

An International Legal Regime for Protected Areas

**Section 4: *International Funds, 'Partnerships' and other
Mechanisms for Protected Areas***

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Section 4: International Funds, “Partnerships” and other Mechanisms

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

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

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

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

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

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

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

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

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

governance concerns. In particular, it is essential to ground any analysis of international support to protected areas, on an awareness of –

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

1. Purposes of Support to Protected Areas

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

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

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

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

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

This is not a fault of the protected areas, nor of the management process that administers them. It is simply true that independent sustainability is not possible for a great many protected areas. It should be noted, however, that sustainability is not generally expected from a great many types of necessary governmental programmes and services, such as, for example, schools, libraries, and public health programmes. The value of these essential services, including protected areas, extends well beyond the individual evaluation of their direct financial receipts or any other

measure of their economic worth. They are key components of a larger system. Where schools are an essential underlying component of the long-term capacity and expertise of a country's citizenry, protected areas are a similarly basic component of the long-term value and sustainability of the overall national system of the use of biological resources.

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

2. Appropriateness of Financial Support in the form of Loans and/or Income-source Development Projects

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

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

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

B. An International Fund for Protected Areas

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

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

³ Gutierrez, Ron, "Mining in Protected Areas of Australia and the Philippines" (as yet unpublished, June 2003)

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

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

- Mechanisms for establishment and capitalisation of such a fund.
- Standards for selection of recipients of assistance.
- Nature of the assistance to be provided.⁵

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

1. Mechanisms for Fund Establishment and Capitalisation

The manner in which the fund will be organised, and capitalised involve many options, and present many challenges. Based on surveys, there appear to be four basic approaches:

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

A binding commitment by nations to contribute funds on the basis of a serial replenishment.⁶ Such a fund may be organised in a way that allows non-governmental entities (NGOs and the private sector) to contribute to the fund. This approach may also be used in the creation of a commitment-based fund as a contractual basis (that is – an agreement between any entities, organisations, individuals, governments and/or government agencies that are willing to sign, rather than through an international agreement among nations);

Endowment:

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

Voluntary Fund:

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

Separate operation providing business proceeds:

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

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

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

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

(a) Initial Concerns

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

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

- (i) **Alteration of Agreed Priorities:** A combination of factors may make this kind of proposal appear to be an attempt to avoid the application of the GEF’s guidelines and standards for funding decisions and CBD workplans and priorities. Such an argument may run as follows:
 - (a) We are seeing a general decline in funds available for baseline “conservation” activities.
 - (b) A tremendous breadth of issues exist which need urgent attention (e.g., invasive species, deforestation/desertification, climate change, etc.)
 - (c) Protected areas, while an important part of the overall process of the CBD are only one among the components necessary for achievement of its objectives.

Therefore,

- (d) It is important to ensure that limited conservation resources are allocated in the most rational and co-ordinated way possible. Accordingly, it may be inappropriate to create a tool that separates a specified proportion of scarce financial resources from the dictates of existing more integrated international instruments and mechanisms, thereby possibly disturbing the balance and priorities for biodiversity implementation.
- (ii) **Existing Mechanism:** Where the fund is created as a mechanism governed by agreement among nations, the very existence of the GEF may be put forward as a strong basis for opposing the creation of such a fund. The GEF’s mandates as “the financing mechanism of the CBD,” coupled with CBD Article 8.a’s provisions regarding the creation and operation of protected areas and other programmes for “*in-situ conservation*” may be considered an indication that there is no need for additional funding.⁸
- (iii) **Co-ordination with other existing mechanisms:** Other political difficulties may arise out of the relationship of such a fund with the existing system of protected areas of international biodiversity importance, namely the “natural heritage areas” declared under the World Heritage Convention. This convention is arguably designed specifically to recognise and address the particular international interest in protected areas (“world heritage”), without becoming inappropriately involved in matters of national sovereignty (*i.e.*, “national heritage”).

A significant number of globally important natural heritage areas have been identified, but in many cases, the countries in which they are located are finding it difficult to find

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

sufficient funds to protect them adequately. The World Heritage Convention also created a fund to provide assistance to parties in implementing their responsibilities.⁹ Creation of a new and separate fund may be interpreted as a further dilution of the support committed by the Parties (a total of 176 countries, nearly all of which are also parties to the CBD) under that convention.

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

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

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

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

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

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

Common to all – minimum funding level: For purposes of certainty for the donors, it may be essential to provide some guarantee regarding the minimum size of the fund. Certainly, any justification for the creation for such a fund must depend on its achieving a certain “critical mass”

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

– a sufficient balance to enable the fund to undertake and achieve its mandate and purpose, as described above.¹⁰

(b) Justification

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

Why is this arrangement preferable to current practices?

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

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

(i) For governmental donors:

- an explanation of the particular importance of such a fund, and the reason for allocation of additional funds to it, at a time when foreign technical assistance funding is generally declining, due to the general tightness of national budgets; and
- a description of the ways in which such a fund is an improvement over the current approach – direct bilateral aid to particular protected areas (or to the agency or agencies with broader responsibility for protected areas)

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

(ii) For non-governmental contributors:

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

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

In this connection, it will be necessary to address the problem of scale. Unlike most aspects of corporate/industrial economics, the effectiveness of most kinds of international technical and

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

financial assistance does not escalate with the size of grants in most circumstances. As demonstrated by the early years of the GEF, grants and assistance are frequently less effective as they increase in size.¹¹ In response to this discovery, in fact, donors are increasingly focusing on “programmatically” grants, which are given to NGOs and others who agree to take responsibility for administering them in the form of very small projects.

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

2. Standards and mechanisms for selecting recipients of assistance

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

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

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

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

¹¹ Overall performance studies of the GEF mechanism are accessible from the GEF website at http://gefweb.org/ResultsandImpact/Monitoring_Evaluation/Overall_Performance_Studies/overall_performance_studies.html

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

¹³ See, for example, the World Heritage Operational Guidelines, cited above, and Operational Strategy of the Global Environment Facility, accessible at http://gefweb.org/Operational_Policies/Operational_Strategy/op_stat/op_stat.html

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

Another important but difficult discussion will be needed to determine the kinds of standards and conditions to be imposed on recipients of assistance. On one hand, there is a possibility of using the grants as key reassurance necessary to assure donors that assisted protected areas and programmes will have sufficient practical and legal support, and that the financial assistance will not be ultimately have been "wasted" –

- particular types and levels of protection,
- provisions regarding the use of natural resources in the protected area, and
- compliance with specific management principles and practices.

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

3. Nature of the assistance to be provided

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

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

4. Initial conclusions regarding Fund development

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

C. "Partnerships" for Protected Areas

One of the most important elements of the 2002 World Summit on Sustainable Development ("WSSD" or "Summit") has been its intrinsic focus on facilitating the development of innovative approaches to addressing the difficult problems of conservation and sustainable development in the coming decade. Most of these are being developed, through the medium of "Type-II partnerships" – a concept which itself has been suggested as a major change in the nature of international environmental governance. Given the many challenges involved in ensuring the

financial future of protected areas as tools for conservation and sustainable use, it seems appropriate to consider these mechanisms as possible avenues.

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

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

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

This evolution was a conscious process, growing out of the desire that the Summit would have more direct and measurable practical results than its predecessor UNCED had done. It was generally agreed that Agenda 21 (as well as other the final outputs of UNCED, such as the Rio Declaration, the three “Rio Conventions,” and the Forest Declaration¹⁴) had generally not resulted in sufficient direct action, leading to a disappointing level of progress during the ensuing 10 years. Hence it was urged that the WSSD would have two types of outcomes –

- “*Type-I outcomes*” referred to the usual outputs of virtually all modern international meetings (declarations, workplans, etc.)¹⁵ In the WSSD, these outcomes include the Johannesburg Declaration on Sustainable Development and the WSSD Plan of Implementation.¹⁶ It was recognised that promulgation of these documents alone could not achieve the Summit’s objectives.
- “*Type-II outcomes*” was used to describe more specific, practical outputs that were expected from the WSSD. Much time during the WSSD prepComs was spent on considering what form and nature such outputs would take. In the end, they were

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

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

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

¹⁶ The Political declaration of the Summit as revised, can be accessed on the WSSD website (as updated) at http://www.johannesburgsummit.org/html/documents/summit_docs/1009wssd_pol_declaration.htm.

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

described rather generally as “partnerships for sustainable development,” with the term “partnership” being specifically chosen to clearly embody the notion that these outcomes would be concrete action-oriented engagements involving identified actors (governments, and other organisations) and funding sources, and through which the Type I outcomes would be meaningfully implemented and promoted.

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

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

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

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

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

(a) *Bilateral and multilateral technical assistance and co-operation*

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

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

(b) *International Partnership arrangements*

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

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

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

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

Partnership concepts were also prominently recognised in the 1992 UN Conference on the Environment and Development (“UNCED” or the “Rio Summit.”) These relationships and the collaborative approach were expressly identified as an important tool for sustainable development. The programme for promoting and improving the use of these kinds of relationships is discussed in Chapter 27 of Agenda 21.²⁰

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

In the most recent decade, however, a more international concept of partnership has begun to evolve. One example of this approach is the World Commission on Dams, which, through an alternative negotiation process undertaken by a team of 12 consensus-selected commissioners, created “an innovative framework within which to examine dams - both existing and planned.”²¹ To some commenters, the WCD follows the GEF²² as an example of a trend toward more flexible and inclusive collective mechanisms for solving difficult global issues not otherwise easily resolvable through traditional international mechanisms.²³ Whether “trend” or not, it is clear that alternative approaches have developed, and that one of the characteristics they share is inclusiveness – a more participatory role to NGOs and civil society representatives.

Certainly, these mechanisms are forerunners of the WSSD Type-II approach. In addition, the WSSD website cites several international collaborative organisations, including the Global Alliance on Vaccine and Immunization (GAVI), the Consultative Group on International

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

¹⁹ See Ramsar COP8 Resolution VIII.29 (accessible at http://www.ramsar.org/key_res_viii_29_e.doc.)

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

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

²² Here referring to the international structure and operational oversight mechanisms of the GEF.

²³ Reinicke & Deng 2000, *supra*; and Streck 2002), *supra*.

Agricultural Research (CGIAR), or the International AIDS Vaccine Initiative (IAVI) as possible prototypes for the Type-II Partnerships.²⁴

3. “Type-II Partnerships”

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

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

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

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

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

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

- (i) *Complementarity*: In terms of substantive approach, the new partnerships should, first, be complementary to (*i.e.*, aimed at achieving) the Type-I outcomes. This principle was intended to address the frequent complaint that international workplans and declarations, once negotiated, are not determinants of the ultimate implementation, which is instead decided by the donors, who fund their own priorities, and often essentially substitute their preferred objectives for those enunciated in the international decision.
- (ii) *Concrete*: The results of the outcomes must be identified with particularity, including clearly stated objectives to be achieved, and “specific, measurable targets and timeframes.”

²⁴ www.johannesburgsummit.org/html/basic_info/faqs_partnerships.html#partnership4.

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

²⁶ Found at (www.johannesburgsummit.org/html/sustainable_dev/sustainable_dev.html). In addition to Guiding Principles, an overview and summary of the WSSD partnerships, can also be found on this website

- (iii) *Adding value*: It was strongly emphasised that the “new partnerships” should not simply involve repackaging of existing activities and programmes, but should “add value” to the WSSD outcomes.
- (iv) *Multi-stakeholder*: It was clearly mandated that these processes be broadly focused, and consensus-based, utilising currently popular concepts of “multi-stakeholder” action.
- (v) *International impact/with local involvement*: In addition, however, the WSSD was unwilling to lose the Rio catch-phrase – “think globally, act locally” – and embodied that combination approach among the substantive principles of the new partnerships.
- (vi) *Integrated approach*: Similarly, the ideal of multi-sectorality has evolved since Rio into the concept of an “integrated approach to sustainable development.”

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

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

It is also clear, from examination of these principles, that the so-called “Type II *partnerships*” are not actually partnerships in any legal sense of that word. In particular, the principles do not appear to mandate any type of formal or binding commitment by the “partners” to shared objectives, but only a more specific declaration regarding particular activities or programmatic approaches to be undertaken. This impression is born out, to some extent by a cursory examination of the 266 Type-II partnerships listed in the WSSD website, as of CSD-11 (April 2003).³⁰ A great many of these, even including some that were listed by development assistance and co-operation agencies, are in essence project or programmatic proposals, stating objectives and plans, and commitments to, at most, initial “seed” funding.

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

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

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

³⁰ http://www.johannesburgsummit.org/html/sustainable_dev/sustainable_dev.html. The website promises to maintain an up-to-date list of the type-II outcomes, with progress reports.

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

(a) Private Sector Involvement:

One clear expectation coming out of the WSSD, for example, is that the new partnerships will embody a substantial commitment of time, money and other contributions by the private sector. The Political Declaration of the Summit expressed this relatively indirectly, noting commitment to work “as social partners” toward the creation of “stable partnerships with all major groups respecting the independent, important roles of each,” and agreeing that “in pursuit of their legitimate activities the private sector, both large and small companies, have a duty to contribute to the evolution of equitable and sustainable communities and societies.”³¹ Clearly, it is perceived that involvement of corporate, industrial, commercial and other private financial interests will be a major enhancement of global environmental implementation.⁷

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

(b) Accountability and Target-based Operation:

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

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

This process can co-ordinate with a broader mandate, developed at approximately the same time, under the UN Report “Strengthening the United Nations: An Agenda for Further Change.”³⁴

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

³² See, e.g., R. Parmentier. 2002. *Type I versus Type II Outcomes: Explaining the Jargon, Exposing the Trap*, downloadable at <http://archive.greenpeace.org/earthsummit/docs/jargon.pdf>; Corporate Europe Observatory. 2002. *Girona Declaration*, www.globalpolicy.org/socecon/envronmt/0529girona.htm; and ECO-Equity Coalition. 2002. *Critical considerations about Type 2 partnerships*, www.greenpeace.org/earthsummit/docs/type2fin.pdf. The latter argues that the mechanism will prevent achievement of goals expressed in the Summit’s type-1 outcomes.

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

³⁴ September 2002, report is accessible at www.un.dk/doc/A.57.0387.pdf.

Under this report the UN objective of strengthening its relationship with the private sector and civil society is to be studied and evaluated by a high-level panel. The first steps of this increased and better organised co-ordination is its creation of a “Partnerships Office” as a liaison to private sector partners and NGOs, fostering the development of partnerships.

(c) Variations on a theme:

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

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

(d) Governance of the New Partnerships:

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

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

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

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

- between typical aid priorities and the often insatiable operational needs of protected areas;
- between international involvement and national sovereignty;

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

³⁶ Witte, Streck & Benner 2003, *supra*.

- between various claimants on scarce financial resources earmarked for biodiversity; and
- between enhancing and supporting entrenched institutions and programmes and finding new avenues to achieving objectives.

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

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

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

- the World Heritage Convention’s mechanisms and history for collaborative work in promoting effective management of a network of the world's most important natural heritage areas,
- the GEF’s programme of direct funding to national projects, protected areas and related programmes,
- the long and continuing history of bilateral and multilateral assistance to specific protected areas or management agencies, and
- the critical organising principle embodied in the objective of ensuring that globally, both on land and in the marine realm the network of protected areas can be “a representative system.”

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

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