



"People and Wetlands: The Vital Link"
7th Meeting of the Conference of the Contracting Parties
to the Convention on Wetlands (Ramsar, Iran, 1971),
San José, Costa Rica, 10-18 May 1999

**Technical Session II:
National Planning for wetland conservation and wise use
Paper 3**

**Reviewing Laws and Institutions to Promote the
Conservation and Wise Use of Wetlands¹**

by Clare Shine, Barrister and Consultant in Environmental Law

- §1.0 Background and Introduction**
- §2.0 Ramsar, Wise Use and the Law**
 - 2.1 Legal commitments accepted by Contracting Parties
 - 2.2 Development of the wise use concept
 - 2.3 The purpose of a legal and institutional review
 - 2.4 Areas of complementarity with other environmental agreements
- §3.0 Identifying Legal and Institutional Measures Which Constrain Conservation and Wise Use**
 - 3.1 Conflicting sectoral policies, laws, taxes and institutional priorities
 - 3.2 Weak or incomplete laws applicable to wetlands
 - 3.3 Land tenure and resource use regimes which undermine wise use
 - 3.4 Operational weakness of administrative authorities
 - 3.5 Jurisdictional constraints on river and coastal ecosystem management
- §4.0 Developing Legal and Institutional Measures to Promote Wise Use**
 - 4.1 Non-site specific measures
 - 4.1.1 Planning of land use and water management
 - 4.1.2 Regulatory measures
 - 4.1.3 Environmental impact assessment legislation
 - 4.1.4 Non-regulatory (voluntary) measures
 - 4.2 Site-specific measures
 - 4.3 Jurisdictional and institutional coordination
 - 4.4 Transboundary and international cooperation mechanisms
 - 4.4.1 Watercourse agreements and other treaties
 - 4.4.2 International assistance programmes
- §5.0 Conclusion**

¹ See also the associated proposed Resolution, Ramsar COP7 DOC. 15.7.

§1.0 Background and Introduction

Background

1. In response to Action 2.1.1, Operational Objective 2.1 from the Strategic Plan (1997-2002) of the Convention on Wetlands (Ramsar, Iran, 1971), the Bureau commissioned the IUCN's Environmental Law Centre to prepare Guidelines and a Background paper on reviewing laws and institutions to promote the conservation and use of wetlands. It has been prepared based on case studies from Australia, Canada, Costa Rica, India, Peru, Uganda, and the Wadden Sea Agreement. Drafts of the Guidelines and Background paper were prepared by Clare Shine and Lyle Glowka and then considered at a workshop involving the case study authors and other experts held at the Ramsar Bureau in July 1998.
2. Following the workshop, the Guidelines and Background paper were revised and a draft Resolution relating to the issues prepared for consideration by the 21st meeting of the Standing Committee. The Standing Committee endorsed these documents going forward for introduction and consideration in Technical Session II at COP7, which has the theme of "National planning for wetland conservation and wise use".

Introduction

3. The Convention on Wetlands (Ramsar, Iran, 1971), the first treaty to promote the conservation of specific ecosystems, was concluded many years before the emergence and international acceptance of the concept of sustainable development². The wise use obligation of the Convention (Article 3.1) can therefore be considered as a pioneering and ambitious objective for its time.
4. The Convention itself does not define "wise use" or set out substantive measures for its implementation, unlike the more comprehensive approach used in most recent environmental agreements. Possibly for this reason, the Ramsar Convention has tended to be popularly associated with site-specific conservation linked to the List of Wetlands of International Importance. Implementation at domestic level has often focused on the conservation of listed wetlands and wetland reserves, lower priority being given to non-site-specific measures for wise use or to transboundary cooperation on wetland management.
5. Ramsar's institutions (Conference of the Parties (COP), Scientific and Technical Review Panel, Bureau) have worked to redress this imbalance and to assist Parties in implementing the wise use obligation. However, wise use is still far from being achieved on the ground. The ecological character of 84% of listed Ramsar sites - which theoretically benefit from the greatest degree of protection - is actually or potentially under threat (Dugan and Jones 1992). Information on the coverage and conservation status of "ordinary" (unlisted) wetlands varies widely among different regions, but it is generally accepted that their loss or degradation is continuing at an alarming rate around the world. This trend presents problems for global

² It was signed a year before the 1972 Stockholm Conference, 11 years before the adoption by the United Nations of the World Charter for Nature, and 21 years before the adoption of the Convention on Biological Diversity and other environmental instruments at the UNCED in Rio de Janeiro.

sustainable development, as wetlands are essential to the functioning of inland water and coastal systems and to water resource management (Acreman, Howard and Pirot 1996).

6. Appropriate legal and institutional frameworks are essential components of national and subnational policies to address wetland loss and degradation. This paper, which provides background information on the draft *Guidelines for Reviewing Laws and Institutions To Promote the Conservation and Wise Use of Wetlands*, draws on experience round the world. The Background Paper briefly considers the legal commitments accepted by Contracting Parties, the role of a legal and institutional review and areas of complementarity with other international treaties. It then identifies possible legal and institutional measures which constrain wise use and outlines some of the legal and institutional measures that can be used to support conservation and wise use at local, national and international level.

§2.0 Ramsar, Wise Use and the Law

§2.1 Legal commitments accepted by Contracting Parties

7. Contracting Parties to Ramsar are bound by three main categories of obligation:
 - **Non-site-specific:** To formulate and implement their planning so as to promote, as far as possible, the wise use of wetlands in their territory (Article 3.1);
 - **Site-specific:** To designate one or more suitable wetlands of international importance for inclusion in the List (Article 2), to formulate and implement their planning to promote the conservation of listed wetlands (Article 3.1) and to establish nature reserves on wetlands and provide adequately for their wardening (Article 4.1);
 - **International cooperation:** To consult with other Parties about implementing obligations arising from Ramsar in respect of transboundary wetlands, shared watercourses and coordinated conservation of wetland flora and fauna (Art.5).
8. All these obligations apply equally to inland and coastal wetlands under the very broad definition of wetlands in Article 1.1³. Parties may of course develop more detailed classification systems as a basis for national wetland legislation and management programmes⁴. However, if a Party chooses to define wetlands more narrowly (for example, by excluding coastal/marine wetlands), it should ensure that legal and institutional measures applicable to such areas remain consistent with its Ramsar obligations.
9. In most cases, site-specific conservation cannot be achieved in isolation from general wise use considerations. Wetlands are exceptionally vulnerable to changes in the quantity or quality of their water supply which result *inter alia* from certain uses of surrounding land or upstream water resources. Site-specific mechanisms, including protected area instruments, are rarely designed to safeguard sites against adverse impacts caused by external activities: a management

³ “Areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres”.

⁴ See *Framework for Developing and Implementing National Wetland Policies* (Ramsar COP7 DOC. 15.6).

authority and/or wetland owners rarely have powers or even rights to information beyond wetland boundaries. The wise use obligation provides Parties with a legal basis to develop measures to regulate/manage activities damaging to wetlands, wherever they occur.

10. The requirement to conserve listed wetlands is an *obligation of result*, to prevent changes to the site's ecological character from development, pollution or other human interference and to monitor the site for such changes (Article 3.2). The Convention does not indicate how this should be done or what legal status should be attributed to listed wetlands. Parties are therefore free to choose how to provide long-term protection against processes or activities which would alter the wetland's character. Methods vary according to a country's legal system (including customary law) and patterns of wetland ownership. They include designation of wetlands as protected areas under conservation legislation, conferring protection under land-use planning rules and using incentive measures to promote voluntary conservation. Often, a wetland's natural properties result from decades or centuries of interaction and use by indigenous and local communities: in such cases, replacing traditional management approaches with public agency controls may defeat the very object of wise use. In pristine, highly sensitive or seriously overexploited wetlands, on the other hand, wise use might actually take the form of "no use" (prohibition of human use or access).
11. The Ramsar Convention COPs have enlarged the listing criteria for Ramsar sites from migratory waterbirds and representative or unique wetlands, plants and animals and to most recently include fish. Consideration is now to be given to developing criteria based on important natural hydrological functions such as groundwater recharge or water quality improvement⁵. This continuing extension of scope brings site-specific conservation closer to mainstream economic activities and resource management and may have significant implications for institutions not directly concerned with wetlands.

§2.2 Development of the wise use concept

12. In 1987, the COP approved the following definition of wise use: "*the sustainable utilization of wetlands for the benefit of mankind in a way compatible with the maintenance of the natural properties of the ecosystem*". "Sustainable utilization" is defined as "*human use of a wetland so that it may yield the greatest continuous benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations*". "Natural properties of the ecosystem" are defined as "*those physical, biological or chemical components, such as soil, water, plants, animals and nutrients, and the interactions between them*" (Recommendation 3.3).
13. The COP has adopted three key texts to assist Parties to implement the wise use obligation. First, the *Guidelines on the Wise Use of Wetlands* (Annex to Recommendation 3.3) outline the need for national action to: (1) improve institutional and organizational arrangements; (2) address legislative and policy needs; (3) increase knowledge and awareness of wetland values; (4) inventory and monitor the status of wetlands; and (5) identify programme priorities and develop action plans for specific sites as components of a National Wetland Policy.

⁵ Resolutions VI.3 and VI.23, Brisbane 1996; Technical Session 1, COP7 (Ramsar and Water).

14. Second, the *Guidelines for the Implementation of the Wise Use Concept* (Annex to Recommendation 4.10, 1990) urge Parties to formulate comprehensive National Wetland Policies in the long term in a manner appropriate to their national institutions. The wise use provision is stated to apply to “all wetlands and their support systems”: it entails implementation of general wetland policies as well as wise use of specific wetlands, such activities being integral parts of sustainable development. Policies should as far as possible address all problems and activities related to wetlands in a national context. Specific recommendations include:
- At institutional level, establishing mechanisms and procedures for incorporating an integrated multidisciplinary approach into planning and executing projects concerning wetlands and their support systems (paragraph 1(b));
 - At legislative and policy level, reviewing existing legislation and policies which affect wetland conservation and using development funds for projects for conservation and sustainable use of wetland resources (paragraph 2);
 - At site-specific level, integrating environmental impact assessment into planning of projects which might affect the wetland, regulating utilization of natural wetland products to avoid over-exploitation, involving local people in planning and restoring wetlands whose benefits and values have been degraded (paragraph 5).
15. Third, *Additional Guidance for the Implementation of the Wise Use Concept* (Annex to Resolution 5.6, 1993) provides further assistance to officials responsible for implementing Ramsar. It incorporates key findings of the Wise Use Project carried out from 1990-1993 (Davis 1993), namely that:
- social and economic factors are the main reasons for wetland loss and should be of central concern in wise use programmes;
 - such programmes should involve public and private institutions in addition to the wetland conservation agency where such institutions have relevant expertise;
 - wise use should take account of surrounding coastal zones or catchments where wetlands form an integral part thereof;
 - activities affecting wetlands should be governed by the precautionary principle where knowledge of ecological constraints of a wetland system is not available.
16. In 1996, the COP again urged Parties to develop national wetland policies, either separately or as a clearly identifiable component of relevant conservation planning initiatives such as environmental action plans or biodiversity strategies. A framework for national wetland policy development and implementation is currently being developed⁶.

§2.3 The Purpose of a Legal and Institutional Review

17. As part of wetland policy development, the COP has called on Parties to review existing legislation and policies (including subsidies and incentives) which affect wetland conservation,

⁶ Recommendation 6.9 and *supra*, note 4.

where appropriate to apply existing legislation and policies important for wetland conservation or, as required, to adopt new legislation and policies⁷. Parties should review legal and administrative constraints which prevent management at the correct scale, such as catchment-wide management⁸ and generally ensure that legal and administrative frameworks facilitate and do not impede wise use.

Box 1: THE CENTRAL ROLE OF LAW IN ACHIEVING WISE USE

Wise use cannot be effectively promoted without appropriate legal and institutional frameworks at local and national level. Statutory and customary laws establish principles and rules for personal and corporate conduct and determine ownership and user rights for land, water and natural resources and applicable taxation. Legislation can be used to require assessment and control of activities and development which may adversely affect wetlands, in accordance with the principle of prevention; to set standards to minimize impairment of land, water and air resources; to monitor compliance; and to punish illegal practices.

Law makes it possible to confer special status on wetlands or catchments, to require cross-sectoral planning on wetland issues and to safeguard the rights of indigenous and local communities to information and participation in wetland management. A legal basis is necessary for most non-regulatory measures such as financial incentives for stewardship by individuals or communities.

Legislation defines the rights and duties of public authorities and agencies with regard to wetland conservation and wise use, including in relation to other States, and lays down the conditions under which financial support may be provided for specific activities. It can authorise the use of judicial review of actions undertaken by public agencies which damage wetlands and can permit civil law proceedings to be brought against natural or legal persons where wetlands have been harmed. It may provide for remedies such as payment of damages and/or mandatory restitution or compensation.

Law thus establishes the framework in which scientists, planners, managers and environmental economists make strategic and operational choices and in which communities and other stakeholders exploit wetland resources.

18. Most recently, the Ramsar Strategic Plan 1997-2002 urges Parties:

- to review and, if necessary, amend national or supra-national (e.g., European Community⁹) legislation, institutions and practices to ensure that the Wise Use Guidelines are applied (Operational Objective 2.1); and
- to carry out a review of legislation and practices and indicate in National Reports to the COP how the Wise Use Guidelines are applied (Action 2.1.1).

⁷ para.2, *Guidelines for the Implementation of the Wise Use Concept* (Annex to Rec.4.10, 1990).

⁸ I.2.4, *Additional Guidance for the Implementation of the Wise Use Concept* (Annex to Res.5.6, 1993).

⁹ N.B. The EC itself is not a Party to the Convention.

19. The review should cover statutory, customary and case law applicable to wetland conservation and wise use and sectoral activities which directly or indirectly impact on wetlands, and it should take account of the practical effects of such law. By way of example, natural resource legislation often gives a public authority general powers to issue permits or give financial assistance to certain activities or projects which may be benign (e.g., incentives for environmentally sensitive agriculture) or potentially harmful (e.g., wetland drainage, watershed deforestation). The compatibility of such legislation with the wise use obligation will depend on the permits actually granted, any use of mitigation/compensation conditions and the use of monitoring and enforcement procedures by administrative authorities.
20. As stated in the draft *Guidelines for Reviewing Laws and Institutions To Promote the Conservation and Wise Use of Wetlands*, a review has two key objectives:
 - to identify legal and institutional measures which constrain conservation and wise use; and
 - to support the development of positive legal and institutional measures for conservation and wise use.

§2.4 Areas of complementarity with other environmental agreements

21. The Ramsar Convention has served as a catalyst for international recognition of wetlands as reservoirs of biological diversity and economically valuable components of inland and coastal water systems. Many environmental agreements contain provisions of direct relevance to wetland conservation and wise use. Where Contracting Parties are party to such treaties, they should ensure that such provisions are implemented consistently with wise use. The review process can help Parties to rationalize complementary legislative and institutional mechanisms.
22. The most relevant treaty is the **1992 Convention on Biological Diversity (CBD)**¹⁰ to which virtually all Contracting Parties to Ramsar are also party. The CBD expressly requires its Parties to promote the integration of conservation and sustainable use of biological diversity (including wetland ecosystems and products) into relevant sectoral or cross-sectoral plans, programmes and policies¹¹. A Memorandum of Cooperation between the Ramsar and CBD Secretariats was signed on 19 January 1996 to promote institutional cooperation, exchange of information and joint conservation action. A Joint Work Plan is in place between the two Conventions¹².
23. Scope for cooperative research, planning and joint action exists between the Ramsar Convention and the **1992 United Nations Framework Convention on Climate Change** with regard to issues such as: the vulnerability of coastal and low-lying regions and small island States to predicted sea level rise; the importance of coastal wetlands for protection against coastal flooding; the bleaching of certain coral reefs apparently as a result of rising sea

¹⁰ See generally Glowka *et al* 1994.

¹¹ Articles 6 and 10.

¹² See Box 2 and Attachment to Diplomatic Notification 1998/5:Cooperation with the Convention on Biological Diversity (UNEP/CBD/COP/4/Inf.8).

temperatures; and the possible role of wetlands in combating climate change by functioning as natural carbon sinks.

24. Potential synergies also exist between Ramsar and the **1994 United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (CCD)**. Applicable to arid, semi-arid and dry sub-humid countries of the world, this Convention contains several provisions relevant to wise use. Parties must develop integrated strategies for the rehabilitation, conservation and sustainable management of land and water resources (Art.2), promote cooperation among affected country Parties for the conservation of such resources as these relate to desertification and drought (Art.4), identify and manage damaging processes¹³, develop sustainable irrigation programmes and enhance the availability of water resources (Art.17). International cooperation is required for the preparation of action programmes. A Memorandum of Cooperation between CCD and the Ramsar Convention was signed in December 1998 and foreshadows a range of joint actions relating to the above.
25. Other agreements relevant to Article 5 on transboundary cooperation include:
- bilateral or multilateral watercourse agreements;
 - regional seas conventions, particularly where protocols have been adopted for the conservation and management of protected areas and species;
 - regional conservation instruments (including Directives adopted by the EC);
 - the 1979 Convention on Migratory Species (CMS) with regard to multilateral cooperation for the conservation of wetland-reliant migratory species (there is a Memorandum of Understanding in place between the Ramsar Convention and CMS) ;
and
 - the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora, to the extent that this applies to wetland-reliant animal and plant species (corals, crocodiles, certain fish...).

¹³ e.g. “unsustainable exploitation of water resources leading to serious environmental damage, including chemical pollution, salinization and exhaustion of aquifers; ... and irrigated agriculture” (Art.2 North Mediterranean Annex to the Convention).

Box 2: COORDINATED IMPLEMENTATION OF OBLIGATIONS UNDER RAMSAR AND THE CONVENTION ON BIOLOGICAL DIVERSITY

Areas of complementarity between the two Conventions include.

- international cooperation for transboundary watersheds and migratory species reliant on wetland ecosystems (CBD Art.5; Ramsar Art.5, Strategic Plan General Objectives 1 and 7);
- development of appropriate policy and legislative instruments for integrated management of inland water and marine/coastal ecosystems, based on cross-sectoral approaches which integrate biodiversity and wetland conservation into broader frameworks; (CBD Art.6, Decision II/10 (“Jakarta Mandate”), Decision III/21 (designating Ramsar as lead partner for implementing CBD activities related to wetlands), Annexes to Decisions IV/4 and IV/5 (Bratislava 1998); Ramsar Art. 3, Strategic Plan General Objective 2);
- identification, monitoring and assessment, notably the preparation of national wetland inventories for use in planning and management and the identification of processes and categories of activities damaging to water systems and wetland biodiversity (CBD Art.7; Ramsar Arts.2 and 3.2, Strategic Plan General Objectives 2, 5 and 6);
- detailed measures for *in situ* conservation, including protection of important sites, restoration of ecosystems, regulation and management of damaging processes and categories of activities, including introductions of alien species, and involvement of indigenous and local communities (CBD Art.8; Ramsar Arts.3.1 and 4.1, Strategic Plan General Objectives 2, 5 and 6);
- sustainable (wise) use of components of biological diversity (CBD Art.10; Ramsar Art.3, Strategic Plan General Objective 2);
- the development of incentive measures to promote sustainable land use in watersheds and coastal zones (CBD Art.11; Ramsar Art.2, Strategic Plan General Objective 2);
- systematic use of environmental impact assessments for wetlands (CBD Art.14; Ramsar Art.2, Strategic Plan General Objective 2);
- actions related to research, training and capacity-building, public education and awareness, exchange of information, technical and scientific cooperation.

§3.0 Identifying Legal and Institutional Measures Which Constrain Conservation and Wise Use

§3.1 Conflicting sectoral policies, laws, taxes and institutional priorities

26. Wetlands are directly or indirectly affected by a large number of sectoral activities, ranging *inter alia* from marine transportation and port and harbour construction through fisheries and forestry to domestic and foreign trade and investment. Side effects of non-wetland activities include hydrological changes from water abstraction or watercourse regulation and water-borne pollution from agriculture, industry or urban centres (OECD 1996).
27. Each sector is generally subject to specialised legislation and jurisdiction is located in government departments and agencies which have no mandate for wetland conservation or wise use *per se*. This can lead to complex overlapping legal and institutional frameworks with a high risk of intersectoral policy inconsistency (Turner and Jones 1991).
28. In some cases, constraints on wise use are direct and easily identifiable. Legislation may make it mandatory to drain and fill wetlands for agricultural, construction, transport, water management, energy or public health purposes. Alternatively, it may provide for subsidies/tax incentives for drainage, infilling or conversion, without any prior requirement for an environmental impact assessment or consultation with the wetland administrative authority. Higher tax rates may be imposed on undeveloped property or fallow land which is not in agricultural production: such provisions are not specific to wetlands but tend to affect marginal areas disproportionately.
29. Constraints on wise use may also be indirect. Incentives instituted for reasons unconnected to wetlands which have the effect of encouraging wetland destruction are often known as “perverse incentives”. Examples may include subsidies or tax incentives for irrigation, flood insurance, intensive forestry and intensive agriculture or the construction of highways, housing or recreational facilities in wetlands. If legislation does not require the user, developer or polluter to “pay” the cost of wetland destruction, such costs are paid by the taxpayer (publicly-funded restoration programmes) or, more commonly, by the environment and future generations.
30. Wise use may also be undermined where projects and developments are classified as being of public interest and are consequently exempted from normal planning controls or environmental impact assessment requirements. For example, wetlands may be destroyed or degraded by publicly-financed infrastructure projects (river channel straightening, flood control measures, transport routes) or the designation of unrestricted economic development zones in sensitive coastal areas.
31. Unless the country’s system of administrative law enables individuals or non-governmental organizations to seek judicial review of actions by public authorities or agencies, it may be virtually impossible for sanctions to be taken against public bodies which unlawfully destroy wetlands in the course of their operations.
32. Obstacles to cross-sectoral coordination exist in all countries but take different forms. Institutional resistance to new approaches may be entrenched in developed countries which have complex and overlapping jurisdictional structures. Countries with economies in transition have often undergone dramatic changes in resource management and land ownership systems and there may be confusion over new institutional mandates. Developing countries may have

limited capacity and resources for such coordination. Small island states often have traditional institutions governing the use and ownership of land which can conflict with modern pressures for use and access to resources. (Miller and Lanou, 1995).

§3.2 Weak or incomplete laws applicable to wetlands

33. Wetlands present particular challenges to legislators as they cover a wide range of habitat types (e.g., caves, peatbogs, inland deltas, coral reefs) and are dynamic systems subject to spatial and temporal variation. Their common characteristic is the seasonal or permanent presence of water: maintenance of their ecological character depends on water supply of appropriate quantity and quality. This is rarely reflected in law and planning which usually treat wetlands like any other kind of natural area.
34. Law applicable to wetlands has often developed in an ad hoc way and may be characterized by gaps, overlaps and inconsistencies, fostering uncertainty amongst wetland owners, users and implementing agencies. There may be exclusive reliance on regulatory approaches which present logistical difficulties for enforcement and leave little incentive for stewardship by communities or individuals. Implementing regulations may be issued late (or not at all) or establish techniques and standards which do not respond to actual threats. Statutory law may fail to take account of customary law and practices on access to/ use of wetlands and wetland resources.
35. Weaknesses or gaps in the legal framework may relate to:
 - coverage of wetland resources (e.g., migratory birds may receive more comprehensive treatment than wetland habitats and genetic resources);
 - measures for sustainable use (e.g., coverage of hunting but not overexploitation of or trade in wetland products such as fish, medicinal plants, peat or coral);
 - the level of protection given to non-consumptive uses of wetlands;
 - the range of damaging activities covered (e.g., water abstraction is regulated less systematically than pollution);
 - the absence of legal measures for environmental management of water quantity and quality; or
 - the absence of effective monitoring and enforcement procedures, meaningful sanctions and adequate remedies.

§3.3 Land tenure and resource use regimes which undermine wise use

36. Loss or degradation of wetlands and wetland products can result from weaknesses in legal regimes for land tenure and resource use. Uncertainty over title and user rights to land, water and natural resources often removes the incentive - and the financial capability - to invest in or manage these resources sustainably. Such insecurity, which is often aggravated by population growth, can in some cases increase the risk of internal or transboundary resource-based conflict.
37. This type of constraint on wise use can take many different forms. For example:

- under some collective systems of shared access/use, there may be no effective mechanism to give individuals a sense of ownership or personal responsibility to respect the carrying capacity of the wetland;
- conversely, where communal ownership and management regimes are replaced by private property rights, possibly as a result of reprivatisation of land, production is often intensified and pressure on natural resources (overgrazing, overfishing, inefficient use of agricultural chemicals) can increase sharply;
- the establishment of modern property law regimes can breed antagonism between government and local communities: if customary users are prevented from harvesting wetland resources without the provision of viable alternatives, pressure is increased on adjacent marginal land;
- in some countries, the co-existence of statutory and customary legal systems can hamper the implementation of wise use measures and make it difficult to modify the way in which natural resources are exploited.

§3.4 Operational weakness of administrative authorities

38. Wise use can be hampered by poor design or operational weakness of the administrative authority responsible for national implementation of Ramsar. Examples might include an authority that works in isolation from national focal points for other biodiversity-related treaties to which the country is party, has no regular communication with relevant public and private sectors or technical personnel such as environmental impact assessment specialists, or has no cooperative arrangements with neighbouring countries for joint management of shared wetlands or wetland species
39. General institutional constraints include the lack of a clear mandate, adequate training, resources, equipment and enforcement personnel for wetland managers. This contributes to poor enforcement of legislation, characterised by low prosecution rates and penalties.

§3.5 Jurisdictional constraints on river and coastal ecosystem management

40. Wetlands can only be conserved and wisely used by protecting them against drainage and infilling and maintaining the regime of their feedwaters throughout the ecological unit formed by the watershed, catchment or river basin¹⁴. Catchment should be broadly interpreted to include upstream water supply, downstream hydrological connections between flood plains and rivers and groundwater flows.
41. National legislation rarely provides a basis for a comprehensive approach to catchment-scale planning and integrated management, due to serious institutional constraints. Catchment boundaries differ from political boundaries: a watercourse may flow through several jurisdictional units such as districts, autonomous provinces or sovereign States. Each unit will

¹⁴ NB The *Additional Guidance* uses the term “catchment” whilst in 1998 the COP to the CBD used these three terms in Decision IV/4 (*Biodiversity of inland waters*). Where the term “catchment” is used, it should be understood to include watersheds and river basins as appropriate.

probably have its own rights and duties in respect of territorial planning and water resource management. The position may be particularly complicated in federal countries where jurisdiction over wetlands and resource management is divided between national and subnational governments.

42. Jurisdictional obstacles are even more complicated in the coastal zone¹⁵. In nearly all countries, the high tide limit of the shoreline forms a legal barrier separating the public maritime domain from the land. Each side of the divide is usually governed by separate legislation and there is rarely any coordination between the administrations concerned (typically the fisheries administration and, on the landward side, the conservation agency as well as local authorities). In the absence of special legislation and institutional coordination, it is difficult to achieve wise use of the land-sea interface, to establish mixed (land-sea) protected areas or to promote rational management of marine and coastal resources.
43. Legal and institutional constraints on wise use of coastal wetlands may include:
 - specialised fisheries legislation and institutions which do not cover non-target species, marine protected species or critical nursery and spawning habitats. Conservation agencies usually have no power to implement measures on the seaward side (de Klemm, 1998);
 - failure of legal and institutional regimes to safeguard the multiple functions of mangrove forests (timber production, coastal flood protection, provision of fish spawning and nursery areas). Mangroves are often administered by forestry authorities without cross-sectoral coordination and have been over-exploited or converted for aquaculture, often with economically disastrous consequences.
 - terrestrial plans and policies which are poorly-adapted to the dynamic nature and ecological functions of coastal areas (storm absorption, natural flood defence, erosion and sedimentation processes). Legislation commonly does not reflect the principle of prevention or incorporate precautionary approaches in order to conserve the ecological character of coastal wetlands, *inter alia*, against sea level rise predicted as a consequence of global climate change.

§4.0 Developing Legal and Institutional Measures to Promote Wise Use

44. Virtually all States have nature conservation legislation applicable to wetlands, though few have enacted specific wetland laws, and a tiny number have incorporated the principle of wetland conservation into their constitutions. Although relevant provisions and techniques vary widely, such legislation has tended to evolve along similar lines from an early focus on species protection towards an emphasis on conservation and sustainable use of critical habitats and biodiversity. Many countries also have long-established customary law and practices supportive of wetland conservation and wise use.

¹⁵ Ramsar sites may incorporate riparian and coastal zones adjacent to the wetlands and islands or bodies of marine water deeper than six metres at low tide within the wetlands (Art.2.1).

45. The *Additional Guidance* sets out four categories of measures supportive of wise use which are considered below: (1) non-site-specific measures (laws and institutions generally applicable to wetlands); (2) site-specific measures (applicable to particular sites); (3) jurisdictional and institutional coordination; and (4) transboundary cooperation mechanisms¹⁶.

§4.1 Non-site-specific measures

46. It is implicit in the wise use obligation that Parties should take appropriate steps to address wetland loss and degradation throughout national territory. Wetlands are damaged by processes such as loss of wetland area, changes in water quality and quantity and overexploitation of wetland products. Processes of this kind are generated by human activities both inside and outside wetlands. Some types of human activity (e.g., drainage, pollution, urban encroachment and the introduction of alien species) almost always generate processes damaging to wetlands, whether individually or on a cumulative basis. Other types of activity (e.g., fishing, agriculture, and nature tourism) may be consistent with wise use within certain limits but can generate damaging processes if they exceed the carrying capacity of the water system, coastal zone or wetland concerned.
47. Where human activities have or may have the effect of generating processes damaging to wetlands, policy instruments should be used to support wise use. Appropriate legal measures and institutional coordination are an essential component of such responses. Legislation should provide a firm basis for the planning, regulation or management of relevant categories of activities, wherever they take place, in order to minimize such processes and maintain the natural properties of wetland ecosystems¹⁷.

§4.1.1 Planning of land use and water management

48. The *Additional Guidance* recommends including wetlands in the zones of land-use plans which enjoy the highest degree of protection. The Ramsar Strategic Plan 1997-2002 emphasizes the cross-cutting nature of wise use, calling on Parties “to integrate conservation and wise use of wetlands into national, provincial and local planning and decision-making on land use, groundwater management, catchment/river basin and coastal zone planning, and all other environmental planning and management” (Operational Objective 2).
49. Planning legislation makes it possible to regulate development and certain economic activities in natural areas. Land-use plans may delimit specific habitat types wherever these occur on national territory, environmentally sensitive areas, ecological corridors to combat habitat fragmentation, flood plains, riparian protection strips along watercourses and non-development zones along the coast and around lakes. Alternatively, legislation may provide that all wetlands coming within the statutory definition or identified in an official inventory must be delimited on the plan. However, the mapping of wetlands for legal purposes can present formidable difficulties because of spatial and seasonal variation of their boundaries.

¹⁶ See further the draft *Technical Guidelines for Reviewing Legislation, Institutions and Practices to Promote the Wise Use of Wetlands*.

¹⁷ This approach is consistent with Articles 7(b) and 8(l) of the 1992 Convention on Biological Diversity.

50. Land-use planning controls are mainly used to prevent or reduce loss of wetland area as a result of residential, recreational and industrial development or infrastructure projects. Typically, the legislation provides that prescribed development or activities in wetlands delimited in planning documents are subject to permit. Proposals for any such developments or activities must therefore be determined by the competent planning authority, which should wherever possible support the maintenance of existing natural wetland area and function.
51. Planning of catchments and coastal zones provides a more ecologically rational scale for management of land and water use and makes it possible to address a wider range of processes threatening to wetlands¹⁸. Integrated planning of this kind will always require cross-sectoral institutional coordination and sometimes the development of special legislation. Appropriate frameworks should provide for:
- regulation or management of water quality and quantity to ensure maintenance of environmental flows (thus providing a legal basis for safeguarding water supply to wetlands to maintain their natural properties);
 - management of floodplains and coastal wetlands to preserve flood control and natural resource production functions, by prohibiting development and drainage and providing incentives to create new retention areas and restore natural areas;
 - conservation of banks, shores and wetland vegetation to minimize erosion and associated problems and to maintain wetland biological diversity;
 - sustainable use of natural resources, supported where necessary by trade controls to discourage overexploitation; and
 - regulation or management of sectoral activities such as industry, mining, construction of ports, transport, agriculture, forestry, aquaculture and fisheries.

§4.1.2 Regulatory measures

52. Regulatory measures can be used to control and set standards for activities damaging to wetlands. Under a permit system, the competent authority may prohibit a proposed activity or authorize it either unconditionally or subject to conditions for mitigation or restoration. However, implementing and enforcing regulatory measures imposes a heavy administrative burden and may trigger public opposition. To make regulatory approaches more workable, legislation may set a threshold below which a permit is not required and may provide a general exemption for certain categories of activities which by their nature are deemed to be compatible with wise use.
53. Factors which may enhance the effectiveness of regulatory measures include:
- extending the range of activities covered. Whilst many planning and permit systems around the world do not apply to agricultural and forestry activities, even where these impact on wetlands, some countries prohibit or restrict the application of fertilizers and

¹⁸ The COP to the Convention on Biological Diversity has endorsed ecosystem approaches for the management of inland waters and the coastal/marine interface (see Box 2). Parties to both Conventions should ensure that Ramsar/CBD obligations are implemented in a streamlined way for this purpose.

- biocides in wetlands and/or any activity involving the modification of the soil profile that could cause erosion and degradation of watersheds;
 - requiring the permit-issuing authority to consult with the wetland administrative authority before granting a permit and to consider the cumulative impact of proposed and existing activities on the carrying capacity of a wetland unit;
 - enshrining the principles of prevention, precaution and “the polluter pays” into decision-making on activities affecting wetlands;
 - where wetland destruction is unavoidable, subjecting permits to conditions for compensation, mitigation, restoration or recreation of wetland area and, where appropriate, to the preparation of emergency or contingency plans; and
 - where appropriate, combining restrictions with incentives for positive stewardship to enhance wise use and facilitate compliance.
54. Legislation should specifically provide for the strict regulation of intentional introduction of alien species and living modified organisms¹⁹. This should include preventive measures to limit the risk of unintentional introductions through pathways such as ballast water discharge or escape from contained facilities. Intentional introductions should generally be prohibited without a permit and should be subject to a high-level environmental impact assessment to determine possible consequences of the introduction in accordance with the precautionary approach. Where practicable, legislation should require all appropriate efforts to eradicate introduced or translocated invasive species which may significantly disrupt water systems. Consideration may need to be given to controlling trade in pet aquatic species which, if abandoned, can become invasive and alter the aquatic balance, Legislation should make it possible for civil damages to be claimed from those responsible for unlawful introductions. Criminal penalties should also be considered.

§4.1.3 Environmental impact assessment legislation

55. When required by law, environmental impact assessment (EIA) procedures provide a legal mechanism to determine whether proposed activities or developments are consistent with maintenance of the natural properties of a given wetland. The Ramsar COP has adopted several decisions relating to the use of EIA where wetlands may be affected.²⁰
56. Given the ecological sensitivity of wetlands, Parties should ensure wherever possible that under relevant legislation:
- EIA is undertaken early enough for necessary action to be taken, including refusal of a permit before damage has occurred (Rec.1.6, Res.5.6);
 - The EIA process continues into project implementation stages so that actual effects can be monitored and compared with predictions (Recs.3.3 and 4.10);

¹⁹ The COP to the 1992 Convention on Biological Diversity has identified the prevention and mitigation of impacts caused by the introduction of alien species as a cross-cutting issue: Parties to the CBD are specifically invited to incorporate measures related to alien species into their national strategies, programmes and action plans (Decision IV/1, 1998).

²⁰ Summarized in Annex to Recommendation 6.2 (Brisbane, 1996).

- EIA is not restricted to individual projects but also addresses cumulative effects of several projects and strategic plans, programmes and policies (Res.5.6);
 - EIA is not restricted to the site of the proposed development but also addresses external (upstream/downstream) influences and interactions between all components of water systems at the catchment level (Rec.4.10, Res.5.6);
 - environmental considerations concerning wetlands are integrated into planning decisions in a clear and transparent manner (Rec.6.2).
57. The requirement for an EIA should apply to major projects irrespective of sector, including agricultural, industrial, mining and hydraulic engineering, and should where appropriate include an ecological risk assessment. EIA thresholds, scoping and criteria should be particularly rigorous for proposed projects in wetlands, including peat swamps, mangroves and coral reefs, and where the project area includes or is hydrologically connected to any significant wetland ecosystems: consideration should specifically be given to cross-border effects. Any activity which could adversely affect a wetland of particular ecological value should be submitted to EIA or other form of evaluation and should only be authorized if the evaluation shows that no significant damage to the area will occur²¹.
58. The Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 25 February 1991) sets out general criteria for determining the environmental significance of certain activities. One of these criteria is proximity to a Ramsar site. Parties to the Espoo Convention must give specific consideration to carrying out an EIA in a transboundary context where the proposed activity is located in or close to an area of special environmental sensitivity or importance, such as a wetland designated under the Ramsar Convention (Appendix III).

§4.1.4 Non-regulatory (voluntary) measures

59. Non-regulatory measures can effectively build support for wise use and conservation amongst private wetland owners and users, without the negative associations of proscriptive (regulatory) approaches: they can increase the number of wetlands dedicated to conservation and to involve a wider range of actors in wetland management (Shine 1996). Voluntary approaches may be used to complement measures to conserve public wetlands and statutory protected areas.
60. Depending on the legal system of each country, it will usually be necessary to develop enabling legislation for the types of wetland acquisition and management mechanisms listed below. Options include:
- Creating management agreements (contracts) between relevant government agencies, landowners and landusers to maintain the ecological character of the wetland. There should be penalties for non-compliance.

²¹ OECD Council Recommendations on Environmental Assessment of Development Assistance Projects and Programmes [C(85)104 of 20 June 1985] and concerning an Environmental Checklist for Possible Use by High-level Decision Makers in Bilateral and Multilateral Development Institutions [C(89)2(Final) of 22 February 1989].

- Providing financial assistance for NGOs or stakeholders to acquire or manage wetlands, possibly on the basis of a long lease, in accordance with agreed wise use objectives. Approved voluntary wetland reserves should be given legal protection, where possible, against expropriation by public agencies.
 - Granting tax incentives to encourage landowners to conclude conservation easements with conservation agencies or NGOs. Legislation should where possible enable such easements to bind future purchasers of the wetland.
61. Economic instruments can also be used to deter unsustainable practices and to provide incentives for sustainable wetland management and resource use (OECD 1996). Enabling legislation will be necessary for certain types of incentives and charges, which could include:
- Conservation payment schemes for wise use of wetlands and their products;
 - Subsidies for conservation, including compensation for managing wetlands in their natural state and for crop damage by wildlife;
 - Tax incentives, such as reductions in income, capital or inheritance taxes for wetlands dedicated or sold for conservation and property tax relief for wetlands managed for conservation;
 - Wetland loss mitigation charges: consistently with the “developer pays” principle, these could include wetland development fees or payments to a public trust fund or a mitigation land bank (for the provision of natural or restored wetlands as compensation for wetlands lost through development);
 - User charges (entrance fees and licences for wetland hunting, fishing and recreational purposes).

§4.2 Site-specific measures

62. Although the wise use obligation applies to all wetlands, it is legally and practically difficult to apply conservation measures to all wetlands or to regulate/manage all activities that may damage them. By carrying out a national inventory of wetlands, each Party can equip itself with a scientific knowledge base to identify and prioritize wetlands for site-specific conservation measures as well as wetlands which need restoration or rehabilitation.
63. The generally-applicable wise use measures described in 4.1 above can be applied and adapted to specific wetlands. In addition, site-specific instruments can be loosely classified into three categories (Untermaier 1991) which can be tailored to meet conservation and wise use objectives of particular sites:
- **General protection instruments** promote the conservation and management of all components of a site (habitats, species, biodiversity, landscapes) and often provide for an administrative structure responsible for implementing relevant measures. The legal system should support multiple use of a wetland’s natural resources by local communities and other stakeholders, where this is consistent with maintenance of the site’s ecological character, and should preferably provide a legal basis for voluntary measures as well as regulatory controls.

- **Specialized protection instruments** are generally used to promote the preservation of one component of the site (game or fisheries resources, plant diversity, outstanding landscapes). Such areas rarely have their own management structures and the level of restrictions varies in accordance with site management objectives (the extreme being strict protection which excludes human access and use). This type of instrument probably offers the greatest potential for establishment and/or management by private entities, including conservation NGOs.
 - **Indirect protection instruments** take the form of land-use controls applied to a defined area. These may be laid down under planning legislation, for example with regard to development in a floodplain. Alternatively, the area may be subject to a special legal regime which incidentally confers protection against construction or development although its primary purpose is not connected with conservation. In many countries, for example, the coastline and navigable rivers form part of the public domain and are subject to a special legal regime.
64. The *Additional Guidance* sets out recommendations for site-specific legislation, including the application of special EIA rules to important wetlands. The COP has also adopted *Guidelines on Management Planning for Ramsar Sites and Other Wetlands* (Annex to Resolution 5.7, Kushiro, 1993). The management planning process is designed to secure agreement between the owners, occupiers, users and other interested parties of a wetland on the wise use of its resources. The *Guidelines* specify that “it may be appropriate for the principle of a management plan to be supported by legislation” and that an authority should be appointed to implement the management planning process, particularly in a larger site where account must be taken of all interests, uses and pressures on the wetland.
65. Taking due account of customary law and practices, national legal and institutional frameworks should therefore contain elements such as:
- powers to zone wetlands²² and to define particular regulations for each type of zone to ensure that the carrying capacity of the area concerned is not exceeded in respect of each activity authorized;
 - combination of zones to facilitate strict protection of ecologically fragile areas with wise use of the rest of the wetland (Recommendation 5.3, 1993);
 - powers to establish mixed land/sea conservation areas as part of integrated coastal area management policy;
 - powers for wetland management bodies to promote wise use, and socio-economic needs of local communities, to include development of management plans, monitoring, regulation of certain activities where necessary and use of management agreements and non-regulatory approaches to facilitate stewardship by owners and users (McNeely 1995);

²² IUCN-The World Conservation Union has developed a system of management categories for different types of protected areas which can be used as a reference point for this purpose. See also the *Statutory Framework for Biosphere Reserves*, adopted in 1995 under the auspices of UNESCO’s Man and the Biosphere Programme.

- procedures for the consultation, involvement and representation of local communities and other stakeholders in the establishment of wetland protected areas and in wetland management. Committees could be established, especially at Ramsar sites, on which users, landowners, managers, developers and community interest groups, particularly women's groups, are represented²³; and
 - provision for compensation for loss of land, user rights or income arising from the designation of a wetland as a strictly protected area.
66. As mentioned above, protected area status and site-specific management planning are not enough in themselves to ensure maintenance of a wetland's ecological character. All statutory agencies which have responsibility for activities in or affecting protected wetlands should be legally required to notify and consult with wetland management authorities before making grants or authorizing activities or projects which could adversely affect the wetland in question.

§4.3 Jurisdictional and institutional coordination

67. Wise use is by definition a cross-cutting issue, given the unusually high number of users and uses of wetlands (Ntambirweki 1997). It is therefore important for institutional frameworks to promote horizontal²⁴ and vertical²⁵ coordination on wetland-related issues between government departments, public agencies, sectoral institutions and relevant stakeholders.
68. Jurisdiction over wetlands varies according to a country's political and administrative system and the nature of the enabling legislation. Terrestrial wetlands usually come under the nature conservation authority which may be an independent government department or, more often, a subdivision of the ministry of the environment or of agriculture and forestry. However, jurisdiction may be less clear with regard to coastal wetlands within the public maritime domain, which may by default come under the ministry responsible for fisheries or marine affairs.
69. With regard to horizontal coordination, the *Additional Guidance* provides indicators for mechanisms at international, national and local level to promote coordination between different government agencies, the private sector and conservation NGOs. At national level, such mechanisms might take the form of inter-ministerial boards or commissions, national wetland committees or other bodies to oversee coordination and cooperation for wetland management. A common feature of such coordination mechanisms should be representation, based on a catchment approach, of all sectoral agencies with jurisdiction over activities relevant to wetlands.
70. Vertical coordination can be particularly sensitive in countries with a federal structure of government. Responsibility for wetlands and wetland products will vary depending on the way in which jurisdiction over land management and natural resources is divided between national and subnational (state, province, canton, land) governments. It may be located exclusively at

²³ Recommended under Action 2.7.3. Ramsar Strategic Plan 1997-2002.

²⁴ i.e., between relevant administrative sectors.

²⁵ i.e., between different levels of government (national, subnational and local).

one level²⁶ or be shared between national and subnational governments with a varying degree of policy and operational consistency and effectiveness (Rubec 1998). If administrative and operational responsibilities for wetlands are poorly defined or involve gaps or duplication, it will be difficult to coordinate effective wise use policy and practice.

71. Vertical coordination involves the harmonization of wise use objectives, policies and standards at all levels of government. This is necessary to minimize inconsistency between national decision-making on relevant sectoral issues and locally-based programmes and actions. Where appropriate to a country's political structure, consideration should be given to decentralizing decision-making and implementation of wise use to subnational or local level, possibly in accordance with strategic guidance and objectives determined by national government.
72. Catchment-scale management will generally require jurisdictional and institutional coordination between functional units (sectoral ministries for water resource management, agriculture, industry, mining etc.) and territorial units (regional and local authorities). Where possible, agreement should be reached on the role of each agency and authority and communication and information-sharing fostered within an appropriate institutional mechanism.

§4.4 Transboundary and international cooperation mechanisms

§4.4.1 Watercourse agreements and other treaties

73. Article 5 of the Convention encourages Parties to cooperate in the implementation of their obligations and this includes measures related to transboundary wetlands, shared watercourses and conservation of wetland flora and fauna. Such cooperation may be initiated on an informal basis but countries will usually need to conclude a bilateral or multilateral agreement to provide a legal basis for formal cooperation and to determine the scope and powers of competent institutions. In Technical Session V at *COP7 Guidelines for International Cooperation under the Ramsar Convention* are to be considered in detail. These address the following issues, and several others, under the theme of international and regional cooperation.
74. Where water systems are shared between two or more countries, institutional cooperation might take the form of cross-boundary water commissions or other coordinating boards. The objective should be to avoid action in one country adversely affecting wetlands in another and to guarantee that water quality and quantity are maintained in such a way as to preserve the functional values of wetlands (*Additional Guidance*, para.I.1.2).
75. There are many watercourse agreements (over 200) which already provide a legal basis for this type of cooperation (de Klemm 1992)²⁷. At regional level, the **Convention on the Protection and Use of Transboundary Watercourses and International Lakes** (Helsinki, 17 March 1992) sets out important principles and rules which provide a comprehensive basis for the development of new agreements. At global level, the **Convention on the Law of the Non-Navigational Uses of International Watercourses** (New York, 21 May 1997: not yet in

²⁶e.g., jurisdiction over navigable rivers and the public maritime domain is usually vested in national government.

²⁷ For further information, see documents prepared for Technical Session V, COP7.

force) requires States to avoid, eliminate or mitigate significant harm to other watercourse states and establishes detailed rules concerning changes in the use of an international watercourse. These include preparation of EIA and consultation procedures between affected watercourse states²⁸. Part IV (Protection, Preservation and Management) requires States individually and, where appropriate, jointly, to protect and preserve the ecosystems of international watercourses. Specific obligations relate to pollution control; the introduction of alien or new species; management of watercourses to protect and preserve the marine environment, including estuaries, taking into account generally accepted international rules and standards²⁹; and prevention or mitigation of conditions that may be harmful to other watercourse States, including siltation, erosion and salt-water intrusion³⁰.

76. An indicative list of legal measures for wise use of shared watercourses includes:

- coordinating watercourse management (water supply, pollution control, conservation, restoration of wetlands important for hydrological functions);
- coordinating land-use planning to protect watersheds and reduce flood damage;
- preventing or mitigating conditions harmful to other watercourse States;
- providing prior notification of and consulting with affected States about planned measures and activities which may have significant adverse impacts on the watercourse;
- exchanging data and information regularly;
- cooperating on technical and scientific matters; and
- developing cooperative or joint contingency planning for emergencies.

77. Many of these indicators are equally applicable to conserving and managing transboundary wetlands. The Ramsar COP has urged Parties to identify transfrontier wetlands of international importance, including those with shared catchment/river basins, and to prepare and implement joint plans for such sites, using a catchment approach³¹. This will generally require some degree of institutional coordination by the respective States or provinces³². Comparable approaches to legal and institutional coordination may also be appropriate in groups of small island States, which might develop regional cooperation mechanisms for wise use of biological resources in shared marine and coastal ecosystems (Miller and Lanou 1995).

78. Parties which are range states of wetland-dependent migratory species should also seek to establish coordinated conservation mechanisms for such species and their habitats. A legal basis for such international cooperation is provided by the **Convention for the Conservation of Migratory Species of Wild Animals (CMS)** (Bonn, 23 June 1979). A Memorandum of

²⁸ Art. 12 *et seq.*

²⁹ Art.23. This important provision for coastal wetland conservation supports the Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities (Washington, 3 November 1995) (UNEP(OCA)/LBA/IG.2/7).

³⁰ Art 27.

³¹ Rec.5.3; Action 7.1.1 of the Ramsar Strategic Plan.

³² Management of the Wadden Sea, a trilateral Ramsar site, involves coordination not only between three Contracting Parties (Denmark, Germany, The Netherlands) but also with the three German Laender which each have jurisdiction over part of the wetland. The Common Wadden Sea Secretariat was established to formalise institutional coordination after some years of informal cooperation.

Understanding was signed on 18 February 1997 between the CMS Secretariat and the Ramsar Bureau to intensify co-operation on matters covered by both Conventions and/or by species-specific Agreements concluded under CMS. The most relevant of these Agreements to Ramsar is the **1995 Agreement on the Conservation of African-Eurasian Migratory Waterbirds** (likely to come into force in 1999) which has 117 Range States. It covers the whole of Africa and Eurasia, including the Middle East, Greenland and parts of Canada and establishes conservation and management measures for all migratory waterbirds.

§4.4.2 International assistance programmes

79. The wise use obligation should be interpreted broadly to apply to international assistance for wetland-related programmes and projects. The COP recommended in 1980³³ that Parties should give financial and technical assistance to developing countries for the purposes of wetland conservation, that aid programmes should help finance EIAs prior to the implementation of large-scale projects to develop wetlands and that developing countries should pay more attention to wetland conservation in any request for and programming of assistance.
80. Parties which are donor countries should actively support the inclusion of wise use components in multilateral and bilateral development cooperation programmes. Project funding should, wherever possible, strengthen the basis for economic benefit to local communities and wetland users, consistently with maintenance of the natural properties of the wetland concerned.
81. Donor countries should also establish procedures to ensure that their bilateral donor agencies do not undermine the wise use obligation by providing financial and technical aid for programmes and projects which destroy or seriously degrade wetlands in other countries. In the absence of adequate mitigation or compensation measures, assistance should not be used to support projects which may harm the ecological character of important wetlands or adversely affect wetland habitats, species, genetic resources or hydrological functions of wetlands.
82. Parties which request international assistance should ensure, as a priority, that the proposed projects and programmes do not involve damage to wetlands and are compatible with the wise use obligation. It may be appropriate for such Parties to establish a review procedure for all applications for international assistance to ensure that the department responsible for wetlands is consulted over relevant proposals.

§5.0 Conclusion

83. The review procedure described in the draft *Guidelines for Reviewing Laws and Institutions To Promote the Conservation and Wise Use of Wetlands* is intended to assist Parties to identify possible constraints on wise use and to rationalise legal and institutional measures supportive of wetland conservation and wise use. This paper has outlined some of the diverse policy

³³ Recommendations 1.2 and 1.6.

instruments which may be used for this purpose for wetlands on national territory and internationally.

84. Legal and institutional frameworks vary widely from one country to another. They may span a wide range of approaches from an emphasis on regulation and public ownership and control of most wetlands to voluntary approaches and community-based wetland management. The appropriate mix of measures will depend *inter alia* on the geography, socio-economic conditions and cultural characteristics of the country concerned, its legal and institutional system and the rules applicable to ownership and use of wetlands and wetland products.
85. It may not be necessary or even appropriate for Parties to enact special legislation for wetland conservation and wise use. Improvements can sometimes be made more swiftly and smoothly by combining or targeting existing measures (regulatory and non-regulatory) in new ways to simplify the burden of enforcement and to maximise wetland stewardship by owners and users, including local communities and, where applicable, the private sector.
86. In conclusion, each Party should, in accordance with its own political and administrative structure, seek to institutionalize the principle and practice of wise use in all relevant sectors. Its legal framework should lay down clear principles, establish regulations, standards and incentives and provide for impact assessment, monitoring and enforcement. Institutional mechanisms should ensure horizontal and vertical coordination and support integrated management based on an ecosystem approach. Planners and decision-makers should be able to make objective choices, based on adequate scientific data, between competing claims to wetland resources and watercourse uses, taking into account responsibility to other States and to future generations.

References

- Acreman, M., Howard, G. and Pirot, J-Y. 1996. *Reconciling Water Resources Management and Wetland Conservation: A Key Challenge for Ramsar in the 21st Century*, in *Themes for the Future: Special Interventions*, COP6 Brisbane 1996, Conference Proceedings Vol.9/12, pp.1-7.
- Davis, T.J. (ed.). 1993. *Towards the Wise Use of Wetlands*, Ramsar Convention Bureau.
- Dugan, P.J. and Jones, T.A. 1992. *Ecological Change in Wetlands: a global overview* in Moser, M., Prentice, R.C and van Vesem, J. (eds.) 1992. *Waterfowl and Wetland Conservation in the 1990s: a global perspective* (Proceedings of the IWRB Symposium, St Petersburg, Florida, November 1992). IWRB Special Publication no.26.
- Glowka, L., Burhenne-Guilmin, F. and Synge, H. in collaboration with McNeely, J. and Gündling, L.. 1994. *A Guide to the Convention on Biological Diversity*, IUCN Environmental Policy and Law Paper No.31, IUCN - The World Conservation Union.
- de Klemm, C. 1992. *Legal Framework for the Application of Article 5 of the Ramsar Convention*. Ramsar Convention Bureau.
- de Klemm, C. (in press, 1998). *The Conservation of Marine Biological Diversity*
- de Klemm, C. and Shine, C. 1994. *Biological Diversity Conservation and the Law*. IUCN Environmental Policy and Law Paper no.29.
- McNeely, J.A. (ed.). 1995. *Expanding Partnerships in Conservation*. Island Press and IUCN-The World Conservation Union.

Miller, K.R and Lanou, S.M. 1995. *National Biodiversity Planning: Guidelines based on Early Experiences around the World*. World Resources Institute, United Nations Environment Programme and IUCN-The World Conservation Union.

Ntambirweki, J.,1997. *Modalities for the Implementation of the Ramsar Convention through National Legislation in Africa*, Faculty of Law, Makerere University.

OECD Development Assistance Committee. 1996. *Guidelines for aid agencies for improved conservation and sustainable use of tropical and sub-tropical wetlands*. Guidelines on Aid and Environment No.9, OECD, Paris.

Rubec, C. with contributions from Mafabi, P., Mahy, M., Nathai-Gyan, M., Phillips, B. and Pritchard, D. (in preparation, 1998) *Draft Framework for Developing and Implementing National Wetland Policies*.

Shine, C. 1996. *Private or voluntary systems of natural habitat protection and management*. Council of Europe, Nature and Environment, No.85.

Turner, K. and Jones, T. (Eds.). 1991. *Wetlands: Market and Intervention Failures*. Earthscan Publications, London.

Untermaier, J. 1991. *Aires protégées et zones humides in Legal Aspects of the Conservation of Wetlands*. Papers presented at an international conference held in Lyon, 23-26 September 1987. IUCN Environmental Policy and Law Paper No.25.