The Ramsar Convention in international law (reprint article)

["The Ramsar Convention Comes of Age", by M. J. Bowman, was published in*Netherlands International Law Review*, XLII: 1-52, in 1995 (copyright the T.M.C. Asser Instituut). It presents an astute analysis of the legal development of the Convention up to COP5 in Kushiro, and its conclusions have generally been borne out by further developments at COPs 6 and 7. We have scanned the text from hardcopy and any typographical errors here probably result from the scanning process. Professor Michael Bowman, Co-Director of the University of Nottingham Treaty Centre, has kindly granted permission to reprint, as has the journal's publisher, Kluwer Law International. Footnotes in the original appear as endnoteshere and are enclosed in square brackets in the text. It is worth pointing out that most of the Ramsar documents cited in Prof. Bowman's arguments are now available on this Web site. -- Ramsar Webmaster.]

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The Ramsar Convention Comes of Age

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1. INTRODUCTION

The second of February 1992 marked the 21st anniversary of the adoption of the 1971 Convention on Wetlands of International Importance, especially as Waterfowl Habitat [1], commonly known as the Ramsar Convention after the town in Iran where it was concluded. For those more familiar with modern concepts of majority, 21 December 1993 constituted the 18th anniversary of its entry into force. The period between these two dates witnessed a significant endeavour by the international community, through the signature at the Rio Earth Summit of the 1992 Convention on Biological Diversity,[2] to establish a basic conceptual framework to underpin the various conservation initiatives embodied in the now substantial number of international treaties for the protection of wildlife.[3] This framework, which was arguably already emerging in customary international law,[4] emphasises a broad, threefold obligation regarding the conservation of ecosystems, of species and of genetic diversity within species.[5] As each species, and indeed each individual member of that species, exists not in isolation but as a functioning unit within a wider ecosystem, it is axiomatic that the protection of natural habitats must continue to play a particularly crucial role in the global conservation effort.[6]

Since the Ramsar Convention constituted the first attempt by the international community to establish a legal instrument providing comprehensive protection for a particular ecosystem type,[7] and at the time of writing remains the only such instrument which is actually operational,[8] the moment seems opportune to consider the progress, or lack of progress, which has been achieved under the Convention to date. In so doing, it will be important to appreciate the historical context in which the Convention was drafted and adopted, since this provides the key to an understanding of many of its most significant features.

Although examples of multilateral nature conservation agreements can be traced back to the turn of the century and beyond,[9] it was not until the late 1 960s that the international community began to perceive the true seriousness of the threat posed by the continuing degradation of the natural environment and the urgent need for a concerted global response. The 1968 UNESCO Conference, which led to the inauguration of that

Organisation's 'Man and the Biosphere' Programme, constituted an important early step in this process, as did the more widely-renowned UN Conference on the Human Environment, held at Stockholm in 1972. A substantial number of international environmental treaties were adopted from that year onwards.[10] The Ramsar Wetlands Convention, concluded the year before Stockholm, thus stood astride the very threshold of modern environmental law, its founding fathers unquestionably apprised of many of the key tenets of contemporary conservation philosophy, but at the same time lacking the benefit of accumulated wisdom as to the legal and institutional techniques and mechanisms which would need to be incorporated if the Convention were to survive and flourish. Indeed, the current Secretary-General of the Ramsar Bureau, Daniel Navid, has pointed out that there appears to have been little or no input from experts in conservation law in the preparation of the final draft text.[11]

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2. BASIC STRUCTURE AND CONTENT

Judged by the standards of modern environmental treaties, the Ramsar Convention in its original form seems an extraordinarily simple, almost simplistic, legal instrument. It comprised a mere twelve articles, four of which were devoted to the articulation of substantive obligations, four to institutional arrangements and other mechanisms for implementation, and four to the final clauses governing participation and the exercise of depositary functions.

More specifically, Article 1 establishes definitions of the central concepts of wetlands and waterfowl, while Article 2 provides for the creation of a List of Wetlands of International Importance, for which each party is obliged to designate at least one example upon signature, ratification or accession. The principal substantive obligations are contained in Articles 3 and 4. These relate to the promotion of the conservation of listed wetlands and the notification of detrimental changes in their ecological character, the wise use of wetlands generally and the establishment and maintenance of nature reserves for their protection, the encouragement of research and information exchange, the management of waterfowl populations and the training of appropriate personnel.

As far as the implementation procedures and mechanisms of Articles 5 to 8 are concerned, Article 5 imposes an obligation upon the parties to carry out consultations regarding the implementation of the Convention, particularly in the case of shared water systems and wetlands which extend across national boundaries, with a view to the coordination of conservation policies. Under Articles 6 and 7, provision is made for the holding of Conferences in order to discuss the implementation of the Convention and to make

recommendations to the parties regarding the conservation, management and wise use of wetlands and their flora and fauna. Article 8 then states that the International Union for the Conservation of Nature and Natural Resources (IUCN) will, at least on a temporary basis, perform certain bureau duties such as the maintenance of the List of Wetlands, the organisation of Conferences and the notification of relevant matters to the contracting parties. Finally, Articles 9 to 12 establish procedures governing the participation and withdrawal of contracting States, the entry into force of the treaty itself and the exercise of depositary functions.

Even this brief survey of the Convention's provisions may be sufficient to indicate that there were a number of deficiencies in the original draft, and it will therefore be necessary to analyze the provisions of the Convention more fully in order to identify these weaknesses and to consider the extent to which it has subsequently proved possible to remedy or mitigate them. The first issue in that context concerns the overall scope of the Convention, seen in the light of its principal objectives. It will then be necessary to examine the treaty's adaptability to changing needs, with particular regard to the continuing evolution of international environmental law and the development of treaty-making experience in the conservation field. This will be followed by an analysis of the basic substantive obligations applicable to wetlands generally, and then of the additional duties regarding listed sites. The criteria and arrangements for the listing of wetlands will then be considered, as will the provisions relating to the restriction or deletion of sites previously so designated. Next follows a discussion of the mechanisms for the implementation of the Convention, together with the supporting institutional and financial arrangements. The final clauses of the Convention will then be examined, and in conclusion some observations will be offered regarding the overall effectiveness of the Convention as a device for wetland conservation.

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3. THE CONVENTION'S OVERALL ORIENTATION AND SCOPE

In the past, it was common for wetlands to be regarded as wastelands - unproductive areas harbouring disease-bearing insects which required 'reclamation' by man in order to be put to some productive use. This objective was pursued with great vigour and no little success in many States. Indeed, it has been pointed out that the 'port of Rotterdam used to be a wetland, and the Netherlands today ranks third in agricultural exports because it drained its wetlands'.[12] More recently, however, there has been a much greater appreciation of the value and importance of wetland areas.[13] They are now widely recognised to play a key role in flood control through their capacity to absorb surplus water and are in many regions equally important as a source of water supply for human consumption and agricultural or industrial purposes. An additional important service which they perform lies in their

absorption of sediments, nutrients and toxicants, many of which are neutralised or put to productive use within the wetland ecosystem. Coastal wetlands are frequently crucial as a means of shoreline stabilisation, acting as a sort of natural buffer against the sea. Peatlands, though occupying only 3% of the world's land area, are believed to store nearly 20% of the earth's soil carbon, which might otherwise be released to contribute to the 'greenhouse effect'.[14] Wetlands are also vital as a food source, a significant proportion of the world's fisheries being dependent upon them for spawning, as nursery areas or as habitat for adult fish. Rice paddies, a form of man-made wetland, provide the largest single food base for the world's population. Wetlands are also highly productive ecosystems - sometimes yielding more in terms of biomass than the agricultural land they are drained to provide - and frequently rich in terms of biological diversity, providing habitat for numerous rare or endangered species which have evolved or adapted to benefit from the specialised conditions they offer. Finally, wetlands have great value in the context of tourism and for related recreational purposes.

In view of this multiplicity of values which wetland ecosystems are now known to possess, it is perhaps surprising that such heavy emphasis is accorded by the Convention to their importance as waterfowl habitat. Indeed, there are references to waterfowl not only in the Convention's title but in the preamble (twice) and on seven other occasions in Articles 1-4. The importance of wetlands in other respects is referred to less frequently and in much more generalised terms.[15] The explanation of this is commonly assumed to be that the primary stimulus for the adoption of the Convention came from ornithological organisations such as the International Council for Bird Preservation (ICBP) and the International Waterfowl Research Bureau (IWRB), who had been pressing for some years for measures to protect migratory wildfowl. It is fair to point out, however, that at the Second Conference of the Contracting Parties, held in 1984, Dr. G.V.T. Matthews, a member of the IWRB delegation, denied that there had been any attempt to advance a purely sectional interest.[16] On the contrary, he stated that

> 'In fact the first (IWRB) draft in 1965 was entitled "International Convention on the Conservation of Wetlands", and the intention was very much an all-embracing habitat conserving instrument. This was followed in the title of the 1967 draft of the Dutch Government, but their second, 1968, draft and the alternative text of the Soviet Government incorporated "wildfowl" in the title. The third Dutch draft, in 1969, was entitled too narrowly "Convention on Wetlands as Wildfowl Habitat" and it was quite an achievement of the drafting meeting of legal and biological experts in Espoo, Finland, in 1970 to reduce the waterfowl interest to a subsidiary clause.

> While I would be the last to deny the importance of birds, both for their intrinsic merits and for their value as indicator species to monitor the health of the ecosystem, it is essential that the conservation of the ecosystem should be holistic. Indeed, most people do think of the Ramsar Convention as the Wetland Convention and it might be discussed when textual changes are under consideration, whether that subsidiary clause could not be omitted.'

What cannot be denied, however, is that the Ramsar Convention was the product of a sequence of deliberations which had as their primary purpose the protection of migratory wildfowl,[17] and that, however desirable this objective, it undoubtedly gave the Convention an emphasis which may not have been wholly to its advantage. Apart from the fact that even many conservationists apparently felt the preoccupation with avifauna to be 'ecologically too restrictive' [18] - a concern which has to some extent been confronted subsequently [19] - it seems extremely likely that it may also have diminished the significance of the Convention in the eyes of many States, and especially developing States,[20] who are unlikely to place the conservation of waterfowl particularly high on their political agenda. Certainly the slow rate of acceptance of the Convention by African, Asian and Latin-American nations, in whose territories many of the most significant and vulnerable wetlands are located, has been a major concern ever since its adoption.[21] On the other hand, it is hard to believe that, without this overarching ornithological perspective, it would ever have been considered appropriate to devise a single instrument for the protection of such a diverse variety of habitats as the Convention embraces. This point comes across with particular force when the important issue of the substantive scope of the Convention is considered.

As indicated above, the first matter to be addressed in the ultimate draft was that of the definition of the concept of 'wetlands'. This is a term of no great precision, either in popular or scientific parlance, and indeed in certain languages there is no single word which adequately reflects the concept.[22] Certainly the rendering in the French language text - 'zones humides' - conjures up a rather different image from its English counterpart. Since, however, the primary aim of those who drafted the Convention was to establish a conservation regime for all those habitats which were of importance to waterfowl, the definition adopted was one wide enough to embrace virtually every practical possibility, without particular regard to scientific nicety. Article 1(1) accordingly states:

> 'For the purpose of this Convention wetlands are 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.'

It has been suggested [23] that of over fifty separate definitions of wetlands currently in use, this is the broadest, encompassing ‘habitats as diverse as mangrove swamps, peat bogs, water meadows, coastal beaches, coastal waters, tidal flats, mountain lakes and tropical river systems’.[24] The definition is, moreover, in effect extended yet further by Article 2(1), which provides in part:

> ‘The boundaries of each wetland shall be precisely described and also delimited on a map and they may incorporate riparian and coastal zones adjacent to the wetlands, and islands and bodies of marine water deeper than six metres at low tide lying within the wetlands, especially where these have importance as waterfowl habitat.’

The Director-General of IUCN, delivering the keynote address at the Fourth Meeting of the Conference of the Parties in Montreux, Switzerland,[25] joked that this very broad definition:

> ‘suggests to me that only two Conventions are really needed to cover the conservation of all the habitats in the world - the Ramsar Convention dealing with any land that can be generally termed "wet", and a Drylands Convention dealing with everything else, with some useful working agreement between the Bureaux and Standing Committees on how to handle the interface.’

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4. ADAPTABILITY TO CHANGING CIRCUMSTANCES

Since human knowledge and understanding of environmental problems is continually evolving, and indeed the very nature and extent of the problems themselves is in a state of constant flux, it is vital that every conservation treaty should make provision for its own adaptation to changing circumstances. Most crucially, there requires to be a mechanism for continued monitoring of its implementation. A review process of this kind facilitates the solution of implementation problems by such means as the adoption of resolutions regarding the interpretation of particular provisions, the elaboration of joint programmes of action in furtherance of the treaty’s objectives and the identification of defaulters and the encouragement of more scrupulous adherence to their obligations. In the last resort, some formal amendment of the text may even be shown to be necessary. Many of the earlier conservation agreements omitted to make such provision, and consequently soon became little more than paper obligations - or, to borrow Simon Lyster’s memorable phrase,[26] ‘sleeping treaties’ - devoid of ongoing practical effect on the parties’ policies.

The Ramsar Convention, as originally drafted, did in fact make provision for occasional meetings of the contracting parties for the purpose of reviewing the process of implementation, though, as will be demonstrated below,[27] the terms in which it did so were not wholly satisfactory and some modification has subsequently proved necessary. What it signally failed to do, however, was to provide a procedure for the amendment of the text, which was soon revealed to be a major disadvantage in view of the number of deficiencies which became apparent in the original version.[25] It therefore proved necessary to convene an extraordinary meeting of the contracting parties in Paris during 1982, almost seven years after the Convention's entry into force, in order to conclude a Protocol of Amendment.[29] The Protocol not only effected one important change to the Convention's testimonium clause,[30] but also inserted a new provision, Article 10 *bis*, establishing a procedure by which future amendments could be adopted. This procedure was closely modelled upon that incorporated in the 1979 Bonn Convention on the Conservation of Migratory Species of Wild Animals.[31]

The Paris Protocol entered into force on 1 October 1986 and, at an Extraordinary Meeting of the Conference of the Parties held in Regina, Canada from 28 May to 3 June 1987,[32] the amendment procedure which it established was used for the first time in order to expand and modify the terms of Articles 6 and 7.[33] Disappointingly, these amendments had not entered into force by 1 January 1994, still requiring one further acceptance from amongst the 31 States that were parties to the Convention on the date of their adoption, but the parties were urged at Regina to implement them on a provisional basis pending their formal entry into force[34] and in many respects they appear to have proceeded as if they were already effective.[35]

The establishment of the amendment procedure can be regarded as a significant step forward in that it provides a more flexible mechanism for progressive adaptation of the original text and will, hopefully, render unnecessary the more cumbersome process of concluding further amending Protocols. It is, however, ironic that the Paris Protocol itself actually took less time to enter into force than the 1987 amendments adopted under the supposedly more streamlined amendment procedure it created! This is perhaps to be explained, however, by reference to the significant financial implications of those amendments[36] - always a major disincentive to speedy acceptance. It is also the case that the utilization of the amendment procedure has given rise to a number of complications of a technical, legal character.[37]

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5. SUBSTANTIVE OBLIGATIONS ATTACHING TO WETLANDS GENERALLY

The potential contribution of any international treaty inevitably derives in large part from its substantive provisions, and one of the key features of the Ramsar Convention is its establishment of the list of wetlands of particular international importance. Before discussing that aspect, however, it may be convenient to consider certain obligations which are imposed upon the parties with respect to wetlands generally. The central provision in that regard is Article 3(1), which states insofar as is relevant:

> 'The Contracting Parties shall formulate and implement their planning so as to promote as far as possible the wise use of wetlands in their territory.'

It is legitimate to speculate whether it would have been possible to frame a treaty obligation in more vague or vacuous terms, and it is indeed debatable whether such words should be regarded as having created any legal obligation at all -the concept of 'wise use' is nowhere defined in the text, the duty is neither to secure or guarantee such use but only to 'promote' it, and then only 'as far as possible'. One is instantly reminded of the cautionary words in the World Conservation Strategy that:

> 'Weak conventions . . . are dangerous and to be avoided because they permit the illusion that problems are being tackled when in fact they are not.'[35]

Yet there are a number of points which should be borne in mind before too readily dismissing the Convention as ineffective. The first is that it is only possible for an international treaty to achieve anything if it secures the support of a significant proportion of the international community, and it was abundantly clear even before the Ramsar Conference that States:

> 'would not accept a convention that infringed their sovereign rights to deal with their own natural resources. It was therefore out of the question to draw up a convention prohibiting absolutely change in the ecological status of wetlands, backed by mandatory sanctions.'[39]

The kind of obligation which Article 3(1) imposes was therefore probably as much as could reasonably have been expected at the time the Convention was drafted. In that regard the pioneering nature of the Ramsar initiative should not be underestimated. What the Convention sought to achieve was to establish a new attitude in relation to geographical features which had commonly been treated as wastelands, and its role was therefore educative as much as anything. In any event, it is far from clear that it would have been desirable to establish a uniform system of strict preservation of wetland sites, so as to guarantee their complete freedom from human attention, since modern conservation policy

tends to reassert the practical, utilitarian value of the earth's natural resources and to emphasize the need for their rational and sustainable utilisation, rather than to advocate what has been described as a 'hands-off' approach.[40] There are a number of practical instances which support the view that a system of sustainable utilization of wetland areas, particularly if designed and operated with the interests of the local community in mind, may stand a better chance of preserving their ecological character in the long term than a regime which seeks to exclude altogether the possibility of human impact.[41]

Equally, it is important to note that the incorporation within the Convention of a mechanism for ongoing review of its implementation has provided the means for clarifying some of the vaguer aspects of the text and, indeed, adapting them to evolving environmental challenges. Particularly significant in that regard has been the attention paid by the Conference of the Parties to the elusive concept of 'wise use'. Following consideration of this issue at earlier meetings, the 1987 Regina Conference established by way of definition [42] that:

> 'The wise use of wetlands is their sustainable utilization for the benefit of humankind in a way compatible with the maintenance of the natural properties of the ecosystem.'

In addition, certain terms from within this definition were themselves defined, so that 'sustainable utilization' is understood to mean:

> '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.'

In this way the provisions of Article 3(1) have both been clarified and at the same time brought into harmony with the basic philosophy of the World Conservation Strategy. It might even be suggested that the vagueness of the original text has proved something of an advantage in this regard, since it has facilitated the progressive development of the Convention in the light of evolving principles of conservation theory. Indeed, the observer from UNEP remarked at the 1993 Kushiro Conference [43] that 'the Ramsar concept of

"wise use" coincided perfectly with the aims and objectives of Agenda 21', the programme of action adopted at the Rio Earth Summit.

The Regina Conference did not content itself with mere definition of the wise use concept, however, but went on to establish some valuable guidelines for its practical application. These were then elaborated much more fully at the 1990 Montreux Conference [44] and supplemented by detailed additional guidance in Kushiro.[45] The guidelines envisage the establishment of national wetland policies, together with the implementation of priority measures both at national level and at particular wetland sites. The policies in question should be directed, *inter alia*, towards the improvement of institutional arrangements, the review of existing policy and legislation, and the development of knowledge and awareness of wetland values. More specifically, States should undertake the preparation of national inventories of wetlands and the identification of the benefits and values of individual sites, the definition of conservation and management priorities for each site in accordance with the needs of the country in question, the conduct of environmental impact assessments before the approval, and during the execution, of development projects together with the full implementation of recommended conservation measures, the use of development funds for conservation projects and the regulated utilization of the natural elements of wetland systems so as to avoid over-exploitation. Action should also be taken regarding the international interchange of experience and information, the training of appropriate staff, the review of traditional techniques of wetland utilization and the elaboration of pilot projects to demonstrate wise use.

These developments have done much to clothe the bare language of the text with real substance, and, outside the formal structure of the Ramsar Convention, IUCN has undertaken further studies aimed at elaborating a coherent and comprehensive strategy for wetland conservation.[46] Thus, although the obligation generated by Article 3(1) still cannot be regarded as particularly specific or rigorous in purely legal terms, it does at least now provide the basis of a reasonably clear policy framework for the conservation of wetland areas. This in itself represents a considerable achievement.

Apart from the central 'wise use' obligation, the Convention establishes a number of other duties regarding wetland areas. By virtue of Article 4(1) each party is to promote the conservation of wetlands and waterfowl by the establishment of nature reserves and the provision of adequate wardening arrangements. Under Article 4(3), (4) and (5), duties arise to encourage research and the exchange of information regarding wetlands and their flora and fauna, to endeavour through management to increase waterfowl populations on appropriate wetlands and to promote the training of personnel competent in the fields of wetland research, management and wardening. It is interesting to note that a number of

these obligations have now effectively been woven in to the concept of wise use by virtue of the Montreux guidelines on its application.

It can therefore be argued that, notwithstanding the distinctly unpromising language in which the substantive obligations of Articles 3 and 4 are cast, the Convention has in practice proved a most valuable vehicle for the articulation of policy frameworks aimed at the conservation of wetland sites generally. It is of course clear that much more needs to be done in the realms of implementation - it emerged from the discussions at Kushiro, for example, that only two parties (Canada and Uganda) have formally adopted national wetland policies so far, though there was some debate as to whether these were better articulated as part and parcel of broader environmental strategies.[47] Resolution RES. C.5.6 therefore called upon the parties to implement the wise use guidelines in a more systematic and effective manner, and to strengthen international cooperation with a view to providing assistance in that regard to developing countries and those whose economy is in transition.[45] It is also to be remembered that additional provision is made in the Convention for the designation and protection of sites of particular international importance, and it is to that question that we should now turn.

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6. ADDITIONAL OBLIGATIONS ATTACHING TO LISTED WETLANDS

As indicated above, Article 2 of the Convention makes provision for the maintenance by the Convention Bureau of a List of Wetlands of International Importance, and it is only to be expected that the international significance of such sites should have attracted a special regime of protection. In point of fact, the additional duties which apply to listed sites are not extensive in number, though they are certainly of sufficient importance to warrant separate treatment. The principal obligation derives from Article 3(1), which states that the 'Contracting Parties shall formulate and implement their planning so as to promote the conservation of the wetlands included in the List . . .' It is noteworthy that this obligation differs in a number of respects from that which is applicable, by virtue of the same article, to wetlands generally.

The first point is that the obligation in relation to listed sites is expressed in terms of 'conservation' rather than 'wise use'. The term 'conservation' is not defined in the text, nor has it been the subject of interpretation by the Conference of the Parties. Indeed, it has been pointed out that although this term is not infrequently employed in international conventions it is seldom defined and there is considerable scope for uncertainty regarding its precise meaning.[49] On closer analysis, however, it appears that much of this uncertainty relates to the meaning of more specific, technical concepts, such as maximum

or optimum sustainable yield, devised to regulate the direct exploitation of particular species. At a more general level it might plausibly be argued that the basic concept of conservation is sufficiently clear and well understood to render further elaboration superfluous. A convenient definition is that provided for the purposes of the World Conservation Strategy,[50] namely:

> ‘the management of human use of the biosphere so that it may yield the greatest sustainable benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations.’

It will be apparent that these words are almost identical to those adopted by the 1987 Conference of the Parties to the Ramsar Convention in defining thc expression ‘sustainable utilization’, which has been accepted as the cornerstone of the notion of wise use. It seems clear, therefore, that there is rather little room for distinction between the ‘conservation’ and ‘wise use’ concepts.[51] Even though traditional principles of treaty interpretation would normally require the attribution of different meanings where different terms are used in this way,[52] the evolving practice of the contracting parties appears in large part to have displaced that inference. It may also be significant that Article 4(1) requires the parties to:

> ‘promote the conservation of wetlands and waterfowl by establishing nature reserves on wetlands, whether they are included in the List or not . . .’

This seems to confirm that ‘conservation’ does not connote a more rigorous form of protection reserved exclusively for listed sites.

There are, however, other points of distinction between the obligations which the Convention establishes in respect of listed and unlisted wetlands. First, the obligation in respect of wetlands generally is only to promote their wise use ‘as far as possible’, whereas no such qualification applies in respect of listed sites, the obligation to promote the conservation of which must therefore be regarded as absolute. A second point of contrast concerns the territorial scope of the two sets of duties. While the general obligation of wise use imposed upon the parties clearly applies only to wetlands ‘in their territory’, the wording of Article 3(1) strongly suggests that the duty in relation to listed sites is not so limited – the parties must simply ‘. . . formulate and implement their planning so as to promote the conservation of the wetlands included in the List.’[53] The implication of this is that the parties undertake some element of collective responsibility for all designated sites. This can presumably be rationalised on the basis that although ‘[t]he inclusion of a wetland in the List does not prejudice the exclusive sovereign rights of the Contracting Party in whose territory the wetland is situated’[54] the international importance which such sites*ex*

hypothesi possess is at least sufficient to cause them to be regarded as resources of ‘common concern’ to the international community as a whole.[55]

It is a little more difficult, however, to indicate the precise content of the duty owed by the parties in respect of listed wetlands outside their own territory. At the very least, there must be some obligation to avoid causing significant damage to such sites. This might arise, for example, in a case where the construction of a dam or other engineering works in one State affects the hydrological regime of a listed wetland in a neighbouring country,[56] or where pollution emanating from one party’s territory damages a listed wetland in another’s. Naturally such obligations may also exist independently of the Ramsar Convention. It is clear, for example, that principles governing the question of liability for transboundary pollution already form part of customary international law,[57] but the precise nature and content of the relevant rules is not easy to state with certainty and there are remarkably few examples of successful resort to such principles in international litigation.[58] Although the duties arising under the Convention are scarcely any clearer, the Conference of the Parties at least provides an additional forum for the airing of grievances, and at Groningen the delegation of Sweden noted [59] that one of the most serious problems it faced was the acidification of its lakes as a consequence of transboundary pollution. It added that much of the work of Ramsar would be wasted unless international agreement on emissions was reached. The 1979 Convention on Long-Range Transboundary Air Pollution [60] was in fact already in force at that time but, as was pointed out at the Conference itself, that convention is only a framework agreement providing. the most generalised of obligations.[61] It is therefore encouraging to note that since 1984 a sequence of Protocols have been concluded with a view to establishing specific controls over emissions of sulphur, nitrogen oxides and volatile organic compounds,[62] and that the former two are already in force.

In addition to any obligation not to harm listed sites by means of pollution there is, as Lyster points out,[63] an equally strong case for arguing that parties to the Ramsar Convention must avoid the funding of development projects which would be likely to prove damaging to their ecology. Wetlands are, of course, particularly vulnerable to the dam-building and irrigation schemes traditionally so favoured by the development agencies.[64] At Regina, the parties accordingly adopted a recommendation [65] expressly urging such agencies, which were defined to include ‘all banks, government institutions and international governmental agencies (such as the European Economic Community) with a significant role in providing funds to countries for their development’ to adopt coherent development policies directed at sustainable utilization, wise management and conservation of wetlands and to develop guidelines to ensure the integration of environmental aspects in all stages of the project cycle, with particular reference to prior environmental impact assessment. It

further called upon the parties themselves to require their own agencies to adhere to this strategy. A subsequent recommendation adopted at Montreux [66] called upon the parties to pursue Recommendation 3.4 in a more rigorous and systematic fashion, and specifically urged them to ensure that their own representatives to the Multilateral Development Banks adopted voting standards in support of wetland conservation.

The obligation in respect of listed sites can therefore quite readily be interpreted to impose upon all parties a duty to avoid positively causing them harm. It could also be argued that it goes beyond that and embraces a collective duty to take affirmative steps for their protection. In this context it would seem even more difficult to set limits to the content of the duty, but it is encouraging to note that various developments have occurred which indicate that the parties are prepared to take such action. Perhaps the most significant of these occurred at Montreux in 1990 with the establishment of a global Wetland Conservation Fund [67] for technical assistance to developing countries. Although the purposes of the Fund are not limited exclusively to the protection of listed sites,[68] that seems likely to represent a principal focus of its activities.

Yet whatever the collective obligations of the parties generally in relation to listed wetlands, it remains the case that the primary responsibility in that regard must inevitably rest with the particular party in whose territory the site in question is located. This point is underlined by the fact that an additional duty is imposed upon each party with respect to listed sites in its own territory. This arises under Article 3(2), which provides:

> ‘Each Contracting Party shall arrange to be informed at the earliest possible time if the ecological character of any wetland in its territory and included in the List has changed, is changing or is likely to change as the result of technological developments, pollution or other human interference. Information on such changes shall be passed without de lay to the organization or government responsible for the continuing bureau duties specified in Article 8.’

Despite the element of urgency plainly explicit in this duty of notification, it would seem [69] that in practice most parties have preferred to convey details of such changes through the medium of their national reports to the triennial meetings of the Conference of the Parties, but the Ramsar institutions have in any event not regarded themselves as limited to information obtained in this way when carrying out their functions regarding the implementation of the Convention. Clearly, non-governmental organisations may have the potential to fulfil a useful ‘watchdog’ role in this context, and the recently-established Standing Committee has discussed ways to react to reports of changes in the ecological character of listed wetlands ‘from whatever source such reports might come’[70]. This

approach now appears to have been endorsed by the Conference of the Parties. Montreux recommendation REC. C.4.8 instructed the Bureau to maintain a record (now known as the Montreux Record) of such changes, after consultations with the parties concerned, and a detailed procedure was established at Kushiro for the performance of this task.[71] Initially the Record was to comprise those sites listed in document INF.C.4.18, which was compiled on the basis of national reports submitted to the Montreux meeting. Thereafter, the procedure for adding additional sites is triggered whenever:

> 'It comes to the attention of the Convention Bureau that the ecological character of a Ramsar site may have changed, may be changing or may be likely to change. . . .'[72]

It is important to note, however, that the Bureau is then expected to enter into consultations with the State in whose territory the site is located, and that the site may not formally be added to the Record without that State's agreement. It is evident even in the early stages of the operation of this procedure that States have adopted markedly different attitudes towards the inclusion of their sites within the Record.[73] A further problem in this context is that there appears to be a degree of uncertainty as to the precise meaning of the expression 'ecological character', as well as of the notion of 'change' (or 'likely' change) in that regard, and the Kushiro meeting called for further studies to be carried out with a view to the elaboration of guidance on these questions.[74] It is to be hoped that any guidelines which emerge will reflect a precautionary approach to the problem, particularly in view of the fact that nothing in the nature of an infractions procedure follows from inclusion in the Record.

As regards the exact content of the substantive obligations owed by the parties in respect of the conservation of their own listed sites, the position is unclear. While the Convention clearly aspires to prevent the deterioration of listed sites and has, indeed, already set in motion various procedures in order to achieve that objective,[75] that is not the same as saying that each party is under a formal, legal obligation to prevent any such deterioration in respect of its own designated wetlands.

It is the case that the Assistant Secretary-General appeared to suggest at the Groningen Conference that the interaction between the various provisions of the Convention regarding listed sites did in fact imply an obligation to avoid changes in their ecological character.[76] Lyster, by contrast, takes the view[77] that this combination of duties:

> ‘does not legally oblige Parties to ensure that wetlands included in the List are actually protected nor does it oblige them to prohibit activities which will change, or are likely to change, their character.’

It is submitted that neither interpretation is wholly convincing. On the one hand, the Convention seems clearly to stop short of imposing a duty to avoid or prevent any change in the ecological character of listed sites, since a procedural obligation to provide notification of such changes cannot be equated with a substantive obligation to prevent them from occurring. On the other, a State which permits the total ecological degradation of its listed sites can scarcely be said to have promoted their conservation. The appropriate interpretation must therefore be somewhere between these two extremes, and it may be that guidance on this question can be derived from the deliberations of the Conference of the Parties on the issue of ‘wise use’. If the wise use of wetlands generally involves their sustainable utilization in a way which is compatible with the maintenance of the natural properties of the ecosystem, as indicated above, then it is certainly arguable that the duty regarding the conservation of listed sites requires their sustainable utilization in such a way as to maintain those natural properties of the ecosystem which caused the site to qualify for designation in the first place. In other words, each party has, at the very least, an obligation to ensure that it is not responsible for bringing about a situation whereby its listed sites cease to satisfy the criteria which govern the question of eligibility for listing. Certainly, Lyster’s view does not sit easily with the terms of Article 2(5), which provides, *inter alia* that any party has the right, in its urgent national interests, to delete or restrict the boundaries of wetlands included by it in the List. Such a power of deletion would scarcely be needed unless the maintenance of a particular site in the List entailed some substantive conservation commitments capable of becoming incompatible with the national interest. It therefore becomes necessary to examine the question of the listing criteria in more detail.

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7. THE DESIGNATION OF SITES OF INTERNATIONAL IMPORTANCE

Article 2(1) provides that each party is to designate suitable wetlands within its territory for inclusion in the List of Wetlands of International Importance and Article 2(2) establishes the broad criteria to be applied in this selection process, namely:

> ‘Wetlands should be selected for the List on account of their international significance in terms of ecology, botany, zoology, limnology or hydrology. In the first instance wetlands of international importance to waterfowl at any season should be included.’

Two observations may be made regarding this provision. The first is that it emphasises once again the underlying preoccupation with the conservation of waterfowl which lay at the heart of the Convention as originally conceived. Reference has already been made to the obvious risk that this consideration might come to exert an excessive and unbalancing influence on the Convention's development. Secondly, while it is perhaps understandable that the relevant criteria were expressed at a rather high level of generality in the original text, there was clearly a need for the subsequent elaboration of more specific guidance regarding the question of suitability for listing.

Fortunately, these points appear to have been taken on board at an early stage, and, at a Conference held at Heiligenhafen even before the Convention entered into force, certain more detailed principles were agreed to govern the question of listing.[78] These have since been reconsidered and revised at formal meetings of the Conference of the Parties.[79] At Montreux, it was recommended that further amendments to the criteria should be avoided as far as possible so as to facilitate a definite basis for uniform application of the Convention.[80] The latest version incorporates (i) criteria for assessing the value of representative or unique wetlands; (ii) general criteria for using plants or animals to identify wetlands of importance; and (iii) specific criteria for using waterfowl to identify wetlands of importance. These criteria are supported by guidelines concerning their application. There can be no doubt that they have been of considerable value in fleshing out the bare bones of the original treaty text. It is also interesting to note that the list of criteria, which in the earlier versions featured those relating to waterfowl as the first item, has subsequently been re-ordered so that the latter now follow the criteria which reflect more generalised wetland values. Furthermore, the Kushiro Conference called in addition for the elaboration of guidelines on wetlands of international importance as habitat for fish.[81] Equally significant is the fact that the existing guidelines now include a statement that:

> 'A wetland could be considered of international importance under Criterion 1 if, because of its outstanding role in natural, hydrological, biological or ecological systems it is of substantial value in supporting human communities dependent on the wetland.'

They add that:

> 'The support, in all its aspects, should remain within the framework of sustainable use and habitat conservation, and should not change the ecological character of the wetland.'

Once again, this has helped to move the Ramsar Convention a little more clearly into the mainstream of modern conservation theory, as developed by the World Conservation Strategy and later instruments.

Under Article 2(4), an obligation is imposed on each party to designate, upon signature or acceptance, at least one wetland for inclusion in the List. Article 2(5) then provides that parties may at any time designate additional wetlands or extend the boundaries of those already listed. Clearly the impact of the Convention is likely to be in large measure dependent upon the willingness of States to go beyond the minimum obligation in proposing sites for inclusion in the List. Here the position is reasonably encouraging, and by the time of the recent Kushiro Conference the 77 contracting parties had between them nominated some 610 sites occupying almost 38 million hectares in total,[82] ranging from the tiny 1 ha. site of Hosnie's Spring on Christmas Island, listed by Australia, to the massive 6 million ha. of Queen Maud Gulf in Canada. The number of sites has grown steadily, with Italy, Australia and the United Kingdom, for example, each having supplemented their original listings on over ten separate occasions and each having now designated 40 or more wetlands in all. Even those States which have not gone beyond the minimum obligation of listing one site can still be regarded as having made a significant contribution to the advancement of the Convention's objectives in many cases. The Mauritanian listed site of Banc d'Arguin, for example, constitutes a major tidal zone area occupying some 1.2 million ha. and is important as a southern wintering or stopover site for migratory shorebirds, while Azraq Oasis in Jordan is reckoned to be that country's only wetland of international importance to waterfowl.[83] It has nevertheless been pointed out [84] that there is scarcely room for complacency as many of the most important and vulnerable wetland sites, particularly in the tropics, still await Ramsar designation.

One important point to note in this context is that the terms of the Convention clearly envisage that the Ramsar list will be compiled on the basis of unilateral designations by the parties. It is obvious that such an approach runs the risk both of the listing of sites which are not of genuine international importance and, conversely, of the failure to designate sites which are. As an example of the former, it appears from the conclusions of an application of the Monitoring Procedure in Pakistan in 1990 that four of the sites designated by that country upon acceptance in 1976 cannot really be described as worthy of global concern.[85] Admittedly, these designations occurred before the formal adoption of listing criteria, the progressive elaboration of which should help to prevent such incidents in the future. At Kushiro, furthermore, a resolution was adopted establishing a procedure for the initial designation of sites for the List, as well as a review procedure to cover any sites which may not, at the time of their designation, genuinely have qualified for inclusion.[86]

As to the more damaging possibility of failure to designate sites which actually are of international importance, it is undeniable that the Ramsar system is wholly dependent upon the willingness of individual States both to become parties to the Convention in the first place and to incorporate individual wetlands in the List. The Ramsar institutions have never been hesitant to offer encouragement in either respect, however, and have frequently called upon the governments of countries from regions which are underrepresented in the list of parties to consider adherence to the Convention.[87] Equally, attempts have been made by organizations such as ICBP and IWRB to develop 'shadow' lists of wetlands which satisfy the listing criteria and existing parties have often been urged to increase their number of listed wetlands both in general terms and with reference to particular sites, as well as to consult 'relevant expert bodies including non-governmental organizations, to assist them in the identification of potential Ramsar sites in their territories. . . .' [88]

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8. DELETION AND RESTRICTION OF LISTED SITES

The fact that a particular wetland has been designated as a Ramsar site does not, of course, guarantee it that status in perpetuity. Quite apart from the possibility that the State which listed it might subsequently denounce the Convention entirely, Article 2(5) provides that any party has the right, 'because of its urgent national interests', to delete or restrict the boundaries of any wetland it has previously listed. While the inclusion of such a provision in the original text was no doubt inevitable, it has to be admitted that it represents a potentially serious loophole in the Convention's protective regime. Though the requirement of urgent national interest appears to be a safeguard, it seems likely that in practice parties will be able to claim a virtually unfettered margin of appreciation regarding such matters. Article 2(6) does require a party, when exercising its right to change entries in the List, to 'consider its international responsibilities for the conservation, management and wise use of migratory stocks of waterfowl', but this provision appears to be too weakly and narrowly drafted to be of much value. On the other hand, the deletion or substantial diminution of a listed site would at least be likely to attract concern or adverse comment from other parties and it is not wholly inconceivable that a State might be persuaded to think again as a result of such pressure. Indeed, a case could be made for the formalisation of such a process through the imposition of a requirement of the giving of a period of notice before the deletion or restriction of a listed site. Since this period would only serve to create an opportunity to persuade the State concerned to change its mind, it should not be regarded as unduly prejudicial to its 'exclusive sovereign rights' in respect of wetlands within its territory', which are expressly confirmed by Article 2(3). It is also to be remembered that a State which wishes to withdraw from the Convention entirely may not do so until it has been a party for at least five years, and then only upon four months

notice,[89] so the imposition of temporal restrictions upon States which are seeking to extricate themselves from obligations affecting particular sites can hardly be regarded as unthinkable.[90] Nor need any period of notice preceding the deletion of a listed site be especially long, since the establishment in 1987 of a Standing Committee provides a mechanism whereby such matters might be considered between meetings of the Conference of the Parties.[91] The introduction of a principle requiring the giving of notice could be effected by means of a resolution of the Conference, though, if it were thought desirable to make this mandatory, an amendment of the Convention would almost certainly be required. In point of fact, the problem is not a pressing one at present, as there appears to be no case so far where any party has sought to delete a wetland from the List.[92] There have been examples of the restriction of Ramsar sites, but in many cases the diminution has been small and sometimes it has been more than compensated by increases elsewhere.[93] In that context the Convention itself establishes one potentially significant safeguard which applies in any case of deletion or restriction of a listed site. Article 4(2) provides:

> ‘Where a Contracting Party in its urgent national interest deletes or restricts the boundaries of a wetland included in the List, it should as far as possible compensate for any loss of wetland resources and in particular it should create additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original habitat.’

The implications of this provision have been carefully considered in a perceptive paper [94] prepared for the Montreux Conference by Cyrille de Klemm, legal advisor to the Ramsar Bureau. It may be sufficient to point out here that there is a curious element of asymmetry in the obligation, in that the specified form of compensation for any reduction in the area of a listed wetland appears to be not in the addition to the List of alternative sites, but rather in the creation of additional nature reserves. This is surprising in that it appears to involve the conflation of two obligations which are entirely independent under the Convention. The obligation to designate wetlands for the List arises under Article 2(1), whereas the obligation to ‘promote the conservation of wetlands and waterfowl by establishing nature reserves’ arises under Article 4(1) and applies ‘whether they are included in the List or not’. The Convention in fact imposes no obligation upon the parties to ensure that their listed sites are designated as nature reserves, nor, conversely, to ensure that their wetland reserves are included in the List, which is reserved for sites of truly international significance.

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9. IMPLEMENTATION MECHANISMS

Even in cases where conservation treaties contain appropriate, detailed and rigorous substantive obligations - and it would be difficult to contend that the bare text of the Ramsar Convention fully satisfied that test - they are unlikely to achieve their objectives unless they make provision for effective mechanisms for the implementation of those obligations. The arrangements originally envisaged in the Convention were extremely limited, and would not have given rise to great optimism in the absence of further development through the subsequent practice of the parties.

The principal provisions establishing mechanisms for implementation are Articles 5 and 6, which envisage cooperative action by the participating States both through and independently of meetings of the Conference of the Parties. Article 5 provides:

> ‘The Contracting Parties shall consult with each other about implementing obligations arising from the Convention especially in the case of a wetland extending over the territories of more than one Contracting Party or where a water system is shared by Contracting Parties.
>
> They shall at the same time endeavour to coordinate and support present and future policies and regulations concerning the conservation of wetlands and their flora and fauna.’

The general duty of consultation is vaguely expressed, but to the extent that it entails the exchange of information and expertise, it reinforces the provisions of Article 4(3), which deal specifically with such matters. Hopefully, such consultations will in due course lead to the coordination and implementation of conservation policies and regulations, though it is to be noticed that the only actual obligation in that regard is one of ‘endeavour’.[95] The collaborative effort envisaged by Article 5 may operate on a variety of levels. Individual States may have much to gain from the sharing of experience concerning legal, administrative and scientific approaches to wetland conservation and in that context the Bureau identified the ‘twinning’ of sites in different countries as a promising idea in its report to the Kushiro Conference.[96] A significant example of such an approach occurred in 1992 with the twinning of the Camargue Ramsar site in France and the Danube Delta in Romania. Other forms of bilateral cooperation which are likely to prove particularly beneficial involve links between developing nations and their more developed counterparts in the Northern hemisphere. At Kushiro, for instance, details were given of a joint project between Mauritania and the Netherlands concerning the wise and sustainable use of the Banc d’Arguin through the traditional fishing methods of the local Imraguen people.[97] In addition, there is much to be said for consultation and cooperation between the States of a particular region, since they are likely to have much in common, both in political and ecological terms. Such cooperation is now in fact an established feature of the Ramsar

system, and regional seminars and meetings are held with increasing frequency.[98] In some cases this has led to the development of regional initiatives, such as MedWet, a cooperative programme for Mediterranean wetland conservation, funded by the EC with the participation of five of its member States, the Ramsar Bureau, IWRB and WWF.[99] Committee membership is also generally based on regional representation, the recognised regions for such purposes being Africa, Asia, Eastern Europe, Northern America, Oceania, Southern America and Western Europe.[100] A legitimate question has been raised as to whether the existence of two European regions can really be justified, and it is clear that it owes more to short-term political considerations than to long-term ecological realities, but it was decided at Kushiro to maintain the present structure at least for the time being.[101]

Article 5 indicates that the duty of consultation applies ‘especially’ in the case of transboundary wetlands and shared water systems. A general duty of cooperation embracing prior notice, consultation and negotiation in the case of transboundary environmental risk is widely recognised in international law,[102]and is particularly well established in the context of international watercourses.[103] There have been a number of examples of cooperative arrangements between Ramsar States regarding shared wetlands and watercourses, including those between Austria and Hungary over Neusiedlersee/Lake Ferto and between Denmark, Germany and the Netherlands over the Wadden Sea, and further instances from other regions were cited at Kushiro.[104] The Bureau had previously been instructed at the Montreux Conference to gather information on shared wetlands and water systems which contained at least one listed site and to draw up an inventory of boundary water treaties to which Ramsar States were party with a view to establishing their relevance for the implementation of Article 5.[105]

A more difficult question concerns the international legal status of the living resources of wetland ecosystems, such as migratory waterfowl,[106] though it is equally clear, and recognised in Article 5, that international arrangements for their protection and conservation are likely to be necessary. With that in mind, the Montreux Conference also instructed the Bureau to endeavour to identify shared migratory animal populations which might require joint conservation measures.[107] Certain parties have, in fact, already embarked upon collaborative efforts of the kind envisaged. An International Conservation Plan for the Greenland White Fronted Goose, involving conservation measures at wintering and breeding grounds and a cooperative system of monitoring between Iceland, Greenland, the UK and Ireland, appears to have achieved some success in restoring the numbers of that particular species and a North American Waterfowl Management Plan was agreed in 1988.[108] In this context it is clear that the Ramsar system has much to gain from developing links with the institutions of other conservation treaties, most notably the Bonn Convention,[109] within the framework of which attempts are already under way to

draft agreements concerning the critically endangered Siberian crane, as well as the waterfowl of the Asian/Australasian and African/Eurasian regions. The report of the Bureau to the Kushiro conference duly recorded an extensive catalogue of contacts with the Secretariats of other treaties aimed at the coordination of conservation efforts.[110]

The other main mechanism for the implementation of the substantive obligations which the Convention imposes operates through the Conference of the Contracting Parties, established by Article 6(1). The 1987 amendments confirmed that the essential function of this body is 'to review and promote the implementation' of the Convention, a point which had merely been left to be assumed in the original text. The detailed aspects of this function are then itemised in Article 6(2) as being:

> '(a) to discuss the implementation of the Convention;
> (b) to discuss additions to and changes in the List;
> (c) to consider information regarding changes in the ecological character of wetlands included in the List provided in accordance with paragraph 2 of Article 3;
> (d) to make general or specific recommendations to the Contracting Parties regarding the conservation, management and wise use of wetlands and their flora and fauna;
> (e) to request relevant international bodies to prepare reports and statistics on matters which are essentially international in character affecting wetlands.'

The formulation of general recommendations is for the most part a relatively uncontroversial issue, and the foregoing discussion highlights a number of examples of the adoption of recommendations relating to the interpretation and implementation of particular provisions of the Convention and the development of policy concerning wetland conservation generally. The 1987 amendments inserted one additional sub-paragraph in Article 6(2), namely:

> '(f) to adopt other recommendations, or resolutions, to promote the functioning of this Convention.'

This new provision has the merit of being a 'catch-all' authorization for any measures that would further the implementation of the Convention, as well as introducing the idea of the adoption of resolutions, i.e., measures which may go beyond mere exhortation. It is noticeable that the Conference has chosen to cast a number of its recent pronouncements in the form of resolutions,[111] including those relating to the implementation of the guidelines on wise use, the application of the Ramsar listing criteria and the interpretation of certain articles.[112] This form of instrument has also been used for the purpose of

establishing a broad prospective agenda for activities under the Convention. At the Montreux Conference, an attempt was made to articulate a clear framework for the implementation of the Convention over the triennium l99l-93 [113] and a similar blueprint for 1994-96 was agreed at Kushiro.[114] The relevant resolution comprised a basic mission statement (the 'Kushiro Statement'), a broad description of the Convention, its institutions and the key commitments it contains, and a framework for the activities of the Bureau.

While much has undeniably been achieved through the meetings of the Conference in terms of the fostering of awareness and appreciation of wetland values and the elaboration of guidance upon such matters as the concept of wise use and the development of national policies for wetland conservation, it remains the case that the principal challenge facing the Convention is likely to be seen by many as lying in its ability to tackle the concrete problem of detrimental change in the character of particular wetlands, and especially those included in the List. The Conference was clearly expected from the outset to have a role in this context through its power under Article 6(2)(c) to consider information relating to changes in the character of Listed wetlands. As we have seen,[115] such information might originate from a variety of sources, though the Convention plainly envisaged that the principal provider would be the relevant State itself, pursuant to its duty under Article 3(2). In practice, this provision does not seem to have been utilized greatly in the manner anticipated, and States have tended to opt to submit details of ecological change through the medium of their national reports to the Conference outlining measures taken in implementation of the Convention. A major potential difficulty here is that there is in fact no specific obligation in the text requiring the parties to submit such reports at all.[116] It was, however, recognised at an early stage that this was a vital part of the monitoring process, and 25 of the then 28 parties did actually respond to a request to present such reports to the first meeting of the Conference of the Contracting Parties.[117] The Groningen Conference called upon all parties to submit such reports to the Bureau at least six months prior to the holding of each meeting of the Conference, and an outline format for such reports was also agreed.[118] Despite these exhortations, the response rate has in fact tended to decline over the years and, of the 77 parties at the time of the Kushiro meeting, only 'a small number' submitted their reports in compliance with the December deadline.[119] By late April, when the Bureau's own overview report was compiled, some 38 national reports had been received and a few more arrived before the Conference itself. These figures suggest that there is room for significant improvement in the parties' performance in this regard.[120] It is also fair to point out, however, that almost one-third of the total of 77 parties had acceded to the Convention in the period since the 1990 Montreux meeting, and States in this group are therefore likely to have had little opportunity to prepare the data upon which such reports might be based.[121]

As seen above, the collation of information regarding listed sites where changes in ecological character have occurred or are likely to occur has now been formalised by means of the establishment of the Montreux Record. At Montreux itself, some 44 sites were adopted for inclusion within the Record, though one site in the United Kingdom was subsequently removed with the approval of the Standing Committee [122] and the Kushiro Conference also endorsed the proposal of the Icelandic delegation that its two sites at Myvatn-Laxa and Thjorsarver be deleted in view of measures taken by the Government to safeguard them.[123] The remaining number of sites on the Record would appear, however, to fall some way short of the 10% of all listed sites estimated by the Bureau to be undergoing changes in ecological character, and even further short of the 38% estimate of Friends of the Earth.[124] Part of the explanation of these discrepancies may lie in the fact that the Bureau's estimate was based on details recorded in the national reports submitted for the Kushiro Conference.[125] Given the rather poor submission rate, details concerning some threatened sites will presumably never have been provided. Even where information was forthcoming, there will in some cases probably have been insufficient time to complete the formalities required for inclusion in the Record of the sites in question. It is also important in this context to recall the fact that such a step can only be taken with the consent of the State in whose territory the site is situated. This might be seen as a weakness, though given that such inclusion is less likely, at least in the first instance, to result in censure than in encouragement and assistance, this point should perhaps not be overstated. Even countries which are unlikely to benefit from the financial assistance available under the Ramsar system have shown themselves willing to admit to the existence of problems affecting their listed sites; the United States, for example, indicated at Kushiro that it had no objection to the inclusion of the Everglades in the Montreux Record.[126] Japan, by contrast, appeared determined to resist the pressure from local NGOs to permit the inclusion of Lake Utonai, insisting that there was no evidence of ecological change there at present. The extent of the public discussion of this case, however, seems certain to ensure that a close eye will be kept upon developments at this site, despite its formal absence from the Record.[127]

Of course, the mere compilation of a catalogue of sites undergoing changes in their ecological character can only constitute a first step towards the process of remedial measures, though the only authorization in the text for further action in this regard would seem to lie in the power of the Conference under Article 6(2)(d) to make specific recommendations to the parties for the conservation of their wetlands. Some fairly cautious instances of use of this power occurred at Groningen [128] and the Conference appears to have grown progressively bolder at each subsequent meeting. At Regina, for example, the Government of Jordan was pointedly urged to conduct a proper assessment of the environmental impact of the use of water from Azraq to supply the city of Amman with drinking water, and to establish a long-term water resources plan for the site. It was further

suggested that pumping be reduced by at least 50% until the study was completed.[129] Another recommendation urged the parties generally not merely to take swift and effective action to restore the value of specified degraded Sites, but also to report to the Bureau the action taken.[130] The Montreux and Kushiro meetings produced lengthy lists of recommendations regarding particular sites, some calling for very specific remedial measures to be undertaken.[131]

It is clear that the Convention finds itself upon sensitive territory here, as the right of each State to exploit its own natural resources is one of the most highly cherished aspects of national sovereignty [132] and any hint of external interference in such matters is customarily strongly resented. It is perhaps to be regarded as a major strength of the Ramsar system, therefore, that it has chosen to rely principally upon the carrot rather than the stick when developing procedures for implementation.

A particularly significant development in this regard occurred with the endorsement at Montreux [133] of the Standing Committee's proposal for a Monitoring Procedure designed to assist parties in the management of threatened listed sites. This procedure has been applied in a number of cases including Leybucht in Germany, Lakes Oubeira and Tonga in Algeria, Saint Lucia in South Africa, the Dee Estuary in the UK and Bañados del Este in Uruguay.[134] According to the Bureau,[135] it 'usually takes the form of a site visit which produces a detailed analysis of the situation and recommendations for future action'. Such recommendations have included advice that the boundaries of certain protected areas be extended, that an environmental impact assessment be carried out before the commencement of a proposed canalisation project, that marsh drainage canals be filled in or water drawn from aquifers to preserve the hydrological regime of particular wetlands, and that hunting activities be curbed or, by contrast, allowed in moderation in order to restrain uncontrolled poaching. It is recognised that in many cases, and particularly in developing countries, the feasibility of such follow-up action is likely to be dependent upon the availability of financial assistance, and the Bureau regards it as part of its function to assist in this context if possible.[136] The question of finance plainly lies at the heart of many conservation efforts, and is discussed below in so far as it affects the Ramsar Convention. Prior to that, however, it is necessary to look briefly at the issue of the institutional arrangements adopted under the Convention, which are equally fundamental to the question of implementation.

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10. INSTITUTIONAL ARRANGEMENTS

It has become apparent in recent years that the prospects of success of any treaty which has the protection of the environment as its principal objective will depend to a considerable extent upon the effectiveness of the institutional mechanisms which it incorporates.[137] While the drafters of the Ramsar Convention are to be congratulated on being amongst the first to perceive this need,[138] it soon became clear that if their creation were to have any chance of fulfilling its potential, arrangements would be required of a far more elaborate kind than anything they could reasonably have envisaged.

The Convention itself actually made provision for the creation of only one new institution - the Conference of the Contracting Parties. To be strictly accurate, Article 6(1) merely provided that:

> 'The Contracting Parties shall, as the necessity arises, convene Conferences on the Conservation of Wetlands and Waterfowl.'

It is to be noticed that these events were not in fact labelled Conferences of the Contracting Parties as such. The first Wetlands Conference following the Convention's entry into force was duly held at Cagliari, Italy, in November 1980. The second meeting, held at Groningen in the Netherlands in May 1984, was referred to as a Conference of the Contracting Parties, however, and all the later meetings have been similarly titled. The 1987 amendments to Article 6(1) do in fact expressly now refer to these meetings as Conferences of the Contracting Parties, as well as regularising their occurrence by providing that ordinary meetings shall no longer be convened 'as the necessity arises', but rather 'at intervals of not more than three years, unless the Conference decides otherwise'. Such meetings have been duly held in accordance with this timetable ever since Groningen. The functions of ordinary meetings of the Conference have already been described in the context of implementation mechanisms. Provision is also made in the amended Article 6 for the holding of extraordinary meetings at the written request of at least one third of the Contracting Parties. The principal reason for convening an extraordinary meeting would be for the adoption of amendments to the Convention in accordance with Article 10 *bis*,[139] but there would seem to be no reason why such meetings could not be convened for other purposes also.

The only reference in the text of the Convention to the question of participation in meetings of the Conference is to be found in Article 7(1), which states that:

> 'The representatives of the Contracting Parties at such Conferences should include persons who are experts on wetlands or waterfowl by reason of knowledge and experience gained in scientific, administrative or other appropriate capacities.'

It is apparent that this provision expressly neither authorises nor excludes the presence of other participants, but, given the substantial role of NGOs in the Convention's formative stages, it would have been surprising had they been denied participation in the implementation phase. Given, furthermore, that the original text spoke only of Conferences on the Conservation of Wetlands and Waterfowl, there was no obvious reason to exclude them. Five NGOs, together with a similar number of intergovernmental organizations, duly attended the Cagliari meeting.[140] The matter is now governed by a new paragraph 4 inserted into Article 6 by the 1987 amendments, which provides for the adoption by the Conference of rules of procedure to govern its meetings. These rules permit the attendance of a number of categories of observers.[141] An automatic right of attendance is accorded to the UN, its Specialized Agencies and the IAEA, as well as to any State which is a member of any of those organisations or a party to the Statutes of the International Court of Justice. Any body or agency technically qualified in the conservation of wetlands and of their flora and fauna, whether national or international, governmental or non-governmental, is also to be admitted unless the Parties decide otherwise, though national non-governmental agencies must first secure the approval of their government for this purpose. Once admitted, observers are entitled to participate but not to vote. They may even submit proposals for deliberation if they secure the sponsorship of a delegation, and there appear to be some examples of this having occurred.[142]

The only other form of institutional arrangement to which express reference is made in the text of the Convention concerns the performance of Bureau duties, such as the convening and organization of Conferences, the maintenance of the List and the receipt of information concerning changes in the ecological character of designated sites, and the transmission to the parties of such details, together with any recommendations of the Conference adopted in response. It has been pointed out [143] that these functions are relatively limited, certainly when judged by the standards of later environmental treaties, and it is significant that no new entity was initially to be created for this purpose. Rather, Article 8(1) envisaged that:

> 'The International Union for the Conservation of Nature and Natural Resources shall perform the continuing bureau duties under this Convention until such time as another organization or government is appointed by a majority of two-thirds of all Contracting Parties.'

The willingness of IUCN to provide services on this basis was no doubt an indispensable factor in the initial establishment of the Ramsar system, and it is also appropriate to record the major contribution, particularly on the scientific and technical side, made from the outset by IWRB, but it is evident even from the text of the Convention that the original

administrative arrangements were little more than a temporary expedient. Obviously, some more secure and permanent infrastructure was going to be needed if the Convention were to have any chance of achieving real progress in wetland conservation.

Accordingly, one of the functions allotted to the Groningen Task Force was to consider the options for the establishment of a permanent structure for administrative, scientific and technical support.[144] It concluded [145] that the only viable option was that proposed in a joint submission by IUCN and IWRB, whereby a permanent Bureau, divided into two sections, would be created. While the former organization would provide an integrated unit, funded from the Convention budget, to perform primarily administrative duties, the latter would establish a similar distinct unit at its own headquarters to fulfil the monitoring and scientific advisory functions. This proposal was duly approved by the Regina Conference.[146] While in some respects a step forward, the new arrangement did appear somewhat cumbersome, not least because the Bureau would be geographically divided between IUCN headquarters in Lausanne, Switzerland, and IWRB's base in Slimbridge, UK. Complex issues of finance and accountability also arose as between the host institutions and these units as part of the Ramsar system. It was accordingly decided at the 1990 Montreux Conference [147] that the Bureau should be consolidated in a single unit in Lausanne, and that henceforth IWRB would merely provide scientific and technical services to the Bureau pursuant to a modified cooperation agreement. IWRB in fact remains responsible for the maintenance of the Ramsar database, and for associated data analysis. In August 1992 generous funding from the Swiss authorities enabled IUCN, and with it the Ramsar Bureau, to move into a new permanent headquarters in Gland, and by April 1993 the Bureau staff comprised some 14 individuals, five of whom were employed on a part-time basis.[148] The financial arrangements for the support of this level of staffing were, however, the subject of considerable controversy at Kushiro.[149]

As far as the activities of the Bureau are concerned, these are now the subject of quite detailed regulation by means of the framework for implementation of the Convention agreed at recent meetings of the Conference.[150] This framework indicates the Bureau's four basic objectives [151] and sets out a programme of essential and desirable activities in pursuit of those ends. Desirable activities are accorded high, medium or low priority and budgetary allocations calculated accordingly.[152] This programme has provided valuable clarification of the Bureau's responsibilities, building upon the inevitably rather sketchy consideration of these matters in Article 8 itself.

The increasing sophistication with which the implementation of the Convention, and particularly the activities of the Bureau, has been mapped out in recent years is unlikely to have been possible, however, without the parallel development of other administrative

arrangements not originally provided for in the Convention. It was, indeed, apparent from an early stage that there was a need for more elaborate institutional support than could be offered by periodic conferences of the parties backed by a small secretariat. From the outset there has been a heavy reliance on ad hoc committees and working groups,[153] of which the Groningen Task Force is perhaps a particularly important example. It was, in fact, yet another of that group's recommendations which led to a crucial development in terms of institutional arrangements, namely the establishment at Regina of a Standing Committee responsible for carrying out such activities as are necessary for the proper functioning of the Convention between Conferences.[154]

The Committee, which comprises representatives from each of the seven Ramsar regions plus the host countries of the preceding and forthcoming Conferences of the Parties, wasted no time in embarking upon its activities. It met several times during the closing days of the Regina Conference and has continued to do so subsequently, having held eleven meetings by the time of the Kushiro Conference.[155] It has also established sub-groups for particular purposes. The Committee began by establishing administrative and financial arrangements with IUCN and IWRB for the management of the Bureau and the appointment of its staff, and has subsequently been responsible for planning and supervising the Bureau's activities. It also acted as a Steering Committee for the more recent Conferences and has, furthermore, been instrumental in the elaboration of the Monitoring Procedure and the development of a strategic programme to shape the Convention's future. In this way it has done much to provide the vision, continuity and momentum which was previously lacking in the Ramsar system.

At the same time, the Committee has from the outset displayed an awareness of its own limitations in discharging these various functions, recognising in particular the need to rely on outside assistance when called upon to make technical assessments and decisions.[156] The Committee was therefore requested at Montreux [157] to investigate the need to establish a separate Scientific Committee to provide appropriate technical assistance. After consideration of its response, the Kushiro Conference resolved [158] to establish a Scientific and Technical Review Panel to meet at least once a year in order to perform the scientific and technical tasks involved in the application and review of many of the procedures, criteria and guidelines established within the Ramsar system. The Panel is to comprise seven appropriately qualified persons, to be appointed initially by the Standing Committee in an individual capacity and for a three-year term, with due regard for equitable representation of each region and the need for continuity of membership.

With the creation of this organ it would seem, therefore, that the Ramsar system has at last established the kind of institutional structure which should enable it to fulfil a meaningful

role in the complex task of wetland ecosystem conservation. It may well be the case, moreover, that the system will evolve still further in the future. For example, although the Convention itself, unlike some other modern conservation treaties,[159] makes no provision for the creation of national institutions for the discharge of the parties' obligations, a recommendation at Kushiro encouraged the parties to establish national committees in order to provide a focus for the implementation of the Convention at national level.[160]

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11. FINANCIAL ASPECTS

A crucial lesson to be derived from the whole experience of the evolution of environmental law since the 1960s, brought home with particular force in the forum of the Rio Earth Summit, is that paper obligations in the area of nature conservation mean nothing unless backed by hard cash. In the context of individual treaties such as the Ramsar Convention, financial considerations are essentially two-fold. First, there is a need for funding to sustain the institutional infrastructure which will be necessary if the treaty is to achieve any practical impact upon the environmental problems it seeks to confront. Secondly, and here the monetary demands are potentially very much greater, resources will be required to finance the substantive tasks involved in tackling those problems. In particular, developing countries are certain to need support both in the form of resources and expertise if they are to be able to implement specific conservation obligations. Indeed, in the absence of any prospect of such support, they are likely to perceive little purpose in incurring such obligations in the first place. The link between financial considerations and willingness to ratify was made explicit by developing countries at the Groningen Conference [161] and the shortcomings of the Ramsar Convention in that regard were by that time all too apparent. The Convention contained no mechanism for substantive financial support and even the skeletal institutional arrangements were sustained by voluntary contributions from NGOs and governments favourably disposed to its objectives.[162]

The matter was accordingly addressed in the new paragraphs 5 and 6 added to Article 6 by the 1987 amendments. The se provided for the establishment of financial regulations, and the adoption of triennial budgets on the basis of a two-thirds majority vote. Each party was to contribute to the budget in accordance with a scale of contributions to be agreed by unanimity of those present and voting. These changes required consequential amendments to be made to the voting provisions of Article 7(2), the original version of which envisaged only the adoption of recommendations by simple majority vote.

The first formal budget was duly approved at Regina for the period 1988-90 and the Standing Committee was charged with the task of supervising future financial

arrangements.[163] Following its deliberations, the budget for 1991-93 was set at a total sum of SFr 3,281,000, or SFr 1,094,000 per annum. These sums were devoted principally to covering staff salaries and the cost of expert legal and scientific services, IUCN administrative support, travel on official business, the purchase of office equipment, telecommunications and publications.[164] This level of funding was extremely modest; the Standing Committee had taken the view that the minimum level of Bureau staffing needed to accomplish all but lower priority tasks would be five professional and three support staff, but had concluded that it would be 'more reasonable' to submit a draft budget providing for four professional and two support staff.[165] The consequence of this was that the Bureau remained heavily dependent upon sponsorship and other sources of outside funding even to sustain basic levels of staffing. Such a situation was plainly unsatisfactory and, with the number of parties to the Convention growing rapidly and the complexity of its programmes also escalating, it was decided that a radical rethink of the budgetary arrangements was required. The budget approved by the Standing Committee for the period 1994-96 and submitted for consideration by the Kushiro Conference [166] therefore represented an increase of around 100% over the previous triennium. The Secretary-General hastened to explain, however, that this increase was for the most part attributable not to increased expenditure, but rather to a transfer to the core budget of items previously sustained by project funding, much of which was due to expire in 1993. Even then, core funding would sustain only 10 of the envisaged 15 members of staff.[167]

The proposed increases prompted something of an outcry,[168] led predictably by the United Kingdom delegation, but after a good deal of wrangling something very close to the original proposal was eventually accepted.[169] The total budget was fixed at SFr 6,675,000, or SFr 2,225,017 per annum. Contributions to this budget are assessed on the UN scale and range, for the period 1994-96, from an annual sum of SFr 223 on the part of the poorest developing countries to SFr 302,378 in the case of Japan. It is also significant to note, however, that the budget contains, under the heading 'Other contributions', the huge sum of SFr 1,824,922 (SFr 608,309 per annum0, the vast bulk of which is represented by the 'voluntary contribution' of the United States, so labelled on account of its declaration formulated in response to the adoption of the Article 6 amendments at the 1987 Extraordinary Conference.[170]

In the light of the difficulties experienced by many international institutions in securing actual payment of the contributions owed by participating governments, it is encouraging to note that the record of payment under the Ramsar system has so far been reasonably impressive. In 1991, for example, contributions actually received amounted to SFr 1,075,247, or 98% of the total invoiced sum. To this core income was added a further SFr 747,500 donated by governments and other agencies in support of particular Ramsar

projects, including the publication of the Ramsar Newsletter, the maintenance of the UK database, preparations for the 1993 Kushiro Conference and Standing Committee Delegate Support.[171]

The institutional framework established under the Convention now therefore appears distinctly more secure as a result of the installation of more systematic funding arrangements. As indicated above, however, there is an equally pressing need for funds to be directed at the actual implementation of individual conservation projects, and it is in this context that a most significant development occurred at the Montreux meeting with the approval of the proposal by the United States to establish a Wetland Conservation Fund to provide assistance to developing countries.[172] The Fund is administered by the Bureau under the supervision of the Standing Committee, with the latter body responsible for determining which applications should be approved. Applications may be made by existing parties for the support of specified wetland conservation activities. These may relate to improvement of the management of listed sites (for example, the investigation of threats, preparation of management plans or training of site managers), the initial process of designation (such as surveys, boundary delineation or the evaluation of hydrological factors) or the wise use of wetlands generally. Even non-parties that are seeking to accede may apply for a grant to support activities which are a necessary part of that process, such as the identification, delineation or mapping of sites to be designated for the List. The Montreux resolution indicated that the Fund was only to be used for the benefit of developing States but it was agreed at Kushiro that, while such countries should continue to be the main focus of support, those whose economy was in transition could be assisted by developed countries or multilateral agencies and that funds so donated could be channelled through the Ramsar Convention for administrative purposes where appropriate.[173] There had been some controversy over this issue [174] and it is perhaps important to realise that the Fund is constituted almost entirely of voluntary contributions,[175] there being no more than a token allocation of money in the Budget itself.[176] Developing countries may now therefore feel themselves to be subject to a degree of unwanted competition, primarily from Eastern European States, when the disbursement of funds for wetland conservation projects is being considered by the wealthier members of the international community.

An account of the early rounds of allocations from the Fund can be found in the report of the Bureau to the Kushiro Conference.[177] It reveals that projects for the study and improvement of individual listed sites have been financed in Chile, Indonesia, Uganda, Argentina, Guatemala, Peru and Costa Rica, while the development of site and national management plans has been funded for China, Niger and Vietnam. Grants have been provided for training and equipping staff in Kenya and Niger and for investigating the

potential of ‘ecotourism’ in Uganda and Mauritania. The Fund has also supported regional meetings and workshops in various States and assisted Congo and Tanzania to carry out studies preparatory to their joining the Convention. Since the total sum available for distribution is only around SFr 300,000 per year, grants have been relatively modest,[178] though the stated aim is to increase the resources of the Fund to around US$ 1 million annually.[179]

It should also not be overlooked that financial support for wetland conservation is not restricted to the internal resources of the Ramsar system itself. At the Kushiro Conference, the Assistant Executive Director of UNEP, Professor Reuben Olembo, observed that the portfolio of the Global Environmental Facility (GEF), operated by the World Bank, UNEP and UNDP, already included several projects which contributed to the cause of wetland conservation.[180] The delegation of Ghana noted with gratitude its receipt of the sum of US$ 7.2 million from the Facility to finance the survey, designation, scientific inventory and monitoring of five new coastal Ramsar sites, and that of Uganda announced the conduct of a wetland inventory supported by funding from the GEF and the Dutch Government.[181] Most significantly, the Jordanian delegation thanked the Bureau for its assistance in obtaining GEF funding for conservation measures at Azraq Oasis, which had been the subject of repeated expressions of concern at earlier Ramsar Conferences.[182]

The Bureau does in fact maintain contacts with funding agencies in major donor countries, such as France, Japan, the Netherlands and the United States, both in order to strengthen awareness of the importance of wetland conservation in the development process generally and to secure funding for specific projects in member States. To the same ends it has initiated links with the major development aid agencies, such as the World Bank, the Asian and Inter-American Development Banks and the EEC, though its most recent report gives the impression that there is still room for progress in this context.[183]

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12. FINAL CLAUSES

The final clauses of environmental treaties are seldom the main focus of attention for commentators, and yet it is important that they are not overlooked entirely, as they are likely to have a significant bearing on the degree of success such treaties in fact achieve. Article 9 adopts a relatively well-tried formula in stating that the Convention is open for acceptance by any member of the United Nations or its Specialized Agencies, or of the IAEA, or any party to the Statute of the International Court of Justice.[184] It remains open for signature indefinitely, and may be accepted by signature alone, signature followed by ratification, or accession. This approach appears admirably flexible, and the relatively slow

rate of acceptance of the Convention, certainly in the early stages, cannot be attributed to any deficiency in these provisions. One potential difficulty which did arise, however, concerned the interrelationship between the requirements of Article 9 and those of Article 2. More specifically, paragraph 4 of the latter requires each party, upon signature or acceptance, to designate at least one wetland for the List, while paragraph 1 lays down that the boundaries of the site shall be precisely described and also delimited on a map. It would appear from the overview report prepared by the Bureau for the Montreux meeting that a number of States had failed to comply with the mapping requirements when depositing their instruments of acceptance, and were consequently not yet considered to be parties to the Convention.[185] It is far from clear, however, that this view is based upon a correct interpretation of the relevant provisions, as it appears to treat the mapping formalities as a condition of acceptance, rather than as an obligation arising upon acceptance. Fortunately, this matter was addressed in Resolution RES.C.4.5, which established that any State which had designated at least one site for the list when accepting the Convention should be regarded as having fulfilled the conditions for becoming a party, and that if the supporting documentation had not been provided at that time, it should be provided as soon as possible thereafter.

By virtue of Article 10 it was established that the requirement for the entry into force of the Convention would be seven acceptances - an unusually low threshold for a treaty of global application.[186] Even then, it took almost five years for the Convention to become operational, after allowing for the effluxion of the stated four-month period following the deposit of the seventh acceptance.[187] It is something of an irony that the State which deposited that acceptance, so triggering the Convention’s entry into force, should have been Greece, as that country appears to have experienced particular difficulty in implementing its obligations and all eleven of its listed sites are currently included in the Montreux Record.[188]

Article 11 provides that the Convention is to be of indefinite duration but allows any party to denounce it after it has been in force for a period of five years for the State in question. Denunciation is effective upon four months’ notice, though no State has actually utilized this power as yet. Article 12 provides in more or less traditional fashion for the exercise of depositary functions, in this case by UNESCO, though it is a quaint feature of the Convention that the spelling ‘Depository’, rather than the more usual ‘Depositary’, is used.[189] The final point of note is that the testimonium clause of the Convention authenticated the text in four language versions (English, French, German and Russian), but indicated that in the event of divergency the English text would prevail. This provision, again relatively unusual in a multilateral standard-setting agreement,[190] was initially the cause of some reluctance to accede to the Convention, particularly amongst Francophone

States. It was amended by the 1982 Paris Protocol, whereby all four language texts became equally authentic.[191] It is interesting to note, however, that a number of discrepancies were subsequently detected between the English and French texts and that, although these were of a relatively minor nature, the French version had the effect of diluting the force of the Convention in various respects.[192] These differences were judged to be errors of translation, and the French text was duly aligned with the English, utilizing the procedures envisaged by Article 79 of the Vienna Convention on the Law of Treaties.[193]

It will be apparent from this discussion that there are certain omissions from the final clauses which may be worthy of brief comment. There is no reservations clause, though this is not wholly surprising in the context of a Convention which lacks a substantial body of detailed substantive obligations Equally, there is no clause governing the Convention's territorial scope. Such a clause had, apparently, been incorporated in earlier drafts at the instigation of the Dutch Government, but was ultimately omitted at Ramsar as a consequence of Soviet objections.[194] It was nevertheless understood that the absence of such a clause would not preclude the parties from indicating at any time those of its territories to which the Convention would apply, and a number of the parties have in fact formulated such declarations.[195] Some have, in addition, designated wetlands situated in their overseas territories for inclusion in the Ramsar List.[196]

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13. CONCLUSIONS

The above review indicates the very substantial degree of progress which has been achieved under the Ramsar Convention, both in terms of the clarification, amplification and fulfilment of the substantive obligations which it contains and of the development of the supporting financial and institutional arrangements. The total number of contracting parties is at last beginning to climb to the level that one might expect of a treaty intended to be of global application and the aggregate area of the sites designated for the List of Wetlands of International Importance continues to grow. The vital reforms instituted at the Regina and Montreux meetings are beginning to bear fruit, as witnessed by the welcome given by the Kushiro Conference [197] to conservation measures taken with respect to threatened sites in Hungary, Spain, the United States and Jordan and the removal of several sites from the Montreux Record entirely.

It is also important to remember that any assessment of the impact of the Convention should not only seek to analyse the precise ramifications of the international obligations which it imposes, but also take account of the practical implications within the domestic

sphere of participation in the Ramsar system and the designation of sites for the List. Although it is difficult to acquire a full and reliable picture of this aspect of the Convention's influence, a broad impression can be gained from a perusal of the national reports compiled by the parties.[198] It is readily apparent from such sources that, quite apart from the enhanced system of formal, legal protection of wetland sites which has developed in many countries and led in several cases to domestic litigation for their conservation,[199] the increase in awareness of the international significance of particular key sites has produced various kinds of impact upon decision-making processes generally. In particular, the symbolic status accorded by designation of a site for the List may be of assistance to conservation groups seeking to influence the formulation or implementation of government policy, while at the same time strengthening the hand of government departments minded to resist undesirable proposals for the development of wetland areas. In New Zealand, for example, any land containing listed wetlands is assumed to have national conservation value and therefore allocated to the Department of Conservation rather than local government; it was reported at Montreux that the international status of Lake Rotoehu had formed the basis of an objection to a proposed development on the lake shore.[200] In the United Kingdom, a government proposal to blow up a stranded oil tanker off the Suffolk coast was met with protests that this might harm the nearby listed site at Minsmere-Walberswick, and the vessel was eventually towed 20 miles further out to sea for the purpose.[201] In some cases, it would appear, the Convention has been utilized by one government agency as a means of bringing pressure to bear upon another. At Kushiro, for example, the Mauritanian delegation expressed concern over the possible routing of the Inter Maghreb Highway inside the Banc d'Arguin National Park, and requested the Conference to include a reference to this matter in the recommendation on particular Ramsar sites.[202]

It would be most unwise to draw too many conclusions from these individual instances, or indeed to entertain overly optimistic expectations about the capacity of international treaties to achieve dramatic advances in the cause of environmental conservation generally, but it is at least possible to identify the factors which are likely to enable such instruments to maximise what potential they have in that regard.[203] Even where the relevant essentials are initially lacking, the opportunity may be taken to remedy the deficiencies and so enable the treaty in question to make its contribution. The Ramsar Convention was undoubtedly conceived out of genuine passion, but arguably born a little prematurely to enable it to benefit from the best that modern legal science has to offer. As a result, it appeared distinctly sickly and unpromising in its infancy. Through careful nurturing, however, it would seem to have achieved a strength and vitality which at one time seemed unlikely, and can now face the future with considerable confidence. The Ramsar Convention, in short, would seem to have come of age.

[Endnotes]

1. 996 UNTS 245. For further text location references and full status information regarding this treaty, see M.J. Bowman and D.J. Harris, *Multilateral Treaties: Index and Current Status* (1984 and annual cumulative supplements - hereafter MTICS), Tr. 575. All references in this article to Ramsar debates, documents, resolutions and recommendations can be found in the reports of the various meetings of the Conference of the Contracting Parties, prepared and published by the Ramsar Convention Bureau, rue Mauverney 28, 1196 Gland, Switzerland. Ordinary meetings of the Conference have been held in Cagliari, Sardinia, Italy 24-29 November 1980; Groningen, the Netherlands 7-12 May 1984; Regina, Saskatchewan, Canada 27 May - 5 June 1987; Montreux, Switzerland 27 June - 4 July 1990; and Kushiro, Hokkaido, Japan 9-16 June 1993. Extraordinary meetings took place in Paris, France 2-3 December 1982 and Regina 28 May-3 June 1987.

2. Misc. 3 (1993), Cm 2127; MTICS Tr. 1008.

3. See generally S. Lyster, *International Wildlife Law* (1985).

4. See P.W. Birnie and A.E. Boyle, *International Law and the Environment* (1992) Chs. 3 (esp. pp. 112-127), 11, 12 and 13.

5. Biodiversity Convention, Art. 2.

6. See generally J.A. McNeely et al., *Conserving the World's Biological Diversity* (1990); World Resources Institute, *Global Biodiversity Strategy* (1992).

7. For other (arguable) examples, see the 1982 UN Convention on the Law of the Sea, 21 ILM 1261, MTICS Tr. 825, especially Part XII, and the 1991 Protocol to the 1959 Antarctic Treaty, 30 ILM 1461, MTICS Tr. 992.

8. The Law of the Sea Convention will enter into force one year after the 60th acceptance (Art. 308), which was achieved on 16 November 1993, while the Antarctic Environmental Protocol requires for its entry into force the acceptance of all those States which were Antarctic Treaty Consultative Parties on the date of its adoption.

9. Birnie and Boyle, op. cit. n. 4, state at p. 421 that the 'first relevant treaty was the 1885 Convention for the Uniform Regulation of Fishing on the Rhine'.

10. For an illustration of this point see the Chronological Table in A.C. Kiss and D. Shelton,*International Environmental Law* (1990).

11. See the interview with Daniel Navid, Secretary-General of the Ramsar Bureau, 17 Env. Pol. & Law (1987) no. 5, p. 181. It does appear, however, that earlier drafts of the Convention had the benefit of significant legal input: see generally G.V.T. Matthews, *The Ramsar Convention on Wetlands: Its History and Development* (1993) especially Ch. 3.

12. Comment attributed to an unnamed World Bank official in P.J. Dugan, ed., *Wetland Conservation: a Review of Current Issues and Required Action* (1990) p. 5.

13. For a sample of the now vast literature on this topic, see E. Maltby, *Waterlogged Wealth*(1986); Dugan, op. cit. n. 12; M. Williams, ed., *Wetlands: A Threatened Landscape* (1990); M. Finlayson and M. Moser, eds., *Wetlands* (1991). Note also that some of these works contain extensive bibliographies.

14. Finlayson and Moser, op. cit. n. 13, p. 22. At the same time, it must be recognized that wetlands are themselves a source of other greenhouse gases, such as dinitrogen oxide and methane: ibid. Recent research suggests that methane output from rice paddies in India may have been substantially overestimated in the past, however: *New Scientist* (27 August 1994).

15. Art. 2(2) establishes that wetlands should be designated for the Ramsar List 'on account of their international significance in terms of ecology, botany, zoology, limnology or hydrology'. Their importance to waterfowl is then singled out for special mention. Generalized references to the 'flora and fauna' of wetlands can be found in Arts. 3(3), 5, 6(2)(d) and 6(3).

16. 'The Need for International Cooperation in Wetland Conservation', Ramsar Doc. C.2.8. See also the same author, op. cit. n.11, Ch. 3, where the reference to waterfowl on the title of the Convention is attributed to Soviet insistence.

17. See Matthews, ibid. For further accounts, see R. Boardman, *International Organization and the Conservation of Nature* (1981) Ch. 9, and C. de Klemm and I. Creteaux, 'The Legal Development of the Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat', INF. C.5.19.

18. Boardman, ibid., p. 168.

19. See in particular the discussion of the evolution of the listing criteria in the section on the Designation of Sites of International Importance, *infra.*

20. Note in this context the discussion at the Fourth Plenary Session of the Groningen Conference of the views of the Chilean delegation that the Convention required adaptation for South American countries, and the statement that the 'thrust of the Convention should be towards wetlands and not birds': Plen. C.2.4 (Rev.) at p. 21.

21. M.W. Holdgate, 'Wetlands in a Changing World', the Keynote Address at the Fourth Meeting of the Conference, INF. C.4.7. For earlier attempts at the 1987 Montreux Conference to encourage wider adherence to the Convention by developing countries, see recommendations REC. C.3.6 (Rev.), 3.7 (Rev.) and 3.10 (Rev.).

22. E.g., Polish – see J. Sommer, 'Legal Protection of Wetlands in Poland', in *Legal Aspects of the Conservation of Wetlands,* IUCN Environmental Policy & Law Paper No. 25 (1991) p. 107.

23. Dugan, op. cit. n.12, p. 9.

24. Lyster, op. cit. n.3, p. 184. A detailed coding and classification system of wetland types, dividing them into three main categories (coastal/marine, inland and man-made) and then progressively sub-dividing these categories (e. g., inland into riverine, lacustrine, palustrine and geothermal, etc.) has been developed: see REC. C.4.7 (Rev.), Annex II. At Kushiro the Australian delegation suggested that this model be further refined to include subterranean karst systems: see PLEN. C.5.2 (Rev.), p. 8.

25. Loc. cit. n.21.

26. Lyster, op. cit. n.3, *passim.*

27. See the discussion of Art. 6 in the section on Implementation Mechanisms, *infra.*

28. These deficiencies were discussed as Agenda Item 9 at the plenary session of the Cagliari Conference and are listed in REC. 1.8.

29. *Extraordinary Conference of the Contracting Parties,* Paris 2-3 December 1982. The text of the Protocol can be found at Misc. 1 (1984), Cmnd. 9113.

30. See the discussion of the testimonium clause in the section on Final Clauses, *infra.*

31. Rec. 1.8 para. 2. For the text and current status of the Bonn Convention, see Misc. 11 (1980), Cmnd. 7888; MTICS Tr. 752.

32. Since the Art. 10 *bis* procedures envisage the adoption of amendments at an extraordinary, rather than an ordinary, meeting, this was held in parallel with the Third meeting of the Conference of the Parties.

33. For the text of these amendments, see Misc. 6 (1990), Cm. 983. For a discussion, see the section on Implementation Mechanisms, *infra.*

34. Resolution on the Provisional Implementation of Amendments to the Convention (resolutions adopted at Regina were not numbered). Information obtained informally from the Ramsar Bureau suggests that the requisite number of acceptances for entry into force was achieved during 1994.

35. This can be seen in the arrangement for the holding both of ordinary and extraordinary meetings of the Conference, the establishment of Rules of Procedure to govern such meetings and of financial regulations to determine the Convention's budget, and the practice of adopting resolutions, as well as recommendations, at such meetings. Note that the depositary's application of the rules governing the entry into force of amendments has been questioned: see M.J. Bowman, ‘Amendment Procedures under the 1971 Convention on Wetlands of International Importance', University of Nottingham Research Papers in Law, No. 12, November 1993 and, by the same author, ‘The Multilateral Treaty Amendment Process - A Case Study', ICLQ (forthcoming).

36. Although the parties have always contributed to the Ramsar budget, the effect of the new para. 6 to Art. 6 is that such contributions become compulsory. The United States formulated a declaration on this point at the 1987 Extraordinary Meeting.

37. See Bowman, op. cit. n.35.

38. Section 15, para. 3. The Ramsar Convention in fact came in for specific sharp criticism in para. *5* of that section on a variety of grounds. Although the Secretary-General of the Ramsar Bureau has described this criticism as 'a bit harsh' (Navid, 'The Ramsar Convention Today', in IUCN, op. cit. n.22, p. 37), it is difficult to disagree with its tenor, and much of the subsequent history of the Convention has constituted an attempt to address the points raised.

39. *International Conference on the Conservation of Wetlands and Waterfowl,* Final Act and Summary Record (Ramsar, 1971) pp. 5-6. For discussion, see Boardman, op. cit. n.17, pp. 164-168.

40. Lyster, op. cit, n.3, p. 206.

41. 'Donana - the Last Resort', *Fragile Earth* series, Central Independent Television, 1992; 'The Desert and the Deep Blue Sea', Anglia Television/Channel Four, 1994. See also the Summary Report of Kushiro Workshop C: 'Establishment of Wetland Reserves', W.G. C.5.3 (Rev.).

42. REC. C.3.3 (Rev.) and Annex to the Regina Recommendations.

43. PLEN. C.5.4 (Rev.) p. 3. See also PLEN. C.5.3 (Rev.) Annex 3.

44. REC. C.4.10 (Rev.).

45. RES. C.5.6, Annex.

46. See Dugan, op. cit. n.12.

47. W.G. C.5.2 (Rev.).

48. The extension of financial assistance to countries whose economies were in transition had been controversial - see the section on Financial Aspects, *infra.*

49. Birnie and Boyle, op. cit. n. 4, p. 435.

50. Section 1, para. 4.

51. Note that A.S. Timoshenko, 'Protection of Wetlands in International Law', in IUCN, op. cit. n. 22, p. 69 appears to suggest that there is a significant difference, if not incompatibility, between these two terms, but offers no supporting argumentation. For a discussion of the wise use concept, see note 42 and accompanying text.

52. In particular, the so-called principle of effectiveness, *ut res magis valeat quam pereat:*see Lord McNair, *The Law of Treaties* (1961) pp. 383-385; *Cayuga Indians Claims* case, A. D. 1925-26, No. 271.

53. Cf., Art, 3(2), which requires each party to arrange to be informed of any changes in the ecological character of 'any wetland *in its territory and included in the List'* (emphasis added).

54. Art. 2(3).

55. For a helpful analysis of this term, and a comparison with other concepts such as common property and common heritage, see A.E. Boyle, 'International Law and the Protection of the Global Atmosphere: Concepts, Categories and Principles', in R. Churchill and D. Freestone, *International Law and Global Climate Change* (1991).

56. For example, the Montreux Conference expressed concern that the building of dams in Afghanistan was leading to ecological changes at Hamoun Lake in Iran, though in that context it should be noted that Afghanistan was not, and still is not a party to the Convention: see REC. C.4.9 (Rev.).

57. Birnie and Boyle, op. cit. n. 4, pp. 89-112, 136-160; Kiss and Shelton, op. cit. n. 10, Chs. 5 and 8.

58. The *Trail Smelter Arbitration,* 33 AJIL (1939) p. 182; 35 AJIL (1941) p. 684 remains the principal example.

59. Plen. C.2.4 (Rev.), Agenda Item 9.

60. UKTS 57 (1983), Cmnd. 9034; 18 ILM 1442; MTICS Tr. 764.

61. Matthews, loc. cit. n. 16.

62. See respectively (i) UN Doc. ECE/EB.AIR/12; 27 ILM 707; MTICS Tr. 868; (ii) Misc.

16 (1989), Cm. 885; MTICS Tr. 930; and (iii) UN Doc. ECE/EB.AIR/3O; 31 ILM 573; MTICS Tr. 994. Note also the 1993 Preliminary Draft Second Sulphur Protocol, 24 Env. Pol. & Law(1994) p. 122. It is fair to point out that by no means all the parties to the Convention have also accepted these Protocols.

63. Op. cit. n. 3, p. 95.

64. At Kushiro, Dr. J.-Y. Pirot, Co-ordinator of IUCN's Wetlands Programme, pointed out that development assistance was the 'single most important source of wetland loss in the developing world': W.G. C.5.4 (Rev.) p. 2.

65. REC. C.3.4 (Rev.).

66. REC. C.4.13 (Rev.). See also Rec. C.5.5.

67. REC. C.4.3.

68. For discussion, see the section on Financial Aspects, *infra.*

69. This point has been made repeatedly in the Overview Reports prepared by the Bureau for successive Conferences: see, e.g., Vol. III of the Proceedings of the Montreux Conference, para. 154.

70. Ibid., para. 158.

71. RES. C.5.4. Annex.

72. Ibid., para. 2. Note that it is not specified by what means this issue has come to the Bureau's attention.

73. See the text accompanying notes 125-127 *infra.*

74. REC. C.5.2.

75. For example, the Monitoring Procedure: see the section on Implementation Mechanisms, *infra.*

76. Plen. C.2.3 (Rev.), Agenda item 9. De Klemm and Creteaux, op. cit. n. 17, state more cautiously that Art. 3(2) 'in essence . . . requires Parties to *attempt* to prevent such changes' (emphasis added).

77. Op. cit. n. 3, p. 191.

78. The 'Heiligenhafen criteria': see Lyster, op. cit. n. 3, p. 188. The Conference, organized by IWRB in West Germany in December 1974, had originally been intended to be the first meeting of the Conference of the Contracting Parties, but, unfortunately, the Convention

had by that time attracted insufficient acceptances for entry into force: Matthews, op. cit. n. 11, p. 48.

79. For successive versions, see Annex II to the Report of the Cagliari Conference; REC. C.3.1 (Rev.) and the Annex to the Regina Recommendations; and REC. C.4.2 (Rev.) and Annex 1.

80. REC. C.4.2 (Rev.).

81. REC. C.5.9.

82. Plen. C.5.2 (Rev.) p. 2. The List of Wetlands of International Importance is maintained by IWRB as part of the Ramsar database.

83. See Finlayson and Moser, op. cit. n. 13, pp. 39, 122; Lyster, op. cit. n. 3, p. 186.

84. Holdgate, loc. cit. n. 21. For an indication of intentions to list further sites, see REC. C.5.1, preamble.

85. Overview Report, Vol. III of the Proceedings of the Montreux Conference, para. 104. The sites are Malugul Dhand, Tanda Dam, Kandar Dam and Kheshki Reservoir.

86. RES. C.5.3 and Annex. Cf., in this context, the procedures established under Art. 11 of the 1972 Convention for the Protection of the World Cultural and Natural Heritage, 1972 UNJYB 89; MTICS Tr. 605.

87. See, e.g., the recommendations cited at note 21 *supra.*

88. RES. C.5.3.

89. Art. 11(2).

90. The present author has been interested to learn that a proposal to establish a period of notice before the withdrawal of a wetland from the List had originally been made by the Deputy Director of IUCN in 1970, together with a number of other proposals to strengthen the Convention. The Dutch Government, which had been heavily involved in the drafting process, had apparently advised that there was no prospect of any of these proposals being accepted by sovereign governments: Matthews, op. cit. n. 11, p. 26.

91. The Committee had met on 11 occasions by the time of the Kushiro Conference, and had also established a number of sub-groups: see the Report of the Standing Committee, DOC. C.5.4. The possible involvement of the newly established Scientific and Technical Review Panel would also need to be considered in this context.

92. At Montreux it was stated that '. . . no Contracting Party has ever deleted a wetland from the List': loc. cit. n. 85, para. 102. At Kushiro it was again stated that 'No deletions of sites from the List had been recorded': PLEN. C.5.2 (Rev.) p. 2. The deletion of sites, e.g., in Pakistan, which might never have satisfied the listing criteria was mooted as a possibility, however.

93. At Montreux, for example, the Netherlands reported the removal of 2 ha. from its 250,000 ha. Wadden Sea site for the construction of a car park; the UK also deleted a 274 ha. section of its North Norfolk site, but increased its overall area from 5,559 to 7,700 ha. Potentially more disturbing changes were reported in respect of certain other sites, however: see generally the Overview Report cited at n. 85, paras. 105-119.

94. 'International Law Requirements', DOC. C.4.7, Section II.

95. On the interpretation of the World Heritage Convention, and in particular the question as to whether obligations to 'endeavour' to do something can amount to binding legal obligations, or are merely statements of aspiration, see *Commonwealth of Australia* v. *The State of Tasmania,* 57 ALJR (1983) 450, esp. Brennan J. at pp. 527-534; Mason J. at pp. 489-491; Murphy J. at pp. 506-509; Deane J. at pp. 545-549; and for the minority view Gibbs CJ. at pp. 466-473; Wilson J. at pp. 513-517.

96. DOC. C.5.5, p. 10.

97. W.G. C.5.4 (Rev.), p. 5.

98. For details, see PLEN. C.5.2 (Rev.), pp. 3-8.

99. Ibid., p. 7. See also W.G. C.5.4 (Rev.) and REC. C.5.14.

100. See the Footnote to the Regina Resolution on the Establishment of a Standing Committee.

101. This conclusion had previously been reached at a meeting between members of the two European regions held during September 1992 at Lelystad and was said to be based on 'ongoing changes in Eastern Europe'. PLEN. C.5.2 (Rev.), p. 6.

102. Birnie and Boyle, op. cit. n. 4, pp. 102-109.

103. *Lac Lanoux Arbitration,* 24 ILR (1957)101; International Law Commission, Arts. 11-19, 1991 Draft Articles on the Law of the Non-Navigational Uses of International Watercourses, UN Doc. A/46/10 (1991) and, for the completion of the ILC's work on this topic, see 24 Env. Pol. & Law (1994) no. 6, pp. 294-296, 335-368. See also C.B. Bourne, 'Procedure in the Development of International Drainage Basins: the Duty to Consult and Negotiate', 10 Can. YBIL (1972) p. 212. Note that Art. 29 of the International Law Association's 1966 Helsinki Rules on the Uses of the Waters of International Rivers only 'recommends' such consultations, but cf., Art. 1 of the 1974 Articles on the Maintenance and Improvement of Naturally Navigable Waterways, etc.; Art. 7 of the 1980 Articles on Regulation of the Flow of International Watercourses; Arts. 5 and 6 of the 1982 Articles on Water Pollution in an International Drainage Basin and Art. 3 of the 1986 Complementary Rules Applicable to International Water Resources see generally E.J. Manner and V.-M. Metsalampi, eds., *The Work of the International Law Association on the Law of International Water Resources*

(1988).

104. W.G. C.5.4 (Rev.), pp. 4-6.

105. RES. C.4.4 (Rev.), paras. (a),(b). At Kushiro, a draft recommendation on Guidelines for the implementation of Article 5, was withdrawn after discussion, and the matter referred back to the Bureau for further consideration: W.G. C.5.4 (Rev.), p. 6.

106. Birnie and Boyle, op. cit. n. 4, pp. 448-452. Note that the preamble to the Ramsar Convention recognizes 'that waterfowl in their seasonal migrations may transcend frontiers and so should be regarded as an international resource'.

107. RES. C.4.4 (Rev.), para. (c).

108. W.G C.5.4 (Rev.), pp. 5-6 and PLEN. C.5.2 (Rev.), Pp. 5-6. For further discussion of such arrangements, see C. de Klemm, 'The Problem of Migratory Species in International Law', *Green Globe Yearbook* (1994) p. 67.

109. See n. 31 *supra.*

110. DOC. C.5.5, p. 11.

111. This practice appears to have begun at Regina, where the amendments were adopted.

112. See RES. C.4.1, 4.4 and 4.5 and RES. C.5.3, 5.6, 5.7 and 5.9.

113. This was one of four unnumbered resolutions adopted at the Conference. An earlier, embryonic version of this framework had appeared as an annex to REC. 2.3 at Groningen.

114. RES. C.5.1.

115. See the discussion of Art. 3(2) in the Section on Additional Obligations attaching to Listed Wetlands, *supra.*

116. Lyster, op. cit. n. 3, p. 205; De Klemm and Creteaux, loc. cit. n. 17, p. 32.

117. For a record of submission rates in this regard up to the Montreux Conference, see DOC. C.4.18, National Reports.

118. Rec. 2.1.

119. PLEN. C.5.2, p. 1.

120. This point was made by the Hungarian delegation, and also by the WWF: see W.G. C.5.l (Rev.), p. 5 and PLEN. C.5.4 (Rev.), p. 1.

121. This point was made by the delegations both of China and of Trinidad and Tobago: PLEN. C.5.2 (Rev.), p. 9 and PLEN. C.5.5 (Rev.), p. 2.

122. DOC. C.5.5, p. 5.

123. REC.C.5.1.

124. See PLEN. C.5.2 (Rev.), p. 2 and W.G. C.5.l (Rev.), p. 2.

125. This fact may well help to explain the discrepancy between the Bureau's estimate and that of Friends of the Earth, who are likely to have relied also upon information from other sources.

126. PLEN. *C.5.5* (Rev.), p. 3.

127. This issue was a recurrent focus of discussion: see PLEN. C.5.3 (Rev.), p. 6; PLEN. C.5.4 (Rev.), pp. 1-2; W.G. C.5.1 (Rev.), pp. 1-2; PLEN. C.5.8 (Rev.), pp. 1-2.

128. Rec. 2.6, 2.7, 2.8.

129. REC. C.3.8 (Rev.)

130. REC. C.3.9 (Rev.)

131. See REC. C.4.9 (Rev.) and C.4.9.1-5 (Rev.); REC. C.5.1 and C.5.1.1-3.

132. This right has been recognized in numerous international instruments: see in particular the 1962 Resolution on Permanent Sovereignty over Natural Resources, UNGA Res. 1803 (XVII); the 1972 Stockholm Declaration on the Human Environment, UN Doc. A/CONF. 48/14; the 1974 Declaration on the Establishment of a New International Economic Order, UNGA Res. 3201 (S-VI); the 1974 Charter of Economic Rights and Duties of States, UNGA Res. 3281 (XXIX); the 1992 Rio Declaration on Environment and Development, UN Doc. A/CONF. 151/5. For a discussion of the relationship between this principle and conservation obligations, see Birnie and Boyle, op. cit. n. 4, pp. 112-127.

133. REC. C.4.7 (Rev.) and Annex 1.

134. For a fuller account, see the Report of the Bureau to the Kushiro Conference, DOC. C.5.5, p. 6.

135. Ibid.

136. Ibid.

137. See the Conclusions of the Siena Forum on the International Law of the Environment, 20 Env. Pol. & Law (1990) no. 6, p. 232, esp. paras. 11(g) and 12(b); A.E. Boyle, 'Saving the World? The Implementation and Enforcement of International Law through International

Institutions', 3 J Env. L (1991) p. 229; P.H. Sand, ed., *The Effectiveness of International Environmental Agreements* (1992).

138. Although fishing and whaling treaties commonly incorporated institutional arrangements, these were often omitted from other kinds of environmental conventions: see, e.g., the 1969 Bonn Agreement concerning Pollution of the North Sea by Oil, 704 UNTS 3; MTICS Tr. 539. This was eventually replaced by the 1983 Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances, Misc. 26 (1983), Cmnd. 9104; MTICS Tr. 834, which does incorporate institutional arrangements.

139. See Bowman, loc. cit. n. 37.

140. The NGOs were IUCN, ICBP, IWRB, WWF and the International Council for Game and Wildlife Conservation. The IGOs were UNESCO, UNEP, FAO, the Council of Europe and the EEC Commission: see the List of Participants in the Report of the Cagliari Conference. To compare the attendance at Kushiro, see PART. C.5.l (Rev.), which includes a list of 15 international NGOs and some 15 pages of representatives of national organizations.

141. Rule 2, Rules of Procedure, DOC. C.5.3.

142. E.g., REC. C 5.6, concerning the role of NGOs, appears to have been based on a proposal by Birdlife International, with the support of Malta and other delegations: W.G. C.5.1 (Rev.), p.4.

143. Lyster, op. cit. n. 3, p. 203.

144. Plen. C.2.6 (Annex).

145. DOC. C.3.5, para. 4(a)(i).

146. Regina Resolution on Secretariat Matters.

147. Montreux Resolution on Secretariat Matters, Annex to DOC. 4.15 (Rev.).

148. DOC. C.5.5, p. 18.

149. See the Section on Financial Aspects, *infra.*

150. For the latest version, see RES. C.5.1, Annex 2, Section 5.

151. Namely, to assist the parties to meet their obligations to conserve wetlands, to promote international cooperation in wetland conservation, to foster communication about wetland conservation and to administer the convention.

152. RES. C.5.1, Annex 3.

153. Each meeting of the Conference is given over in part to the meetings of working groups on particular issues, and a Credentials Committee is also established.

154. Regina Resolution on the Establishment of a Standing Committee.

155. For the Report of the Standing Committee, see DOC. C.5.4.

156. Ibid., Section III. See also DOC. C.4.4, Section III.

157. REC. C.4.7 (Rev.).

158. RES. C.5.5

159. E.g., the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 993 UNTS 243; MTICS Tr. 613.

160. Rec. C.5.7.

161. W.G. C.2.3 (Rev.).

162. See DOC. C.2.6, 'Voluntary Contributions towards Interim Secretariat Costs'. It is interesting to note that early drafts of the Convention prepared by the Dutch Government had made provision for financial matters, but that these clauses had become casualties of the negotiating process: Matthews, op. cit. n. 11, p. 73.

163. Regina Resolutions on Financial and Budgetary Matters and on the Establishment of a Standing Committee.

164. Montreux Resolution on Financial and Budgetary Matters, DOC. C.4.13 (Rev.), Annex.

165. DOC. C.4.13 (Rev.), para. 6.

166. DOC. C.5.13 (Rev.).

167. PLEN. C.5.4 (Rev.), p. 5.

168. Ibid., pp. 6-8. This discussion led to the establishment of a Conference Finance Committee, which met throughout the day on Friday 11 June and again on the Saturday afternoon and Monday morning. It produced a report offering three budgetary options: see PLEN. C.5.6 (Rev.).

169. RES. C.5.2, which endorsed the Finance Committee's Option 1, which was described as ‘virtually as provided in Conference Document C.5.13 (Rev.1) with a slightly amended presentation': PLEN. C.5.6 (Rev.), Annex, p. 3.

170. RES. C.5.2., Annex 2, pp. 2-3.

171. Ramsar Convention Bureau, 1991 Annual Report. The figure for core income appears to have risen still further to SFr 1,118,010 by the time of the Bureau's Triennial Report, DOC. C.5.5, p. 19.

172. RES. C.4.3 (Rev.).

173. RES. C.5.8.

174. W.G. C.5.4 (Rev.), pp. 3-4; PLEN. C.5.5 (Rev.), p. 4.

175. See the footnote to the Budget for 1991-93, RES. C.4.3 (Rev.) Annex, Attachment 1. Voluntary contributions amounted to around SFr 250,000 in 1991 and SFr 310,000 in 1992.

176. SFr 10,000 per annum in the triennium 1991-93, though this figure was increased to SFr 100,000 per annum for 1994-96.

177. DOC. C.5.5, pp. 8-9.

178. Up to about SFr 40,000: RES. C.5.8, preamble.

179. Ibid.

180. PLEN. C.5.3 (Rev.), p.3.

181. Ibid., pp.5-6.

182. W.G. C.5.l (Rev.), p. 3; REC. C.5.1.

183. DOC. C.5.5, p. 11.

184. See 'Open to' entries, MTICS, *passim.* The Soviet Union had objected to this formula during drafting negotiations, but had ultimately not pressed the point, apparently in return for reciprocal concessions on other clauses: see Matthews, op. cit. n. 11, Ch. 3.

185. DOC. C.4.18, para. 13.

186. Cf., 10 for CITES, Art. 22(1), 15 for the Bonn Convention, Art. 18(1), and 20 for the World Heritage Convention, Art. 33.

187. Art. 10(1).

188. DOC. C.5.5, p. 5. REC. C.5. 1.1 requests the Greek Government 'to take urgent measures to fulfil its obligations under the Ramsar Convention', in particular by submitting definitive maps of two Sites and making definitive delimitations of the other nine, preparing management plans for these sites and ensuring their wise use. For a discussion of the implementation of the Convention by Greece, see G. Samintis, 'The Legal Protection of Wetlands and the Ramsar Convention', 23 Env. Pol. & Law (1993) nos. 3-4, p. 214.

189. The term 'depository' is usually employed to indicate a place where something is left for safe keeping, whereas 'depositary' usually refers to the person or institution with whom something is deposited: *Oxford English Dictionary* (where it is, however, conceded that the terms are sometimes used interchangeably). The 1969 Vienna Convention on the Law of Treaties, 1155 UNTS 331, MTICS Tr. 538, uses the term 'depositary' in the present context: see Arts. 76-80.

190. See 'Authentic Texts' entries, MTICS, *passim*. For other examples note the 1973 and 1982 International Telecommunications Conventions, MTICS Trs. 632, 824; certain treaties concerning international carriage by air adopted within the Warsaw Convention system, MTICS Trs. 124, 320, 418, 579, 671-674; and the Kuwait Regional Marine Environment Convention, MTICS Tr. 730. In all but the last of these (where the relevant language is English), it is the French text which is to prevail in the event of divergency.

191. Paris Protocol, Art. 2.

192. DOC. C.4.7.

193. PLEN. 4.5. See also de Klemm and Creteaux, loc. cit. n. 17, p. 41.

194. Matthews, op. cit. n. 11, Ch. 3.

195. Such declarations have been formulated by the Netherlands, New Zealand and the UK, and formerly by West Germany with respect to the *Land* Berlin. For full details, see MTICS Tr. 575.

196. Examples include Hosnie's Spring, Christmas Island (listed by Australia), Het Spaans Lagoen in Aruba and various sites in the Netherlands Antilles (the Netherlands), and North, Middle and East Caicos Islands (UK). Denmark and Norway have designated various sites in Greenland and Spitzbergen respectively. For an interesting RSPB study of possible Ramsar sites in UK territories in the Caribbean, see D. Pritchard, *The Ramsar Convention in the Caribbean* (1990), which appears to have prompted the UK's extension of the Convention to Anguilla and the British Virgin Islands in February 1991.

197. REC.C.5.1.

198. Collated in the Overview Reports prepared by the Bureau and published as Volume III of the proceedings of recent meetings of the Conference.

199. At Kushiro, reference was made by India to 'landmark public interest litigation preventing further encroachment' on the wetlands of East Calcutta: PLEN. C.5.3 (Rev.), p. 5; and by Trinidad and Tobago to the fact that 'national courts had prohibited further clearance' of Nariva Swamp by local rice farmers, though the latter were appealing against this decision: W.6. C.5.l (Rev.), p. 2. The Montreux Conference had applauded the 'current and unprecedented legal action instituted by the United States Government in regard to preventing further degradation of the Everglades': REC. C.4. 9.2 (Rev.); and for later developments in this context, see 'Everglades Plan Agreed', 23 Env. Pol. & Law (1993) no.5, p. 226. For a discussion of Greek litigation concerning wetland conservation, see Samiotis, loc. cit. n.188. Note also the decision of the European Court of Justice in the case of*European Commission* v. *Germany,* ECJ Case 57/89, 28 February 1991, concerning the lawfulness of the construction of dykes in the Leybucht Ramsar site. Although decided upon the basis of compliance with the Community's Birds Directive, this case raised very

similar issues to those that would have been relevant in the context of compliance with the Ramsar Convention.

200. DOC. C.4.18. For further examples, see paras. 337-351.

201. Cagliari Doc. CONF/4, discussed by Lyster, op. cit. n. 3, p. 190.

202. W.G. C.5.l (Rev.), p. 5. REC. C.5.1 duly called upon the Mauritanian authorities to ensure that the highway did not pass through or adversely affect the national park. It is interesting to note that the head of the Mauritanian delegation is the park's director: PART. C.5.l (Rev.), p. 15.

203. Sand, op. cit. n.137.