue will be returned to in more detail below.

## What kind of certification?

A related question refers to exactly what is being certified. Certification schemes do not have to apply to all operations in every protected area in a national network: in fact existing examples have generally rejected this approach. Five different approaches can be distinguished and are listed below, then discussed in more detail.

- Certification of all protected areas in a region or country
- Certification of particular management types of protected areas (e.g. private protected areas or community-managed protected areas)
- Certification of protected areas for particular purposes (e.g. tourism)
- Certification of activities that occur predominantly in protected areas (e.g. certification of ecotourism operators)
- Certification of activities that may occur in protected areas but also commonly occur outside (e.g. good forest management or organic farming)

**National systems:** To date, there is no scheme for certifying a country's entire protected area network (yet this is often assumed to be what certification would imply, and generates most of the debate). Several countries have carried out analysis of all the protected areas in their country.

**Particular types of protected areas:** Nor are there schemes for certifying particular types of protected areas, although here the demand is stronger. In countries where private protected area networks contribute an increasingly important proportion of a protected area network, state protection agencies and others are wrestling with the task of seeing if and how these can be reflected within networks, reported in the *UN List of Protected Areas* and reflected in other official statistics. While some private protected areas are established with a set of trust rules that make their tenure and security as strong as those of the state, others are far less firmly established and, for example, use can change through sale or inheritance. These latter, while providing short-term benefits, are clearly not suitable for inclusion in longer-term protected area networks. It has therefore been suggested that these areas might be a particular case worthy of certification (and where owners might also be willing to take the time and money needed to see certification through).

Indigenous self-declared protected areas are similar cases, where indigenous people have declared part or all of their traditional lands as protected areas. In these cases some independent assurance might release state funds for management, help in raising other forms of support and provide strong endorsement of tenure status.



***Certification for particular purposes:*** There has recently been growing interest in development of protected area certification schemes to address particular uses – predominantly at the moment tourism although there is no theoretical reason why such schemes should not look at other values such as biodiversity conservation, environmental services and so on.

In Europe for instance the Pan Parks initiative offers an approach where protected areas are certified specifically for their tourism potential although within a more general assessment of management effectiveness. The initiative aims to create a network of outstanding, internationally recognised protected areas offering unique, high quality nature-based tourism. It is hoped that Pan Parks will become widely known as the natural capitals of the continent and the concept is based on partnership between all actors involved. Pan Parks has developed standards<sup>17</sup> and a star rating system<sup>18</sup> and has carried out some early assessments, for example of Oulanka National Park in Finland.<sup>19</sup> The Pan Parks initiative specifically does not aim to certify all parks in a region, but to select, promote and provide guarantees for a few outstanding protected areas, which will be developed specifically with nature tourism and education in mind. The certification system is lengthy and expensive and would therefore not be suitable or practical for a whole protected area network, and would also be focused too specifically on tourism issues to be applicable everywhere.

***Certification of activities that occur predominantly in protected areas:*** This category forms a bridge between the certifying of specific activities in protected areas and other forms of certification that overlap with protected areas, by being a general environmental certification system that is likely to have particular relevance to protected areas. It also focuses mainly on tourism or ecotourism.

For example, the Green Globe system provides certification for tourism companies and operations relating to environment and sustainable development, based around the principles of *Agenda 21*, published after the 1992 Earth Summit in Rio de Janeiro. It has four types of standard, relating to companies, communities, international ecotourism awards and design and construction, and also endorses the World Tourism Organization's *Code of Ethics for Tourism* and the Pacific Asia Travel Association's *Travellers' Code*. As such it can provide clear advice to protected area authorities, managers and others about the standards of tourism companies operating in and around protected areas, although will not necessarily be focused particularly on the parks themselves.

***Certification of activities that may occur in protected areas:*** The loosest link between certification and protection, although paradoxically perhaps the commonest in practice, is the use of existing certification schemes inside protected areas, particularly those with less highly protected management policies (such as those in IUCN category V and VI: protected landscapes/seascapes and extractive reserves). Certification systems are already helping to monitor the effectiveness of protected areas. Three main roles exist:

- Certification of operations within protected areas (particularly in Category V areas related to operations such as organic farms, management for non-timber forest products and ecotourism and in marine protected areas)

---

<sup>17</sup> Kun, Z. (2000); Pan Parks Verification – a discussion paper (draft), WWF, Budapest.

<sup>18</sup> van de Vlasakker, J. (2000); *Pan Parks Star Rating*, consultants report to WWF.

<sup>19</sup> Väisänen, R. and Tapaninen M. (2003); case study on Oulanka National Park, Finland, prepared for the *Managing Effectively in the Face of Change: Lessons Learned* workshop, Melbourne, Victoria.

- Certification of land uses within the buffer zones of protected areas or in the corridors of protected area networks
- Creation of additional protected areas as a result of certification

All of these roles are already being played out, particularly in Europe where the common type of landscape or seascape national parks provides an ideal site for such approaches. For instance organic farming is increasingly being adopted within Category V protected landscape areas in southern and central Europe, where traditional livelihoods take place alongside conservation. Promotional work by the Associazione Italiana Agricoltura Biologica within regional parks in Italy encouraged 113 farms within protected areas to apply for certification between 1996 and 1997;<sup>20</sup> conversion has given farmers access to new markets and organic agriculture has proven advantages over conventional farming in terms of protecting on-farm biodiversity. Similar efforts are being made in buffer zones within the MesoAmerican Biological Corridor, stretching from Mexico to Colombia. In Mediterranean Europe, the development of non-timber forest product certification under the Forest Stewardship Council is being used to encourage traditional forest management systems in cultural landscapes in and around protected areas, for example to maintain groves of walnut trees and fruits.<sup>21</sup> The Marine Stewardship Council is involved in several certification schemes within various categories of marine protected area to help maintain local fisheries.

The requirement to protect a proportion of forest in Forest Stewardship Council (FSC) certification schemes has also created additional protected areas in some countries, from set asides on commercial forests: these areas had often in effect been left out of production before but certification standardized and helped maintain this management choice.<sup>22</sup> FSC requirements were extended further into a recent guarantee by the giant Swedish company Sveaskog that 20% of its forest land will be managed predominantly for biodiversity conservation.

In these cases certification offers clear advantages to managers, in giving assurances that livelihood or commercial operations within protected areas meet the best standards possible,<sup>23</sup> and has the advantage of already utilizing well-recognised systems. However, such certification only covers small parts of a protected area and is only likely to apply to those IUCN protected area management categories that are less intensely protected, predominantly category V and VI. There are also often poorly developed links between certifiers and protected area agencies. For example none of the forest certification schemes have specific policies about certification within protected areas, leading to confusion and sometimes to the certification of

<sup>20</sup> Compagnoni, A. (2000); Organic agriculture and agroecology in regional parks, in Stolton, Sue, Geier, Bernward and McNeely, Jeffrey A. *The Relationship Between Nature Conservation, Biodiversity and Organic Agriculture: Proceedings of an international workshop held in Vignola, Italy 1999*, IFOAM, IUCN and WWF, Tholey-Theley, Germany and Gland, Switzerland.

<sup>21</sup> Moussoris, Y. and Regatto, P. (1999); *Forest Harvest: Mediterranean woodlands and the importance of non-timber forest products to forest conservation*, arborvitae supplement, October 1999, WWF and IUCN, Gland, Switzerland.

<sup>22</sup> Dudley, N., Stolton, S. and Beland-Lindahl, K. (2000); The role of large companies in forest protection in Sweden, in *Partnerships for Protection*, edited by Stolton, S., Dudley, N., Gujja, B., Jackson, W. J., Jeanrenaud, J.-P., Oviedo, G., Rosabal, P., Phillips, A. and Wells, S. Earthscan, London.

<sup>23</sup> Stolton, Sue and Dudley, Nigel (2000); The use of certification of sustainable management systems and their possible application to protected area management, in *Beyond the Trees* edited by Rana, Devendra and Edelman, Liz, WWF International, Gland, Switzerland.

forest management in places within protected areas where the managers would generally oppose forestry – here certification could be giving “green approval” to land use that is incompatible with wider protected area aims.

## **Arguments for and against certification**

People who argue against the whole concept of certification are avoiding the fact that it is happening already. Currently the three more specialized uses – certification of particular operations in protected areas and other certification schemes (e.g. tourism, forestry and agriculture) that spill over, predominantly or occasionally, into protected areas – are in operation in many protected areas around the world and all the signs are that they will continue and probably increase. The real debate at present is therefore whether or not there is a justification for more general application of certification to protected areas, either for particular types of protected areas or for entire systems.

A WCPA task force has been looking at options for protected area certification and collecting reactions to these proposals. It would be fair to say that reaction from protected area agencies has been mainly, although not entirely, opposed, in some cases dramatically so. Arguments for and against have been collected and a summary is given in Table 3 below, which is an expanded form of one appearing in a recent WCPA background paper.<sup>24</sup>

Key issues relate to the incentives and costs. Critics point out that other environmental certification schemes have commercial incentives, whereas protected area certification would offer few benefits. Developing such a scheme would be expensive and existing, cheaper options might offer more – such as use of ISO standards. Certification would only appeal to those protected areas that would be likely to succeed in their application and would be avoided by paper parks or those parks that are struggling to maintain their values, thus increasing the gap between the well-funded, successful protected areas and the rest. Detractors point out that although forest certification was established mainly to help improve management in tropical forests, it has almost entirely occurred in temperate and boreal forests that were already managed fairly sustainably. Proponents argue conversely that self assessment has proven flaws and that the people who pay for protected areas – tax-payers, donors and other sponsors – have the right to see a small proportion of their investment being set aside to ensure that the rest is used wisely. Certification would give governments a set of data for reporting to institutions such as the Convention on Biological Diversity and would give a framework for improving management. All similar certification schemes have initially been resisted by those being certified, for a range of practical and emotional reasons.

---

<sup>24</sup> Dudley, Nigel, Hockings, Marc and Stolton, Sue (2003); *Protection Assured: Guaranteeing the effective management of the world's protected areas – a review of options*, IUCN World Commission on Protected Areas, Gland, Switzerland.

**Table 3. Arguments for and against certification of protected areas**

For certification	Against certification
It could create an important focus on management effectiveness of protected areas, additional national pride in good protected areas and a focus for publicity and debate	Certification is likely to be extremely time consuming and could divert effort from practical management or capacity building
A certificate of good management could provide important political recognition to protected area managers within countries	Obtaining a certificate would be expensive and there is no obvious market advantage in having a certificate that could justify paying for certification
The certification process could provide a standardized way of reporting on protected areas, e.g. for international mechanisms such as the Convention on Biological Diversity or for regional monitoring systems such as the Ministerial Conference for the Protection of Forests in Europe	Resistance to certification amongst governments could conversely undermine their willingness to report on the CBD and other monitoring systems
Certification could result in independent (and free) advice to governments on the status of their protected areas and to managers on improving management, and could therefore be a valuable tool for adaptive management – an independent assessor would need to be a protected area specialist and would therefore also be a source of advice regarding adaptive management	Some government protected area agencies have stated strong opposition to the idea of certification
Independent certification could take pressure off protected area staff in countries or regions where it is politically difficult (or dangerous) for staff to identify particular threats – particularly if these are connected with powerful interests or other parts of the government	Being subjected to outside evaluation could undermine or antagonise staff, particularly if they thought that assessors paying a brief visit failed to understand the complexity of issues found in protected areas – this has frequently been the case even for assessments that result in no label or externally-available report
Certification could help major funding agencies to determine whether grants and donations were being correctly and effectively used	Certification could create a “two-tier” system, with secure, well-funded protected areas in politically stable countries opting for certification (and thus getting additional support) and those in more difficult situations ignoring certification and being further marginalized
Certification could provide local communities and others with a voice in protected areas that is currently missing in many countries	The certification process could simply open up old disputes and give anti-conservation elements a chance to make trouble
Any certification scheme is almost certain to be voluntary so that governments and protected areas that did not like the idea could simply not take part	A certification scheme could create enough momentum that governments would feel forced to take part but might do so reluctantly and without entering into the spirit of good management
Certification could well happen anyway, so the conservation movement should act now to make sure that it has a role in shaping and controlling the process	Certification could well happen anyway, so the conservation movement should ignore it for now and wait to see what develops

## What would certification entail?

There is no doubt that developing a comprehensive certification scheme capable of certifying protected areas in general, would be a very large undertaking. It would involve, for example:

- ***An institutional home:*** either an existing institution such as WCPA, IUCN, ISO or UNEP, or some body set up specifically to manage protected area certification.
- ***Development of principles and standards:*** itself a time-consuming business but particularly so as it would have to work out the relationship between any certification system with existing initiatives, including WCPA's work on management effectiveness and protected area standards, ISO's standards and separate initiatives like Pan Park.
- ***Agreement on the role of the certification body:*** for example deciding whether it would be an organization that carried out certifications itself or an accreditation agency that would provide standards and accreditation for a range of certification schemes, which are the ones who would actually send people around the world judging protected areas.
- ***Development of a management structure:*** whatever the intent, a management structure will need to be worked out, including representation of different interests on a management board, identification of protocols and guidelines, patrons, etc.
- ***Sustainable forms of funding:*** either through some way of persuading protected areas to pay for their own certification (highly unlikely) or some long-term support, perhaps through donors, governments or others.

There would also be a long-term process of developing political buy-in to the concept, including working out relationships with potentially competing interests. For example, most governments have their own accreditation procedures, and there are at least two existing international accreditation agencies, all of which might resent or oppose a "new" attempt at accreditation. Issues of mutual recognition between certification schemes and technical equivalence have hampered some other efforts at certification for environmental and social reasons; getting them mired in arcane technical debates rather than in addressing the issues they were established to tackle. The legal implications of certification would need to be addressed even for a voluntary scheme.

## Some possible ways forward

There currently seems to be little stomach for developing an all-singing, all-dancing certification system for any or all protected areas, even on a voluntary basis. To some extent this may be simply because the time is still too early for many protected areas, which have recently been created or are about to be created and are fully engaged in attempts to build capacity and establish goals: bringing in outside assessors might add little to their efforts at the moment. However as protected areas become more established and long-term funding needs better identified, the situation may change and many people will be watching current certification schemes, such as Pan Parks, with considerable interest.

This does not mean that certification currently has nothing more to offer protected areas in the immediate term. WCPA and IUCN in general could develop a series of initiatives to build on existing work and use certification options to improve management. Three stepping stones

to a full certification scheme might be of interest (and might have value whether or not a full scheme ever emerged):

- Better coordination with existing certification efforts to ensure that they maximize benefits for protected areas;
- Use of existing expertise to ensure that assessment systems, including certification systems, reach minimum standards;
- Further investigation of certification schemes for specific types of protected areas, such as private protected areas or indigenous peoples' protected areas.

**Better coordination:** one of the early aims of any broader certification initiative should be to make sure that existing schemes, and particularly those with only occasional links to protected areas, include specific consideration of protected area needs in their principles, standards and operating procedures. This could start with development of general guidance about protected areas for certification schemes, perhaps in the form of a simple leaflet from WCPA explaining the role of protected areas, the different categories and the implications for management. More specific guidance might be applicable for different schemes, such as previous efforts made by IFOAM to ensure that organic standards maximize biodiversity potential on farms. In the case of forest management, such guidance could include recommendations on the type of protection acceptable in forest management unit areas set aside for protection under certification standards and the circumstances in which certified forest management is and is not an acceptable component within protected areas (and possibly some additional guidance for certification within Category IV, V and VI protected areas).

**Minimum standards:** most quality assurance schemes need a system for accrediting component certification systems: e.g. several different schemes are accredited by the Forest Stewardship Council as meeting agreed principles. The WCPA management effectiveness theme is already being asked for advice about which assessment systems meet the WCPA framework requirements and this is currently provided on an *ad hoc* basis. Formalizing this into *accreditation* (or a simpler form of recognition) by agreement of minimum standards of assessment and appointment of an accreditation committee would have the immediate benefit of giving organizations, governments or agencies assurance that particular assessment schemes are adequate and the political benefit that if protected area *assessment* ever developed into protected area *certification*, WCPA would already be playing an integral role in this process.

**Certification of specific types of protected areas:** there appears to be far more enthusiasm for exploring the possibility of some form of certification for specific types of privately-run protected areas to: (1) give guarantees that these are meeting minimum standards to be included in national protected area networks and (2) to access funding and support in the case of community or indigenous-run protected areas. These are both cases where management authorities are actively looking for some kind of certification and where there are clear livelihood and governance implications. Developing certification or verification schemes addressing these particular areas would be a larger exercise than accreditation but would be far more limited in its extent than a full certification system, and also far less liable to run into questions of national sovereignty and legal structures.

# International Funds, “Partnerships” and other Mechanisms for Protected Areas

*Tomme R. Young\**

---

The financing of protected areas is one of the most difficult obstacles to the development and evolution of the entire protected area concept and the relevance of protected areas to the lives and livelihoods of the communities and countries they are a part of. In virtually all parts of the globe, lack of ‘sustainable funding’ serves as a major impediment to the realization of protected area objectives, including as critical elements in the prevention of the extinctions of species and ecosystem types, and as keys to ensuring the sustainability of natural resource use – providing commodities in trade, “genetic resources”, and “non-consumed” resources (*e.g.*, ecotourism).

Underlying this problem is the fact that protected areas are generally not designed or intended for the production of income. Their very name suggests that, regardless of the benefits that accrue from them, the primary objective of designation of such areas is “protection” – that is, their goal is to try to ensure that the species, ecosystems and other important features of the area continue to exist, as healthy components of the “green web” for the benefit of future, as well as the present, generations.

It is clear, however, that unlike the benefits arising from current use, the benefits of stewardship of the earth’s remaining biodiversity are globally important. It is these benefits that can form the basis on which the concept of “common, but differentiated responsibilities”<sup>1</sup> can apply. Hence, the most significant basis on which one can predicate any concept of “international governance of protected areas” (which are otherwise almost exclusively matters of domestic sovereignty) must be the ethical one – the responsibility of sharing the burdens and costs associated with achievement of the goal of ensuring that protected areas, when viewed globally, comprise a representative network of important ecosystems.

This part will examine some elements of governance relevant to the issue of international support for domestic and trans-border protected areas. In particular, it will look at:

- The possibility of creating one or more international funding mechanisms directed at providing financial support to protected areas; and
- The application of the so-called “new partnerships” to the provision of global support for protected areas.

This discussion is not intended as an in-depth legal analysis, but as an initial examination of some aspects of these issues. Its objective is not to convince or promote a particular position, but rather to foment discussion regarding these concepts within the governance stream of the Vth IUCN World Parks Congress.

---

\* Senior Legal Officer, IUCN Environmental Law Centre, IUCN – the World Conservation Union

<sup>1</sup> Rio Declaration on the Environment and Development (1993), Principle 7. See also the Johannesburg World Summit on Sustainable Development Plan of Implementation para 13.

## **A. Key distinctions between protected areas and other targets of assistance**

In considering these issues, it became relatively obvious that in some ways support for protected areas is very different from other kinds of technical co-operation and development assistance programmes. In particular, protected areas present unique challenges with regard to financing and sustainable financing, which must necessarily be considered in any legal analysis of governance concerns. In particular, it is essential to ground any analysis of international support to protected areas on an awareness of:

- The difference between the purpose underlying support for protected areas and the purposes of other assistance programmes and development lending;
- The reasons that some typical approaches to financing development assistance concepts are not optimal in the context of protected areas.

### **1. Purposes of support to protected areas**

One of the difficulties with the provision of traditional assistance for particular protected areas arises from the fact that conventional development co-operation is usually expected to be available only for a specific, defined time. In the current climate, even long-term technical assistance rarely can be expected to extend beyond 7–15 years. Assistance programmes are generally expected to provide “seed money” and initial capacity – the basic underlying support necessary to get a programme or activity organized, to enable it to begin operations, and to help it to become “sustainable” (by locating or generating sufficient sources of long-term income to cover ongoing operational needs.)

This approach may be relatively effective when the assistance project is aimed at setting up a farmer’s co-operative or some other business enterprise which can be expected to eventually have clear access to income flows, and whose annual operational costs will be a small fraction of the costs involved in organization and start-up. Protected areas, however, are rarely (if ever) self-supporting, and may develop different and potentially difficult problems in the course of long-term operations.

Only in a small percentage of instances – usually as a result of international renown combined with a relatively high level of international and/or domestic tourism – a protected area may bring in more revenues than are spent on its upkeep. Often, however, even these “flagship parks” have to fight for funding, where protected area income is a major contributor to the national economy and/or governmental budget. Even relatively modest gate receipts may be ultimately included in general funding, in these days of lean governmental funding. At a minimum, higher-level revenues from flagship protected areas are typically expected to cover much more than that single protected area’s upkeep and maintenance.

It is much more common that a protected area’s operational receipts (gate, ecotourism services, concessions, offtake, etc.) will not cover more than the costs of the tourism activities and infrastructure, and the maintenance needed to eliminate the tourism-caused damage and wear-and-tear to the park. Supplemental governmental funding, through mechanisms such as taxes, levies and surcharges, is nearly always subject to budgetary dispensation, a process that is subject to periodic reallocation. This means that, even if some percentage of discretionary funds is allocated to protected area operation or maintenance, they cannot be depended on for long-term operations.



As a consequence, a significant number of protected areas and protected area programmes will require not only “start-up” or “development” funds, but may also need long-term funding for “ongoing maintenance,” without which the gains made during the project period may eventually be entirely lost.

This is not a fault of the protected areas, nor of the management process that administers them. It is simply true that independent sustainability is not possible for a great many protected areas. It should be noted, however, that sustainability is not generally expected from a great many types of necessary governmental programmes and services, such as, for example, schools, libraries, and public health programmes. The value of these essential services, including protected areas, extends well beyond the individual evaluation of their direct financial receipts or any other measure of their economic worth. They are key components of a larger system. Where schools are an essential underlying component of the long-term capacity and expertise of a country’s citizenry, protected areas are a similarly basic component of the long-term value and sustainability of the overall national system of the use of biological resources.

This is a critical difference between funding provided for protected areas and other development assistance.

## **2. Appropriateness of financial support in the form of loans and/or income-source development projects**

For similar reasons, it is generally not appropriate to design financial assistance in the form of development loans or the granting of one-time assistance for the development of a stable “income source” for protected areas. Experts generally agree that “ecotourism” – the primary focus of such proposals at present – is unlikely to provide significant income in most protected areas.<sup>2</sup>

Resource-utilization projects (usually offtake, but sometimes programmes of controlled harvesting or mineral resource extraction) are another potential source of income. But this option may be controversial in the protected area context, due to the need to balance income generation against the conservation aspects of the area’s primary mandate, suggesting that these also may be less than optimal as long-term sources of income in most protected areas.<sup>3</sup>

Moreover, even in cases in which on-site resource-production does become a stable and significant source of funding, that success may contribute to a co-ordination problem. Where government lands are successful in producing income, responsibility for that aspect of operations may be transferred to the management of another substantive ministry, whose management decision-making may diverge from the protected area objectives in significant ways.

---

<sup>2</sup> See Biological Diversity and Tourism: Draft Guidelines for Activities Related to Sustainable Tourism Development and Biological Diversity – Note by the Executive Secretary (unep/cbd/sbstta/8/11) available from the CBD website at [www.biodiv.org/doc/meetings/sbstta/sbstta-08/official/sbstta-08-11-en.doc](http://www.biodiv.org/doc/meetings/sbstta/sbstta-08/official/sbstta-08-11-en.doc), and documents cited therein from the International Ecotourism Conference. The above statements are not intended to denigrate the importance of ecotourism. It is clearly an important concept, and may be an important source of increased community incomes, even where the gross amount of visitors and spending is not significant in estimates of national production and incomes.

<sup>3</sup> Gutierrez, R. “Mining in Protected Areas of Australia and the Philippines” (as yet unpublished, June 2003).

## B. An International fund for protected areas

The most direct approach to external support would involve the creation of an international fund dedicated to this purpose. In recent years, such a fund has been generally proposed by several sources, and it is expected that a new call for this kind of action will be proposed in February 2004 at the 7<sup>th</sup> Conference of the Parties to the Convention on Biological Diversity.<sup>4</sup> At present, such proposals are still in nascent stages, and serve primarily as a vehicle for sounding out the receptivity of national delegations and others to such a concept. If it were decided to go forward with such a proposal, however, it will be essential to carefully analyse its legal and political implications, and practical aspects and constraints.

This paper will open the discussion of these “governance” aspects of the international fund proposals by looking at three basic issues:

- Mechanisms for establishment and capitalization of such a fund;
- Standards for selection of recipients of assistance;
- Nature of the assistance to be provided.<sup>5</sup>

For this paper, we will assume that the purpose of such a fund is to address the basic lack of national financial ability (1) to establish protected areas as something more than “paper parks” (2) to develop necessary infrastructure for improved protected area management, and (3) to fill gaps in the necessary continuing functional support needed for their long-term operation.

### 1. Mechanisms for fund establishment and capitalization

The manner in which the fund will be organized and capitalized involves many options, and presents many challenges. Based on surveys, there appear to be four basic approaches:

*“Global Environment Facility (GEF)-style” arrangement:*

A binding commitment by nations to contribute funds on the basis of a serial replenishment.<sup>6</sup> Such a fund may be organized in a way that allows non-governmental entities (NGOs and the private sector) to contribute to the fund. This approach may also be used in the creation of a commitment-based fund as a contractual basis (that is – an agreement between any entities, organizations, individuals, governments and/or government

---

<sup>4</sup> The Royal Society for the Protection of Birds (RSPB), for example, has circulated a formal call for a protocol to the CBD, whose primary objective will be “to operationalise the requirement in Article 8(m) of the CBD that parties cooperate in providing financial and other support for *in situ* conservation, particularly to developing countries.” The circular indicates that the RSPB will formally raise this option in CBD-COP7. RSPB circular, *The Convention on Biological Diversity and a Protocol on Biodiversity Areas: Issues related to the UN Convention on the Law of the Sea* (looseleaf, June 2003).

<sup>5</sup> Much of this discussion is based on practical experiences with conservation trust funds created at the national and regional levels. This paper does not discuss the experiences of these funds more generally, however, an excellent source for such a discussion can be found in FAO’s paper online #15 on National Forest Funds, accessible at [www.fao.org/Legal/prs-ol/paper-e.htm](http://www.fao.org/Legal/prs-ol/paper-e.htm)

<sup>6</sup> The GEF’s establishment was not by an international convention, but by a slightly different type of agreement among nations and the implementing agencies. It is unique in the manner in which parties may accede to or withdraw from this agreement. The Revised GEF Agreement (Instrument for the Establishment of the Restructured GEF (1994), amended October, 2002) can be accessed at [gefweb.org/Documents/Instrument/instrument.html#B](http://gefweb.org/Documents/Instrument/instrument.html#B)

agencies that are willing to sign, rather than through an international agreement among nations);

*Endowment:*

A (much larger) fund, probably capitalized by non-governmental sources,<sup>7</sup> operating as an “endowment” (preserving the capital, either by distributing income only or operating as a “revolving (loan) fund”);

*Voluntary fund:*

A fund that is based on voluntary contributions, typically open to any contributor;

*Separate operation providing business proceeds:*

As an alternative basis for financing, linkage of the protected area (or management agency or ministry) to a separate business operation, whose operating profits are to be applied to the “fund” purposes, rather than being returned to investors as dividends.

## 1.1 Initial concerns

Each of these options offers both strengths and weaknesses as a basis for the achievement of the purpose described above. Initially, the following are possible concerns that may arise with regard to the “commitment and capitalization” stage:

*The “GEF-style” approach* seems to face most significant potential political obstacles, including the following:

- **Alteration of agreed priorities:** A combination of factors may make this kind of proposal appear to be an attempt to avoid the application of the GEF’s guidelines and standards for funding decisions and CBD workplans and priorities. Such an argument may run as follows:
    - We are seeing a general decline in funds available for baseline “conservation” activities;
    - A tremendous breadth of issues exist which need urgent attention (e.g., invasive species, deforestation/desertification, climate change, etc.);
    - Protected areas, while an important part of the overall process of the CBD, are only one among the components necessary for achievement of its objectives;
- Therefore,
- It is important to ensure that limited conservation resources are allocated in the most rational and co-ordinated way possible. Accordingly, it may be inappropriate to create a tool that separates a specified proportion of scarce financial resources from the dictates

---

<sup>7</sup> International conventions do not generally operate through endowments, as national budgeting usually requires a closer control over capital accounts and does not typically allow the accumulation of sufficient reserves to enable countries to make endowment-sized contributions. The Ramsar Convention on Wetlands, however, has recently resolved to attempt to create such a Fund (Ramsar COP8 Resolution VIII.29, accessible at [www.ramsar.org/key\\_res\\_viii\\_29\\_e.doc](http://www.ramsar.org/key_res_viii_29_e.doc)), and is now seeking contributions from any source to capitalise it. The fund will be used to “resource the Ramsar Small Grants Fund” through which operational assistance is given to developing country parties (discussed below.)

of existing more integrated international instruments and mechanisms, thereby possibly disturbing the balance and priorities for biodiversity implementation.

- **Existing mechanism:** Where the fund is created as a mechanism governed by agreement among nations, the very existence of the GEF may be put forward as a strong basis for opposing the creation of such a fund. The GEF's mandates as "the financing mechanism of the CBD," coupled with CBD Article 8.a's provisions regarding the creation and operation of protected areas and other programmes for "*in-situ conservation*" may be considered an indication that there is no need for additional funding.<sup>8</sup>
- **Co-ordination with other existing mechanisms:** Other political difficulties may arise out of the relationship of such a fund with the existing system of protected areas of international biodiversity importance, namely the "natural heritage areas" declared under the World Heritage Convention. This convention is arguably designed specifically to recognise and address the particular international interest in protected areas ("world heritage"), without becoming inappropriately involved in matters of national sovereignty (i.e., "national heritage").

A significant number of globally important natural heritage areas have been identified, but in many cases, the countries in which they are located are finding it difficult to find sufficient funds to protect them adequately. The World Heritage Convention also created a fund to provide assistance to parties in implementing their responsibilities.<sup>9</sup> Creation of a new and separate fund may be interpreted as a further dilution of the support committed by the Parties (a total of 176 countries, nearly all of which are also parties to the CBD) under that convention.

Such a fund may also be interpreted as a dilution of the WHC's impacts on conservation. The WHC, as a major part of its importance to conservation, is intended to set high and consistent standards for conservation of designated World Heritage Sites – essentially, to create a "brand" of protected areas which are both internationally important and maintained in accordance with the highest standards. If a second international instrument is adopted with similar objectives, it may be seen as a way to circumvent WHC standards while still achieving international recognition and assistance for the sites involved.

- **Political activism affecting the mechanism:** Certain controversies regarding protected areas, too, may be sources of resistance to the creation of a fund of this type. Current discussions focus on proposals to create rigid limiting definitions of "protected area," and to mandate particular categorical definitions as well as to fix international standards regarding what activities may be permitted in protected areas and/or how they may be managed. These looming prospects may decrease the confidence of potential parties to the Fund, who may fear that these political changes will be interpreted to apply to the fund, thereby limiting potential recipients of funding.

---

<sup>8</sup> In addition, as noted below, the GEF's programme of funding in this field (protected areas) would focus on particular protected areas or agencies. It is likely that an international fund would operate in the same way.

<sup>9</sup> The World Heritage Fund is well described in the World Heritage Convention, Arts. 15–18, its Operational Guidelines (at paras. 94–125), the financial regulations of the Fund, Document WH/7, and the World Heritage Centre website at [whc.unesco.org/nwhc/pages/doc/main.htm](http://whc.unesco.org/nwhc/pages/doc/main.htm) The World Heritage fund, and other mechanisms for financing the convention's implementation, are discussed below.

Similar concerns may be raised in connection with proposals for “certification” of protected areas, based on the category system.

“*Endowment*” and “*Voluntary Fund*” approaches may fare better as they will not be seen to be in competition with (or attempting to circumvent) the existing mechanisms. However, a number of other concerns may arise with regard to the establishment and capitalization of these types of mechanisms:

- Even if perceived to be “additional” to the GEF, once the fund is successfully established, the GEF process and other donors may assume that it will take over the field of technical assistance with regard to protected areas. If so, it is possible that the GEF could thereafter cease providing grants and assistance to protected area projects.
- Often, particularly with regard to larger contributions and endowments, the donors attach conditions to their donations. Such conditions may create a nightmare at the time of fund formation (and their implementation may add significantly to the costs and time involved in fund management.)

“*Separate Business*” income: Commitment of business income for management of protected areas may be somewhat more difficult and expensive at the initiation phase, requiring significant investment in the “start-up” or set-up of the arrangement.

*Common to all – minimum funding level:* For purposes of certainty for the donors, it may be essential to provide some guarantee regarding the minimum size of the fund. Certainly, any justification for the creation for such a fund must depend on its achieving a certain “critical mass” – a sufficient balance to enable the fund to undertake and achieve its mandate and purpose, as described above.<sup>10</sup>

## **1.2 Justification**

Another serious issue that must be addressed at the commitment/capitalization stage is the “justification” for the parties regarding the arrangement. In essence, by its nature, the fund or arrangement must answer an important, but generally unstated question:

*Why is this arrangement preferable to current practices?*

In other words, the fund must be able to achieve something that is not available through direct bilateral aid (either to particular protected areas or the agency or agencies with responsibility for protected areas.)

The justification for the creation of the fund must have at least two components:

- For governmental donors:
  - an explanation of the particular importance of such a fund, and the reason for allocation of additional funds to it, at a time when foreign technical assistance funding is generally declining, due to the general tightness of national budgets; and

---

<sup>10</sup> This is perhaps most essential in the case of endowment funding. An example is the proposed Ramsar Endowment Fund, which the parties to that convention have resolved to establish, but will not exist unless/until an appropriate minimum funding level is reached. Ramsar COP8 Resolution VIII.29 (accessible at [www.ramsar.org/key\\_res\\_viii\\_29\\_e.doc](http://www.ramsar.org/key_res_viii_29_e.doc)).

- a description of the ways in which such a fund is an improvement over the current approach – direct bilateral aid to particular protected areas (or to the agency or agencies with broader responsibility for protected areas).

In connection with the latter, the fund must explain not only why an international fund approach is preferable, but also provide a reason that it should be additive i.e., constitute an increase in their external assistance with biodiversity conservation and related matters, rather than simply a re-allocation of money that would otherwise be used in bilateral aid for protected areas (or other biodiversity conservation);

- For non-governmental contributors:

The justification must provide a reason that funds which they have in the past administered or donated directly would be better spent or have a more effective biodiversity impact, if administered by some external fund. In this connection, it should be noted that many such contributors are “funds” themselves – recipients of donations from individuals and corporate entities, who have a legal expectation that their donations will be used for designated charitable and public-benefit purposes. While it is true that all charities use some percentage of the donated funds for administrative purposes, a contribution from a national fund or NGO to the International Fund would in essence add another layer of “administrative expenditure” decreasing the effective percentage of donations that will be used for the conservation purpose.

Accordingly, it will be essential to demonstrate a justification that these entities might be able to give to their governing bodies and donors, which will justify the increase in administrative expenditure.

In this connection, it will be necessary to address the problem of scale. Unlike most aspects of corporate/industrial economics, the effectiveness of most kinds of international technical and financial assistance does not escalate with the size of grants in most circumstances. As demonstrated by the early years of the GEF, grants and assistance are frequently less effective as they increase in size.<sup>11</sup> In response to this discovery, in fact, donors are increasing by focusing on “programmatic” grants, which are given to NGOs and others who agree to take responsibility for administering them in the form of very small projects.

It seems possible that a major justification for the Fund would be the issues discussed in “A. Key Distinctions”, above. As noted, one of the greatest unfulfilled needs of protected areas is the inability to construct them in a way that allows them to be independently and sustainably financed over the long term. If the fund could be created and subscribed in a way that ensures that it can provide a dependable level of funding on a long-term basis, then it can offer some level of assurance of operating capital for long-term operation and maintenance of protected areas.<sup>12</sup>

---

<sup>11</sup> Overall performance studies of the GEF mechanism are accessible from the GEF website at [gefweb.org/ResultsandImpact/Monitoring\\_Evaluation/Overall\\_Performance\\_Studies/overall\\_performance\\_studies.html](http://gefweb.org/ResultsandImpact/Monitoring_Evaluation/Overall_Performance_Studies/overall_performance_studies.html)

<sup>12</sup> Some other ideas about justification of an international fund may be gleaned from national experience, see GEF Lessons Notes #5, “When is conservation best served by a trust fund?” (January, 1999) accessible at [gefweb.org/ResultsandImpact/Monitoring\\_Evaluation/GEF\\_Lessons\\_Notes/EnglishPLN5.pdf](http://gefweb.org/ResultsandImpact/Monitoring_Evaluation/GEF_Lessons_Notes/EnglishPLN5.pdf)

## **2. Standards and mechanisms for selecting recipients of assistance**

A key legal issue to be addressed in the creation of such a fund will be the manner in which assistance decisions are made. Typically, the donor group will have a primary interest in ensuring that certain types of standards are applied in selecting which protected areas or agencies will receive assistance, and what kinds of restrictions, requirements and conditions will be attached to the support programme.

These issues are generally addressed in several integrated ways. In establishing the Fund, certain general (and sometimes specific) objectives are enunciated in the legal documents (Agreement, contract, etc.), which provide basic principles around which applications for assistance can be organized. Secondly, the mechanism for administering the fund (which is also generally spelled out in the organizing document) may be a determinant of the bases on which assistance will be given.<sup>13</sup>

This mechanism usually embodies one or a combination of the following:

- Empowerment of one or a group of trustee(s) or manager(s), usually given a further specific mandate or set of standards, for distributing the Fund, or
- Creation of a committee of the fund donors (a COP, Council or other representative committee), whose mandate may be less specific.
- Specification of a set of prerequisites for assistance, including both specific factors relating to the country (e.g., least developed countries, developing countries, countries in economic transition, small island states, etc.), specific commitments regarding the protected area(s) involved, and consent to certain key operational commitments (matching funds, etc.)
- Specification of priorities – types of protected areas, specific biomes, regions, countries or institutions which should be primary recipients of aid.

Some of these factors may be controversial, particularly those that may be thought to limit the kinds of protected areas that will receive assistance (for example, some protected area assistance programmes focus exclusively or primarily on protected areas which are within categories 1 and 4 (strict wilderness and ecosystem protection) in the IUCN Category system.)

Another important but difficult discussion will be needed to determine the kinds of standards and conditions to be imposed on recipients of assistance i.e. particular types and levels of protection, provisions regarding the use of natural resources in the protected area, and compliance with specific management principles and practices.

On the one hand, there is a possibility of using the grants as key reassurance necessary to assure donors that assisted protected areas and programmes will have sufficient practical and legal support, and that the financial assistance will not ultimately have been “wasted”.

---

<sup>13</sup> See, for example, the World Heritage Operational Guidelines, cited above, and Operational Strategy of the Global Environment Facility, accessible at [gefweb.org/Operational\\_Policies/Operational\\_Strategy/op\\_stat/op\\_stat.html](http://gefweb.org/Operational_Policies/Operational_Strategy/op_stat/op_stat.html)

On the other side, however, many of these are otherwise matters of exclusive national sovereignty, particularly where such concerns are focused on long-term protection of specific areas.

### **3. Nature of the assistance to be provided**

As noted above there are potentially unique aspects of the assistance to be provided which may be both the primary justification for the creation of such a fund, and also a determinant of the type of fund to be used, and the particular funding mandates given to the decision-makers.

Particularly if the fund is designed to address long-term maintenance issues, the “endowment” approach (or some provision in the other approaches that mandated a minimum annual commitment from signatories) would appear to be the best choice, as these mechanisms would best ensure a dependable, long-term source of funds. This approach could be supplemented by operational provisions such as “matching fund” requirements, as discussed below.

### **4. Initial conclusions regarding fund development**

Perhaps the most obvious initial problem to be grappled with in connection with the creation of an international fund for protected areas is the number of unknown factors to be grappled with. These range from political unknowns (whether there will be sufficient political support to champion the creation of the fund and to fuel negotiation of solutions to the difficult issues) to practical unknowns such as the best mechanisms for creating relatively secure long-term funding arrangements on a global scale, and the ability of any institutional mechanism to realistically apply existing scientific tools and protected area data towards the co-ordinated achievement of the objective of a global “representative system of protected areas”. In the face of these unknowns, it may be useful to consider the applicability of mechanisms to help reduce uncertainties before negotiating a formal (and difficult to adjust) institution.

## **C. “Partnerships” for protected areas**

One of the most important elements of the 2002 World Summit on Sustainable Development (“WSSD” or “Summit”) has been its intrinsic focus on facilitating the development of innovative approaches to addressing the difficult problems of conservation and sustainable development in the coming decade. Most of these are being developed through the medium of “Type-II partnerships” – a concept which itself has been suggested as a major change in the nature of international environmental governance. Given the many challenges involved in ensuring the financial future of protected areas as tools for conservation and sustainable use, it seems appropriate to consider these mechanisms as possible avenues.

This section will briefly examine the various meanings of the concept of “partnership” in modern international assistance and co-operation programmes. Then it will examine the manner in which these instruments can become a part of the development of international support to protected areas.



## **1. Moving beyond ‘Declarations’ – Type I and Type II outcomes of the WSSD**

The preparations and deliberations of the WSSD have given rise to new concepts and controversies regarding bilateral and multilateral assistance and co-operation, in general, which may have particular relevance in the context of protected areas. Concepts of international environmental governance in particular underwent a potentially important evolution during the preparations for, and deliberations of, the WSSD.

This evolution was a conscious process, growing out of the desire that the Summit would have more direct and measurable practical results than its predecessor UNCED had done. It was generally agreed that Agenda 21 (as well as other final outputs of UNCED, such as the Rio Declaration, the three “Rio Conventions,” and the Forest Declaration)<sup>14</sup> had not resulted in sufficient direct action, leading to a disappointing level of progress during the ensuing 10 years. Hence it was urged that the WSSD would have two types of outcomes:

- “*Type-I outcomes*” referred to the usual outputs of virtually all modern international meetings (declarations, workplans, etc.)<sup>15</sup> In the WSSD, these outcomes include the Johannesburg Declaration on Sustainable Development and the WSSD Plan of Implementation.<sup>16</sup> It was recognised that promulgation of these documents alone could not achieve the Summit’s objectives.
- “*Type-II outcomes*” was used to describe more specific, practical outputs that were expected from the WSSD. Much time during the WSSD prepComs was spent on considering what form and nature such outputs would take. In the end, they were described rather generally as “partnerships for sustainable development,” with the term “partnership” being specifically chosen to clearly embody the notion that these outcomes would be concrete action-oriented engagements involving identified actors (governments

---

<sup>14</sup> The Rio Declaration is accessible at [www.un.org/documents/ga/conf151/aconf15126-1annex1.htm](http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm); Forest principles at [www.un.org/documents/ga/conf151/aconf15126-3annex3.htm](http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm), the Convention on Biodiversity at [www.biodiv.org](http://www.biodiv.org); UN Convention to Combat Desertification at [www.unccd.int/convention/menu.php](http://www.unccd.int/convention/menu.php) and UN Framework Convention on Climate Change at [unfccc.int/resource/conv/conv.html](http://unfccc.int/resource/conv/conv.html). Agenda 21 is accessible as well, and can be downloaded by chapters. It is located at [www.un.org/esa/sustdev/agenda21text.htm](http://www.un.org/esa/sustdev/agenda21text.htm)

<sup>15</sup> It has become common that virtually every conference, forum, workshop and “working group,” however sponsored and however the participants are selected, now issues a “declaration” of some sort. The drafting of these documents may consume a significant percentage of meeting time, or be undertaken by the organizers without input from the participants. Often, it is not clear how these declarations will be used, or what value they will add.

There are obvious exceptions, however – perhaps most notably the second Trondheim conference on Biodiversity, whose outputs led to the creation of the Global Invasive Species Programme, and the January 1998 Lilongwe workshop on the Ecosystem Approach. Both of these documents are frequently cited by meeting promoters as justification of the value of meeting declarations. There is a fallacy here, of course. The value and impact of the Trondheim and Lilongwe documents (Trondheim was not a declaration, but a report) arose not out of the documents themselves, but out of the competence and credibility of the process that they represented. Lacking that basis, the average “declaration of the expert workshop on X” is has little chance to be perceived as anything other than a self-serving document.

<sup>16</sup> The Political Declaration of the Summit as revised, can be accessed on the WSSD website (as updated) at [www.johannesburgsummit.org/html/documents/summit\\_docs/1009wssd\\_pol\\_declaration.htm](http://www.johannesburgsummit.org/html/documents/summit_docs/1009wssd_pol_declaration.htm)

The Plan of Implementation, both in full and in summary form can be accessed here as well, at [www.johannesburgsummit.org/html/documents/summit\\_docs/2309\\_planfinal.htm](http://www.johannesburgsummit.org/html/documents/summit_docs/2309_planfinal.htm)

and other organizations) and funding sources, and through which the Type I outcomes would be meaningfully implemented and promoted.

This basic understanding of the Type-II outcomes, soon re-characterized as “type-II partnerships,” was reaffirmed in the UNGA’s Resolution on the World Summit on Sustainable Development,<sup>17</sup> which encouraged implementation of “partnership initiatives voluntarily undertaken by some Governments, international organizations and major groups.”

In the wake of the WSSD, it is clear that type-II partnerships have increasingly been seen as a major element of international environmental governance as well as a vehicle for implementation of sustainable development objectives. As such, it is essential to understand what sort of vehicles the “new partnerships” are and how they are expected to operate and to integrate with existing mechanisms for co-operation in sustainable development.

The following is a brief examination of the international/intergovernmental application of partnerships concepts (including both traditional and “Type-II” partnerships), and how they can best be applied in support of the creation and management of protected areas.

## **2. Existing (pre-WSSD) “Partnership” approaches to bilateral and multilateral assistance**

The concept of a “partner relationship” (although more commonly referred to in other terms, especially “joint venture,” or “co-operation agreements,” etc.) is not a new one in the context of bilateral co-operation, development assistance, and other international activities.

### **2.1 Bilateral and multilateral technical assistance and co-operation**

For at least the past two or three decades, partnership-style relationships have existed throughout the realm of international development assistance. In the last fifteen years, these collaborative partnerships have increasingly included not only governments and governmental agencies, but also NGOs, and even private enterprises.

Bilateral aid for conservation, in particular, has followed a “partner” approach, particularly in long-term programmes and projects for the restoration or protection of fragile and endangered ecosystems and habitats. Given the length of time and amounts of human and financial resources that were dedicated to these projects, it was essential (to donors and to recipients of the assistance, as well as the implementing agencies) that these activities be bound by clear and mutual commitments of resources, personnel and political/financial support, before they could realistically begin to go forward.

### **2.2 International Partnership arrangements**

Among other uses of the partner concept, perhaps the most relevant is the World Heritage Convention’s provisions regarding “partners in protection” – the joining together of groups, including “especially local communities, governmental, non-governmental and private organizations who have an interest and involvement in the management of the World Heritage

---

<sup>17</sup> Resolution A/RES/57/253, adopted on 20 December 2002. Other relevant sources include the Millennium Development goals and declaration, at paragraph 20, recognising the need to “develop strong partnerships with the private sector and civil society organisations in pursuit of development and poverty alleviation” (accessible at [www.un.org/millennium/declaration/ares552e.pdf](http://www.un.org/millennium/declaration/ares552e.pdf)).

property.”<sup>18</sup> The WHC recognises that the partnership approach “provides a significant contribution to the protection of World Heritage properties and the implementation of the Convention. Its definition of this concept is broad enough that it includes bilateral co-operating entities among the “partners”. The practical aspects of these relationships are evolving and are shared through the WHC’s various networking and information-sharing mechanisms.

Another such mechanism, the Ramsar Small Grants Fund, provides a variety of kinds of assistance to developing-country parties. This fund, too, merges international objectives with bilateral mechanisms, through a system whereby the requests of some applicants are directly funded by developed-country parties.<sup>19</sup>

Partnership concepts were also prominently recognised in the 1992 UN Conference on the Environment and Development (“UNCED” or the “Rio Summit.”) These relationships and the collaborative approach were expressly identified as an important tool for sustainable development. The programme for promoting and improving the use of these kinds of relationships is discussed in Chapter 27 of Agenda 21.<sup>20</sup>

These pre-existing mechanisms operate in a manner that is generally consistent with more traditional uses of the term partnership, in the sense that they embody firm commitments to direct action and other contributions toward shared objectives. GEF funding of particular work at local and national levels is similarly characterizable as a “partnership” between the funding entity and the government and agencies involved.

In the most recent decade, however, a more international concept of partnership has begun to evolve. One example of this approach is the World Commission on Dams, which, through an alternative negotiation process undertaken by a team of 12 consensus-selected commissioners, created “an innovative framework within which to examine dams – both existing and planned.”<sup>21</sup> To some commenters, the WCD follows the GEF<sup>22</sup> as an example of a trend toward more flexible and inclusive collective mechanisms for solving difficult global issues not otherwise easily resolvable through traditional international mechanisms.<sup>23</sup> Whether “trend” or not, it is clear that alternative approaches have developed, and that one of the characteristics they share is inclusiveness – a more participatory role to NGOs and civil society representatives.

---

<sup>18</sup> The new revision of the World Heritage Operational Guidelines contains this language at para I.D.30. This document is expected to be adopted, and thereafter publicly accessible, this year.

<sup>19</sup> See Ramsar COP8 Resolution VIII.29 (accessible at [www.ramsar.org/key\\_res\\_viii\\_29\\_e.doc](http://www.ramsar.org/key_res_viii_29_e.doc)).

<sup>20</sup> Agenda 21, Section III, Chapter 27, *Strengthening the role of non-governmental organizations: partners for sustainable development*. (accessible at [www.un.org/esa/sustdev/agenda21text.htm](http://www.un.org/esa/sustdev/agenda21text.htm)).

<sup>21</sup> The WCD has recently redeveloped its website as an archive of its operations ([www.dams.org/](http://www.dams.org/)). Through this resource the mechanisms of its operations, as well as the outputs and lessons learned, are readily available. See also W.H. Reinicke & F.M. Deng, (2000). *Critical Choices: The United Nations, Networks and the Future of Global Governance* (purchasable online at [www.idrc.ca/acb/showdetl.cfm?&DS\\_ID=2&Product\\_ID=534&DID=6](http://www.idrc.ca/acb/showdetl.cfm?&DS_ID=2&Product_ID=534&DID=6); C. Streck, 2002. *Global Public Policy Networks as Coalitions for Change*. (Published in: Esty, D.C. and Ivanova, M.H. (Eds). *Global Environmental Governance. Options & Opportunities*, [www.yale.edu/environment/publications/geg/streck.pdf](http://www.yale.edu/environment/publications/geg/streck.pdf)

<sup>22</sup> Here referring to the international structure and operational oversight mechanisms of the GEF.

<sup>23</sup> Reinicke and Deng (2000), *supra*; and Streck (2002), *supra*.

Certainly, these mechanisms are forerunners of the WSSD Type-II approach. In addition, the WSSD website cites several international collaborative organizations, including the Global Alliance on Vaccine and Immunization (GAVI), the Consultative Group on International Agricultural Research (CGIAR), or the International AIDS Vaccine Initiative (IAVI) as possible prototypes for the Type-II Partnerships.<sup>24</sup>

### **3. “Type-II Partnerships”**

Plainly, the WSSD participants, the UN General Assembly, and countless commentators have interpreted the Type-II concept as something very different from existing concepts of international partnership mechanisms. Throughout the WSSD process, however, the specific mechanisms and objectives encompassed within the Type-II-Partnership concept were never clearly explained or defined.

This ambiguity may have been intentional, as a tool for encouraging creative and flexible development of the means and commitments to carry through on the type-I outcomes. Now, however, these “new international partnerships” have increasingly been equated with international environmental governance,<sup>25</sup> in contrast to pure intergovernmental co-operation. Accordingly, one must first understand the new partnerships, before considering how they can be applied to protected areas.

A substantial effort was expended in the WSSD PrepComs toward the development of “Guidance Principles for Partnerships for sustainable development (Type 2 Outcomes).”<sup>26</sup> Although never officially endorsed, they provide some idea of the most basic minimum requirements as envisioned prior to the Summit. These principles include three requirements regarding the mechanisms themselves, and another six that focus on their objectives and substantive approach.

The principles which address the organizational/governance aspects of the new partnerships are relatively unsurprising. The only requirements were:

- that the partnerships must be voluntary and self-organizing (not organized by international/UN supporting institutions, except where they are “partners” in the endeavour);
- that all such activities be transparent and accountable;
- that sources of funding be specifically identified.

Regarding content and substance, the principles are also broadly defined:

- *Complementarity*: In terms of substantive approach, the new partnerships should, first, be complementary to (i.e., aimed at achieving) the Type-I outcomes. This principle was intended to address the frequent complaint that international workplans and declarations, once negotiated, are not determinants of the ultimate implementation, which is instead

---

<sup>24</sup> [www.johannesburgsummit.org/html/basic\\_info/faqs\\_partnerships.html#partnership4](http://www.johannesburgsummit.org/html/basic_info/faqs_partnerships.html#partnership4)

<sup>25</sup> See, e.g., Witte, J. M., Streck, C. and Benner, T. 2003. The Road from Johannesburg: What Future for Partnerships in Global Environmental Governance? Included in Witte, J.M., Streck, C. and Benner, T. (Eds). Progress or Peril? Partnerships and Networks in Global Environmental Governance. The Post-Johannesburg Agenda, downloadable at [www.gppi.net/index.php?page=cms&id=151](http://www.gppi.net/index.php?page=cms&id=151)

<sup>26</sup> Found at [www.johannesburgsummit.org/html/sustainable\\_dev/sustainable\\_dev.html](http://www.johannesburgsummit.org/html/sustainable_dev/sustainable_dev.html) In addition to Guiding Principles, an overview and summary of the WSSD partnerships can also be found on this website.

decided by the donors, who fund their own priorities, and often essentially substitute their preferred objectives for those enunciated in the international decision.

- *Concrete*: The results of the outcomes must be identified with particularity, including clearly stated objectives to be achieved, and “specific, measurable targets and time-frames”.
- *Adding value*: It was strongly emphasised that the “new partnerships” should not simply involve repackaging of existing activities and programmes, but should “add value” to the WSSD outcomes.
- *Multi-stakeholder*: It was clearly mandated that these processes be broadly focused, and consensus-based, utilizing currently popular concepts of “multi-stakeholder” action.
- *International impact with local involvement*: In addition, however, the WSSD was unwilling to lose the Rio catch-phrase – “think globally, act locally” – and embodied that combination approach among the substantive principles of the new partnerships.
- *Integrated approach*: Similarly, the ideal of multi-sectorality has evolved since Rio into the concept of an “integrated approach to sustainable development.”

Eight months after the WSSD, the 11th Meeting of the UN Commission on Sustainable Development, “building on work undertaken through the WSSD process to encourage partnerships between governments, major groups and other stakeholders for implementing sustainable development initiatives on the ground,” decided that it will take action to clarify a number of issues including the status of the Guidelines, and other matters relating to partnerships and their operations.<sup>27</sup>

Clearly, these principles do not offer any blueprint regarding the nature of activities to be undertaken, and only differ in a few respects from the approach that was envisioned by the UNCED outputs. The only limitation seems to be that of requiring a closer relationship between individual implementation activities and the Type-1 outcomes – presumably as a means of increasing the extent to which the items identified in the WSSD Plan of Implementation will be achieved.<sup>28</sup> Beyond this, the inclusion of defined targets and the requirement of value addition, add substantive direction to the “accountability” concept.<sup>29</sup>

It is also clear, from examination of these principles, that the so-called “Type II partnerships” are not actually partnerships in any legal sense of that word. In particular, the principles do not appear to mandate any type of formal or binding commitment by the

---

<sup>27</sup> Report of the Secretary General: Follow-up to the WSSD and the future role of the Commission on Sustainable Development: The implementation track. UN ECOSOC doc. E/CN.17/2003/2 (accessible at [www.un.org/esa/sustdev/csd/csd11/csd11\\_docs.htm](http://www.un.org/esa/sustdev/csd/csd11/csd11_docs.htm)).

<sup>28</sup> Given the breadth of coverage of the Plan of Implementation, it is not clear what activities would be excluded by the complementarity provision. Similarly, it is arguable that virtually all bilateral and multilateral co-operation undertaken between 1992 and 2002 would have fitted within the broad scope of the Rio Declaration and Agenda 21.

<sup>29</sup> A much clearer demonstration of the potential approach and use of the Type-II outcomes is found in the Frameworks for Action developed by the Secretary General’s WEHAB (Water, Energy, Health, Agriculture, Biodiversity) Working Group. In particular, the Framework for Action on Biodiversity and Ecosystem Management offers a course of action which embodies a clear and effective prototype of the principles and the manner in which they could be applied. The WEHAB Frameworks are accessible at [www.johannesburgsummit.org/html/documents/wehab\\_papers.html](http://www.johannesburgsummit.org/html/documents/wehab_papers.html)

“partners” to shared objectives, but only a more specific declaration regarding particular activities or programmatic approaches to be undertaken. This impression is borne out to some extent by a cursory examination of the 266 Type-II partnerships listed in the WSSD website, as of CSD-11 (April 2003).<sup>30</sup> A great many of these, even including some that were listed by development assistance and co-operation agencies, are in essence project or programmatic proposals, stating objectives and plans, and commitments to, at most, initial “seed” funding.

What, then, is the source of claims that the “new partnerships” may be the best hope for the future of international governance for the environment and sustainable development? Upon examination, it appears to arise primarily out of the multitude of different interpretations that have been applied to the concept, and strong optimism about their concreteness and accountability, and the manner in which a broader mix of “partners” will have an effect on the achievement of global sustainable development objectives.

### **3.1 Private sector involvement**

One clear expectation coming out of the WSSD, for example, is that the new partnerships will embody a substantial commitment of time, money and other contributions by the private sector. The Political Declaration of the Summit expressed this relatively indirectly, noting commitment to work “as social partners” toward the creation of “stable partnerships with all major groups respecting the independent, important roles of each,” and agreeing that “in pursuit of their legitimate activities the private sector, both large and small companies, have a duty to contribute to the evolution of equitable and sustainable communities and societies.”<sup>31</sup> Clearly, it is perceived that involvement of corporate, industrial, commercial and other private financial interests will be a major enhancement of global environmental implementation.

Other commentators have viewed this relationship as both more comprehensive and more problematic. Much of the opposition expressed before and during the WSSD focused on the partnership emphasis, and assumed that the private sector’s involvement would necessarily be formed around underlying corporate mandates and objectives, rather than on achievement of sustainable development objectives.<sup>32</sup>

### **3.2 Accountability and target-based operation**

Another important new element of the Type-II approach is its inclusion of targets and timeframes. These provisions, however, would be of relatively little value, in the absence of another aspect of the overall concept – transparency and the international “oversight.”

---

<sup>30</sup> [www.johannesburgsummit.org/html/sustainable\\_dev/sustainable\\_dev.html](http://www.johannesburgsummit.org/html/sustainable_dev/sustainable_dev.html) The website promises to maintain an up-to-date list of the type-II outcomes, with progress reports.

<sup>31</sup> The Johannesburg Declaration on Sustainable Development, paras 26 and 27. The stated reason behind this focus on the private sector was given in terms of participatory and social consensus needs: “We recognize sustainable development requires a long-term perspective and broad-based participation in policy formulation, decision-making and implementation at all levels.” *Id.*

<sup>32</sup> See, e.g., R. Parmentier (2002). *Type I versus Type II Outcomes: Explaining the Jargon, Exposing the Trap*, downloadable at [archive.greenpeace.org/earthsummit/docs/jargon.pdf](http://archive.greenpeace.org/earthsummit/docs/jargon.pdf); Corporate Europe Observatory. 2002. *Girona Declaration*, [www.globalpolicy.org/soecon/envronmt/0529girona.htm](http://www.globalpolicy.org/soecon/envronmt/0529girona.htm); and ECO-Equity Coalition (2002). *Critical considerations about Type 2 partnerships*, [www.greenpeace.org/earthsummit/docs/type2fin.pdf](http://www.greenpeace.org/earthsummit/docs/type2fin.pdf) The latter argues that the mechanism will prevent achievement of goals expressed in the Summit’s type-I outcomes.

In this connection, it is worth noting a number of particular aspects of the ongoing post-WSSD evolution. Initially, as noted above, the WSSD website proposes to maintain an updated list of Type-II outcomes, including providing information concerning their performance. In addition, however, and more formally, the UNGA has called on the Commission for Sustainable Development to give consideration to the manner in which various Type-II arrangements are organized and internally governed, and how they can be overseen.<sup>33</sup>

This process can co-ordinate with a broader mandate, developed at approximately the same time, under the UN Report “Strengthening the United Nations: An Agenda for Further Change.”<sup>34</sup> Under this report the UN objective of strengthening its relationship with the private sector and civil society is to be studied and evaluated by a high-level panel. The first steps of this increased and better organized co-ordination is its creation of a “Partnerships Office” as a liaison to private sector partners and NGOs, fostering the development of partnerships.

### **3.3 Variations on a theme**

The 266 currently listed type-II outcomes identified by the WSSD encompass a great variety of different approaches. Many (but certainly not all) of these “outcomes” describe what are, in essence, conventional technical assistance projects and programmes – joint action identical to “traditional” bilateral/multi-lateral co-operation, with the “partners” (including both governments, NGOs, and in some cases private sector participants) fitting into the standard roles of donor(s), implementing agenc(ies), and co-operating agencies/institutions (recipients).

On the other hand, however, there is clearly a mandate within the Type II rubric for partnerships on a much higher level. Exemplars cited by the WSSD as possible prototypes for Type-II efforts include a number of international instruments that operate on a global level, structured in a way that strongly resembles the organization of international agencies or conventions, including individual secretariats, and a variety of decisional and advisory bodies.<sup>35</sup>

### **3.4 Governance of the new partnerships**

To a number of commentators, the variety of organizational and administrative approaches to these partnerships has been identified as a matter of concern.<sup>36</sup> However, the Guiding Principle relating to the organization of Type-II partnerships – that they be “self-organizing” – clearly constitutes a virtual mandate to allow, and even encourage, a more creative approach to the establishment of whatever rules and systems the parties agree to, so that each can be tailored to what will be most effective for achieving their objectives.

---

<sup>33</sup> Resolution A/RES/57/253, adopted on 20 December 2002. As noted above, the latest meeting of the CSD began this process, by suggesting the first steps that it will undertake.

<sup>34</sup> September 2002, report is accessible at [www.un.dk/doc/A.57.0387.pdf](http://www.un.dk/doc/A.57.0387.pdf)

<sup>35</sup> The organizational structures of GAVI, CGIAR, and IAVI are fully described in their respective websites – GAVI: [www.vaccinealliance.org/home/index.php](http://www.vaccinealliance.org/home/index.php); CGIAR: [www.cgiar.org/](http://www.cgiar.org/); and IAVI: [www.iavi.org/](http://www.iavi.org/). One of the reasons cited as underlying the development of the Type-II approach has been the plethora of international agencies and instruments competing for funding and for the time and effort of international implementation of their primary provisions, workplans, etc. Although it actually embodies the creation of new and additional instruments and activities, the Type-II approach has been identified as a first step in the solution of many of the problems represented by this multiplicity of mandates.

<sup>36</sup> Witte, Streck and Benner (2003), *supra*.

In combination with the mandates for accountability and transparency, the Type II partnerships can become much more than simply mechanisms for taking action, and learning lessons about the substantive issues being addressed – they can also provide an extensive global laboratory for examining new and hybrid approaches to governance, on the basis of actual performance. Given that the WSSD website is currently tracking 266 Type-II partnerships, the result may be a statistically valid level of data on the effectiveness of mechanisms (both the new and the “tried and true”) that are being utilized.

## **D. Conclusion: “New international partnerships” for protected areas**

Protected areas offer a unique level of challenge to the concept of common, but differentiated responsibilities, necessitating a number of balances, for example:

- between typical aid priorities and the often insatiable operational needs of protected areas;
- between international involvement and national sovereignty;
- between various claimants on scarce financial resources earmarked for biodiversity; and
- between enhancing and supporting entrenched institutions and programmes and finding new avenues to achieving objectives.

Pending resolution of these uncertainties and elimination of various other kinds of donor reticence, it seems unlikely that a new international fund can be developed that will have any significant positive impact in the near future. And developing such a tool now may seriously hamper the ability to sculpt one more precisely to meet the needs and objectives of that later time when the international climate is more favourable.

In this situation, the vitality and innovation inherent in the Type-II concept offers particular value in the prospect of its ability to address the unique and difficult problems with creative solutions. Moreover, given their mandate of “self-organization,” type-II partnerships are capable of a level of flexibility and of responding to evolving mandates in a way that more conventional international agreements and even international contractual documents may not be able to match.

In applying the Type-II concept to protected area finance and support, however, it is important not to ignore or waste existing assets. Three of the most important such assets are:

- the World Heritage Convention’s mechanisms and history for collaborative work in promoting effective management of a network of the world’s most important natural heritage areas;
- the GEF’s programme of direct funding to national projects, protected areas and related programmes;
- the long and continuing history of bilateral and multilateral assistance to specific protected areas or management agencies; and



- the critical organizing principle embodied in the objective of ensuring that globally, both on land and in the marine realm, the network of protected areas can be “a representative system”.

Taken together, these factors suggest at least one avenue for promoting the objectives identified at the beginning of this paper. Through a Type-II partnership including IGOs such as the World Heritage and Ramsar Conventions, as well as national governments, aid agencies and NGOs, current bilateral and multilateral assistance activities relating to protected areas, including World Heritage Areas, Ramsar sites and areas of national or regional importance, can be co-ordinated, and some investigative or statistical oversight can be started, relying on existing lists of protected areas, developed under the auspices of IUCN, UNEP, and other organizations.

This mechanism can gather data concerning the effectiveness and problems encountered in such assistance, and provide a resource for sharing information, and eventually for networking among various assistance projects and programmes. It may be possible to follow the lead of the World Commission on Dams, to develop more comprehensive suggestions and frameworks for action. Over time, the mechanism can evolve into a more conventional “fund” or other mechanism, once the needed parameters and operational systems of such a mechanism are better understood, and the justification for such a fund is understood and accepted on the basis of collective experience.