Section 2: *An International Regime for Protected Areas*

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International Environmental Governance

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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 20th 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[1]. Some principles originating in soft law, frequently repeated principles appearing in global and regional treaties,[2] and provisions in draft treaties or treaties not yet in force[3] 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 concerted unilateral actions[4]. New principles and approaches have rapidly evolved.[5] This in turn has resulted in the proliferation of international treaties, soft law

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[1] 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.

[2] An example of such a principle might be intra and inter-generational equity.

[3] 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

[4] Observation provided by Françoise Burhenne-Guilmin, July 2003

[5] 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

and other global initiatives aimed at protecting the environment[6]. 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[7], the legal expert advisors 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."[8] 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).[9]

The draft Covenant has been under constant review and revision since its inception over the last ten years. Some of the worlds 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.

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

[6] See Nicolas de Sadeleer, *From political slogans to legal rules*, Oxford University Press, 2002 and Donald Zillman, Alastair Lucas and George Pring, *Human rights in natural resource development*, Oxford University Press, 2002

[7] WCED, *Our Common Future* (Oxford, 1987)

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

[9] 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, at p.134

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.[10] 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 NGO's, industry, academic specialists, scientific organisations and international institutions in addition to States.[11]

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.

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[10] See "IUCN and Governance for Sustainable Development" prepared for the WSSD Bali Prep Com,16 May, 2002 at p. 1;

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

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.[12] 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 44,000 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.[13] The IUCN's definition of protected areas, adopted from the 1992 IVth 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.'[14]

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

- Preservation of species diversity
- 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

[12] 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 at p. 80

[13] Adrian Phillips, "Turning Ideas On Their Head – The New Paradigm for Protected Areas," January, 2003; It should be noted, however, that only around 15,000 of these are large enough to be included in the United Nations List of Protected Areas, the last edition of which was the 1997 list (IUCN 1998).

[14] Barbara Lausche, *IUCN Environmental Policy and Law Paper No16: 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.

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.[15] 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.*[16] 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[17] (Paris, 1972) and the Wetlands Convention[18] (Ramsar, 1971) should fall into any of the above categories and are no longer treated as separate categories in their own right.[19]

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.[20]

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

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[15] 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 organisational structure of the *UN List of National Parks and Protected Areas*.

[16] Gland, Switzerland and Cambridge, UK 1994

[17] UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, 11 *ILM* (1972), 1358

[18] 1971 The Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar), 996 *UNTS* 245

[19] See Lyle Glowka, Françoise Burhenne-Gilmin and Hugh Synge et al, IUCN: *A Guide to the Convention on Biological Diversity*, Gland, Switzerland and Cambridge, UK 1994 at p. 23

[20] IUCN (1994) *Guidelines for Protected Area Management Categories* CNPPA with the assistance for WCMC, IUCN, Gland, Switzerland and Cambridge, UK at p. 5

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.[21]

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'.[22] 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.[23]

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 that are strictly protected areas with very little human influence which are used to monitor natural changes in representative ecosystems and serve as conservation areas for biodiversity; a buffer zone being areas 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

[21] Supra note 13, pp. 12, 13
[22] Patricia Bernie and Alan Boyle, *International Law & the Environment* (2nd ed, 2002) 545-6.
[23] UNESCO's Man and the Biosphere (MAB) Programme arose from the 1968 Conference on the Conservation and Rational Use of the Biosphere

long-term survival of fragile ecosystems. They are designed to answer one of the most challenging questions of the 21st 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?[24]

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 1960's 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 trans-boundary pollution that led them to suggesting a conference at the international level to address global environmental problems.[25]

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).

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.[26]

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[27]. 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.

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[24] 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 at 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 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.

[25] Supra note 11 p.171

[26] Ibid, p.176

[27] Supra note 22, p.563

Our Common Future

The UN in the mid 1980s asked the World Commission on Environment and Development, also known as the Brundtland Commission,[28] 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.[29] The report reinforced the principles of Stockholm and the World Charter[30] and proved to be the catalyst that brought the concept of sustainable development to the forefront of the world stage.[31]

Specific to protected areas, Our Common Future noted that historically national parks were established "somehow isolated from greater society"[32]. 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.[33] 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."[34]

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 Janerio. 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.[35] 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.[36] 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.

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[28] The Commission was chaired by Gro Harlem Brundtland, the then Prime Minister of Norway.
[29] The World Commission on Environment and Development, "*Our Common Future*", Oxford University Press, 1987
[30] Supra note 22, p. 562
[31] Supra note 11, p. 180
[32] Supra note 29 p. 157
[33] Ibid, p.159
[34] Ibid, p.157
[35] Supra note 11, p.196
[36] Ibid, p.197

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…"[37]. 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 presented to the United Nations. It is currently undergoing further amendments and a third version will be published shortly.[38]

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 & 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[39], 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'.

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[37] Agenda 21, Chapter 11.13b

[38] 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

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

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.

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[40].

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[41]. 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[42]. 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[43] (CDB) 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

[40] Paul M. Bray, An Introduction to Public Trust Doctrine, Government Law Center, Albany Law School, New York, USA, unpublished.
http://www.responsiblewildlifemanagement.org/an_introduction_to_public_trust_doctrine.htm
last updated on 30/3/03, accessed on 28/05/03

[41] 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.

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

[43] Convention on Biological Diversity, 31 *ILM* (1992), 818

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.[44] Also, lack of finances to support global conservation through a treaty had not yet materialised, 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 now 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, 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"[45]

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.[46] The word "designated" does not in this context mean named but rather legally defined by geographic coordinates.[47] 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'[48]. 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

[44] 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 and Natural Heritage, 11 *ILM* 1358 (1972) consisted of specific purposes that employed protected areas to fulfil their primary objectives.
[45] 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.
[46] 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'.
[47] 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.
[48] Ibid

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 areas 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.[49] The acceptance of protected areas being used for a wide variety of purposes, such as sustainable use (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) endorses 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.

[49] Supra note 19, p.23; comment by F. Burhenne-Guilmin, 8 July 2003

Subsection (e) implicitly recognises that the activities, which occur adjacent to protected areas, may be critical to the protected area's success.[50] 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. In combination with UNESCO's Man and the Biosphere, (a successful model[51] for designing reserves), is available for States to implement.

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.[52]

In Australia, the National Strategy for Conservation of Australia's Biological Diversity,[53] 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 CBD in Australia.[54] 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 Organisation (UNESCO) adopted The Convention Concerning the Protection of the World Cultural and Natural Heritage[55] (The World Heritage Convention). Three years later the treaty came into force. To date, more than 160 countries have ratified the convention.

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[50] Ibid
[51] Ibid. at p. 39
[52] See Article 8 of the Convention on Biological Diversity (1992)
[53] Commonwealth of Australia, *National Strategy For Conservation of Australia's Biological Diversity* 1996, available at www.ea.gov.au/biodiversity/publications/strategy/index.html last accessed 30th May, 2003
[54] 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, at p. 9
[55] UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, 11 *ILM* (1972), 1358

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 Florence after floods. This highlighted the importance of certain national sites having global significance.[56]

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.[57] 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 it shall have established.[58] 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.[59] The inclusion of a property on the World Heritage List requires the consent of the State concerned.[60]

***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 articles lists 5 subsections aimed at identification, research, and the establishment of administrative, financial and legal frameworks.

[56] Supra note 11, p.1038
[57] Ibid, Article8
[58] Ibid, Article 11(2)
[59] Ibid, Article 11(4)
[60] Ibid, Article 11(5)

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.[61]

In fact, an Australian case, *Commonwealth of Australia v State of Tasmania*[62] (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."[63]

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 2nd 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, organised 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 contained 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.

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[61] Marc McC. Denhez, *Pacta Sund Servanda: Reinterpreting the World Heritage Convention*, in Old Cultures in New Worlds 869 (8th General Assembly and International Symposium, International Council on Monuments and Sites, Symposium Papers Vol. II, Washington, D.C., Oct. 10-15, 1987). This reference was found in Ben Boer, "World Heritage Disputes in Australia", *7 J. Envtl. L. & Litig. 247* 1992 at p. 3

[62] *Commonwealth of Australia v State of Tasmania* 46 ALR (1983)

[63] Ben Boer, "World Heritage Disputes in Australia", *7 J. Envtl. L. & Litig. 247* 1992 at p. 3

Parties to the Ramsar Convention are required to place at least one site on the List of Wetlands of International Importance (Article 2.4).[64]

As noted by Shine and de Klemm[65], 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 provide 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-ordinate 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 wetland 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 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 on the basis of the general principles contained in the text of the treaty.

[64] 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

[65] Supra note 49, p.29

The overall aim of this Convention is to prevent the net loss of wetlands[66] 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. [67]

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 that the freedom of use of the seas was a basic human right[68]. 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 nmegotiations 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[69]. 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.[70]

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.[71] It looks at pollution from various sources including land-based pollution (Article 207), pollution 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).

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[66] 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*, at p. 4

[67] 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.

[68] Supra note 11, p.656

[69] 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.

[70] Supra note 10, p.659

[71] IUCN *The Law of the Sea: Priorities and Responsibilities in implementiong the Convention*, Marine Conservation and Development Report, IUCN, Gland, Switzerland, 1995, p84

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.[72]

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"[73]. 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 organisations (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:

The Convention on the Conservation of Migratory Species of Wild Animals (also known as the CMS or the Bonn Convention)[74] 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

[72] Comments provided by Lee Kimball and Tony La Viña with respect to this and other sections of this paper were most helpful.

[73] 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, p283 at p293

[74] See www.wcmc.org.uk/cms/intro/htm last accessed 8 July 2003

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.[75]

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.[76]

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 cooperation and joint conservation action.[77]

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 is 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.[78]

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.

The Antarctic Treaty

The Antarctic is a unique nature reserve and is the largest and most important such reserve protected by treaty.[79] As part of the 'global commons', the region was subject to claims of sovereignty during the early 20th Century, and by 1950, seven nations had made territorial claims

[75] Ibid.
[76] Cyrille de Klemm, *Biological Diversity Conservation and the Law,* Environmental Policy and Law Paper No. 29, IUCN, Gland, Switzerland and Cambridge UK, 1993 at p.42
[77] See www.ramsar.org/key_cmsmou.htm last accessed 8 July 2003
[78] Supra note 78 at p.40
[79] Supra note 22, p. 612

over it.[80] 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.[81] 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.[82] Efforts were made through discussion by the UN General Assembly[83] 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.[84]

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."[85] 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"[86].

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*"[87]. 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.[88]

African Convention

The 1968 African Convention,[89] drafted on the recommendation of the Organization of African Unity (OAU)[90] and currently with 43 signatories[91], became the first treaty to consider protection of a continent as a whole.[92] 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;[93] and (b) protect all species, especially those listed

[80] Argentina, Australia, Chile, France, New Zealand, Norway and the UK. Hunter et al, supra note 11, p1046
[81] 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.
[82] Supra note 11, p.1059
[83] GA Res. 38/77, UN Doc A/38/69 (1983); G.A. Res. 39/152, UN Doc. A/39/51 (1984).
[84] Supra note 11, pp1054-55.
[85] The Antarctic Treaty 1959, supra note 83, (Preamble)
[86] 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).
[87] Ibid, Preamble (emphasis added)
[88] Ibid, Articles 11, 12(g).
[89] 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.
[90] Now the African Union, as of the final summit of the OAU in Durban, South Africa on 9 July 2001.
[91] As of 5 May 2003. See www.ecolex.org/TR/TR/comply/state/EN/002353.htm, last accessed 25 May 2003.
[92] See IUCN Statement on the occasion of OAU meeting of experts for revision of the African Convention, UNEP Nairobi, 14 January 2002 at www.iucn.org/info_and_news/press/oaustatement.html
[93] Supra note 91, Article X(1)(i)

in its annex.[94] 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[95]. 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),[96] it has been criticised for failing to provide effective means of ensuring implementation[97]. Its deficiencies arise from the lack of a central administrative body[98] and its failure to create new methods of cooperation between parties to ensure regional protection of conservation areas[99] and it is currently under review[100]. 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)[101] 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 and recreation[102]. 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,[103] spanning the jurisdiction of seven member states[104]. The purpose of the convention is to harmonise "economic interests and ecological exigencies",[105] 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[106]. The Alpine Convention requires parties to maintain comprehensive policies for protection based on the general principles of "prevention, cooperation and the-polluter-pays."[107] Nine protocols have been adopted to date including the Nature Conservation and

[94] Ibid, Article X(1)(ii)
[95] ibid, Article III(4)
[96] Ibid, Article II. See also Preamble.
[97] See Jarred Kassenoff, "Treaties in the Mist", *Cardozo Journal of International and Comparative Law*, Fall 1999, Vol 7, p359 at pp 371-372
[98] Ibid.
[99] Supra note 22, p.607
[100] IUCN Statement, supra note 94
[101] 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".
[102] Roberto J and Salom P, "Sustainable Tourism: Emerging Global and Regional Regulation", 13 *Georgetown International Environmental Law Review* 801, pp 828-829
[103] Ibid.
[104] 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.
[105] Alpine Convention, supra note 103, Preamble
[106] 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.
[107] Alpine Convention, Article 2(1)

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 ecosystems 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.[108]

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 principles, 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[109]. 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 reveal 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 categorised by *function* the key emerging principles of international environmental law. These are set out in Table 1, annexed hereto as Appendix I.[110]

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[108] See Institute for Biodiversity " Applying the Ecosystem Approach in High-Mountain Ecosystems: Experiences with the Alpine Convention" www.biodiv.de/prjecte/konzeptebiodiv/berg_e.html last accessed 8 July 2003

[109] Supra note 11; see also Supra note 22.

[110] Supra note 11 at p.378

Birnie & Boyle, in their most recent publication, identify similar general principles within international environmental law.[111] Some of these principles in the above table 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.[112] 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.[113]

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 for 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, trans-boundary 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 Table 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

[111] See also Nicolas de Sadeleer, *From Political Slogans to Legal* Rules, Oxford University Press, 2002

[112] 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

[113] Supra note 11, p.376

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 trans-boundary 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[114]. Such tensions may be particularly great in countries that have federal systems of government with constitutionally delineated spheres of power. In some cases international 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. [115]

In addition, conventions can also encourage effective and ecologically-coherent national and regional protected areas 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.

Stakeholder Participation and Community Involvement

Under the new management paradigm involving decentralisation 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

[114] For example the proposed created 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.

[115] It has been noted by one commentator that some of the existing trans-boundary 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)

increasingly in the hands of several actors. Although decentralisation of management with respect to protected areas appears to be the trend of the future, and co-management as well as privatisation are evolving at a rapid pace, there have been in some countries unfortunate results where there has been a breakdown of central control and aggravated, in some cases, by widespread corruption.[116]

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 centralised 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.*[117] A further challenge is the need to develop effective co-management regimes when there is often inadequate legal recognition of indigenous rights or enforcement of those rights.[118]

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[119] and the UNFCCC.[120] 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 capacities to effectively support conservation and sustainable development. How to effectively deal with international law at national levels where authorities (and local communities) are lacking the knowledge and

[116] 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.
[117] 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, p29. Unpublished at time of writing.
[118] 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.
[119] See for example Articles 17 and 18 of the CBD.
[120] Article 4(3), 4(5) of the UNFCCC

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.[121]

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 collectively deal 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 U.S. position as a basis for withholding their own commitment to move forward in a concerted, unified manner.[122]

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 amongst 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 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 be perhaps 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.[123]

Concluding Comments

[121] Comment provided by Pedro Solano - 8 July 2003.
[122] The U.S., 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 U.S. and also refused to ratify the Protocol.
[123] The author wishes to thank Lee Kimball for providing the proposed themes for future discussion set out in Appendix II.

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 globalised 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'.

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APPENDIX I

Table 1: 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 Utilisation 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-PAs 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 & 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;

Source: Lee Kimball