The Designation of Protected Areas Pursuant to Biodiversity-Related MEAs: an Effective Way of Conserving Natural Resources?

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ABSTRACT

The objective of the article is to see how and to which extent the creation of protected areas pursuant to biodiversity-related MEAs, as a way of balancing state sovereignty over natural resources and the concern of the international community over global environmental protection, can effectively serve the purpose of conserving biodiversity. To that extent, relevant rules under biodiversity-related MEAs will be analyzed as well as the practice developed at international level by the Conference of the Parties of the 1992 Convention on Biological Diversity (CBD COP) and the strategies respectively developed at national and sub-national level by a selected number of CBD contracting parties (Italy, Brazil, China and South Africa).
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I. INTRODUCTION

Multilateral environmental agreements on biodiversity-related issues (biodiversity-related MEAs) entail a whole set of rules on the protection, conservation and sustainable use of natural living resources (i.e. species, natural habitats and ecosystems). The maintenance and management of said resources, worth of international legal protection under these agreements either for their «outstanding universal value», their being a «common heritage» or for constituting transboundary issues engendering a «common concern», are typically demanded to national authorities. These, in turn, are responsible for the realization of administrative arrangements as, for instance, the creation of protected areas.

Three conventions on wildlife and habitat protection have been functioning for more than four decades as the main international legal instruments in this regard (the 1971 Convention on Wetlands of International Importance especially as Waterfowl Habitats, the 1972 UNESCO Convention on the protection of the World Cultural and Natural Heritage and the 1978 Convention on the Conservation of Migratory Species). Each of these international legal instruments laid down rules on the creation of protected sites, to be implemented with the view to realize an “advanced” regime of conservation, sustainable use and protection at local level. The compliance with the provisions enshrined by these MEAs is supported and assisted, at international level, by the decisions and initiatives variously undertaken by the Conferences of Parties (COPs) which, operating as periodical meetings of the Contracting Parties of each convention, detain the power to “shape” the normative evolution and the functioning of the underlying agreements. The 1992 United Nations Convention on Biological Diversity (CBD), a global treaty with an overarching scope covering all biodiversity-related issues, at the same time superseded and supported the functioning of its «predecessors». This is because, as the other biodiversity-related MEAs, the CBD contemplates the designation of protected areas as a means for realizing the in situ conservation of habitats and species\(^1\) but, unlike its sectorial predecessors, it is equipped with a more sophisticated system of governance. However, the common trait under all biodiversity-related MEAs, CBD included, is determined by the reliance on very broad obligations which seek to strike a balance between the sovereign right of each State over its natural resources, on the one hand, and the interest of environmental protection, which, in modern international environmental law, normally amounts to a global concern for States, the international community, the individual, the present and the future generations. This

\(^1\) Article 8, paragraphs a) to e).
tension is frequently epitomized in the designation of protected areas, where it finds one of its maximum expressions. Hence, the goal of this paper is to attempt to see whether or not the protected areas designated pursuant to biodiversity-related MEAs guarantee an adequate balance between sovereignty over natural resources and the supranational environmental protection interests at stake, thus offering a viable solution for the conservation of biological resources.

The analysis will proceed on two distinct although mutually interacting levels. Part 2 will preliminary provide a detailed overview on the provisions of each MEAs relating to the designation of protected sites. Part 3, instead, will focus at first on the CBD and on the mechanisms through which its Contracting Parties address the implementation of the Convention at international level (e.g. by adopting decisions on conservation, the 2012-2020 Strategic Plan for Biodiversity, the Aichi Biodiversity Targets and the thematic decisions on protected areas). Thereafter COP practice will be followed by a sample assessment of the practice that has been developed by a chosen group of CBD Contracting Parties (e.g. Italy, Brazil, China and South Africa). This exercise, *inter alia*, will highlight the characteristics of the conservation strategies adopted by Italy and certain countries commonly referred to as «new economic powers», although featured by profoundly different social, political and environmental conditions.

II. THE DESIGNATION OF PROTECTED AREAS IN INTERNATIONAL BIODIVERSITY LAW

In the year of its 40th anniversary, the Convention on Wetlands of International Importance especially as Waterfowl Habitat (hereinafter the «Ramsar Convention») gave protection to 1,968 designated wetlands, covering 190,729,546 hectares around the world. The Ramsar Convention has been the first biodiversity-related MEA establishing a set of obligations aimed at conserving a particular type of habitat. Specific conservation measures implemented under the convention are aimed to the maintenance of the ecological functions displayed by wetlands

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3 With reference to its rather general principles, the Ramsar Convention has been identified as a «framework convention», see O. FERRAJOLO, *Il sistema giuridico della Convenzione di Ramsar sulle zone umide*, Milano, 2006, p. 24.
ensuring the survival of dependent birds.\(^4\) The peculiarity of the Ramsar Convention is that ratification is subordinated to the insertion of a wetland in the so-called «List of Wetlands of International Importance».\(^5\) Participation to the Ramsar Convention without designation is therefore excluded. Furthermore, the convention does not foresee any screening process and no super partes supranational organism in order to select the sites to be included in the List of Wetlands of International Importance. Hence, States have the fullest discretion in deciding which sites should enter the list and designation amounts to a full exercise of sovereignty as explicitly affirmed by the conventional text.\(^6\) Thus, contracting parties maintain exclusive sovereignty rights on the portions of territory inserted in the list.\(^7\) As highlighted in the doctrine, however, it is very unlikely that by ratifying the convention States do not accept any sort of limitation upon their territorial sovereignty with respect to sites designated precisely by virtue of their “international importance”.\(^8\) In order to address urgent matters, contracting parties may de-list one or more wetlands or review their boundaries.\(^9\) However, the convention provides also that deletions and restrictions must be compensated by the creation of additional protected areas, either on the same territory interested by the deletion/restriction or elsewhere.\(^10\)

The Montreux Record (MR)\(^11\) is a mechanism created by the Ramsar COP in 1990, consisting in a register of wetland sites constituting an integral part of the «List of Wetlands of International Importance» and comprising wetlands where «changes in ecological character have occurred, are occurring, or are likely to occur as a result of technological developments,

\(^4\) Art. 1, para. 2.

\(^5\) Article 2, paragraph 4. The List is kept by the Ramsar Convention Bureau, hosted by the International Union for the Conservation of Nature (IUNC), acting under the supervision of the Standing Committee of Contracting Parties.

\(^6\) Article 2, paragraph 3.

\(^7\) The insistence on sovereignty as being not affected by the designation of a wetland, which in turn enables the participation to the Convention, seems partly pleonastic. In this regard, P. Sands, *Principles of International Environmental Law*, Cambridge, 2003, p. 187.


\(^9\) Article 2, paragraph 5.

\(^10\) Article 4, paragraph 2.

\(^11\) Resolution VI.1 (1996) established procedures for the utilization of the Montreux Record mechanism, with guidelines on the steps to be taken for including or removing Ramsar sites from the Record.
pollution or other human interference». The record identifies sites likely to require the adoption and implementation of positive national and international conservation measures.

Prima facie, the MR seems to be more rudimentary than the List of World Heritage in Danger, established under the 1972 United Nations Education, Scientific and Cultural Organization (UNESCO) Convention of the Protection of World Cultural and Natural Heritage,12 backed up from its outset by a financial instrument (the World Heritage Fund) allocating financial resources to the most threatened sites.13 Concluded under the aegis of the UNESCO, the WCNH Convention resulted from the concern caused by the lethal damages that had destroyed European landmarks during World War II. The WCNH Convention stands out in the context of wildlife protection because of its peculiar perspective on the natural heritage. The convention, in fact, was the first treaty to address the conservation of certain elements of nature conceptually linking them to the notion of heritage.14 It must be said, however, that the role played by the convention as a «conservation» treaty is somehow limited as it does not ensure legal protection to wild species and habitats not fulfilling certain selective requirements. In fact, the WCNH Convention aims at protecting only certain elements of nature15 defined as «physical, biological, geological and physiographical formations» figuratively belonging to all nations and to every individual by virtue of their remarkable and unique features or by virtue of their «outstanding universal value».16 So far there are 878 sites of outstanding universal value localized in 145 States. Out of these 878, only 147 are natural heritage sites whereas only 25 are mixed sites (featured by both natural and cultural elements of value). The disproportion is chiefly due to the priority accorded to the protection of man-made heritage. Recently, however, awareness about the damages that armed conflicts may inflict to the environment has arisen in

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13 A Wetlands Conservation Fund, aimed at favouring the implementation of the convention has been actually introduced by the 1987 amendments. However, its resources, rather than being destined to the management of threatened sites, are conveyed to least developed country parties for facilitating their implementation.

14 See M. Bowman, P. Davies, C. Redgwell, cit., p. 453.

15 Article 1.

16 Article 2. The outstanding universal value can be aesthetic or scientific and can also be determined by the presence of habitats of threatened species of animals and plants worth of conservation.
the doctrine as well as within the supranational WCHN organisms entrusted with screening powers.\textsuperscript{17}

The World Heritage Committee carries out most tasks established under the WCNH Convention. Composed by 21 States appointed with a six-year mandate,\textsuperscript{18} this body is responsible for managing the World Heritage List, comprising natural and cultural heritage sites.\textsuperscript{19} According to paragraph 77 of the WCNH Convention Operational Guidelines,\textsuperscript{20} natural sites embodying an «outstanding universal value» are eligible for insertion in the list and must, specifically, «(ix) be outstanding examples representing significant ongoing ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals», and/or «(x) contain the most important and significant natural habitats for in situ conservation of biological diversity, including those containing threatened species of outstanding universal value from the point of view of science and conservation». In light of these criteria, the list is prepared on the basis of the «inventories of properties forming part of the cultural and natural heritage» individually submitted by contracting parties and known as «tentative lists». While under the Ramsar Convention designation amounts to an integral exercise of sovereignty, under the WCNH Convention a screening procedure, encompassing an independent evaluation of proposed sites is performed by two advisory bodies: the International Council on Monuments and Sites (ICOMOS) and the International Union for Nature Conservation (IUNC). The screening carried out according to the WCNH Operational Guidelines, is explained by two reasons. Firstly, the WCHN Convention is entirely premised on the concept of «common heritage».\textsuperscript{21} Secondly, the functioning of the convention is allowed by the mandatory financial contributions flowing into the World Heritage Fund.\textsuperscript{22} Like the Ramsar Convention, also the WHCN Convention


\textsuperscript{18} WCNH Convention, arts. 8-14. States are elected to the WH Committee at the General Assembly of Contracting Parties convened by the UNESCO General Conference.

\textsuperscript{19} Article 11, paragraph 2.


\textsuperscript{21} However tempered by art. 4, according to which «each State Party (...) recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage (...) situated on its territory, belongs primarily to that State».

\textsuperscript{22} Article 15.
introduced a system of «double listing». The World Heritage Committee, in fact, is entrusted for the elaboration of the «List of World Heritage in Danger», comprising sites requiring major international cooperation and the implementation of urgent conservation measures.\(^{23}\)

The designation of a site into World Heritage Lists implies the fulfillment of certain obligations.\(^{24}\) In particular, every contracting party bears the responsibility of ensuring the conservation of the site as well as the transmission of its unique characteristics to future generations.\(^{25}\) Such responsibility entails the adoption of a series of positive measures concerning the «preservation and the presentation» of hosted sites.\(^{26}\) Finally, contracting parties shall respect the sovereignty of those states in whose territories World Heritage sites are hosted, acknowledging, in particular, that «such heritage constitute world heritage for whose protection it is the duty of the international community as a whole to cooperate».\(^{27}\) From these provisions, unlike those of the Ramsar Convention, the tension between the prerogatives of sovereignty and the general interests of the international community emerges in a more evident way.\(^{28}\)

Albeit being universal in scope, the Convention on the Conservation of Migratory Species of Wild Animals (hereinafter CMS)\(^{29}\) counts on a relatively limited participation. However, many States that have not either signed or ratified the CMS undertook certain obligations on the conservation of some migratory species stemming from quite a relevant number of instruments negotiated pursuant to the CMS.\(^{30}\) The CMS aims at protecting species crossing multiple jurisdictional boarders during periodical migrations. In order to achieve this goal, the

\(\text{\textsuperscript{23}}\) Article 11, paragraph 4. The most recent entries are natural sites: the Tropical Rainforest Heritage of Sumatra (Indonesia) and the Rio Platano Biosphere Reserve (Honduras).

\(\text{\textsuperscript{24}}\) Their bindingness was reaffirmed by the Australian High Court, in Commonwealth of Australia v. State of Tasmania and Others, Australia, High Court, 1 July 1983, in (1985) 68 ILR, p. 266.

\(\text{\textsuperscript{25}}\) Article 4.

\(\text{\textsuperscript{26}}\) Article 5.

\(\text{\textsuperscript{27}}\) Article 6.

\(\text{\textsuperscript{28}}\) See M. GESTRI, La gestione delle risorse naturali d'interesse generale per la Comunità internazionale, Torino, 1996, p. 23. Conversely, on the «common heritage» concept at treaty level as implying that the nature of an environmental offence becomes less relevant in the eyes of contracting parties, see F. MUNARI, L. SCHIANO DI PEPE, La tutela transnazionale dell'ambiente, Bologna, 2012, pp. 52–53.


\(\text{\textsuperscript{30}}\) Specifically, article 3, paragraphs 3 and 4.
convention foresees a system of listing. In particular, Appendix I lists endangered migratory species,\textsuperscript{31} whereas Appendix II lists migratory species characterized by an unfavorable conservation status.\textsuperscript{32} Appendix I to the CMS lists species that shall be protected by all those contracting parties interested by their migration route on their territory. Whereas for Appendix II species, as well as for species with a conservation status that «would significantly benefit from international cooperation», protection can be achieved through the negotiation of ad hoc agreements. Differences between the two regimes of protection derive also from the criteria to be used for establishing the conservation status of a species. As for the criteria, the convention\textsuperscript{33} specifies that endangered migratory species qualify as such if they are in danger of extinction throughout «all or a significant portion» of their range. In practice, CMS COPs consider the listing of certain species in Appendix I on a case-by-case basis, following the variations to the IUNC Red List of Threatened Animals\textsuperscript{34} and the independent assessment of the CMS’s Scientific Council. The legal status of CMS-based agreement is a debated issue. With reference to Appendix II species, the power to conclude ad hoc agreements is extended to non-CMS Parties. Hence, non-contracting States can negotiate CMS-based agreements, provided that they are «range States» (if their territory is touched by the migrating route of a certain species). In relation to species whose conservation status would significantly improve by virtue of international cooperation, States are instead only encouraged to cooperate by adopting Memoranda of Understanding.\textsuperscript{35} This solution was adopted for the purpose of giving effect to article 4, paragraph 4, referring to «any population or any geographically separate part of the population of any species or lower taxon of wild animals, members of which periodically cross one or more national jurisdictional boundaries». The CMS laid down the basis for the coming into being of a system of protection based on the functioning of instruments featured by various degrees of binding force. Although this might be detrimental to the overall effectiveness of the CMS system of governance, the prevision of ad hoc agreements and memoranda might incentivize participation and substantially facilitate the achievement of the CMS overall objective. The flexibility of the convention is furthermore enhanced by the acknowledgement of

\footnotesize{\textsuperscript{31} Article 3, paragraph 1.  
\textsuperscript{32} Article 4, paragraph 1.  
\textsuperscript{33} Article 1, paragraph 1, letter e.  
\textsuperscript{34} See www.iucnredlist.org.  
\textsuperscript{35} 17 Memoranda for the protection of various migratory species but also 3 legally binding treaties were concluded pursuant to art. 4, paragraph 4, all available at www.cms.int.}
the variability that may occur in the conservation status of populations of the same species located in different distribution areas. The definitions are also flexible, as well as the options for cooperation established by the CMS. This is evident in the definition of «migratory species», not seeking «formally to define the taxonomic concept of a species as such». This enables the protection of particular varieties of a certain species (e.g. the west Indian manatee (*trichechus manatus*), endangered only between Honduras and Panama) and allows the comprehensive protection of different species as it occurs through the *ad hoc* agreements (the 1991 EUROBATS (for the Conservation of the Populations of European Bats), the 1995 AEWA (for the Conservation of African and Eurasian Water Birds along their routes of migration), the 2001 ACAP (on the Conservation of Albatrosses and Petrels) and the 2007 Agreement on the Conservation of Gorillas and their Habitats).

The United Nations Convention on Biological Diversity (hereinafter CBD) is the most widely ratified environmental treaty. Its objectives are the conservation of global biodiversity and the sustainable utilization of its elements, as well as the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. The CBD mitigates the tension between the sovereignty over biological resources, on the one hand, and the generalized interest for their conservation, on the other, by expressively urging States to combine environmental protection with economic development. The legal status to be assigned to biological resources

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36 Article 1, paragraph 1.

37 See M. Bowman, P. Davies, C. Redgwell, cit., p. 539.


40 See www.cbd.int/convention/parties/list/. The only relevant exception currently on the record is the missed ratification of the US, a «mega-diverse» country. From the *travaux préparatoires* of the CBD emerges that the US opposed three provisions, namely art. 15 (on «access to biological resources»), art. 16 (on «technology transfer»), and art. 19 («on handling of biotechnology and benefit sharing»). On the point, see V.M. Marroquín-Merino, «Wildlife Utilization: A New International Mechanism for the Protection of Biological Diversity», in (1995) *LPB*, p. 325. However, the US included provisions supportive to CBD implementation in a number of bilateral free trade agreements (BFTAs), see e.g. art. 18.11, of the US-Peru Trade Promotion Agreement, available at www.ustr.gov/trade-agreements.

41 Art. 1. The CBD is not a conservation convention *strictu sensu*.

42 See M. Gestri, cit., 54 describing the CBD as an accomplished example of how the sustainable development principle should be elaborated at treaty level, and S. Johnston, «The Convention on Biological Diversity: The Next Phase», in 6 *RECIEL*, 1997, p. 219, retaining the CBD a departure from previous biodiversity-related MEAs (preferring conservation).
was debated during negotiations and, while the concept of «common heritage of humankind» was initially proposed, it was dismissed for its implications in terms of «common ownership» of resources mainly found within jurisdictional boundaries. Therefore, it was eventually substituted by the concept of «common concern of mankind». The solution crystallized in the CBD is peculiar as it is not exclusively limited to the affirmation of the «common concern» concept. The convention, in fact, reaffirms also the sovereign right of every State to exploit its natural resources. Indeed, the CBD restates this right, combining it with the duty not to cause trans-boundary harm. Similarly, said provision embodies two core principles of international environmental law. Interestingly, by introducing the formula of Principle 21 of the 1972 Stockholm Declaration on the Human Environment, CBD Parties accepted for the first time to give a legally binding character to the no-harm rule or *sic utere tuo ut alienum non leadas* principle. Unlike preceding biodiversity-related MEAs, the CBD neither regulates designation of protected sites nor it entails any listing procedure. However, article 8 on *in situ* conservation stands as the heart of the convention in this field, characterizing the CBD as a MEA whose

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43 By relying upon this concept, Parties accepted that, on a spatial perspective, the cooperation of all nations is required to preserve biodiversity and, on a temporal perspective, that both present and long term consequences of harm to biodiversity must be addressed for ensuring that the rights of both present and future generations are maintained.

44 Article 3.

implementation can be realized by virtue of a plurality of actions. *In situ* conservation is defined as «the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings». CBD article 8 paragraphs a) to c) deal with «protected areas». In this respect, contracting parties are under the obligation to establish a system of protected areas or areas were special measures need to be taken in order to conserve biological diversity. Paragraph d) deals with habitats and ecosystems, obliging parties to protect them for the maintenance of viable populations of species in the natural surroundings. In the context of species and habitat protection, paragraph e) requires also the promotion of environmentally sound and sustainable development of areas adjacent to protected sites («buffer zones»), with the view of enhancing their protection.

III. **AN OVERVIEW OF STATE PRACTICE IN THE FIELD OF IN SITU CONSERVATION**

A. COP PRACTICE ON IN SITU CONSERVATION: AN ANALYSIS OF RELEVANT DECISIONS

The Conferences of the Parties (COPs), instituted by MEAs, are *fora* guaranteeing the functioning of each underlying regime as they offer the occasion of exchanging views on countless policy, legal, and institutional issues that can be proposed as to stimulate better implementation of the agreements. The range of COP activities has been object of studies that tried to answer to the following questions: why do COP activities matter? What kind of sources of international law do they produce? What are the legal implications of COP activities? As efficaciously formulated,

> consensus-based COP activity results in resolutions and decisions by the parties to the underlying treaty that can influence the substantive obligations of the parties in numerous ways, affect the internal working of the treaty regime and its institutions, and serve efforts to enhance effectiveness of the treaty. [...] this activity does not result in resolutions or decisions that can be

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46 Article 2.


divorced from the underlying treaty. These resolutions and decisions are tightly connected with the original treaty and enrich it by thickening the parties’ obligations.49

On this premise, and aware that they do not establish any stand-alone obligation as they belong to the realm of soft law, we uphold here the view, already expressed in the doctrine,50 that COP decisions and recommendations agreed upon by consensus by the entire community of CBD contracting parties cannot be regarded as a residual phenomenon as they provide insight on the extent to which broadly defined obligations are multilaterally perceived and they detail what these obligations entail in practical terms. In light of this, the present section overviews COP decisions in the field of conservation, to see if and how they are supportive of CBD article 8. Consideration is firstly given to the most comprehensive instrument adopted in order to enhance the implementation of the CBD as a whole, namely, the «Strategic Plan for Biodiversity 2011-2020».

1. The Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets

CBD contracting parties adopted this Strategic Plan (SP) in order to have a «useful flexible framework that is relevant to all biodiversity-related conventions». The SP was adopted by the COP, along with its «Aichi Targets»,52 once the persistence of the plague of biodiversity loss had been confirmed by the third Global Biodiversity Outlook (2010).53 Premised on the idea that biodiversity allows ecosystems functioning and triggers provisions that are essential for human well-being, the Plan’s objective is «to promote effective implementation of the convention through a strategic approach, comprising a shared vision, a mission and strategic goals and targets». Like other major COP decisions, the SP was also conceived as a supportive instrument

49 Id, p. 245.

50 See E. MORGERA, E. TSHOUMANI, «Yesterday, Today and Tomorrow: Looking Afresh at the Convention on Biological Diversity», in University of Edinburgh School of Law Working Paper Series, 2011/21, at 12, stressing that «the CBD COP's normative activity is testimony to an intense, evolving and creative interpretation of the convention by the international community».


52 Ibid., The «Aichi Targets» are included in the new Strategy and they serve as benchmarks for measuring its progressive implementation.

53 Id., (points 3-4). A significant reduction to the current rates of biodiversity loss was deemed essential by the CBD COP for the achievement of the Millennium Development Goals, including poverty eradication. The 3rd Global Biodiversity Outlook (hereinafter GBO3). Available at: http://www.cbd.int/gbo3/.
for progressing towards the realization of the Millennium Development Goals (MDGs). In particular, it is premised on the idea that the conservation and sustainable use of biodiversity can foster the eradication of poverty.54

According to its vision, the SP aims at building a world where, by 2050, mankind would live «in harmony with nature» and biodiversity would be «valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people». The mission of the plan, in turn, is to «take effective and urgent action to halt the loss of biodiversity in order to ensure that by 2020 ecosystems are resilient and continue to provide essential services, thereby securing the planet’s variety of life, and contributing to human well-being, and poverty eradication».

For achieving a positive outcome, the SP prescribes the adoption of what is defined as «actions at multiple entry points», reflected in these strategic goals: i) action to address the underlying causes of biodiversity loss, ii) immediate action to decrease the direct pressures on biodiversity, iii) direct action to safeguard and restore biodiversity and ecosystem services, iv) efforts to ensure the continued provision of ecosystem services and ensure access to these services and v) enhanced support mechanisms for capacity building, the generation, use and sharing of knowledge, the access to the necessary financial and other resources.

Each of these five goals has been further specified by technical or policy sub-targets, the so-called «Aichi Biodiversity Targets», serving the attainment of global as well as national and regional targets to be realized either by 2015 or by 2020, as specified on a case-by-case basis. In relation to biodiversity conservation, particularly significant is Strategic Goal C, calling for the improvement of the status of biodiversity by safeguarding ecosystems, species and genetic diversity. According to the targets, this objective can be achieved if CBD contracting parties strive for reaching three distinctive conservation targets. Firstly, they should ensure that at least 17 per cent of terrestrial and inland water areas, as well as 10 per cent of coastal and marine areas are effectively conserved and equitably managed (Target 11). The global system of protected areas thus established or enhanced should comprise «ecologically representative» but also «well-connected» biodiversity hubs. «Area-based» conservation measures are further

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indicated as effective means of ensuring the achievement of this targets as well as their integration into the wider landscapes and seascapes.\textsuperscript{55}

Secondly, under Target 12, CBD contracting parties agreed also to undertake efforts aimed at preventing the extinction of known threatened species and to improve and sustain the conservation of species whose conservation \textit{status} that is currently in decline by 2020.\textsuperscript{56} Lastly, Target 13, in turn, tackles the role that agriculture and farming can play for conservation, as it required CBD contracting parties to maintain the genetic diversity of cultivated plants, farmed or domesticated animals, their wild relatives and, in general, all socio-economically and culturally valuable species by 2020. As biodiversity conservation is concerned, also Target 18 (pursuant to Strategic Goal E on the «enhanced implementation through participatory planning, knowledge management and capacity building») falls into the picture.\textsuperscript{57}

The plan is by no means detached by the CBD system of governance. At COP 10, in fact, it was agreed by \textit{consensus} that the plan would «be implemented primarily at national or sub-national level, with supporting action at the regional and global levels».\textsuperscript{58} Section V of the SP prescribes that domestic measures of implementation should be financially supported through the mechanism provided for under CBD article 20. This means that the SP needs to be translated into national strategies, elaborated according to the circumstances of each state and that developing country parties shall receive financial aid for its implementation.\textsuperscript{59} However, beside national strategies and action plans (NSAPs), the strategic plan identifies other tools that can

\textsuperscript{55} See «Explanatory Guide on Target 11 of the Strategic Plan For Biodiversity», available at www.cbd.int/protected/ revealing that for the GEF 5 funding cycle (2010-2014) $700 million USD are allocated to the conservation and management of protected areas, amounting to 54\% of GEF 5 biodiversity portfolio.

\textsuperscript{56} For the SP is conceived as tool serving the attainment of objectives established under MEAs other than the CBD, Target 12 might inspire actions from CMS and other regional/sectorial instruments for the protection of particularly endangered species/habitats.

\textsuperscript{57} Target 18 is in line with CBD art. 8(j) on the contribution made by indigenous people in terms of biodiversity sustainable use and management. The target (at point 4) recalls the UN Declaration on the Rights of Indigenous People, UN GA Resolution A/RES/61/295 of 13 Sept. 2007.

\textsuperscript{58} See SP, paragraph. 14 on “means of implementation”, recently reaffirmed by the Ad Hoc Open Ended Working Group on Review of Implementation of the Convention, see “Review of progress in providing support in implementing the objectives of the Convention and its Strategic Plan for Biodiversity 2011-2020”, UNEP/CBD/WGRI/5/3 of 9 May 2014.

\textsuperscript{59} See SP, paragraph 14: «National biodiversity strategies and action plans are key instruments for translating the Strategic Plan to national circumstances, including through the national targets, and for integrating biodiversity across all sectors of government and society». 
supportively help the attainment of its goals, like the Programmes of Work adopted by COPs and revised on constant basis.\textsuperscript{60}

The SP was criticized for not having included any binding commitment on biodiversity conservation.\textsuperscript{61} Such observation should be rejected for a number or reasons. Firstly, the plan embraces each objective of the CBD as well as their related thematic areas. Secondly, as a tool that «thickens» the law but refrains from establishing additional and autonomous legal obligations, it should be seen as an instrument (adopted by consensus by the CBD Community of Parties) helping the implementation of the convention in the next decade. Thirdly, the strategic plan cannot be regarded as a substitute of national implementation. CBD compliance at national level shall be ensured through the adoption of measures to be «inspired» by the strategic plan but that, at the same time, do not find in the strategic Plan their ultimate definition. Arguably, the most evident shortcoming of this document is given by a too confident use of quantitative targets. If one considers the outcome of the much heralded 2010 Biodiversity Targets, little faith can be given to the efficacy of such devices, which, on the long run, might weaken the legal force of CBD provisions and the credibility of CBD policy tools, hence increasing the «aspirational» character of the whole convention.

2. \textit{COP Decisions on Protected Areas}

Although protected areas are crucial for realizing in situ conservation, this issue awaited long before being addressed at COP level, probably due to the lack of interest as to developing further guidance.\textsuperscript{62} It was only at COP7 that a Programme of Work on Protected Areas was adopted with the aim of increasing awareness on the benefits stemming from protected areas.\textsuperscript{63} Decision VII/28 confirmed the priority of establishing and maintaining systems of protected areas where special measures need to be taken, as well as the necessity to build these systems in conformity of CBD article 8. More importantly, it states that such arrangements are «essential for achieving, in implementing the ecosystem approach, the three objectives of the Convention and the Plan of

\textsuperscript{60} List of updated programmes, at: www.cbd.int/programmes.


\textsuperscript{62} See A. Gillespie, «Obligations, Gaps and Priorities Within the International Regime for Protected Areas», in (2006) 19\textit{Georgetown Int. Env. L Rev.}, at 1, observing that the theme ranks amongst «the less glamorous subjects of international environmental law».

\textsuperscript{63} CBD COP, Decision VII/28, on «Protected Areas (Articles 8 (a) to (e)», Annex «Programme of Work on Protected Areas». 
Implementation of the World Summit on Sustainable Development, and to achieve sustainable development and the attainment of the Millennium Developmental Goals».64

The operational objective of the programme was to create a network of «comprehensive, effectively managed, and ecologically representative national and regional systems of protected areas» (by 2010 for terrestrial areas and by 2012 for marine ones). Such goal, however, was not reached, making it harder to reduce the current rate of biodiversity loss. The programme recognized the interrelationship between the three CBD objectives specifying that ‘protected areas, together with conservation, sustainable use and restoration initiatives in wider land-and seascape are essential components in national and global biodiversity conservation strategies».65 The programme also focused on the value of goods and services flowing from protected areas (point 8) and, for boosting both the adoption of in situ conservation measures and the rise of representative protected areas, it stressed the need of adequate funding. In this regard, it is noted that «funding for this purpose generally should consist of a mixture of national and international resources and include the whole range of possible funding instruments, such as public funding, debt for nature swaps, private funding, remuneration from services provided by protected areas, and taxes and fees at the national level for the use of ecological services».

As for the SP, the pattern of establishing an overall goal that is further specified by the prevision of instrumental goals with a more limited scope was followed in relation to protected areas. The programme, in fact, is structured in four interlinked «programme elements» in turn elaborated in «goals» achievable through the implementation of «suggested activities» on which the Community of the Parties has agreed upon (i) direct actions for planning, selecting, establishing, strengthening, and managing protected area systems and sites, ii) governance, participation, equity and benefit sharing, iii) enabling activities, iv) standards, assessment and monitoring).

In order to support the implementation and review of this programme, COP7 decided to establish an Open-ended Working Group on Protected Areas.67 At COP10 (Nagoya), protected

64 Annex, point 5.

65 Id., point 1.

66 Ibidem, point 5. On this topic, see N. AFFOLDER, «Transnational Conservation Contracts», in (2012) 25 Leiden JIL, pp. 443-460 C. REID, «Between Priceless and Worthless: Challenges in Using Market Mechanisms for Conserving Biodiversity», in (2012) TEL, pp. 1-17, addressing the criticalities inherent to the establishment of a tradable currency (i.e. reduction units), the difficulties of considering all the variables to be included in the calculations (time and space-wise) as well as the ethical dilemma of employing commercial schemes for biodiversity conservation (constituting a «common concern of humankind»).

67 Id, paragraph 25.
areas were again on the table. The COP fully embraced the recommendations coming after an in-depth review of the implementation of the Programme of Work. Whereas in 2004, the COP focused more on the instruments for expanding the global system of protected areas, the review emphasises how to strengthen implementation at various scales (national, regional, and global) and how to deal with cross-cutting issues.

B. NATIONAL IMPLEMENTATION IN THE FIELD OF IN SITU CONSERVATION: A SAMPLE OVERVIEW

CBD article 6 requires contracting parties to submit their National Biodiversity Strategies and Action Plans (NBSAPs) for consideration during ordinary COP meetings. These NBSAPs are largely retained to be the main instruments, together with national reports (CBD article 26), for assessing the implementation of the CBD at national level. At the time of writing, 175 contracting parties have complied with the procedural obligation under article 6. This section tries to see how contracting parties, endowed with different social, economic and environmental

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68 «Programme of Work on Protected Areas», point 28.

69 See CBD/SBSTTA, Recommendation XIV/4, on the «In-depth-review of the implementation of the programme of work on protected areas», (followed by the formal adoption of CBD COP 10, Decision X/31, on «Protected Areas»).

70 To his end, CBD Parties are invited, among others, to consider standard criteria for the identification of sites of global biodiversity significance (e.g. IUNC Red List of Threatened Species, UNESCO Man and Biosphere processes, etc., point 1-h).

71 CBD COP, Decision X/31. It recalls regional initiatives such as the Micronesian Challenge, the Caribbean Challenge, the Dinaric Arc Initiatives, the Amazonian Initiative, the Coral Triangle Initiative, the EU Natura 2000 network, the Carpathian Network of Protected Areas and so forth (point 3, note 67).

72 To this end, the Executive Secretary is asked to continue the cooperation with biodiversity-related MEAs, regional and sub regional agreement as well as with the IUNC World Commission on Protected Areas. (point 7-a).

73 Under CBD COP 10, Decision X/31, these latter are labeled as «issues that need greater attention». Amongst these, sustainable finance, climate change and marine protected areas stand out as needing the most action. As for «sustainable finance», Parties are invited to develop additional methods for distributing assistance on the basis of TEEB, The Economics of Ecosystems and Biodiversity for National and International Policy-makers. Summary: Responding to the Value of Nature (2009), available at www.teeb.web.org (point 9). Parties are required to designate protected areas that can be equally used for carbon sequestration purposes (point 13-d). As for marine protected areas (MPAs), acknowledging «the absence of a global process for designation of such areas» (point 22), the decision encourages Parties (point 21) to cooperate in the wake of the processes commenced by the UN General Assembly, UN GA Resolution A/RES/59/24 on «Oceans and the Law of the Sea» (para. 72), where the need to establish networks of MPAs in light of the «best scientific information available» and «consistent with international law» is reaffirmed.

74 (As of 31 May 2012), www.cbd.int/nbsap/.
assets and problems, comply with article 6, and, more relevantly, which legal and policy instruments are used for implementing CBD article 8 (a) to (e).

3. Italy

The latest ‘Strategia Nazionale per la Biodiversità’ (Italy’s NBSAP) was adopted by the Permanent Conference for the Relationships between the Italian State, its Regions and autonomous Provinces, convened in October 2010. The Italian NBSAP opens by recalling that the country took the lead within the framework of the G8 in integrating biodiversity protection into international economic and developmental policies. The focus then shifts to the EU framework and to biodiversity protection as conceived into the Italian constitutional system. The Italian NBSAP affirms that its implementation depends on the coherence among the actions undertaken by national and regional operators and on the integration of biodiversity targets into other sectorial environmental plans and programmes. According to the Italian NBSAP, effective implementation depends also on the degree of actual operationalization of the monitoring mechanisms foreseen by the Strategy. Among others, the Italian plan, calls for the establishment of an Osservatorio Nazionale sulla Biodiversità. The organism, chaired by the Ministry for the Environment, would be composed by representatives of Biodiversity Regional Offices, the ISPRA (State Environmental Authority) and other institutions in charge of protected areas management. In line with the CBD Strategic Plan for Biodiversity 2011-2020, this NBSAP will be reviewed by 2015. Biennial reports on the implementation of the NBSAP will also be prepared.

The strategic goals set by the NBSAP on the results to be achieved by 2020 are i) biodiversity conservation, ii) a sensible reduction of climate change impacts on biodiversity and iii) the integration of biodiversity conservation into broader economic and social policies. The current

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75 Received by the CBD Secretariat in October 2011, the Italian NBSAP is available at www.cbd.int/doc/world/it/it-nbsap-01-it.pdf. Italy ratified the CBD through the adoption of a Law n. 124 of 14 Feb. 1994.

76 In April 2009, Italy hosted a G8 Summit where a special session on the theme of «Biodiversity after 2010» took place. G8 ministries adopted the Syracuse Charter on Biodiversity, firstly endorsed by Italy and entirely focused on how to streamline biodiversity conservation into national policies of G8 members.

77 Title V of the Italian Constitution attributes to the state an exclusive and absolute legislative competence for the protection of nature and ecosystems while regions and minor local authorities are attributed with implementation and enforcement competences.

78 Ministero dell’Ambiente, della Tutela del Territorio e del Mare, «La Strategia Nazionale per la Biodiversità», p. 7.

79 The NBSAP is structured on these three main thematic areas. In turn, domestic initiatives are divided into 15 work areas.
analysis is limited, however, to two of the fifteen work areas identified, namely «species, habitat and landscape» (work area 1) and «protected area» (work area 2).

From the reading of work area 1, it emerges that Italy has a great responsibility in conserving biodiversity as it hosts almost 58 thousands animal species (the highest number among EU countries). In relation to plant species, the situation does not change since it is affirmed that Italy hosts the most diversity in European flower species. At the same time, work area 1 identifies a high number of threats looming on Italian biodiversity. The list of such threats is extensive, ranging from illegal hunting practices to climate change, from water pollution to the realization of infrastructures in the surroundings of sites of extreme value in terms of biodiversity dynamics. In order to tackle these threats, work area 1 formulates a set of sub-targets to be achieved by 2020. Besides formulating these sub-targets, the NBSAP at hand advances also «priority areas» needing major efforts. In this regard Italy decided to put into operation a system for monitoring the conservation status of habitats and species on its territory by the end of 2012.

Work area 2 recognized that recent conceptual and policy developments and new cultural, scientific and political experiences have globally altered the mission of protected areas, for which Italy had adopted framework law N° 394 of 1991. According to the NBSAP, Italy currently ranks first in Europe for the number of protected areas designated from 1991 onwards, filling the gap that had previously forced the country to lag behind other EU countries. Among the criticalities undermining the functioning of the Italian network of protected areas, the NBSAP indicates the missed recognition of the opportunities and development incentives offered by such areas. This is partially due to the diffused behaviour of public administrations, local groups and NGOs, primarily concerned with the enforcement of prohibitions linked to the conservation of such areas. According to the Italian Strategy, this should be overcome by the realization of priority measures as, for instance, giving incentives to national parks and supporting their adoption of the European Charter on Sustainable and Responsible Tourism. The major criticality emerging from this NBSAP, however, is the lack of ad hoc domestic financial instruments for biodiversity protection. This omission is likely to put into perspective the weight of the strategy as a viable informative tool. It seems, in fact, that the implementation of

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80 See Italian NBSAP, p. 17.

81 Europark Federation, «European Charter on Sustainable and Responsible Tourism», at www.europark.org. Firstly drafted by the Fédération des Parcs naturels régionaux de France in 1999 the Charter was subsequently revised by the Europark Federation in 2007 and 2010.

82 See Italian NBSAP, p. 11.
the CBD in the Italian territory is not backed by the availability of adequate financial instruments.

4. **Brazil**

Brazil submitted its latest NBSAP in April 2008, before the publication of the third Global Biodiversity Outlook (GBO3) and the spreading of data confirming the failure in halting the accelerating rate of biodiversity loss. For this reason, the Brazilian strategy consists of a table\(^3\) defining seven national targets for 2010, in line with the global ones previously approved at COP level.\(^4\) From the table presented by Brazil, it emerges that the country defined its priorities in every focal area of the CBD and, in most cases, it decided to couple aspirational targets with figures and percentages. The second section of the Brazilian NBSAP is devoted to biodiversity conservation (Componente 2 da PNB -- Conservação da biodiversidade) and is built on fourteen sub-targets aimed at realizing four different and inter-linked objectives (promoting the conservation of the biological diversity of ecosystems, habitats and biomes; promoting the conservation of species diversity; promoting the conservation of genetic diversity; maintaining and enhancing the functions of ecosystems services and their life-supporting provisions).

Under objective 1, Brazil had established sub-target 2.1, according to which by 2010 at least the 30 per cent of the Amazonian territory and the 10 per cent of other biomes, including coastal and marine areas would have been effectively conserved by their inclusion within the *Unidades de Conservação do Sistema Nacional de Unidades de Conservação*, (Units of the Brazilian National System of Conservation). Under objective 2, the goal of conserving all the Brazilian threatened species stands out as the most ambitious one (sub-target 2.5), followed by *ex situ* conservation of the 60 per cent threatened plant species through the creation of collections and the conservation of 10 per cent of plant species threatened by extinction by the implementation of *in situ* measures of recovery and restoration (sub-target 2.8). Under objective 4, Brazil aimed at maintaining and enhancing the functions of ecosystems and their life support capacities within the so-called *Áreas Prioritárias para Biodiversidade* (Priority Areas for Biodiversity)

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\(^3\) Brazilian Ministry of the Environment, «*Tabela de Metas Nacionais de Biodiversidade para 2010 e correspondência com as Metas Globais aprovadas pela Conferência das Partes da Convenção sobre Diversidade Biológica*,» available at www.cbd.int/doc/world/br/br-nbsap-v2-pt.pdf. The 51 targets singled out here were approved by CONABIO (National Biodiversity Commission) in 2006.

\(^4\) In particular, this NBSAP is structured in light of the indications provided by CBD COP decisions instrumental to the implementation of the Strategic Plan for Biodiversity 2002-2010 (COP Decision VI/26, Annex), notably, COP6, Decision VI/9 on the «Global Strategy for Plant Conservation», COP7, Decision VII/30 on the «Strategic Plan: future evaluation of progress» and COP8, Decision VIII/15, on the «Framework for monitoring implementation of the achievement of the 2010 target and integration of targets into the thematic programmes of work». 
(sub-target 2.13). On the other hand, the country committed to increase actions in favour of on farm conservation of agro-biodiversity, with a view of supporting sustainable lifestyles, enhancing food safety and improving the health of local communities and indigenous groups.

The 2008 Brazilian NBSAP does not allow to discover if and how these and other biodiversity-related objectives were achieved. Some insights, however, are traceable within the Fourth National Report, submitted by Brazil at COP10. The National Report, in fact, contains information on the progress in the implementation of the NBSAP. With regards to protected areas (sub-target 2.1), the National Report states that, albeit Brazil had actually undertaken a plurality of measures, it did not succeed in achieving its 2010 national target for any of its seven biomes (even though progresses were made in the Amazon, the Atlantic Forest and the Cerrado).

5. China

A throughout perspective on how China acts for preserving the biodiversity hosted within its boundaries is directly hindered by the fact that its most recent NBSAP submitted to the executive secretary, was only available in Mandarin. As in the case of Brazil, however, some information on the progress of the implementation of the previous SP (2002-2010) can be collected by an analysis of the Fourth Chinese National Report, issued by the Chinese Ministry of the Environment and transmitted to the CBD in March 2009. Chapter II of the National Report describes the implementation status of the Chinese NBSAP. The Chinese Government recalls a wide set of measures promulgated in order to integrate biodiversity conservation into national planning. Among these, the 11th «Five-Year Plan for National Economic and Social Development», officially adopted by the National People’s Congress in 2006, set targets that either directly or indirectly are likely to positively influence trends in biodiversity conservation (e.g. reducing energy consumption per unit of GDP by about 20 per cent or controlling the

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86 Id., Section 2.4, p. 112.

87 Id., p. 85. The Pampas and the Coastal and Marine Zone were the biomes where less action was taken, having achieved less than 50% of the target.

88 A second version of the Chinese NBSAP was received on 21st Sept. 2010, shortly before COP10 inauguration, see www.cbd.int/reports/search/.

tendency of ecological and environmental degradation). Relevant policy instruments include the 1994 China Biodiversity Conservation Action Plan and the National Program for Nature Reserves (1996-2010).90 The latter established the target of instituting 1200 protected areas by 2010, occupying 10 per cent of China’s land area.91

Section 2.4 of the National Report describes the achievements of the Chinese in conserving biodiversity, starting with the acknowledgement that the country successfully established «a biodiversity conservation and management system with Chinese characteristics» while maintaining in place a fast economic growth.92 It is section 2.3, however, on the «Main Activities Undertaken to Implement National Biodiversity Strategies and Action Plans», where substantial information can be traced. Here it is stated that by 2007 the goal on protected areas established under the National Program for Nature Reserves (1996-2010) had already been achieved, with the total number of protected areas amounting to 2,531 units (excluding Hong Kong, Macao and Taiwan) and covering 151.88 million square metres. It is claimed by the Report that China instituted 303 national nature reserves, well above the 160/170 originally foreseen, covering a total area of 93.656 million hm², equal to 15.2 per cent of domestic land area (well beyond the originally agreed target).

6. South Africa

At the time of writing, CBD COP still awaits the submission of a new South African NBSPA, to be drafted in light of the guidance globally provided by the Strategic Plan for Biodiversity 2011-2020. The submission of the last South African strategic document dates back to 2006.93 The last South African NBSPA appears as a comprehensive policy instrument premised on the effective performance of a rigorous spatial assessment of biodiversity in the country. The NBSPA itself is anticipated by a background note on the process triggered by its preparation and by an executive summary country study outlining the main social, political, economic and institutional characteristics of the country. Some information concerning the assessment carried out in relation to the status of South African species was further inserted, as well as some information on the outcome of the assessment carried out on ecosystems hosted by the country.

90 Both programmes are linked to the global goals set by the Strategy for Biodiversity (2002-2010).


92 Id. p. 27.

Amongst the strategic objectives identified by the South African NBSAP, one is dedicated to in situ conservation («Conservation Areas»). The NBSPA mentions that 5.4 per cent of land in the country was conserved thanks to the establishment of a network managed by different institutions. Notwithstanding this, conservation measures were unevenly implemented, leaving significant habitats unprotected.\textsuperscript{94} Given the absence of a follow-up process, however, it is hard to determine whether or not the goal of enhancing the network, respectively, up to 8 and 20 per cent of the land area and marine surface has been achieved by 2010.\textsuperscript{95} Significantly, among the key points that informed the 2006 South African NBSPA, there was the recognition of the fundamental importance of mainstreaming biodiversity.\textsuperscript{96}

IV. CONCLUSIONS

After a detailed overview on the biodiversity-related MEAs provision on the designation of protected areas, some of the techniques employed by CBD contracting parties in order to fulfil the procedural obligations established under the Convention have been illustrated. If a constant trait of NBSAPs, as shown in the previous section, is the tendency to link domestic targets to the ones fixed at COP level, some differences have emerged however. While the Italian and the Chinese strategies appear to have a more declaratory nature, the Brazilian and the South African ones rely more on scientific figures. Moreover, the fact that NBSAPs submission depends from the capabilities of domestic authorities gives rise to certain «diachronic» mismatches, meaning that some parties may still have to adjust their own national and sub-national targets to the policy developments that meanwhile have been occurring at COP level.

Another factor shrinking the informative potential of national strategies is given by the absence of qualitative and quantitative data with legal content on national implementation. Indeed, none of the reviewed documents offers either an in-depth analysis on the legal arrangements in place for protecting biodiversity and for giving legal effect to CBD article 8 on protected areas. Similarly information on the enforcement of biodiversity and nature

\textsuperscript{94} Id., p. 18. Conservation efforts are concentrated on the savannah, thereby leaving some biomes under-represented in the national conservation network (e.g. grassland). It is interesting to note that, unlike other NBSPAs, the South African one contains a peculiar indication of some elements of the network, comprising also Ramsar and WHCN sites, de facto confirming the framework character of the CBD.

\textsuperscript{95} Ibid.

conservation laws by national courts and tribunals is constantly omitted by the strategies. In general, this undermines and diminishes the potential of COP dynamics, at international level, and prevents a throughout assessment of how actually domestic implementation is carried out at national level.

For all these reasons, a throughout assessment of how States comply with Article 3 of the CBD and on the means used in order to strike a balance between sovereignty over biological resources and the interest of the international community for their conservation, can only be very limited both in its scope and in its conclusions. Part I has described the solutions found in this respect under biodiversity-related MEAs. The survey carried out in Part II, however, has reasserted that procedural compliance with international environmental law norms, in the absence of other viable indicators, cannot alone constitute a measure of the effectiveness of the solutions enshrined by the CBD and the other agreements, constantly re-shaped, interpreted and specified by the COPs in order to reconcile a collective interest of supranational character with the legitimate sovereign prerogatives of each Contracting Party.

It may be desirable, for the purpose of fully comprehending the actual implementation of the CBD (and by analogy that of the other biodiversity-related MEAs), that the various processes for reviewing the functioning of the Convention and the implementation of the Strategic Plan for Biodiversity 2011-2020, beside procedural compliance, focus more on the issues briefly explored here. It is also crucial to propose mechanisms for increasing transparency and for encouraging the transmission of data of legal nature, while also proposing viable ways to facilitate the implementation of the substantive provisions of the CBD, which, in spite of its shortcomings, some underlined here and by other scholars, remains the only international legal instrument capable of assisting States in conserving biological resources, thus halting the global loss of biodiversity.