

# The Current Framework for International Governance of Biodiversity: Is It Doing More Harm Than Good?

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*The latest international status reports confirm that change, and especially loss, of biodiversity continues all over the globe. Consequently, it would seem the body of international biodiversity law and its attendant governance apparatus have failed to deliver their intended effects. From this standpoint, we argue that particular weaknesses in existing biodiversity governance are contributing to this situation, instead of being supportive. Thus, some structural changes seem inevitable if the global biodiversity governance system is to arrest the current rates of biodiversity decline. Based on these propositions and viewed through the lens of environmental law methodology, this article proposes particular changes in international biodiversity law which would enhance international biodiversity governance presently and in the future. Governments are seeking to develop new targets, goals and strategies to prevent biodiversity loss, but what is needed is little short of a revolution in biodiversity governance. We propose some first steps for a radical system redesign, which, underpinned by appropriate science, will enable the international community to regain control of the diminishing status of biodiversity.*

## INTRODUCTION

Despite the rapid development of international biodiversity law,<sup>1</sup> target setting (such as the 2010 biodiversity target),<sup>2</sup> action plans, strategies and programmes in

this field,<sup>3</sup> and new theory, principles and management concepts,<sup>4</sup> the state of biodiversity continues to decline.<sup>5</sup> In recent years, and despite the Convention on Biological Diversity<sup>6</sup> (CBD), the issue of biodiversity has in most cases been overshadowed by the issue of human-induced climate change, yet both are equally important, if not fundamental to the ongoing future of planetary life (including human populations). In fact, these two issues are intertwined and this should be reflected politically and legally.

This article reviews the success and failure of international governance of biodiversity. It proposes that

<sup>3</sup> See on CBD programmes on biodiversity, *inter alia*: Decision II/10, Conservation and Sustainable Use of Marine and Coastal Biological Diversity, printed in *Report of the Second Meeting of the Conference of the Parties to the Convention on Biological Diversity* (UNEP/CBD/COP/2/19, 30 November 1995), Annex II, particularly Annex II to the Decision; Decision IV/5, Conservation and Sustainable Use of Marine and Coastal Ecosystems, Including Programme of Work, printed in *Report of the Fourth Meeting of the Conference of the Parties to the Convention on Biological Diversity* (UNEP/CBD/COP/4/27, 15 June 1998), Annex, Programme of Work on Marine and Coastal Biological Diversity; Decision V/3, Progress Report on the Implementation of the Programme of Work on Marine and Coastal Biological Diversity (Implementation of Decision IV/5), printed in *Report of the Fifth Meeting of the Conference of the Parties to the Convention on Biological Diversity* (UNEP/CBD/COP/5/23, 22 June 2000), Annex III; Decision VI/3, Marine and Coastal Biological Diversity, printed in *Report of the Sixth Meeting of the Conference of the Parties to the Convention on Biological Diversity* (UNEP/CBD/COP/6/20, 23 September 2002), Annex I; Decision VII/5, Marine and Coastal Biological Diversity, Review of the Programme of Work on Marine and Coastal Biodiversity, printed in *Report of the Seventh Meeting of the Conference of the Parties to the Convention on Biological Diversity* (UNEP/CBD/COP/7/21, 13 April 2004), Annex.

<sup>4</sup> This includes the Ecosystem Approach as developed by the CBD COP. See further Decision V/6, Ecosystem Approach, printed in *Report of the Fifth Meeting of the Conference of the Parties*, *ibid.*, Annex III; and Decision VII/11, Ecosystem Approach, printed in *Report of the Seventh Meeting of the Conference of the Parties*, *ibid.*, Annex.

<sup>5</sup> See, *inter alia*, *Millennium Ecosystem Assessment, 2005: Ecosystems and Human Well-being. Synthesis* (Island Press, 2005), at 1–131; *Global Biodiversity Outlook 2* (Secretariat of the Convention on Biological Diversity, 2006) (GBO-2), at 9–73; and *Global Biodiversity Outlook* (Secretariat of the Convention on Biological Diversity, 2010) (GBO-3), at 9–94, and particularly at 9–13.

<sup>6</sup> See CBD, n. 2 above.

<sup>1</sup> We use the term international biodiversity law to include international and regional treaties on biodiversity, although we deal only with global treaties in this article.

<sup>2</sup> See, *inter alia*, reflected in several decisions of the Conference of the Parties (COP) to the Convention on Biological Diversity (Rio de Janeiro, 5 June 1992) (CBD), such as in Decision VI/26, Strategic Plan for the Convention on Biological Diversity, printed in *Report of the Sixth Meeting of the Conference of the Parties to the Convention on Biological Diversity* (UNEP/CBD/COP/6/20, 27 May 2002), Annex I, paras 2 and 11, and also the Hague Ministerial Declaration of the Conference of Parties to the Convention on Biological Diversity, Annex II to the same report, *ibid.*, para. 11.

particular regulatory changes at the international level could contribute and strengthen the legal operationalization<sup>7</sup> of international objectives and targets and, at the same time, enhance biodiversity conservation and management. The analysis builds on existing global regimes on biodiversity relating to terrestrial and marine biodiversity with an emphasis on the CBD. The legal method used is based on the fundamentals of environmental law methodology (ELM).

## THE NATURE OF THE PROBLEM

Biodiversity is the term used to describe the variety of life, at all levels from genes through species and to ecosystems. Even while it is undergoing rapid change, including substantial loss, people and their cultures value biodiversity for reasons ranging from the aesthetic to the economic. Biodiversity is integral to sustainable development but, as a result of human activities, its change and loss threatens a range of ecosystems that play a central role in supporting vital Earth systems upon which people, as well as other species, depend. The Millennium Ecosystem Assessment associated loss of biodiversity with a loss or reduction in provision of ecosystem services; the benefits people obtain from ecosystems.<sup>8</sup>

Increasingly, societies are concerned about environmental security (including food, energy, water and health), and the link between secure human environments and the capacity of natural and managed ecosystems to respond to environmental change. Biodiversity underpins many key ecosystem functions, including their ability to adapt to change, although the details are often not well understood.<sup>9</sup> Biodiversity loss remains a serious issue that needs to be tackled by the global community, within the overall context of tackling climate change.<sup>10</sup>

Since the Rio Earth Summit in 1992,<sup>11</sup> there have been many discussions about the governance arrangements for biodiversity. The CBD is not the only treaty with a

focus on biodiversity, as it is being discussed currently in the United Nations Framework Convention on Climate Change<sup>12</sup> (UNFCCC) (with regard to Reducing Emissions from Deforestation and Degradation (REDD), which is a process that has the potential for benefits for biodiversity) and the United Nations Convention on Combating Desertification (UNCCD),<sup>13</sup> as well as in a multitude of ways in the other biodiversity-related multilateral environment agreements (MEAs), detailed later in this article.

In order to reduce biodiversity loss, the world needs greatly improved biodiversity policies and implementation practices, developed globally but implemented through existing local, national and international systems and structures. There are a number of fundamental principles, developments and concerns which are not incorporated in current policy and management responses, and the need for clear direction on global policy directions, and a concomitant supporting and enabling legal framework for biodiversity, cannot be overemphasized.

## ONE RESPONSE: THE 2010 TARGET

In 2002, the Conference of the Parties (COP) to the CBD established a target 'to achieve, by 2010, a significant reduction of the current rate of biodiversity loss at the global, regional and national levels as a contribution to poverty alleviation and to the benefit of all life on earth'.<sup>14</sup> This target was further endorsed by the World Summit on Sustainable Development<sup>15</sup> and incorporated into the Millennium Development Goals as a target under Goal 7 on environmental sustainability.<sup>16</sup>

At its tenth meeting in Nagoya, Japan, in October 2010, the CBD COP is due to assess progress towards this target, and also to update the convention's Strategic Plan, including a vision, targets and milestones for future commitments on biodiversity conservation, management and benefit sharing.<sup>17</sup>

<sup>7</sup> A reference to legal operationalization is often used to describe what is needed in law and legal systems and what should be avoided in order for objectives and targets to become part of enforceable law. See further, e.g., A. Jóhannsdóttir, *The Significance of the Default: A Study in Environmental Law Methodology with Emphasis on Ecological Sustainability and International Biodiversity Law* (Uppsala University, 2009), at 19–28 *et passim*.

<sup>8</sup> See *Millennium Ecosystem Assessment*, 2005, n. 5 above, at 84–87 *et passim*.

<sup>9</sup> In January 2010, the Inter-Academy produced a clear statement on these issues, as a contribution to discussions throughout 2010. The Inter-Academy is a global network of the world's science academies.

<sup>10</sup> See further *Communiqué of the Inter Academy Panel Biodiversity Conference* (13–14 January 2010), available at <<http://www.interacademies.net/Object.File/Master/10/228/IAP%20BC%20Communique.pdf>>.

<sup>11</sup> This was the United Nations Conference on Environment and Development, which was held in Rio de Janeiro 3–14 June 1992.

<sup>12</sup> United Nations Framework Convention on Climate Change (New York, 9 May 1992).

<sup>13</sup> United Nations Convention on Combating Desertification (Paris, 17 June 1994).

<sup>14</sup> See Decision VI/26, n. 2 above, Annex I, para. 11.

<sup>15</sup> Johannesburg Plan of Implementation (UN Doc. A/CONF.199/20, 4 September 2002), Resolution I, Annex, para. 44.

<sup>16</sup> See United Nations Millennium Declaration (A/RES/55/2, 18 September 2000), para. 23; Implementation of the United Nations Millennium Declaration (A/57/270, 31 July 2002), Annex, at 30; and *Report of the Secretary-General on the Work of the Organization* (A/62/1, 31 August 2007), Annex II, at 68.

<sup>17</sup> See further Decision IX/8, Review of Implementation of Goals 2 and 3 of the Strategic Plan, reported in *Report of the Conference of the Parties to the Convention on Biological Diversity on the Work of its Ninth Meeting* (UNEP/CBD/COP/9/29, 9 October 2008), Annex I; and Decision IX/9, Process for the Revision of the Strategic Plan, *ibid*.

Many recent international meetings, and within the EU, have concluded that, at the global level and across a range of biodiversity measures, a significant reduction in the overall rate of loss has not been achieved. This is because many of the direct drivers of biodiversity loss – habitat change, over-exploitation, invasive species, nutrient loading from nitrogen and phosphorous, pollution – are increasing, some rapidly so. The key question that needs to be answered is whether the current suite of MEAs is functioning sufficiently to deal with these issues. In examining that question we find them wanting.

## ENVIRONMENTAL LAW METHODOLOGY

We approached this problem using ELM, a proactive legal approach.<sup>18</sup> Its point of departure is the question of how to achieve and maintain the overall objective of ecological sustainability.<sup>19</sup> Due to the lack of a generally accepted definition, it is usually easier to point out factors that contribute to ecological unsustainability than to identify those factors which do not. To date, no single accepted method has been proposed to identify clear thresholds and targets, either generic or specific to any ecosystem, geographic region, or any other defined system, that would measure ‘sustainability’. To reach this goal we must define what we wish to achieve, and a useful starting point (provided by ELM) is the definition of ecological sustainability as ‘the situations and conditions in the biosphere that are sufficient for sustaining mankind for innumerable generations to come with reliable and safe resilience, including full biodiversity’.<sup>20</sup>

ELM recognizes the active role of law in the achievement of ecological sustainability and how important it is to understand *how* law works from a systemic point of view and that any control system needs to be as advanced as the objects being controlled by the system.<sup>21</sup> Hence ELM sets a focus on how legal systems actually function and influence the object – in this article biodiversity – that benefits from the regulation.

By highlighting the rule of law, ELM places an emphasis on law as an instrument for reaching and maintaining particular environmental objectives, providing arguments and models that can be of assistance in answering questions whether law is benefitting the environment.<sup>22</sup>

Under the principles of international law, only States can be responsible for the implementation and legal operationalization of international law. In the case of international biodiversity law, the legal operationalization would typically take place through national legal systems. There is however a significant gap between international law – so often aspirational in its expression – to realizing outcomes on the ground, particularly in changing human behaviour to benefit biodiversity.<sup>23</sup> Realization of the 2010 target (and its successor), or any target for that matter, depends on an understanding of some of the reasons for implementation deficits – being the difference between environmental objectives and the results achieved in the environment from international biodiversity law.

## INTERNATIONAL GOVERNANCE AND BIODIVERSITY

As discussed above, ELM emphasizes the importance of addressing (environmental) law from a systemic point of view. It is based on the thesis that any control system needs to be as advanced as the objects that it is meant to control. In order to understand why international control systems for environmental law may be failing, producing these gaps between international biodiversity law and on-ground results (thereby creating implementation deficits) two important features of international biodiversity governance should be singled out: first, the principal legal solutions that have been chosen with emphasis on the global convention and attempts to strengthen international cooperation in biodiversity governance; and, second, the increasing importance of the typical governing mechanism that many biodiversity conventions rely upon, i.e. the COPs.

## THE LEGAL SOLUTIONS SO FAR: GLOBAL CONVENTIONS ON BIODIVERSITY

In order to understand some of the shortcomings produced by the current international governance system, the main features of biodiversity governance necessitate some examination. Even if some important global

<sup>18</sup> Environmental law methodology (ELM) was originally developed by Dr Staffan Westerlund, Professor at the Faculty of Law, Uppsala University, Sweden. See, *inter alia*, S. Westerlund, *En hållbar rättsordning. Rättsvetenskapliga paradigmer och tankevändor* (Iustus förlag AB, 1997); *Miljörättsliga grundfrågor 2.0* (IMIR Institutet för miljörett. Åmyra förlag, 2003); and S. Westerlund, ‘Theory for Sustainable Development. Towards or Against?’, in H.C. Bugge and C. Voigt (eds), *Sustainable Development in International and National Law* (Europa Law Publishing, 2008), at 47. ELM has been further developed for international law research. See, e.g., J. Ebbesson, *Compatibility of International and National Environmental Law* (Iustus förlag AB, 1996), and A. Jóhannsdóttir, n. 7 above.

<sup>19</sup> See S. Westerlund, *Miljörättsliga grundfrågor 2.0*, *ibid.*, at 16–32 *et passim*.

<sup>20</sup> See A. Jóhannsdóttir, n. 7 above, at 68.

<sup>21</sup> *Ibid.*, at 93–96, 98 and 109 *et passim*.

<sup>22</sup> See S. Westerlund, *Miljörättsliga grundfrågor 2.0*, n. 18 above, at 33–39 *et passim*.

<sup>23</sup> See A. Jóhannsdóttir, n. 7 above, at 78.



MEAs<sup>24</sup> relating to biodiversity predate the 1972 Stockholm Conference on the Human Environment,<sup>25</sup> most were concluded after 1970. Since then, international biodiversity law and governance has expanded considerably, culminating with the CBD in 1992, which marks a particular starting point for a new approach in biodiversity regulation. Because of the soft and open-ended character of the CBD's provisions, its weak extraterritorial dimension, and its lack of an explicit commitment to protect biodiversity, some view the CBD as a failure.<sup>26</sup>

Besides the CBD, the MEAs that this article takes into account are: (i) the International Convention for the Regulation of Whaling<sup>27</sup> (the Whaling Convention or ICRW); (ii) the Convention on Wetlands of International Importance Especially as Waterfowl Habitat<sup>28</sup> (the Ramsar Convention); (iii) the Convention for the Protection of the World Cultural and Natural Heritage<sup>29</sup> (the World Heritage Convention); (iv) the Convention on International Trade in Endangered Species of Wild Fauna and Flora<sup>30</sup> (CITES); (v) the Convention on the Conservation on Migratory Species of Wild Animals<sup>31</sup> (CMS); (vi) the United Nations Convention on the Law of the Sea<sup>32</sup> (UNCLOS); (vii) UNCCD;<sup>33</sup> (viii) the Agreement for the Implementation of the Provisions of the United Nations Convention of the Law of the Sea of 10 December 1982, Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks<sup>34</sup> (the Straddling Fish Stocks

Agreement); (ix) the Cartagena Protocol on Biosafety to the Convention on Biological Diversity<sup>35</sup> (the Cartagena Protocol); and (x) the International Treaty on Plant Genetic Resources for Food and Agriculture<sup>36</sup> (the International Seed Treaty).

In line with the principles of international law, each MEA represents an independent control system. Although with different scopes, subject matter, type of norms and methodological approach,<sup>37</sup> together these MEAs are the backbone of a global control system governing biodiversity.<sup>38</sup> This system lacks both an inherent hierarchy and a typical centre,<sup>39</sup> but is all the same an international governing system applicable to terrestrial and marine biodiversity.

Some may consider our inclusion of the Whaling Convention, and its attendant International Whaling Commission (IWC), curious, simply because the whaling issue is often not seen as relevant to biodiversity. Yet all international conventions which deal with biodiversity are important, and the IWC, as implementer of the Whaling Convention, has made significant contributions to our scientific understanding of whale populations, their dynamics and response to environmental perturbation – all of which have implications far beyond whales. Additionally, the IWC does have observer status at CITES. At the same time, the IWC is widely regarded as dysfunctional,<sup>40</sup> and while there are signs of reluctant reform at the time of writing, such reforms are not likely to improve its long-term functioning.

The biodiversity-related MEAs rely upon different regulatory techniques, but many still have several things in common: (a) they all include an objective to

<sup>24</sup> There are furthermore many important regional treaties that belong to international biodiversity law; they will, however, not be considered in this article. Moreover, the application of particular global treaties, including, *inter alia*, the General Agreement on Tariffs and Trade (Geneva, 30 October 1947) and the Agreement Establishing the World Trade Organization (Marrakesh, 15 April 1994), influences the possibilities of States to exercise their own environmental policies progressively, including particular policies in the sphere of biodiversity law.

<sup>25</sup> S. Lyster, *International Wildlife Law: An Analysis of International Treaties Concerned with the Conservation of Wildlife* (Grotius Publications, 1985) provides a good overview of these treaties.

<sup>26</sup> See further L.D. Guruswamy, 'The Convention on Biological Diversity: A Polemic', in L.D. Guruswamy and J.A. McNeely (eds), *Protection of Global Biodiversity: Converging Strategies* (Duke University Press, 1998), at 351–359.

<sup>27</sup> International Convention for the Regulation of Whaling (Washington, 2 December 1946).

<sup>28</sup> Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar, 2 February 1971).

<sup>29</sup> Convention for the Protection of the World Cultural and Natural Heritage (Paris, 23 November 1972).

<sup>30</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington, 3 March 1973).

<sup>31</sup> Convention on the Conservation on Migratory Species of Wild Animals (Bonn, 23 June 1979).

<sup>32</sup> United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982).

<sup>33</sup> See UNCCD, n. 13 above.

<sup>34</sup> Agreement for the Implementation of the Provisions of the United Nations Convention of the Law of the Sea of 10 December 1982, Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (New York, 4 December 1995).

<sup>35</sup> Cartagena Protocol on Biosafety to the Convention on Biological Diversity (Montreal, 29 January 2000).

<sup>36</sup> International Treaty on Plant Genetic Resources for Food and Agriculture (Rome, 3 November 2001) (ITPGR). The treaty, together with the CBD, forms a particular international control system for the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use; see, *inter alia*, ITPGR, Articles 1, 15, 19 and 20 of the former, and CBD, n. 2 above, Articles 2, 15 and 16.

<sup>37</sup> The CBD, UNCLOS, UNCCD, Straddling Fish Stock Agreement and the International Seed Treaty contain, in many instances, rather general framework provisions that are open for interpretation and balancing of competing interests; the Ramsar Convention, CITES, World Heritage Convention and the CMS all contain general principles but also rely upon listings of the object that is eventually to enjoy the conservation; the Cartagena Protocol, n. 35 above, establishes an advance informed agreement procedure (prior informed consent (PIC) system).

<sup>38</sup> This is in line with Article 19 of the CBD, n. 2 above, and the Cartagena Protocol, n. 35 above, and, as such, the pair forms a particular international control system for biodiversity and living modified organisms.

<sup>39</sup> See CBD, n. 2 above, Article 22, on the relationship with other treaties in this field.

<sup>40</sup> P. Bridgewater, 'Whales and Wailing', 55:178 *International Social Science Journal* (2003), 555.

conserve biodiversity; (b) their individual obligations are often open-ended and States have the possibility to balance their economic and social conditions against the environment in the implementation process;<sup>41</sup> (c) some of them provide general principles that are also meant to be further elaborated in particular agreements between groups of States;<sup>42</sup> (d) very seldom are clear restrictions visible;<sup>43</sup> (e) most of them lack a clear reference to precautionary approaches in their operative text;<sup>44</sup> (f) their obligations and the necessary enforcement mechanisms, as a general rule, need to be made part of national legal systems in order to have the intended benefits for biodiversity; and (g) the various COP decisions, which implement and develop further the operative text of many of the MEAs and introduce important management concepts and precautionary approaches, have weak or unclear legal status under international law and are probably not creating the necessary obligations for States to act accordingly.<sup>45</sup>

In order to strengthen international governance and reduce duplication, a web of memoranda of cooperation and understanding have been created between the secretariats of the CBD, the Ramsar Convention, the CMS, CITES, the World Heritage Convention and the International Seed Treaty.<sup>46</sup> Also some joint working programmes have been established to reach shared goals for the MEAs.<sup>47</sup> These developing partnerships can

focus on common goals and mechanisms to avoid duplication. While these arrangements have initiated dialogue, little tangible progress has resulted, and the substantive obligations of the respective MEAs have remained unchanged. This increased cooperation is not translating into better biodiversity outcomes, as can be judged by the key conclusions of the UN Environment Programme's (UNEP) Third Global Biodiversity Outlook (GBO-3).<sup>48</sup>

## GOVERNING MECHANISMS

Apart from UNCLOS and the Straddling Fish Stocks Agreement,<sup>49</sup> the operative texts of the MEAs in question create a functional governing machine – the COP. These bodies have been given mandates to undertake additional actions to achieve the objectives of the MEAs.<sup>50</sup> Permanent secretariats<sup>51</sup> and standing scientific bodies have also been created.<sup>52</sup> The COPs are further able to establish *ad hoc* bodies to work on particular tasks. In most cases, and in line with particular regulatory frameworks,<sup>53</sup> the COPs have continued legislating – reflected in law-making decisions and new protocols<sup>54</sup> – and interpreting and developing the respective regimes, and some may have expanded their mandates beyond their prime objective (which brings even further complications into play).<sup>55</sup> Numerous COP decisions provide the principal mechanism by which these activities can be implemented.<sup>56</sup>

<sup>41</sup> This is particularly the case for the CBD and UNCLOS. See, on balancing norms, J. Ebbesson, n. 18 above, at 86–89 and 103–135.

<sup>42</sup> See, *inter alia*, UNCLOS, n. 32 above, CMS, n. 31 above, and UNCCD, n. 13 above.

<sup>43</sup> See, however, the wording of CBD, n. 2 above, Article 8(h): 'Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species'; and see also the Ramsar Convention, n. 28 above, Article 4(2): 'Where a Contracting Party in its urgent national interest, deletes or restricts the boundaries of a wetland . . . it should as far as possible compensate for any loss of wetland resources, and in particular it should create additional nature reserves for waterfowl . . .'. On the other hand, the Whaling Convention, n. 27 above, has *de facto* exercised strict conservation policies, and is by some thought to have exceeded its original mandate of proper conservation of whale stocks and thus make possible the orderly development of the whaling industry.

<sup>44</sup> The exceptions are the Straddling Fish Stocks Agreement, n. 34 above, and the Cartagena Protocol, n. 35 above.

<sup>45</sup> See A. Jóhannsdóttir, n. 7 above, at 121–125.

<sup>46</sup> For information on the mandates for cooperation, see *Mandates for Cooperation* (Secretariat of the CBD, undated), available at <<http://www.cbd.int/cooperation/related-conventions/mandates.shtml>>.

Some treaties, such as the International Seed Treaty, n. 36 above, stipulate cooperation with other relevant treaty bodies and international organizations, and in this case with the CBD COP; see further CBD, n. 2 above, Article 19(3).

<sup>47</sup> Decision VII/26, Cooperation with Other Conventions and International Organizations and Initiatives, printed in *Report of the Seventh Meeting of the Conference of the Parties*, n. 3 above, Annex. See also, *inter alia*, Ramsar COP-10, Resolution X.11 (2008), Partnerships and Synergies with Multilateral Environmental Agreements and Other Institutions, printed in *Resolutions of the Tenth Meeting of the Conference of the Parties to the Convention on Wetlands* (28 October–4 November 2008).

<sup>48</sup> See GBO-3, n. 5 above, at 9–13.

<sup>49</sup> The Straddling Fish Stocks Agreement, n. 34 above, relies upon cooperation through regional and sub-regional fisheries management organizations and arrangements.

<sup>50</sup> The COPs sometimes bear other names, e.g. General Assembly or Governing Body, although have similar or identical powers and functions as COPs.

<sup>51</sup> See, e.g., the International Seed Treaty, n. 36 above, Article 20, and CITES, n. 30 above, Article XII.

<sup>52</sup> See, for instance, CBD, n. 2 above, Article 25 and the CBD's Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA).

<sup>53</sup> See further CBD, *ibid.*, Article 23; Ramsar Convention, n. 28 above, Article 6; World Heritage Convention, n. 29 above, Article 8; CITES, n. 30 above, Article XI; CMS, n. 31 above, Article VII; UNCCD, n. 13 above, Article 22; Cartagena Protocol, n. 35 above, Article 29 (the same COP as the CBD's), and International Seed Treaty, n. 36 above, Article 19.

<sup>54</sup> See, e.g., Cartagena Protocol, n. 35 above.

<sup>55</sup> See further on the CBD COP mandate for furthering CBD's scope, A. Jóhannsdóttir, 'The Convention on Biological Diversity: Supporting Ecological Sustainability or Prolonging Denial?', 1 *Nordic Environmental Law Journal* (2010), 81.

<sup>56</sup> For a thorough coverage on COPs and their development in MEAs, see R.R. Churchill and G. Ulfstein, 'Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law', 94:4 *The American Journal of International Law* (2000), 623; and also V. Röben, 'Institutional Developments under Modern international Environmental Agreements', in J.A. Frowein and R. Wolfrum (eds), *Max Planck Yearbook of United Nations Law* (Kluwer Law International, 2000), 363.

As a rule, States are obliged to monitor the national implementation of the respective regimes and as well have reporting obligations.<sup>57</sup> National reports are important tools for evaluating the current biodiversity situation and provide a framework for further actions. While many parties take these obligations seriously, not all do so – and fewer still use the reports as a tool in assisting better implementation; as can be adduced from the reporting details to be found at each convention website. In the last decade, there have been a number of attempts<sup>58</sup> to produce more unitary, or simplified reporting systems, yet all of have floundered. The COPs do not have powers to deal with non-reporting,<sup>59</sup> but where national implementation has turned out to be flawed or ineffective, COPs may be able to effect moral suasion.<sup>60</sup>

## MOVES TOWARDS BETTER GOVERNANCE

As noted above, ELM calls for the use of a systemic analysis of environmental issues. In this section, it will be argued that, in spite of many important steps that should assist underpinning and strengthening of biodiversity governance and its management, many of the new initiatives have not yet managed to strengthen international governance or develop coherent controls. To this end, this section highlights the development of the Biodiversity Liaison Group since 2004, and other initiatives that relate to the further possible clustering of MEAs.

<sup>57</sup> See further, *inter alia*, World Heritage Convention, n. 29 above, Articles 11 and 29; CITES, n. 30 above, Articles VIII and XI; CBD, n. 2 above, Articles 23 and 26; Cartagena Protocol, n. 35 above, Article 33; and International Seed Treaty, n. 36 above, Articles 19 and 21. Regarding fisheries, States report to the UN Food and Agriculture Organization, as well as to sub-regional and regional organizations which are involved with fisheries.

<sup>58</sup> See, for instance, D. Mouat *et al.* (eds), *Opportunities for Synergy among the Environmental Conventions: Results of National and Local Level Workshops* (Secretariat of the United Nations Convention to Combat Desertification (UNCCD), 2006), at 3.

<sup>59</sup> For example, under the CBD the due date for the fourth National Report was 30 March 2009: Decision VIII/14, National Reporting and the Next Global Biodiversity Outlook, printed in *Report of the Eighth Meeting of the Parties to the Convention on Biological Diversity* (UNEP/CBD/COP/8/31, 15 June 2006), para. 4. On 30 May 2010, 111 of 193 contracting parties had submitted the fourth report. For information on receipt dates, see CBD Secretariat, *National Reports and NBSAPs* (CBD Secretariat, undated), available at <<http://www.cbd.int/reports/search/?type=nr-04>>. The situation is rather different under the Ramsar Convention. The return rate was 97.2% before COP-7 (1999); 91.9% before COP-8 (2002); 85.1% before COP-9 (2005); and 90.4% before COP-10 (2008). For information on the percentage, see Ramsar Secretariat, *National Reports Submitted to the Conference of the Contracting Parties* (Ramsar Secretariat, undated), available at <[http://www.ramsar.org/cda/en/ramsar-documents-natl-rpts/main/ramsar/1-31-121\\_4000\\_0\\_>](http://www.ramsar.org/cda/en/ramsar-documents-natl-rpts/main/ramsar/1-31-121_4000_0_>)>.

<sup>60</sup> See, e.g., Ramsar Convention, n. 28 above, Article 6(2)(c)(d) and (f).

## THE BIODIVERSITY LIAISON GROUP

Under its Decision VII/26 on cooperation with other conventions and international organizations and initiatives, the CBD COP established<sup>61</sup> in 2004 the Biodiversity Liaison Group, stating that the COP:

Requests the Executive Secretary, drawing on the experience gained in the exercise mentioned above, and in close collaboration with relevant conventions, organizations and bodies, to examine options for a flexible framework between all relevant actors, such as a global partnership on biodiversity, in order to enhance implementation through improved cooperation, and to report to the Conference of the Parties at its eighth meeting on possible ways forward;<sup>62</sup>

The decision was further elaborated at the eighth COP (COP-8) in 2006 in CBD Decision VIII/16,<sup>63</sup> with many more proposed cooperative activities between the CBD Secretariat and other MEAs, as well as specialist programmes and UN agencies.

Yet this was still confined to action by the secretariats, when the important issue is action by the Member States that have ratified the CBD or other MEAs. In 2008, CBD Decision IX/26<sup>64</sup> extended the actions to subsidiary bodies – especially science and technical bodies of the Rio conventions<sup>65</sup> – and for the first time noted the need for action nationally.<sup>66</sup> How effective that decision will be given the great many previous decisions calling for national actions that have been only partially fulfilled or ignored remains to be seen.

In this context, the Global Biodiversity Outlook 3 (GBO-3) reports that:

... action to implement the Convention on Biological Diversity has not been taken on a sufficient scale to address the pressures on biodiversity in most places. There has been insufficient integration of biodiversity issues into broader policies, strategies and programmes ...<sup>67</sup>

The GBO-3 further shows that, while national reporting rates have increased, they are still far from

<sup>61</sup> See Decision VII/26, n. 47 above, Annex, para. 2.

<sup>62</sup> *Ibid.*, para. 3, including cooperation with CITES, Ramsar, CMS and the World Heritage Convention.

<sup>63</sup> Decision VIII/16, Cooperation with Other Conventions and International Organizations and Initiatives, printed in *Report of the Eighth Meeting of the Parties*, n. 59 above, Annex I, paras 12–16, broadening the previous mandate (Decision VII/26, n. 47 above).

<sup>64</sup> Decision IX/27, Cooperation Among Multilateral Environmental Agreements and Other Organizations, printed in *Report of the Conference of the Parties to the Convention on Biological Diversity on the Work of its Ninth Meeting* (UNEP/CBD/COP/9/29, 9 October 2008), Annex I.

<sup>65</sup> These are the UNFCCC, CBD and the UNCCD.

<sup>66</sup> Decision IX/27, n. 64 above, Annex I, para. 12.

<sup>67</sup> See GBO-3, n. 5 above, at 9.



satisfactory.<sup>68</sup> And this is but one example where national implementation of the CBD is far below actions needed to make a serious inroad into stemming, or at least slowing biodiversity decline.

## OTHER IMPORTANT STEPS

UNEP initiated an international environmental governance (IEG) process<sup>69</sup> in 2000 including an examination of clustering of MEAs dealing with biodiversity, and with chemicals and waste (the Basel,<sup>70</sup> Rotterdam<sup>71</sup> and Stockholm<sup>72</sup> Conventions). While this led nowhere, a report for the Nordic Environment Ministers<sup>73</sup> re-emphasized that the most striking example of increasing synergies between MEAs comes from those in the chemicals and waste cluster.

In 2006, each of the COPs of the Basel, Rotterdam and Stockholm Conventions agreed to establish an *ad hoc* joint working group on enhancing cooperation and coordination (AHJWG). The AHJWG agreed on a recommendation that included proposals for joint programmatic and administrative activities. Integrated among the conventions are several issues that aim to strengthen particular tasks such as the harmonization of national reporting, joint capacity-building activities and public awareness activities, and organizing an extraordinary meeting of the COPs to the three conventions mentioned above. The process has been described as an innovative 'bottom-up' approach; it is furthermore country-driven and engages the parties to the MEAs in the design of and follow-up to synergistic efforts.<sup>74</sup> However, the biodiversity MEAs – perhaps because some of their origins date back 40 years and have been adopted in a piecemeal fashion, often with lack of effective coordination and engagement at national level – have failed to deliver such concrete and synergized results.<sup>75</sup>

IEG discussions have been refreshed in recent meetings of the UNEP Governing Council.<sup>76</sup> The proceedings of

the last eleventh special session of the Council included the following text on options for incremental reform:

We recognize the importance of enhancing synergies between the biodiversity-related conventions, without prejudice to their specific objectives, and encourage the conferences of the parties to the biodiversity-related multilateral environmental agreements to consider strengthening efforts in this regard, taking into account relevant experiences.<sup>77</sup>

At the same time, the UN Environment Management Group (EMG) was attempting to promote synergies between relevant MEAs and relevant UN agencies, but again at the secretariat level. Finally, and importantly, the UN Joint Inspection Unit in 2008 made, *inter alia*, the following recommendation:

The Secretary-General should submit to the General Assembly, for its consideration through the UNEP Governing Council/Global Ministerial Environmental, a clear understanding on the division of labour among development agencies, UNEP and the MEAs, outlining their respective areas and types of normative and operational capacity-building activities for environmental protection and sustainable development.<sup>78</sup>

Some two years on, there is no indication that the main elements of this report have progressed, and its status, whose conclusions remain valid, is unclear. Its key conclusions were included in the discussion papers for the UNEP Governing Council's Eleventh Special Session, but did not appear in any of the proceedings. All of these discussions take place against the broader canvas of wider UN reforms being undertaken by the UN General Assembly, instigated in part by the UN Secretary General to improve system coherence in 2006, as well as proposals from some countries for broader reform still, including the establishment of a World Environment Organization, essentially to balance the World Trade Organization. There seems little appetite for such radical changes, however.

## LEGAL OPERATIONALIZATION AT THE NATIONAL LEVEL

The role of international law in the legal operationalization of biodiversity targets is an important one. However, if the main emphasis is placed on solutions that have a vague legal status under the international system, then gaps between the law and the on-ground results seem inevitable. From that standpoint, this

<sup>68</sup> *Ibid.*, at 20 *et passim*.

<sup>69</sup> See also *International Environmental Governance, Report of the Executive Director* (UNEP/IGM1/2, 4 April 2001).

<sup>70</sup> Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel, 22 March 1989).

<sup>71</sup> Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam, 19 September 1998).

<sup>72</sup> Stockholm Convention on Persistent Organic Pollutants (Stockholm, 22 May 2001).

<sup>73</sup> *Possibilities of Enhancing Cooperation and Coordination among MEAs in the Biodiversity Cluster* (TemaNord 2009:537) (Nordic Council of Ministers, 2009), at 21 *et passim*.

<sup>74</sup> *Ibid.*, at 15 and 21 *et passim*.

<sup>75</sup> *Ibid.*, particularly at 19–22 *et passim*.

<sup>76</sup> Proceedings of the Governing Council/Global Ministerial Environment Forum at its Eleventh Special Session International Environmental Governance: Outcome of the Work of the Consultative Group

of Ministers or High-Level Representatives. Note by the Executive Director (UNEP/GCSS.XI/11, 3 March 2010).

<sup>77</sup> *Ibid.*, para. 12.

<sup>78</sup> *Management Review of Environmental Governance within the United Nations System* (JIU/REP/2008/3) (UN Joint Inspection Unit, 2008), Recommendation 1, at 7.

section highlights two important issues that relate to the legal operationalization at the national level: namely lack of information about, and implementation of, COP decisions, and the consequent failure in national implementation of international biodiversity law.

## LACK OF INFORMATION

While national reports carry some information on the implementation and legal operationalization of some of the most important COP decisions, they are often rudimentary and difficult to access. It is thus fair to presume that only a minimal level of legal operationalization of biodiversity MEAs has taken place at the national level.

Further, two known factors indicate that the legal operationalization at the national level has been flawed. First, the available scientific and technical information on the state of biodiversity shows continuing decline and indicates slow progress toward the overall objective of reaching ecological sustainability. However, most agreed decisions contain guidelines on biodiversity management that could produce quick and effective actions to reduce biodiversity loss. Second, CBD Decision IX/8 on the Review of Implementation of Goals 2 and 3 of the CBD Strategic Plan<sup>79</sup> and Decision IX/9 on the Process for the Revision of the Strategic Plan<sup>80</sup> indicate that the previous emphasis on reaching the 2010 target by using soft approaches had been unrealistic in the first place.

The COP, in Decision IX/8, emphasizes 'that national biodiversity strategies and action plans and equivalent policies and legislative frameworks are key implementation tools of the Convention and therefore play an important role in achieving the 2010 biodiversity target'.<sup>81</sup> However, it notes that:

Parties that have not yet done so [are] to develop a national biodiversity strategy and action plan or adapt existing strategies, plans or programmes, as required by Article 6 of the Convention, as soon as possible and preferably no later than the tenth meeting of the [COP in 2010].<sup>82</sup>

Given the fact that the CBD came into effect in 1993, its implementation at the national level can only be described as worryingly slow, as the GBO-3 shows.<sup>83</sup> MEAs dealing with specific aspects of biodiversity have had some better results in specific areas, although this is uneven in each, and at best has provided an operating policy framework based on past practice of what is

achievable rather than fully addressing the fundamental goals of the particular MEA. For example, the listing of sites under the Ramsar and World Heritage Conventions may have caused some parties to take more care over those sites and the adherence to a CMS range State agreement places a party in a much more visible position regarding the status of particular species. Yet while few would argue these are not positive steps forward, even fewer would argue that they represent a complete fulfilment of all the obligations of the MEAs concerned.

## NATIONAL LEVEL

Perhaps the most significant factor in the failure of international biodiversity law resides in how it is implemented at the national level. As has been pointed out above, these are at best 'suggestions' for how the basic MEA obligations and the law-making decisions should be implemented at the national level. This lack of clear agreement at the international level has led to a plethora of implementation styles, ranging from ignorance to full enactment in national law.<sup>84</sup> It is also of interest to recall that, in 2002, when the Strategic Plan for the Convention on Biological Diversity was introduced, the lack of appropriate policies and (national) laws were considered obstacles to the implementation of the CBD.<sup>85</sup>

While having national legislation in place is the first step, it is still lacking for much of international environmental law across most of the world's States. Several national governments provide the exception to this rule. For example, the Australian Government has codified the main environment MEAs that have site-based objects for protection within its own environment law (the Environment Protection and Biodiversity Conservation Act (EPBC) 1999), thereby allowing inscription and management of World Heritage (natural and cultural) sites, Ramsar Wetlands of International Importance, CITES listed species, IWC matters and CMS range species measures. Norway has also recently taken progressive legal steps and implemented international biodiversity law in its new Legislation Relating to the Management of Biological, Geological and Landscape

<sup>79</sup> See Decision IX/8, n. 17 above.

<sup>80</sup> See Decision IX/9, n. 17 above.

<sup>81</sup> See Decision IX/8, n. 17 above, para. 2.

<sup>82</sup> *Ibid.*, para. 6.

<sup>83</sup> See further GBO-3, n. 5 above.

<sup>84</sup> As an example from a national context, relating to the implementation of the Ramsar Convention into the Icelandic legal system, A. Jóhannsdóttir points out in 'Breytingar á mörkum friðlýstra svæða með áherslu á Ramsarsvæði', 79:1–4, *Náttúrufræðingurinn* (2010), 68, that important Ramsar resolutions seem to be unknown to the legislator and are not visible in the legislation or taken into account in planning or decision making. On the other hand, many States consider resolutions (and other identical COP decisions) as only marginally relevant as they, in many instances, are reflecting soft law, which, according to traditional international law theory, does not legally bind States. Their potential legal relevance should, however, not be underestimated.

<sup>85</sup> See Decision VI/26, n. 2 above, Annex, Appendix, Point 6.



Diversity, known as the Nature Diversity Act, No 100/2009.<sup>86</sup>

However, these seem to be more the exception than the rule. For instance, implementation of the Ramsar Convention into the Icelandic legal system has been flawed in that key Ramsar Resolutions seem to be unknown to legislators and are not taken into account in planning or decision-making.<sup>87</sup> Other States consider resolutions (and other identical COP decisions) as only marginally relevant as they, in many instances, are reflecting soft law, which, according to traditional international law theory, does not legally bind States. Their potential legal relevance should, however, not be underestimated.<sup>88</sup>

Generally, the necessary legal and social infrastructures to monitor and police international environmental law obligations are missing or rarely utilized effectively. This is compounded by many of the aspirational targets and obligations being unworkable in terms of providing measurable outcomes that can then provide tangible evidence of any progress.

## A WAY FORWARD

Fragmented international biodiversity governance is reality and specific legal solutions are needed to reduce implementation deficits. Further to this is the need to ensure that adequate scientific information is available to support decisions by the COPs, and for there to be a workable science–policy interface. There have been exhaustive discussions on this over many years, many focusing on the fact that the CBD's Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) 'doesn't work', compared to the technical advisory bodies of other MEAs. In fact, it does work, but maybe not as intended.<sup>89</sup>

Recent discussions since 2007 have focused on a new mechanism, an Intergovernmental Science–Policy Platform on Biodiversity and Ecosystem Services (IPBES).<sup>90</sup> At the time of writing, discussions on the form and function of an IPBES continue, with a third and final meeting scheduled for June 2010. Much of the driving force for this panel may be for the wrong

cause, however, including existing institutional mismatches (i.e. incompatibilities between the nature of a governance problem and the institutional arrangements established to address it).<sup>91</sup>

So what would work? Existing MEAs relating to biodiversity – international biodiversity law – could be merged by developing them into distinct protocols under the CBD. This could facilitate all scientific work, information gathering and processing, and increase the efficiency of international biodiversity governance as a whole; most importantly, this stands to improve biodiversity outcomes, presently and in the future.

Practically, the CMS would be the easiest to treat by this process, since its own function (essentially as a framework convention) has been taken over in terms of national implementation by species range-State agreements, such as the Agreement on the Conservation of African-Eurasian-Migratory Waterbirds<sup>92</sup> (AEWA) and the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas<sup>93</sup> (ASCOBANS).

Ramsar is not currently part of the UN system, although its Member States have been considering this issue for over four years.<sup>94</sup> This delay is an indication of the malaise that can take hold of MEAs even when obvious and desirable changes are proposed. Regardless of its status, however, the degree of overlap between Ramsar and CBD programmes is very large, and a joint work programme exists. Yet the obvious solution is not a joint work programme, still resulting in inevitable duplication, but to bring it as a wetlands protocol under the CBD, where discussions need occur once only. This could rationalize efforts and expenditures, and potentially help change the scenario where the only convention devoted to an ecosystem (Ramsar) is devoted to the one with greatest planetary decline (according to the Millennium Assessment).

Natural World Heritage sites, while designed by the creators of the World Heritage Convention to be seamless with cultural sites, nonetheless have greater affinity with activities under the CBD and again could become a protocol. It is true that this would mean negotiating an arrangement for the governance *vis-à-vis* the World Heritage Committee, a creature of the UN Educational, Scientific and Cultural Organization, but this only calls

<sup>86</sup> See further on this new legislation, I.L. Backer, 'Naturmangfoldloven – en milepel i norsk miljølovgivning', 1 *Nordic Environmental Law Journal* (2009), 35.

<sup>87</sup> See A. Jóhannsdóttir, n. 84 above, at 68.

<sup>88</sup> *Ibid.*, at 70–71.

<sup>89</sup> T. Koetz *et al.*, 'The Role of the Subsidiary Body on Scientific, Technical and Technological Advice to the Convention on Biological Diversity as Science–Policy Interface', 11 *Environmental, Science & Policy* (2008), 505.

<sup>90</sup> See, for instance, *Options for Improving the Science–Policy Interface for Biodiversity and Ecosystem Services: Note by the Secretariat* (UNEP/IPBES/3/2, 13 April 2010).

<sup>91</sup> See on these issues several aspects tackled by O.R. Young, H. Schroeder and L.A. King (eds), *Institutions and Environmental Change: Principal Findings, Applications, and Research Frontiers* (MIT Press, 2008).

<sup>92</sup> Agreement on the Conservation of African-Eurasian-Migratory Waterbirds (The Hague, 16 June 1995).

<sup>93</sup> Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (New York, 17 March 1992).

<sup>94</sup> See, e.g., *Report of the Ad Hoc Working Group on Administrative Reform to the Forty-First Meeting of the Standing Committee* (SC41-33, 1 May 2010).

for a reshuffling of organizational responsibilities within the UN system. While the International Seed Treaty arose from the Food and Agriculture Organization (FAO), again it logically sits as a CBD protocol, while retaining links with the FAO.

Regarding the Whaling Convention, until the IWC decides if it has a viable or relevant future, it is difficult to consider it further. Finally, with respect to CITES, it deals largely with trade issues and its logical place is as part of the WTO system, rather than within the CBD.

Are there disadvantages from such a consolidation? It can be argued that a large umbrella convention can only reinforce the problems of distance between decision taking at global scales and the urgent need for local actions. And yet the CMS is perhaps the best example of where success has come from decentralizing the main functions for the convention to a limited range of Member States to carry out activities for a particular species or set thereof. This has been so much so that there is now an arguable case for CMS as a convention to no longer exist, but be driven through the Range State Agreements, such as the AEWa and ASCOBANS. This model fits well the need for a global perspective but local action discussed earlier. Provided the aim is to streamline the global functions and provide an appropriately supportive and funded implementing body, there can only be advantages in the model proposed.

So how could this consolidation of MEAs under the CBD happen? As each convention has its own governing body, meeting asynchronously, this could take at least a decade for even initial consideration and response. Given the data from the Millennium Ecosystem Assessment and the recent Global Biodiversity Outlook<sup>95</sup> which suggest biodiversity loss is increasing, the biodiversity issue cannot wait a further 10 years for the international community to get its governance fit for twenty-first century purposes.

The UN General Assembly launched (in 2005) an informal consultative process on the institutional framework of the environmental activities of the UN.<sup>96</sup> As part of this activity, the UN Secretary-General presented the report of his High-level Panel on United Nations System-Wide Coherence in the Areas of Development, Humanitarian Assistance and the Environment, entitled *Delivering as One*.<sup>97</sup>

As part of its recommendation to upgrade UNEP and give it real authority as the UN environment-policy

pillar and improve the effectiveness of environmental activities within the UN system, the High-level Panel recommended that the Secretary-General commission an independent assessment of the current UN system of international environmental governance.<sup>98</sup> This independent report was produced by the Joint Inspection Unit of the UN (its internal audit arm).<sup>99</sup>

That Joint Inspection Report concluded in its 2008 review that 'the current framework of international environmental governance is weakened by institutional fragmentation and specialization and the lack of a holistic approach to environmental issues and sustainable development'.<sup>100</sup> Recognizing the prominent role of UNEP as the environment programme within the UN, and taking account of the sheer difficulties of attempting joint sittings of the several COPs, perhaps the most effective scenario for making the necessary changes is through UNEP's Global Environment Ministerial Forum. A special sitting of that body, as the only global venue with appropriate authority and vision to deal with that issue, and with ministers empowered to make decisions in a plenipotentiary sense, could establish a new mandate for fusion of the conventions. It could be supported in this endeavour by work also undertaken on international environmental governance by the UN Environment Management Group, although much of that work has not been effectively published as of now.

Comments in review of this article alluded to the lack of real progress so far of this body; while a truism, it remains the only appropriate and logical vehicle. It could be so tasked by the special sitting of the UN General Assembly on Biodiversity, foreseen for September 2010, and the high-level segment of the CBD COP to be held in October 2010. Given such a clear global focus and a grasp of the urgency of the situation, within five years a newly consolidated system could be in place. If these proposals can be implemented against a background of new more realistic and measurable biodiversity targets for 2020 (an aim of the CBD COP in October 2010), then perhaps by 2020 biodiversity would have a better long-term prognosis.

## CONCLUSION

An analysis of the current set of international biodiversity-related MEAs shows that, during the last two decades, synergies between them have developed, but weakly. Little evidence exists that such synergies have been useful for or have led to improved biodiversity outcomes. Looking across the entire suite of MEAs, it can be concluded that 'the sum of the parts is not

<sup>95</sup> See *Global Biodiversity Outlook*, n. 5 above

<sup>96</sup> See further *Management Review of Environmental Governance within the United Nations System*, n. 78 above, para 2, a follow up to the United Nations 2005 World Summit Outcome (A/RES/60/1, 24 October 2005).

<sup>97</sup> *Delivering as One, Report of the Secretary-General's High-Level Panel* (UN General Assembly, 9 November 2006).

<sup>98</sup> *Ibid.*, at 6, and also further coverage on the same issues at 18–22.

<sup>99</sup> See *Management Review of Environmental Governance within the United Nations System*, n. 78 above

<sup>100</sup> *Ibid.*, at iii.

greater than the whole', which indicates a system that has no one in charge and no functioning checks and balances to achieve an overall agreed vision. It can thus be argued that the current collection of international biodiversity conservation tools is not working for the future of biodiversity; or worse, it is providing a sense of false security.

Indeed, they are doing more harm than good as they lead to a strong perception within States and more broadly within society that there is adequate legal protection leading to positive outcomes. The general perception of the power and efficacy of international regimes is of a set of mechanisms far more powerful and useful than they are in reality. It is true that existing biodiversity targets do provide some moral suasion on parties to comply, which can lead to increased activity. But while international environmental targets, such as the CBD 2010 target, have no definitive legal status, with no penalty imposed for failure, and with ineffectual or absent reporting, it would seem most likely they will continue to fail to achieve positive biodiversity outcomes everywhere.

This year, 2010, has been declared an International Year of Biodiversity. CBD COP-9 in 2008 took a decision on a new multi-year programme for the period 2011–2022.<sup>101</sup> Thus, the challenge facing CBD COP-10, to be held in October 2010 in Nagoya, Japan, is the task of agreeing upon a biodiversity target for the future.

Such a target must include a new, less fragmented, approach to biodiversity governance. Hopefully then reducing biodiversity loss and managing biodiversity change can become reality, not only on paper but also in nature.

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<sup>101</sup> See Decision IX/8 and also Decision IX/9, n. 17 above.