

# The Bern Convention: 30 Years of Nature Conservation in Europe

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*The Council of Europe's Convention on the Conservation of European Wildlife and Natural Habitats is a binding international treaty in the field of nature conservation aimed at the protection of the natural heritage in the European continent. The Bern Convention aims to conserve Europe's wild flora and fauna and their natural habitats. It was an innovative biodiversity convention at the time of its birth, over 30 years ago, through its approach to protect both species and habitats. The treaty also takes account of the impact that other policies may have on natural heritage and it recognizes the intrinsic value of wild flora and fauna, which needs to be preserved and passed to future generations. The convention has produced extensive guidance and standards, including species actions plans, strategies, and over 140 recommendations and resolutions to help countries improve their national policies on nature conservation. The Bern Convention has combined concrete and practical action on the conservation and management of key species and sites with more strategic and forward-looking instruments on complex issues, long before they were subject to legislation, like invasive alien species or biodiversity adaptation to climate change. This work on current and relevant issues, developed in partnership and cooperation with other biodiversity conventions, the scientific community and non-governmental organizations, is one of the convention's strengths that has continued to motivate European countries to join and support this multilateral environmental agreement.*

## INTRODUCTION

### THE BASICS

The Convention on the Conservation of European Wildlife and Natural Habitats<sup>1</sup> is Europe's treaty on nature conservation and the only regional convention of its kind worldwide. In force since 1982, the Bern Convention is the most comprehensive convention for the protection of biodiversity in Europe. With 50 contracting

parties,<sup>2</sup> the convention has a large and diverse membership, extending from Iceland to Azerbaijan, and including the EU as a party, alongside its 27 Member States, as well as 18 other European countries, and four African States (Morocco, Tunisia, Senegal and Burkina Faso).<sup>3</sup>

The Bern Convention aims to conserve Europe's wild flora and fauna and their natural habitats. It engages parties to conserve the wild fauna and flora species listed in its appendices, as well as natural habitats. Parties also agreed in 1989 to build up a network of 'areas of special conservation interest': the Emerald Network.<sup>4</sup> This feature is an important one in the development of international biodiversity law, as the Bern Convention provided a qualitative step forward, moving from the previous focus on species protection, to a more 'modern' approach to conserve both species and habitats.<sup>5</sup>

The Bern Convention gives particular importance to the protection of endangered and vulnerable species, including migratory ones. The four appendices to the convention provide the lists of wild species in need of 'strict protection' (Appendix I for flora and Appendix II for fauna) as well as a further list of species that can be 'exploited',<sup>6</sup> subject to regulation and in accordance with the treaty's provisions (Appendix III).<sup>7</sup> However,

<sup>2</sup> Montenegro and Georgia are the most recent additions to the Bern Convention, having joined on 1 February 2010 and 1 March 2010, respectively.

<sup>3</sup> The convention was also opened to signature by States that are not members of the Council of Europe.

<sup>4</sup> See Recommendation No 16 (1989) on areas of special conservation interest (9 June 1989); Resolution No 3 (1996) concerning the setting up of a pan-European Ecological Network (26 January 1996); and Resolution No 5 (1998) concerning the rules for the network of areas of special conservation interest (Emerald Network) (4 December 1998).

<sup>5</sup> The Emerald Network is made up of 'areas of special conservation interest' launched under the Bern Convention to be set up in each contracting party and observer State to the convention. See *Ecological Networks* (Council of Europe, undated), available at <<http://www.coe.int/emerald>>. See also Resolution No 3, n. 4 above, and Recommendation No 16, n. 4 above.

<sup>6</sup> See Bern Convention, n. 1 above, Article 7(2) and (3).

<sup>7</sup> Any exploitation of wild fauna listed in appendix III must be regulated in order to keep the populations out of danger (temporary or local prohibition of exploitation, regulation of transport or sale, etc.).

<sup>1</sup> Council of Europe Convention on the Conservation of European Wildlife and Natural Habitats (Bern, 19 September 1979).

even when 'utilization' of listed species is allowed,<sup>8</sup> the convention bans the use of 'indiscriminate means of capture and killing',<sup>9</sup> and those able to cause 'local disappearance' or 'serious disturbance'<sup>10</sup> to species' populations. Appendix IV lists the 'means and methods of killing, capture and other forms of exploitation' (of Appendix III species) prohibited by the Bern Convention.

The Bern Convention was a very innovative biodiversity convention at the time of its adoption, with many features and provisions that were 'unique' at the time. The treaty incorporated important principles such as those of precaution, integration, participation and cooperation, long before they became widespread. Importantly, this convention recognizes the value of wild flora and fauna and the need to conserve them to be passed to future generations, as they constitute a 'natural heritage of aesthetic, scientific, cultural, recreational, economic and intrinsic value'.<sup>11</sup>

## THE ORIGINS

The convention was negotiated in response to a request made by the Parliamentary Assembly of the Council of Europe in 1973<sup>12</sup> requesting European regulations<sup>13</sup> for the protection of wildlife.<sup>14</sup> It was opened for signature in Bern, Switzerland, in 1979. In between those dates took place the Second European Ministerial Conference on the Environment, held in Brussels in 1976, where the idea of drafting a convention to protect Europe's fauna, flora and natural habitats was discussed.<sup>15</sup> An *ad hoc* Committee for the Protection of Wildlife was set up within the Council of Europe to prepare the text of the convention.<sup>16</sup> The Committee worked for over three

years and the convention was opened for signature at the Third European Ministerial Conference on the Environment.<sup>17</sup>

The Bern Convention has been in force since June 1982, evolving alongside other international policy and legal instruments to protect biological diversity by focusing on both species and habitats. The 1979 Explanatory Report of the Bern Convention indicates that it aimed to raise 'the minimum level of nature conservation in Europe' while enabling the 'maximum number of States to become Contracting Parties'.<sup>18</sup> In addition, the recognition that wildlife species found in Europe have often a range that extends beyond the continent justified opening the convention to non-Member States of the Council of Europe,<sup>19</sup> which in the 1980s included most Central and Eastern European countries (which today are all members of the Council of Europe – with the exception of Belarus). This range issue is also the reason why four African States are parties to the convention.

The relationship with the EU, a contracting party to the Bern Convention since 1982, has been a dynamic one, having evolved and changed over the years. From the 1980s, when the European Community only had one main legal instrument for nature conservation (the 1979 Directive to Protect Wild Birds)<sup>20</sup> and was preparing a more comprehensive tool for species and habitats protection (the 1992 Habitats Directive),<sup>21</sup> until today, when 27 parties of the Bern Convention are members of the EU, and many more are making progress to join, the division between EU and non-EU countries among the parties to the Bern Convention has been a significant one. As the EU continues to develop policy and law on many areas in which the Bern Convention is also active (such as invasive species or the linkages between biodiversity and climate change), the need to exchange information and increase coordination increases. European countries demand that regional intergovernmental organizations add value to each other's work and avoid duplication, particularly in times of financial restrictions and reduced budgets.

## MAIN OBLIGATIONS FOR PARTIES

Forty-nine countries and the EU have engaged themselves in preserving Europe's wild fauna and flora and their natural habitats, especially when this requires the cooperation of several States, which is particularly the

<sup>8</sup> See Bern Convention, n. 1 above, Article 9, setting out the conditions for applying 'exceptions' to the general obligation of conserve listed species.

<sup>9</sup> Ibid., Article 8.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid., Preamble.

<sup>12</sup> Recommendation 720 (1973) on the results of the European Ministerial Conference on the Environment (Vienna, 28–30 March 1973) (28 September 1973).

<sup>13</sup> Back in 1961, the Parliamentary Assembly of the Council of Europe had recommended to establish a 'permanent system of cooperation' for the 'conservation of nature and natural resources and for the protection of fauna and flora', as well as to promote the establishment of 'new nature reserves and national parks'. See Recommendation 284 (1961) on the establishment within the Council of Europe of a permanent system of cooperation in matters concerning the protection of nature in Europe (27 April 1961).

<sup>14</sup> S. Jen, 'The Convention on the Conservation of European Wildlife and Natural Habitats (Bern, 1979): Procedures of Application in Practice', 2(2) *J. Int'l Wildlife L. & Pol'y* (1999), 224.

<sup>15</sup> J.P. Ribaut, 'How the Bern Convention Came into Being', 101 *Naturopa* (2004), 4.

<sup>16</sup> *Explanatory Report concerning the Convention on the Conservation of European Wildlife and Natural Habitats* (Council of Europe, 1979), para. 4, available at <<http://conventions.coe.int/Treaty/en/Reports/Html/104.htm>>.

<sup>17</sup> See J.P. Ribaut, n. 15 above.

<sup>18</sup> See *Explanatory Report*, n. 16 above, para. 9.

<sup>19</sup> Ibid., para. 11.

<sup>20</sup> Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, [1979] OJ L103/1.

<sup>21</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, [1992] OJ L206/7.

case in order to protect endangered and migratory species, as set out in the convention.<sup>22</sup>

One of the main obligations for parties is to take:

measures to maintain the population of wild flora and fauna at, or adapt it to, a level corresponding to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements and the needs of subspecies, varieties or forms at risk locally.<sup>23</sup>

This obligation is directly linked to the general aim of the Bern Convention to conserve wild fauna and flora and their natural habitats, as established in Article 1(1) of the convention. However, and importantly, no interpretation or definition of the necessary aimed 'level' for populations of wild flora and fauna is provided, as ecological, scientific, cultural, economic and recreational requirements will vary from country to country.

Under Article 3, parties must take action also to:<sup>24</sup>

- promote national policies for the conservation of wild flora and fauna, and their natural habitats;
- have regard to the conservation of wild flora and fauna in their planning and development policies, and in their measures against pollution;
- promote education and disseminate general information on the need to conserve species of wild flora and fauna and their habitats; and
- encourage and coordinate research related to the purposes of the convention.

These obligations are quite broadly drafted and leave to each contracting party the choice of what measures to take to achieve them. However, it should be noted that the second point listed above, i.e. integrating biodiversity considerations into national planning and development policies and in measures against pollution, represented a very forward-looking provision at the time – even though, 30 years on, their application is still far from satisfactory. On the positive side, this obligation allows the convention to address the biodiversity impacts of certain sectoral policies. As an example, the Bern Convention has participated in EU discussions to develop guidelines on wind energy and nature conservation to address the possible negative impacts on biodiversity of this renewable energy source, which is promoted as a 'measure against pollution', in the sense of Article 3(2).

However, the need under Article 3 to conserve nature by taking biodiversity protection into account in planning and development policies still remains a big challenge in Europe and the rest of the world, as one of the

main threats to biodiversity continues to be habitat loss and fragmentation, mostly caused by decisions on land use or spatial planning at the national, regional and local levels.

Additional obligations for parties are established in Articles 11 and 12 of the convention, under the heading of 'Supplementary provisions'.<sup>25</sup> This does not mean that these obligations are 'secondary', which is illustrated by the importance of provisions setting out the need for parties to cooperate to enhance the effectiveness of the above measures,<sup>26</sup> coordinate efforts to protect migratory species, exchange information, and share experiences and expertise. These obligations include the need to cooperate with other parties; encourage and coordinate research relevant for the purposes of the convention; reintroduce native species of wild flora and fauna when it contributes to the conservation of an endangered species; and inform about the species receiving complete protection and not included in Appendices I and II.

Another obligation for parties is the need to 'strictly control the introduction of non-native species'.<sup>27</sup> This obligation has resulted in a wide range of activities under the convention to address the issue. The cornerstone of these initiatives was the 2003 European Strategy on Invasive Alien Species,<sup>28</sup> which remains the main policy instrument on invasive alien species (IAS) in Europe and is one of the key inputs in the development of an EU strategy on the issue, which is currently being discussed by the European Commission and the Member States.

## A 'FLEXIBLE' CONVENTION

During the drafting of the convention it was considered that, while it was necessary for the treaty to be specific regarding its objectives and tools, the text should recognize that the species concerned are rarely present in all European countries and that the status of those species is often different in different States. The convention aimed at finding a balanced approach by listing all the species deserving united action for their conservation, and providing the possibility of specific and conditioned 'exceptions' to the general rule of protection.<sup>29</sup>

The drafters of the convention wanted to ensure its widest possible membership and were aware of the fact that biological diversity is continuously changing, both

<sup>22</sup> See Bern Convention, n. 1 above, Article 1(2).

<sup>23</sup> Ibid.

<sup>24</sup> Ibid., Article 3.

<sup>25</sup> Ibid., Chapter V.

<sup>26</sup> Ibid., Article 11(1).

<sup>27</sup> Ibid., Article 11(2)(b).

<sup>28</sup> P. Genovesi and C. Shine, 'European Strategy on Invasive Alien Species', 137(June) *Nature and Environment* (2004), available at <[http://www.coe.int/t/dg4/cultureheritage/nature/Bern/IAS/default\\_en.asp](http://www.coe.int/t/dg4/cultureheritage/nature/Bern/IAS/default_en.asp)>.

<sup>29</sup> See Bern Convention, n. 1 above, Article 9.



naturally and as a result of human actions. Therefore, the drafters elaborated an instrument that would allow flexibility of action with a common purpose<sup>30</sup> and be able to vary the provisions of the convention to meet changing circumstances.<sup>31</sup>

This is exemplified in Article 14, which lists the main tasks of the Standing Committee (the governing body of the Bern Convention) to ensure that the provisions of the convention and the contents of its appendices meet the changing needs of Europe's wildlife. One of the priorities of the Standing Committee is the review of Appendices II and III and to consider which convention species 'may be legitimately exploited'.<sup>32</sup> As a result of this, the appendices have been amended 11 times,<sup>33</sup> with the latest changes having been agreed in 2001.<sup>34</sup>

## THE CONVENTION'S INSTITUTIONAL FRAMEWORK

The governing body of the Bern Convention is its Standing Committee,<sup>35</sup> comprising all parties, observer States and organizations, including intergovernmental and non-governmental organizations (NGOs). The Standing Committee meets annually, usually in Strasbourg to monitor the implementation of the convention and take decisions on its further development.<sup>36</sup> It adopts recommendations<sup>37</sup> and provides guidance to parties and observers aimed at improving the implementation of the convention.

In between meetings of the Standing Committee, the Bureau takes decisions on the running of the convention and the implementation of the annual programme of activities. The size of the Bureau has been debated in recent years,<sup>38</sup> given the growth in membership of the

convention and the range of issues covered, which made the original three-member body (comprising the Chair of the Standing Committee, the Vice-Chair and the former Chair) insufficient to ensure the necessary quorum and representation, as well as being able to manage the increased workload. This led to the adoption of an enlarged Bureau,<sup>39</sup> with five members instead of three at the twenty-ninth meeting of the Standing Committee in November 2009.<sup>40</sup>

In order to address the different issues relevant to the convention, the Standing Committee has set up a number of Groups of Experts.<sup>41</sup> Some of them are run together with or by NGOs with particular expertise (e.g. those on large carnivores, birds and plants), while others have pioneered international cooperation in Europe on issues such as invasive alien species, biodiversity and climate change, and European island biodiversity. Other active Groups of Experts are those on 'protected areas and ecological networks', invertebrates conservation, and amphibians and reptiles.

The Secretariat of the Bern Convention is provided by the Council of Europe, which carries out administrative and other tasks that may be required by the Standing Committee.<sup>42</sup> The Secretariat is also responsible for convening meetings and preparing and circulating all documents and reports that need to be examined by the Standing Committee and its Bureau, as well as by the Groups of Experts and *ad hoc* working groups set up under the convention.

## PUBLIC PARTICIPATION

Non-governmental organizations working on nature conservation, at the national or international level, can apply for observer status and participate actively at meetings of the Standing Committee and Groups of Experts.<sup>43</sup> Some NGOs are key partners of the convention in core activities such as the conservation of large carnivores, birds or plants. In addition, NGOs play a critical watchdog role in monitoring the implementation of the convention on the ground, as well as providing useful information on the follow-up of recommendations previously adopted by the Standing

<sup>30</sup> See *Explanatory Report*, n. 16 above, para. 10.

<sup>31</sup> See Bern Convention, n. 1 above, Articles 16 and 17, which set out the requirements to amend the text of the convention and its appendices. The appendices were last amended in 2002.

<sup>32</sup> See *Explanatory Report*, n. 16 above, para. 53.

<sup>33</sup> For all amendments, see Bern Convention on the Conservation of European Wildlife and Natural Habitats: Appendices (Council of Europe, undated), available at <[http://www.coe.int/t/dg4/cultureheritage/nature/Bern/Appendices\\_en.asp](http://www.coe.int/t/dg4/cultureheritage/nature/Bern/Appendices_en.asp)>.

<sup>34</sup> The latest changes to Appendix II are in force since March 2002, with the addition of two *Carabus* (ground-beetles) species. See Proposed Amendment to Appendix II by the Republic of Moldova (T-PVS (2001) 43, 20 August 2001).

<sup>35</sup> See Bern Convention, n. 1 above, Articles 13 and 14.

<sup>36</sup> See Rules of Procedure of the Standing Committee (T-PVS (99) 2, 14 January 1999).

<sup>37</sup> The Standing Committee has adopted 144 recommendations to date. The next meeting of the Standing Committee, to discuss and eventually adopt further recommendations, will be held in Strasbourg on 6–10 December 2010.

<sup>38</sup> See Rules of Procedure of the Standing Committee, n. 36 above, Rules 18 and 19; and see Amendment of the Rules of Procedure of the Standing Committee: Size of the Bureau and Elections – Proposals from the Bureau' (T-PVS (2009) 5 revised, 28 September 2009).

<sup>39</sup> The Rules of Procedure of the Standing Committee were amended accordingly. See the revised version of the Rules of Procedure (T-PVS (2009) 16, 2 December 2009), Rules 18 and 19.

<sup>40</sup> See *Report of the Twenty-Ninth Meeting of the Standing Committee* (T-PVS (2009) 17, 4 December 2009), at 5, available at <[http://www.coe.int/t/dg4/cultureheritage/nature/WCD/TPVSReports\\_en.asp#>](http://www.coe.int/t/dg4/cultureheritage/nature/WCD/TPVSReports_en.asp#>).

<sup>41</sup> See Bern Convention, n. 1 above, Article 14(2).

<sup>42</sup> See Rules of Procedure of the Standing Committee, n. 36 above, Rule 20.

<sup>43</sup> See Bern Convention, n. 1 above, Article 13(3).

Committee. To do so, they submit their own reports to the Standing Committee and the Bureau, as official meeting documents.<sup>44</sup>

NGOs are admitted as observers to the annual meetings of the Standing Committee as well as to meetings of the Groups of Experts. They can ask for the floor and make interventions during these meetings. NGOs can also submit reports on issues that are on the agenda of Standing Committee meetings.<sup>45</sup> These NGO reports are also official meeting documents.

Some Groups of Experts (such as the ones on 'Conservation of birds', 'Large carnivores', and 'Plant conservation') are run by NGOs, together with the Secretariat. The Standing Committee has recognized that NGOs have valuable specialized knowledge in certain areas.<sup>46</sup> The rationale behind this is to avoid proliferation of expert groups on similar issues in Europe, and contribute to a more efficient allocation of limited resources.

NGOs are at the origin of many complaints and case-file procedures for possible breaches of the Bern Convention.<sup>47</sup> Interestingly, the system for these complaints is not found in the text of the convention itself.<sup>48</sup> The convention establishes that the Standing Committee may 'make recommendations to the Parties' concerning 'measures to be taken for the purposes of this Convention'.<sup>49</sup> In line with the Council of Europe's tradition, NGOs were invited to play an active role in the implementation of the convention through the opportunity to submit complaints for specific violations of the convention's provisions.<sup>50</sup> A few months after its entry into force, in June 1982, the Standing Committee held its first meeting and discussed the first two case-files, which would lead to the first two recommendations of the Standing Committee, addressed to Italy regarding threats to several species protected under the convention (one concerned a winter-sport project and the other hunting activities).<sup>51</sup>

The first attempts to give structure to a procedure that had already been working for ten years, and in accordance with which over 40 case-files had been discussed by the Standing Committee, were taken in 1992. The rules of procedure were discussed in 1993 and have been 'applied provisionally' ever since, pending a decision on the form of their final adoption.<sup>52</sup> This absence of a decision is due to concerns raised by the European Commission concerning the relationship between the then EC's infringement procedure and the Bern Convention case-file system. There were discussions as to whether to develop a specific protocol to the convention, or an interpretative resolution to deal formally with the case-file system, but discussions were postponed several times and, in the meantime, the practice has been maintained. Over the years, the use of the existing 'provisional system' has shown that the case-file system works properly and that its success relies more on the will of the parties to collaborate than on the formal status of the rules applied.<sup>53</sup>

NGOs may submit reports to the Standing Committee and the Bureau of the Convention, which follows up the procedure of complaints and case-files between meetings of the Standing Committee.<sup>54</sup> NGOs submit reports and information to the different convention bodies in charge of monitoring the implementation of the convention. Another important role played by NGOs is their ability to raise public awareness about nature conservation needs by mobilizing support for the conservation and sustainable use of biodiversity in Europe.

## NGO INPUT: FROM POLICY DEVELOPMENT TO MONITORING IMPLEMENTATION

NGOs can actively contribute to the development of policy and guidance under the Bern Convention, as well as help enforce its provisions.

Through their participation in meetings of Groups of Experts and *ad hoc* working groups, NGOs and civil society can actively contribute to the development of policy proposals and draft recommendations to be submitted to the Standing Committee for further discussion and eventual adoption. However, only parties to the convention take decisions at Standing Committee meetings.

Civil society has been instrumental in helping State parties reach consensus on sometimes difficult or sensitive issues such as the European Charter on Hunting

<sup>44</sup> See Rules of Procedure of the Standing Committee, n. 36 above, Rule 9(b).

<sup>45</sup> *Ibid.*

<sup>46</sup> See the Bern Declaration on the Conservation and Sustainable Use of Biodiversity in Europe: 2010 and beyond (Decl(2009)3, 26 November 2009), para. 11; and see the Strasbourg Declaration on the Role of the Bern Convention in the Preservation of Biological Diversity (Decl (2004) 2, 30 November 2004), para. 11, available at <[http://www.coe.int/t/dg4/cultureheritage/nature/WCD/Declarations\\_en.asp#](http://www.coe.int/t/dg4/cultureheritage/nature/WCD/Declarations_en.asp#)>.

<sup>47</sup> See Summary of Case-Files and Complaints (T-PVS (2009) 6 rev., 24 September 2009), showing that 9 out of 12 case files and complaints reviewed had been brought up by NGOs.

<sup>48</sup> For an overview of this procedure, see Summary of Case-Files and Complaints: Reminder on the Processing of Complaints and New On-Line Form' (T-PVS (2008) 7, 25 August 2008), at 3–6.

<sup>49</sup> See Bern Convention, n. 1 above, Article 14(1).

<sup>50</sup> M. Rodríguez-Valero, *Analysis of the Rules of Procedure for the Case File System* (T-PVS (2007) 6, 29 March 2007), at 6.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*, at 7.

<sup>53</sup> *Ibid.*

<sup>54</sup> See Rules of Procedure of the Standing Committee, n. 36 above, Rule 9b.

and Biodiversity,<sup>55</sup> endorsed by the Standing Committee in November 2007. The Charter is a non-binding set of principles and guidelines addressed to biodiversity regulators, managers, hunters and hunting tour operators, and it represents the collective efforts of governments, hunters and environmental organizations to achieve sustainable hunting within a biodiversity conservation approach. The Federation of Associations for Hunting and Conservation of the EU (FACE), the International Council for Game and Wildlife Conservation (CIC), and Birdlife International all played a crucial role to get the European Charter approved also by their constituencies so it is not 'only' a government document.

NGOs also play a critically important watchdog role in the Bern Convention, alerting the Committee and its Bureau of threats and possible breaches of the convention. On many occasions they have asked the Standing Committee to follow up the application of certain recommendations and previous decisions, bringing up information that otherwise would have taken longer to reach the Secretariat. As an example, in 2009, an NGO expressed concerns over the threats facing three nesting beaches for the Loggerhead sea turtle (*Caretta caretta*) in Fethiye (Turkey), due to construction work and developments for tourism purposes. This led to the decision to review in 2010 the implementation of Recommendation No 66 (1998) on the conservation status of some nesting beaches for marine turtles in Turkey.<sup>56</sup>

At a more technical level, NGOs also take part in the monitoring carried out by the different Groups of Experts on their particular subject areas (e.g. invertebrates, invasive species, climate change), contributing their own research, reports and projects. A recent example was an NGO initiative to follow up the implementation of Recommendation No 110 (2004) on minimizing adverse effects of above-ground electricity transmission facilities (power lines) on birds.<sup>57</sup> To this effect, they presented to the Standing Committee, in November 2009, a report on the progress achieved since 2004, and recommended steps forward.<sup>58</sup> There is therefore often a close link between policy development and monitoring of the recommendations adopted by the Standing Committee.

## COOPERATION WITH OTHER CONVENTIONS AND ORGANIZATIONS

Bern Convention parties work together with observer countries and organizations such as other biodiversity conventions and NGOs, operating at the local, regional and the global level. The Secretariat of the Bern Convention has signed several memoranda of cooperation (MoC) with institutions such as the Secretariat of the Convention on Biological Diversity (CBD), the European Environment Agency,<sup>59</sup> the International Union for Conservation of Nature (IUCN) and Planta Europa.<sup>60</sup>

The CBD<sup>61</sup> has acknowledged the important role that regional and subregional mechanisms and networks play to promote the implementation of that convention. In this light, the Secretariats of the Bern Convention and the CBD signed an MoC in 2001, which was revised and enhanced in 2007 and formally signed at the ninth Conference of the Parties to the CBD in May 2008.<sup>62</sup> This MoC highlights cooperation on components of the programmes of work implemented under the two conventions that are of mutual interest, such as on issues related to 'protected areas, invasive alien species, plant conservation and adaptation to climate change'.<sup>63</sup>

Another important MoC<sup>64</sup> was signed in November 2009 to strengthen cooperation with the Secretariat of the Convention on Migratory Species (CMS)<sup>65</sup> on species of common concern (including migratory bird species, the Mediterranean monk seal, marine turtles and sturgeon), cross-cutting issues (for example invasive species, adaptation and climate change, and island biodiversity), and other activities of relevance to both conventions (such as follow up to Bern Convention case-files, the building of the Emerald Network of Areas of Special Conservation Interest and common pilot projects that may be identified).<sup>66</sup>

<sup>55</sup> S. Brainerd, 'European Charter on Hunting and Biodiversity', 150(July) *Nature and Environment* (2008).

<sup>56</sup> *Report of the Meeting of the Bureau held in Strasbourg on 15 September 2009* (T-PVS (2009) 12, 2 October 2009).

<sup>57</sup> Recommendation No 110 (2004) on minimizing adverse effects of above-ground electricity transmission facilities (power lines) on birds (3 December 2004), available at <[http://www.coe.int/t/dg4/cultureheritage/nature/WCD/Rec2004\\_en.asp#](http://www.coe.int/t/dg4/cultureheritage/nature/WCD/Rec2004_en.asp#)>.

<sup>58</sup> B. Schuerenberg, R. Schneider and H. Jerrentrup, *NGO Report: 'Follow-Up of Recommendation No. 110 (2004) on Minimizing Adverse Effects of Above-Ground Electricity Transmission Facilities (Power Lines) on Birds'* (T-PVS/Files (2009) 15, 13 October 2009).

<sup>59</sup> Memorandum of Cooperation between the Council of Europe (CoE) and the European Environment Agency (EEA) (T-PVS (2000) 14, 5 October 2000).

<sup>60</sup> Memorandum of Cooperation between the Secretary General of the Council of Europe (CoE) and the Executive Director of Planta Europa (T-PVS (2001) 35, 18 June 2001).

<sup>61</sup> United Nations Convention on Biological Diversity (Rio de Janeiro, 5 June 1992).

<sup>62</sup> Memorandum of Cooperation between the Secretariat of the Convention on Biological Diversity and the Secretariat of the Bern Convention (T-PVS (2007) 20, 11 October 2007).

<sup>63</sup> *Ibid.*, at Article 2(2)(c).

<sup>64</sup> Memorandum of Cooperation between the Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 1979) and the Secretariat of the Convention on the Conservation of European Wildlife and Natural Habitats (Bern, 1979) (T-PVS (2009) 3, 5 December 2008).

<sup>65</sup> United Nations Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979).

<sup>66</sup> *Ibid.*, Article 2(3).



As explained above, the Bern Convention's bodies work closely with NGOs in particular in the context of specialized Groups of Experts, as some of them are managed jointly between the Council of Europe and NGOs such as Birdlife International, Planta Europa or the Large Carnivore Initiative for Europe. The most recent MoC was signed to replace an old agreement signed between the Council of Europe and IUCN in 1961, which was revised and updated in 2009, and then signed in Madrid, in January 2010.<sup>67</sup> The MoC signed with IUCN provides for institutional cooperation, exchange of information and technical cooperation between the Council of Europe's Secretariat of the Bern Convention and IUCN.<sup>68</sup>

In addition, and as explained above, NGOs collaborate with the Secretariat of the Bern Convention in the framework of the case-files system. For example, Birdlife International is active in case-files related to threats and damages to bird species in Bulgaria<sup>69</sup> and Norway.<sup>70</sup> The Bureau is currently following up case files for wind farms on the Via Pontica route in Bulgaria<sup>71</sup> and on the island of Smøla (Norway),<sup>72</sup> both of which were initiated by Birdlife, which actively continues to provide updated information to the Standing Committee and its Bureau every year.

Finally, the Bern Convention has a 'special relationship' with the European Commission, as the EU is a party to the Convention, alongside the 27 Member States of the EU. Close cooperation is carried out to inform each other of activities and initiatives on issues of common interest, such as invasive alien species, climate change and biodiversity species action plans. The European Commission and the Bern Convention Secretariat invite each other to participate in relevant meetings and events, where they inform each other of their activities and coordinate ongoing initiatives.

## STANDARD-SETTING UNDER THE BERN CONVENTION

Over the years, Bern Convention parties have developed guidance on how best to protect Europe's wild fauna, flora and natural habitats, as well as address some of the main threats facing biodiversity. The Bern Convention has developed an extensive number of species action plans,<sup>73</sup> at its own initiative and also in cooperation with other organizations, covering many bird, mammal, amphibian and reptile species.<sup>74</sup> This work has been undertaken with the input of the relevant Groups of Experts set up under the convention. The Bern Convention was a pioneer in the development of species conservation action plans at the European level, often in cooperation with other conventions and with NGOs. As an example, in 2006 the Standing Committee endorsed six action plans submitted by BirdLife International and the African-Eurasian Waterbird Agreement (AEWA).<sup>75</sup> However, in recent years, this activity is becoming the focus of increased attention and resources by the EU, and so the Bern Convention is focusing on areas where it can present an 'added value', such as regarding sustainable hunting and angling, management of invasive alien species, and the linkages between biodiversity and climate change, among other areas.

The formal instrument of the Bern Convention to produce guidance and set standards is through 'recommendations'<sup>76</sup> adopted by the Standing Committee at its annual meetings. The recommendations endorse the policy guidance developed under the convention and usually ask parties to take action at the national level, on the basis of the instruments adopted. They are not legally binding as such, but carry the weight of having been adopted by the annual meeting of the parties, where NGOs can participate and witness

<sup>67</sup> Memorandum of Cooperation between the Council of Europe and the International Union for Conservation of Nature and Natural Resources (T-PVS (2009) 2, 5 December 2008).

<sup>68</sup> Key areas for cooperation identified in the MoC are protected areas and ecological networks; threatened species; invasive alien species; adaptation of biodiversity to climate change; integration of biodiversity into sectoral policies; and conservation of island biodiversity. Ibid., Article 3.

<sup>69</sup> See Birdlife, *Windfarms in Balchik and Kaliakra – Via Pontica (Bulgaria)* (T-PVS/Files (2009) 4, 3 September 2009).

<sup>70</sup> See Birdlife, *Windfarm in Smøla Archipelago (Norway)* (T-PVS/Files (2008) 18, 15 October 2008).

<sup>71</sup> The Standing Committee is following up the implementation of Recommendation No 117 (2005) on the plan to set up a wind farm near the town of Balchik and other wind farm developments, on the Via Pontica route (Bulgaria) (1 December 2005), and Recommendation No 130 (2007) on the windfarms planned near Balchik and Kaliakra, and other wind farm developments on the Via Pontica route (Bulgaria) (29 November 2007).

<sup>72</sup> The Standing Committee will follow up the implementation of Recommendation No 144 (2009), on the wind park in Smøla (Norway) and other wind farm developments in Norway (26 November 2009).

<sup>73</sup> The most recent examples are H. Rosenthal *et al.*, 'Action Plan for the Conservation and Restoration of the European Sturgeon (*Acipenser sturio*)', 152 *Nature and Environment* (2008), 1; and U. Weinholt, 'Action Plan for the Conservation of the Common Hamster (*Cricetus cricetus*)', 158 *Nature and Environment* (2009), 1.

<sup>74</sup> See Bern Convention: Documents Classified by Theme or by Country (Council of Europe, undated), available at <[http://www.coe.int/t/dg4/cultureheritage/nature/Bern/theme\\_en.asp](http://www.coe.int/t/dg4/cultureheritage/nature/Bern/theme_en.asp)>.

<sup>75</sup> See Recommendation No 121 (2006) on the implementation of six new action plans for most threatened birds in the convention's area (30 November 2006). The six species targeted are the Saker Falcon (*Falco cherrug*); the Light-Bellied Brent Goose (*Branta bernicla hrota*); the Northern Bald Ibis (*Geronticus eremita*); the Corncrake (*Crex crex*); the White-Headed Duck (*Oxyura leucocephala*); and the Ferruginous Duck (*Aythya nyroca*).

<sup>76</sup> To access all recommendations adopted by the Standing Committee of the Bern Convention, see Bern Convention: Recommendations Classified by Year (Council of Europe, undated), available at <[http://www.coe.int/t/dg4/cultureheritage/nature/Bern/Rec\\_en.asp](http://www.coe.int/t/dg4/cultureheritage/nature/Bern/Rec_en.asp)>. All texts adopted by the Standing Committee between 2005 and 2008 are published in 'Texts adopted by the Standing Committee 2005–2008', 154 *Nature and Environment* (2009), 1.

developments.<sup>77</sup> In addition, the recommendations of the Standing Committee are often subject to review and follow up by the Bureau and the Committee itself, with the full involvement of observers, including other conventions and NGOs.

In addition, the Bern Convention has also developed a more 'strategic' approach to nature conservation, through the provision of guidance for parties on a wide-range of issues, long before they are 'ready' for a hard legislative approach. Examples of such instruments are the 2003 European Strategy on Invasive Alien Species<sup>78</sup> and the 2006 European Strategy for the Conservation of Invertebrates.<sup>79</sup>

The Bern Convention continues to produce these 'traditional' conservation tools, such as action plans and conservation strategies, while exploring new and emerging issues related to climate change and biodiversity, invasive species and ecological networks. In this context, the parties to the convention adopted in 2008 a Code of Conduct on Horticulture and Invasive Alien Plants,<sup>80</sup> developed jointly with the European and Mediterranean Plant Protection Organization (EPPO), targeting the horticultural industry as one of the main entry points for invasive species in European and Mediterranean countries. The success of this approach, involving all relevant stakeholders, has resulted in a similar initiative to prepare a code of conduct for the pet industry, including ornamental fish.<sup>81</sup>

In the field of biodiversity and climate change, the Bern Convention regime continues to develop guidance for parties focusing on species and habitats conservation management to adapt to climate change. A Group of Experts on Biodiversity and Climate Change was established at the end of 2006 and the first set of guidance for parties was endorsed in November 2008.<sup>82</sup> The work of this Group of Experts has continued to develop further guidance, which will be submitted to the Standing Committee for further discussion and eventual adoption. In 2009, the Standing Committee endorsed guidance for parties concerning

the impacts of climate change on invertebrates, plants and protected areas in Europe, including recommended actions to address these impacts at the national level.<sup>83</sup>

The parties to the Bern Convention recognize the need to take 'positive' actions for nature conservation, as has been illustrated with the above-mentioned types of standard-setting instruments developed over the years. With the objective of integrating concerns for biodiversity in national policies, another important development for parties to the Convention is the Standing Committee's adoption of a number of relevant recommendations and policy instruments, such as Recommendation No 110 (2004) on minimizing adverse effects of above-ground electricity transmission facilities (power lines) on birds<sup>84</sup> and Recommendation No 109 (2004) on minimizing adverse effects of wind power generation on wildlife.<sup>85</sup> This latter recommendation was based on information provided by an NGO report<sup>86</sup> addressing the impacts of wind farms on birds and proposing recommendations to tackle them.<sup>87</sup> A more recent example is the 2007 European Charter on Hunting and Biodiversity,<sup>88</sup> which is, as noted above, a collective effort of governments, hunters and environmental organizations to discuss and facilitate sustainable hunting in a biodiversity conservation context. The Charter provides a set of non-binding guidelines for hunters, hunting tour operators, regulators and managers addressing common principles and good practices for sustainable hunting (including tourism) in Europe.<sup>89</sup> This Charter incorporates the sustainable use principles of the CBD, as well as the ecosystem approach, and therefore integrates relevant obligations under the Bern Convention and the CBD. A similar approach is foreseen for a complementary European Charter on Angling and Biodiversity, to be developed in 2010.<sup>90</sup>

<sup>77</sup> See Rules of Procedure of the Standing Committee, n. 36 above, Rule 9(b).

<sup>78</sup> See P. Genovesi and C. Shine, n. 28 above.

<sup>79</sup> J.R. Haslett, 'European Strategy for the Conservation of Invertebrates', 145 *Nature and Environment* (2008), 1, available at <[http://www.coe.int/t/dg4/cultureheritage/nature/Bern/Invertebrates/default\\_en.asp](http://www.coe.int/t/dg4/cultureheritage/nature/Bern/Invertebrates/default_en.asp)>.

<sup>80</sup> V. Heywood and S. Brunel, 'Code of Conduct on Horticulture and Invasive Alien Plants', 155 *Nature and Environment* (2009), 1.

<sup>81</sup> K. Davenport 'Draft Code of Conduct on Companion Animals and Invasive Alien Species (Including Ornamental Fish) in Europe', (forthcoming).

<sup>82</sup> Recommendation No 135 (2008) on addressing the impacts of climate change on biodiversity (27 November 2008), available at <[http://www.coe.int/t/dg4/cultureheritage/nature/Bern/ClimateChange/default\\_en.asp](http://www.coe.int/t/dg4/cultureheritage/nature/Bern/ClimateChange/default_en.asp)>.

<sup>83</sup> Recommendation No 143 (2009) on further guidance for parties on biodiversity and climate change (26 November 2009), available at <[http://www.coe.int/t/dg4/cultureheritage/nature/WCD/Rec2009\\_en.asp#](http://www.coe.int/t/dg4/cultureheritage/nature/WCD/Rec2009_en.asp#)>.

<sup>84</sup> See Recommendation No 110, n. 57 above.

<sup>85</sup> Recommendation No 109 (2004) on minimizing adverse effects of wind power generation on wildlife (3 December 2004).

<sup>86</sup> BirdLife International, *Wind Farms and Birds: An Analysis of the Effects of Wind Farms on Birds and Guidance on Environmental Assessment Criteria and Site Selection Issues* (T-PVS/Inf (2003) 12, 11 September 2003).

<sup>87</sup> *Ibid.*, at 6–7.

<sup>88</sup> See Recommendation No 128 (2007) on the European Charter on Hunting and Biodiversity (29 November 2007), which asks contracting parties to take into consideration that Charter and apply its principles in the elaboration and implementation of their national hunting policies, so that hunting is carried out in a sustainable way.

<sup>89</sup> European Charter on Hunting and Biodiversity (International Council for Game and Wildlife Conservation, 2008), Preface. See also n. 55 above.

<sup>90</sup> See Bern Convention, *2010 Programme of Activities of the Bern Convention* (undated), available at <[http://www.coe.int/t/dg4/cultureheritage/nature/Bern/Programme2010\\_en.pdf](http://www.coe.int/t/dg4/cultureheritage/nature/Bern/Programme2010_en.pdf)>.



## MONITORING THE IMPLEMENTATION OF THE CONVENTION

The Standing Committee has a range of tools to monitor the implementation of the convention at each of its meetings, including by reviewing reports, processing case-files and adopting recommendations.<sup>91</sup> This monitoring system includes reports from parties and observers, and the case-file system, which are fully accessible to parties, observers and civil society.

### THE REPORTING SYSTEM

There are different types of reporting under the Bern Convention, even though only one of them (the biennial reports) is compulsory under the terms of the convention. However, the evolution and practice of the convention have created a diverse system of reporting through which the Standing Committee can have a more comprehensive overview of the implementation of the convention by contracting parties. A summary of the different types of reporting under the Bern Convention is provided below.

**Introductory Reports** Every year, new parties to the Bern Convention are asked to present an 'introductory report' to the Standing Committee. These reports are neither mentioned in the convention nor in the Rules of Procedure of the Standing Committee (it started as an initiative of the Secretariat, supported by the Bureau). Introductory reports are a recurrent practice at each year's Standing Committee meeting, fulfilling the role of providing an overview of the country's biodiversity and the legal and policy instruments in place to conserve nature. There are no specific formalities concerning introductory reports and their length and level of detail tend to vary, but they are useful to welcome and establish a first contact with a new contracting party during the annual meeting of the Standing Committee.

**Biennial Reports** There is only one compulsory report for parties, as spelt out in Article 9 of the convention, and it concerns the so-called 'biennial reports', which all parties making use of the exceptions allowed in the convention must submit to the Secretariat every two years. These reports must contain a scientific assessment of the impact of such exceptions to the general obligation to protect the species and habitats covered by the Bern Convention, as spelt out in Articles 4, 5, 6 and 7.<sup>92</sup>

The Secretariat provides parties with model forms for their biennial reports, taking into account Resolution No 2 (1993) of the Standing Committee on the scope of Articles 8 and 9 of the Bern Convention. In accordance with this resolution, biennial reports on the exceptions made from the provisions of Articles 4, 5, 6, 7 and 8 of the convention must cover: general exceptions; individual exceptions if they are so numerous as to result in a generalized practice; individual exceptions concerning more than ten individuals of a species; and individual exceptions concerning individuals of endangered or vulnerable populations of species. Compilations of the biennial reports are presented each year to the Standing Committee.

**General Reports** In addition, parties are invited to submit 'general reports' on the national implementation of the convention every four years.<sup>93</sup> These reports are voluntary and compiled by the Secretariat every year in order to inform the Standing Committee. Most parties comply with the treaty obligation to submit a biennial report, as and when they apply the exceptions provided for in Article 9. However, only a few parties have submitted the voluntary general reports mentioned above.<sup>94</sup>

**Legal Reports** As part of its monitoring activities each year, the Standing Committee reviews a legal and policy report analysing the implementation of the convention in a contracting party. These reports are commissioned to independent experts, who present them at the meeting of the Standing Committee after having given the concerned party an opportunity to comment.

**Thematic Reports** Groups of Experts also monitor the implementation of Standing Committee recommendations concerning the species or habitats they cover (e.g. amphibian and reptiles, plants, invertebrates). At their periodic meetings, Groups of Experts address specific conservation problems and propose recommendations to the Standing Committee.

In addition, parties are asked to send national reports on specific issues or topics of interest and to share

<sup>91</sup> See Council of Europe, *Questions and Answer: The Bern Convention* (Council of Europe, November 2007), available at <[http://www.coe.int/t/dg4/cultureheritage/nature/Bern/QR9\\_en.pdf](http://www.coe.int/t/dg4/cultureheritage/nature/Bern/QR9_en.pdf)>.

<sup>92</sup> See *Explanatory Report*, n. 16 above, para. 43.

<sup>93</sup> In 1995, the Standing Committee agreed that contracting parties would prepare general reports on the application on the convention every four years. See *Guidelines for the Contents of a General Report by the Parties of the Bern Convention* (T-PVS (2001) 26, 29 May 2001); and see *Guidelines for the Contents of a General Report by the Parties of the Bern Convention 2001–2004* (T-PVS/Inf (2005) 09, 30 June 2005).

<sup>94</sup> For the latest compilations of biennial and general reports, see *Compilation of Biennial Reports 2005–2006* (T-PVS/Inf (2009) 17, 26 October 2009); *Compilation of Biennial Reports 2007–2008* (T-PVS/Inf (2009) 18, 26 October 2009); and *Compilation of General Reports 2001–2004* (T-PVS/Inf (2009) 19, 3 November 2009), available at <[http://www.coe.int/t/dg4/cultureheritage/nature/WCD/TPVSDocs\\_en.asp#>](http://www.coe.int/t/dg4/cultureheritage/nature/WCD/TPVSDocs_en.asp#>).

information to be discussed at the meetings of the Groups of Experts. Some examples are national reports on the implementation of the European Strategy on IAS, which are reviewed at the meetings of the Group of Experts on IAS; national reports on activities and initiatives concerning biodiversity and climate change in contracting parties; and national reports on the status of development of the Emerald Network.<sup>95</sup>

### Follow Up on Previous Recommendations

Each year, the Standing Committee reviews the implementation of a selection of previous recommendations. With more than 140 recommendations adopted so far, the Bureau prepares this follow-up by asking relevant parties and observers to submit reports on the implementation of past recommendations adopted by the Standing Committee. Sometimes, these reports have alerted the Committee about a particular problem in a country or group of countries, resulting in the opening of a case-file. Frequently, the processing of complaints and case-files (see next section) results in the adoption of Standing Committee recommendations asking parties to take certain actions to address the issue at stake. These recommendations are also regularly monitored by the Standing Committee, which requests parties to submit reports on the implementation of each of the actions listed therein.

All reports under the different reporting systems are publicly accessible through the convention's website,<sup>96</sup> as are other documents submitted to the Standing Committee's annual meetings.

## THE CASE-FILE SYSTEM

As noted above, the case-file system of the Bern Convention is unusual as it is not based on any provisions within the convention, but stems from a decision taken by the Standing Committee at its third meeting, in 1984,<sup>97</sup> to deal with complaints and alerts as to possible breaches of the convention in the territories of contracting parties. The case-file system has proven to be an excellent tool to achieve the aims of the Bern Convention through international cooperation. The system is

based on complaints for possible breaches of the convention, usually submitted by NGOs, that are processed by the Secretariat, the Bureau and the Standing Committee according to their merits and on the basis of the information submitted.<sup>98</sup>

When the Standing Committee considers that further information is needed, an 'on-the-spot visit' can be arranged by the Secretariat, although it needs the consent of the relevant party. On-the-spot appraisal visits are carried out by independent experts, who report to the Standing Committee on their findings and recommendations. Many NGO complaints have triggered on-the-spot appraisal visits and independent expert reports, which have then led to recommendations adopted by the Standing Committee to tackle the specific problems identified and assessed. These recommendations are therefore addressed to a particular country or group of countries to redress a problem with the application of the convention concerning the protection of a wild species or natural habitat under threat.

Since 1982, when the Standing Committee limited its actions to very general recommendations, practice has created a set of steps that guide the procedure for the case-file system, such as preliminary screenings of complaints by the Secretariat, which then contacts the affected party for further information; and the decision by the Bureau on the follow up of each case, including the determination of which are to be placed in the draft agenda of the Standing Committee. The success of these procedural steps relates to the fact that the Standing Committee remains free to find the solution in each case, without being constrained by strict obligations that may be a barrier to smooth cooperation among contracting parties. This is a clear reflection of the commitment embodied in Article 18(1) of the convention, establishing that the Standing Committee 'shall use its best endeavors to facilitate a friendly settlement of any difficulty to which the execution of this Convention may give rise'. The aim behind the rules has been to guide the procedure itself, not to influence the flexibility that contracting parties need when addressing a particular situation at the Standing Committee. The Standing Committee is a forum to express opinions and propose solutions. This could be jeopardized by a very strict application of the rules.

As noted above, the current set of rules<sup>99</sup> has been applied in a 'provisional' manner and without any opposition. Practice has shown that the success or the

<sup>95</sup> As an example, in 2009, parties were asked to submit national reports on European island biodiversity (see *Compilation of National Reports on Activities Related to Biological Diversity on European Islands* (T-PVS/Inf (2009) 12, 6 October 2009); biodiversity and climate change (see *Compilation of National Reports on Activities Related to Biodiversity and Climate Change* (T-PVS/Inf (2009) 7, 9 October 2009); and invasive alien species (see *Report of the Eighth Meeting of the Group of Experts on Invasive Alien Species* (Brijuni (Croatia), 5–7 May 2009 (T-PVS (2009) 8, 12 May 2009), Appendix 3).

<sup>96</sup> See Council of Europe, *Bern Convention on the Conservation of European Wildlife and Natural Habitats* (Council of Europe, undated), available at <[http://www.coe.int/t/dg4/cultureheritage/nature/Bern/default\\_en.asp](http://www.coe.int/t/dg4/cultureheritage/nature/Bern/default_en.asp)>.

<sup>97</sup> See S. Jen, n. 14 above.

<sup>98</sup> See Summary of Case-Files and Complaints, n. 48 above.

<sup>99</sup> See *Implementation of the Bern Convention: Opening and Closing of Files and Follow Up of Recommendations* (T-PVS (93) 22, 3 November 1993).

failure of the case-file procedure does not depend solely on the procedural rules themselves, but on the will of parties to cooperate.<sup>100</sup>

In 2007, the Secretariat presented to the Standing Committee an analysis of the rules of procedure for the case-file system,<sup>101</sup> based on two elements: a review of the procedural steps used for the opening and closing of case-files on the basis of the experience gained in 25 years of practice; and an up-to-date table containing basic information on each of the 96 cases that had been assessed by the Standing Committee by that time. At its twenty-seventh meeting, the Standing Committee requested the Secretariat to prepare a proposal based on this report, and submit it to its twenty-eighth meeting in 2008. At that meeting, the Standing Committee agreed to follow a registration system for the case-files and, more importantly, to post an 'on-line complaint form' on the convention's website<sup>102</sup> to provide information on the main elements needed to process complaints and determine their admissibility.

In addition to the system of complaints and case-files, a 'final resort' tool is available in the Bern Convention,<sup>103</sup> which provides for recourse to arbitration when mediation and negotiation have failed. Parties to the Bern Convention have recourse to arbitration as a dispute-settlement method available to them,<sup>104</sup> but this so far remains unused. The arbitration procedure can be initiated at the request of one party. Each party to the dispute must designate an arbitrator, and the two arbitrators shall designate a third one. The convention provides a procedure in case one of the parties fails to designate its arbitrator within three months following the request for arbitration. The resulting arbitration tribunal will draw up its own Rules of Procedure, but it is established in the convention that decisions must be taken by majority vote, and that the award of the arbitration tribunal will be 'final and binding'.<sup>105</sup>

## CONCLUSIONS

The Bern Convention has come of age, having reached 50 contracting parties and having adopted more than 140 recommendations and many policy guidance documents to improve the conservation of biological diversity in Europe. Interestingly, this 'mature' convention,

which has just turned 30 years old, continues to attract newcomers: the five most recent contracting parties having joined the treaty in the last four years.

Bern Convention parties and observers have recognized and value the role that this regional treaty has played to protect Europe's wild flora and fauna for future generations, while at the same time addressing the impact that people play in the wider environment and their interactions with nature.<sup>106</sup>

In 2004, the parties to the Bern Convention adopted a 'Declaration on the role of the Bern Convention in the preservation of biological diversity',<sup>107</sup> in which they recognized this regional treaty as an 'instrument of major importance for the conservation and sustainable use of biological diversity at the regional level by reason of its aims, its geographical coverage and commitment of its Parties to implementation'.<sup>108</sup> In this sense, the continued cooperation and coordination of the Bern Convention with the EU, the CBD and other international biodiversity agreements will be critical to ensure a fruitful future for this unique regional treaty.

Over the last 30 years, the Bern Convention has produced extensive guidance and standards in different forms to help countries improve national biodiversity policies and preserve their natural heritage. The Bern Convention has combined concrete and practical action on the conservation and management of key species and sites with more strategic instruments such as the 2003 European Strategy on Invasive Alien Species or the 2006 Strategy for the Conservation of Invertebrates, mentioned above. In this sense, the Bern Convention plays a unique and complementary role to other biodiversity policy instruments, such as those developed by the EU.

This broad coverage of relevant issues, leading to concrete guidance and strategic documents, together with the active partnerships and cooperation developed over the years with other biodiversity conventions, the scientific community and NGO, are some of the convention's strengths that continue to motivate European countries to join this multilateral environmental agreement. Part of the Bern Convention's 'added value' has also been to tackle complex and sensitive issues long before they were addressed in legally binding instruments across Europe, including sustainable hunting, invasive species, ecological networks, the linkages between biodiversity and climate change, and the special needs and vulnerability of European island biodiversity.

<sup>100</sup> See Summary of Case-Files and Complaints, n. 48 above.

<sup>101</sup> See Analysis of the Rules of Procedure for the Case File System (T-PVS (2007) 6, 29 March 2007).

<sup>102</sup> In 2008, the Standing Committee agreed to make available an 'on-line complaint form' on the Bern Convention's website to facilitate the processing of complaints by the Secretariat. See on-line form available at <[http://www.coe.int/t/dg4/cultureheritage/nature/Bern/On-lineform\\_en.pdf](http://www.coe.int/t/dg4/cultureheritage/nature/Bern/On-lineform_en.pdf)>.

<sup>103</sup> See Bern Convention, n. 1 above, Article 18(2)–(5).

<sup>104</sup> Ibid.

<sup>105</sup> See *ibid.*, Article 18(2) and 18(4).

<sup>106</sup> See Bern Declaration, n. 46 above. To mark and celebrate its thirtieth anniversary, the 2009 meeting of the Standing Committee was exceptionally held in Bern, Switzerland, at the invitation of the Swiss Government.

<sup>107</sup> See Strasbourg Declaration, n. 46 above.

<sup>108</sup> Ibid., para. A.



However, the Bern Convention faces some challenges too. As more and more country members of the Council of Europe continue to join the EU, the proportion of EU and non-EU members which are also parties to the Bern Convention will be altered, even though not all European countries may have this aspiration. This means that currently a majority of parties are also EU countries (27 out of 50), which will soon increase with the likely forthcoming accessions of Iceland, Croatia and other Balkan countries to the EU. In addition, the EU itself is a party to the Bern Convention and therefore EU countries try to coordinate their positions at the meetings of the Standing Committee. This trend implies that EU countries can easily carry out their initiatives, or block others, in the Standing Committee, as their current majority is set to increase in the near future.

On a separate issue, the financial resources needed to service a treaty with 50 contracting parties and an increasingly heavy workload clashes with the decreasing budget available to the Secretariat in the Council of Europe, which leads to the need to prioritize but it also questions the long-term future of the Bern Convention.

The 'Bern Declaration on the conservation and sustainable use of biodiversity in Europe: 2010 and beyond', adopted by the Standing Committee in November 2009, includes a reaffirmation of the important role played by the Bern Convention to facilitate the coordinated implementation of global biodiversity obligations in Europe, including relevant parts of the CBD, CMS and related agreements, and the Ramsar Convention on Wetlands.<sup>109</sup> Parties to the Bern Convention have continued to stress the need 'to keep the existing strong links and cooperation with the European Commission and the European Environment Agency in order to increase efficiency and avoid duplication of efforts, in particular in the fields of invasive alien species, climate

change and biodiversity, protected areas and ecological networks'.<sup>110</sup>

The Bern Convention needs to play on its strengths and continue delivering added value to other existing biodiversity instruments and fora. The post-2010 period will be critical to ensure sustainable funding and policy relevance once the International Year of Biodiversity and tenth Conference of the Parties of the CBD are over, and more political attention is devoted to the post-Kyoto regime to combat climate change. The future global biodiversity vision and targets need to provide the necessary focus to assign priorities and develop initiatives and activities for biodiversity conservation and sustainable use that manage to attract broad support and commitment from governmental and non-governmental actors alike. To achieve this in a context of continued biodiversity loss, reduced funding and insufficient political will remain a challenge for the twenty-first century. The ultimate goal for the regime should be to strive for biodiversity conservation and sustainable use and for its intrinsic value<sup>111</sup> and to work as a major ally to prevent and adapt to the negative effects of climate change. And to do this using all opportunities at hand, from the international to the local level, including climate change negotiations, significant conferences and landmark events, such as the twentieth anniversary of the Rio Summit, in 2012.

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<sup>109</sup> See Bern Declaration, n. 46 above, para. 2.

<sup>110</sup> *Ibid.*, para. 3.

<sup>111</sup> See *ibid.*, last preambular paragraph, where the Standing Committee stressed that the post-2010 biodiversity target 'should be ambitious, measurable and clear, emphasize the value of healthy and resilient ecosystems and the services they provide, and recognize the intrinsic value of biodiversity'.