

# The Five Global Biodiversity-Related Conventions: A Stocktaking\*

Veit Koester

## INTRODUCTION

Over the last three decades disquiet over environmental degradation has crystallized, *inter alia*, in the form of the five global biodiversity-related conventions:

- the Ramsar Convention (Convention on Wetlands of International Importance especially as Waterfowl Habitat) 1971;
- the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Convention (Convention concerning the Protection of the World Cultural and Natural Heritage) 1972;
- CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) 1973;
- the Bonn Convention or CMS (Convention on the Conservation of Migratory Species of Wild Animals) 1979; and
- the Convention on Biological Diversity (CBD) 1992.

The birth and development of these five conventions are closely connected with the United Nations Conference on the Human Environment (Stockholm, 5–16 June 1972) and the United Nations Conference on Environment and Development (Rio de Janeiro, 3–14 June 1992).

On the eve of the preparations for the third UN conference on these issues, the World Summit on Sustainable Development (WSSD) in South Africa in August/September 2002, it seems natural to try to take stock of these five conventions. What are their main features? Are they in good shape and health? How does the academic world assess them? What are their particularities and their cultures? This article does not present a full legal, political and sociological analysis, but provides only some indication of what might be the answers to some of those questions.

## FOUR PARAMETERS

This article is limited to four parameters regarding the global biodiversity-related conventions: number of contracting parties; main legal features; review of the conventions; and the author's own assessment.

## NUMBER OF CONTRACTING PARTIES

This is a completely objective parameter, but the conclusions that might be drawn from it are questionable because this parameter does not tell us anything other than the degree to which international society has accepted the conventions. On the other hand, this is important. A convention with a number of far-reaching, strong, clear and precise obligations cannot be described as a success if only a very limited number of potential parties are contracting parties.

## MAIN LEGAL FEATURES

The second parameter is the main legal features of each convention. The main legal features of a convention can be divided into three types of obligations: concrete, general and soft. Such divisions were perhaps best analysed by Josette Beer-Gabel and Bernard Labat in their critique of 49 international agreements based on these three divisions of obligations.<sup>1</sup> The division of obligations set out in this article is based on their work.

How many *concrete obligations* are there in each convention? Lawyers prefer obligations in the format of the following, for example:

parties that are Range States of migratory species listed in Appendix I shall prohibit the taking of animals belonging to such species.<sup>2</sup>

---

\* Many of the ideas behind this article were originally conceived in preparation for a speech delivered by Mr Koester at Pace University School of Law in White Plains, New York on 13 March 2001 on the occasion of his receipt of the Elizabeth Haub Prize for Environmental Diplomacy, awarded by the International Council of Environmental Law and Pace University School of Law. An article reflecting that paper was published in 31:3 *Environmental Policy and Law* (2001), 151 under the title 'The Five Global Biodiversity-Related Conventions'.

<sup>1</sup> J. Beer-Gabel and B. Labat, *La Protection Internationale De La Faune Et De La Flore Sauvages* (Editions Bruylant, 1999). Beer-Gabel and Bernard divide the obligations into '*les règles contraignantes*', '*les obligations*' and '*les incitations*'.

<sup>2</sup> Bonn Convention, Article III, para. 5.

Such obligations are clear, leaving no doubt about what has to be done.

What is the number of *general obligations*? Although lawyers do not dislike general obligations such as:

The Contracting Parties shall formulate and implement their planning so as to promote the conservation of the wetlands included in the List . . .<sup>3</sup>

it is not easy to assess the implementation of, and compliance with, such obligations.

And finally, how many '*soft*' obligations, incentives and the like, are there? An example of a soft obligation is found in CBD, Article 6(b):

Each Contracting Party shall in accordance with its particular conditions and capabilities . . . integrate as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.<sup>4</sup>

Generally speaking, governments prefer obligations that are, in reality, not true obligations. Sometimes these are needed in order to overcome political problems and generally they are better than nothing, representing at least a starting point for a continuous political and legal dialogue among the parties.

The distinction between categories of obligations and the number of various obligations is of a semi-objective nature. First of all, the differentiation between various kinds of obligations is not that clear. Second, if the choice were to be between a concrete obligation dealing with a relatively unimportant issue and a general, or maybe even a soft, obligation to protect a specific component of the environment, most environmentalists would probably choose the second alternative. And third, the extent to which it is permissible, according to the provisions of the conventions, to derogate from the obligations is unclear.<sup>5</sup>

<sup>3</sup> Ramsar Convention, Article 3, para. 1.

<sup>4</sup> CBD, Article 6(b).

<sup>5</sup> There are, of course, other ways to measure the theoretical strength of an international legally binding instrument. An interesting example is provided in P.S. Chasek, *Earth Negotiations: Analyzing Thirty Years of Environmental Diplomacy* (United Nations University Press, 2001), at 176 and 234 where a 'strength index' is introduced. The index contains 12 variables (secretariat, reporting, reservations, monitoring, compliance, inspections, disputes, amendment, standards, liability, finance and protocols). The variables referring to the content of the legal instruments are related to a weighting system rating from zero to five, depending on the importance of the variable. For instance, if there is no compliance mechanism, the instrument is rated in this respect with zero, while the possibilities of recommendations or impositions of trade restrictions and/or sanctions is awarded with five. No reporting obligations result in zero and regularly scheduled reporting result in four points.

## REVIEW OF THE CONVENTIONS

The third parameter is how each convention is assessed or evaluated by lawyers of the academic world who specialize in international environmental law. This article examines academic reviews contained in the following seven comprehensive books<sup>6</sup> on international environmental law, all of which were published after the entry into force of the most recent biodiversity-related convention, namely the CBD:

- Patricia W. Birnie and Alan E. Boyle, *International Law and The Environment* (Clarendon Press, 1994);
- Philippe Sands, *Principles of International Environmental Law I* (Manchester University Press, 1995);
- Lakshman Guruswamy and Brent Hendricks, *International Environmental Law in a Nutshell* (West Publishing, 1997);
- Alexandre Kiss and Dinah Shelton, *International Environmental Law*, 2nd edn, (Transnational Publishers, 1999);
- Jonas Ebbesson, *Internationell Miljörätt*, 2nd edn, (Justus Förlag, Uppsala, 2000);
- Ulrich Beyerlin, *Umweltvölkerrecht* (Verlag C.H. Bech, 2000); and
- Astrid Epiney and Martin Scheyli, *Umweltvölkerrecht. Völkerrechtliche Bezugspunkte des schweizerischen Umweltrechts* (Stämpfli Verlag AG, 2000).

The literature on the global biodiversity-related conventions is enormous. To some extent, the books referred to here build on that literature and, in any case, a borderline has to be drawn.

## AUTHOR'S OWN ASSESSMENT

The fourth and final parameter is the author's overall assessment of the current status of the five conventions, which is, of course, completely subjective.

<sup>6</sup> The most comprehensive work on biodiversity-related conventions is S. Lyster, *International Wildlife Law* (Grotius Publications Limited, 1985). The author has not used this book, partly because this article focuses on assessments contained in books dealing with all aspects of international environmental law, and partly because it is more than 15 years old. It is a pity that it has not been revised in the light of the developments in the past 15 years. It is due to the first-mentioned reason that the author also has not used C. de Klemm and C. Shine, *Biological Diversity Conservation and the Law* (Environmental Policy and Law Paper No. 29) (IUCN, 1993).

## RAMSAR CONVENTION 1971

The Ramsar Convention now has 130 contracting parties.<sup>7</sup> It contains five concrete obligations, four general obligations and one soft obligation.

Birnie and Boyle characterize the Ramsar Convention as an 'innovative convention',<sup>8</sup> while Kiss and Shelton conclude that the Convention 'is generally considered to be a success'.<sup>9</sup> Guruswamy and Hendricks argue that the Convention 'has achieved a significant amount given its limited budget and its only recent growth in developing country membership', emphasizing the Convention's potential for increasing 'its contribution to the global effort of protecting wetland biodiversity'.<sup>10</sup> Ebbesson offers the most complete review, observing that the parties over time have reached a common understanding of the interpretation of the obligations and have adopted guidelines for the implementation of the Convention. He continues by stating that:

the Ramsar Convention has considerably contributed to increasing the awareness of the need for legal protection of these biotopes not only in order to further the conservation of waterfowl but also because wetlands generally play an important ecological role.<sup>11</sup>

The author shares the opinions just quoted. The 'culture' of Ramsar represents a straightforward, step-by-step, pragmatic approach, which has enabled the Convention to develop into an influential global instrument in spite of its meagre content. At the plenary sessions of the last Ramsar Conference of the Parties (COP) in 1999, the first real voting in the history of the Convention took place. The voting used all the provisions in the rules of procedure about voting, *inter alia*, whether to vote, how to vote, roll call and secret ballots. This procedure provided a mixed result, not because of the voting itself, but because the voting probably signified the start of a politicizing of the Ramsar Convention, which will not benefit wetlands in the long run.

<sup>7</sup> This is the number as of 1 November 2001. All other figures on the number of contracting parties to the biodiversity-related conventions are also as of 1 November 2001.

<sup>8</sup> P.W. Birnie and A.E. Boyle, *International Law and The Environment* (Clarendon Press, 1994), at 468.

<sup>9</sup> A. Kiss and D. Shelton, *International Environmental Law*, 2nd edn, (Transnational Publishers, 1999), at 330.

<sup>10</sup> L. Guruswamy and B. Hendricks, *International Environmental Law in a Nutshell* (West Publishing, 1997), at 118.

<sup>11</sup> J. Ebbesson, *Internationell Miljö rätt* (Justus Förlag, 2000), at 173. All quotations of Ebbesson have been translated from Swedish to English by the author of this article.

## WORLD HERITAGE CONVENTION 1972

There are 167 contracting parties to the World Heritage Convention (WHC). The Convention reflects four concrete obligations: two obligations of a general nature and five 'soft' obligations or incentives.

Birnie and Boyle, in their comparison of the WHC with the Ramsar Convention, maintain 'that [the WHC] lays more stringent and specific obligations on its parties to take conservation measures', and that it provides listed sites with real protection, but 'limitations on listing prevent it from being the major instrument of habitat protection'.<sup>12</sup> Ebbesson puts a question mark behind Birnie and Boyle's observation, maintaining that both Conventions:

are laying down general principles for the protection of relevant sites and that these principles have gradually been elaborated by the means of resolutions and recommendations on their interpretation and implementation. However, the WHC has had (at least until a couple of years ago) a better organization and more Contracting Parties than the Ramsar Convention. Furthermore, the financial incentive and the prestige of having sites on the World Heritage List have influenced the implementation of the Convention.<sup>13</sup>

According to Kiss and Shelton 'the importance of the Convention cannot be overstated as far as legal principles are concerned'. They refer to the principle that certain property under the sovereignty of a State concerns all humanity and must be conserved in the interest of the entire international community – at that time emerged the legal concept of common heritage of mankind.<sup>14</sup> Guruswamy and Hendricks underscore the narrow definition in the Convention, but nevertheless conclude that the WHC 'has proven a helpful tool in the global effort to conserve biological diversity'.<sup>15</sup>

The scope of the WHC includes cultural and natural (as well as 'mixed') sites. The Convention represents a rather modern approach to the solution of environmental problems, including both nature conservation and preservation of the cultural environment. Such a holistic approach has found its latest expression in the European Landscape Convention 2000, while the new Danish Government (November 2001) has done the opposite, namely administratively disconnecting preservation of the cultural environment and conservation of the natural environment.

<sup>12</sup> See n. 8 above, at 470.

<sup>13</sup> See n. 11 above, at 175.

<sup>14</sup> See n. 9 above, at 331.

<sup>15</sup> See n. 10 above, at 115.

Another important feature of the WHC is its reference to the beautiful concept of 'common heritage' ('world heritage of mankind as a whole'), emerging in the 1970s as a principle of international environmental law applicable outside the traditional scope of the 'global commons'. However, this concept may not survive. With regard to genetic material the principle was put to death by Article 15 of the Biodiversity Convention establishing the sovereign rights of States over their natural resources. However, at the same time it introduced the notion of 'common concern', being less idealistic but probably more fair to developing countries.

## CITES 1973

There are currently 150 States which are contracting parties to CITES. The Convention imposes on its parties six concrete obligations, and only one general and two soft obligations.

Birnie and Boyle do not hide the weaknesses of CITES, nor the diverging opinions on its philosophy and approach. However, they conclude that CITES provides:

a highly practical mechanism incorporating a structure designed to deal with a complex international situation which attempts to balance legitimate trade interests in renewable resources with the need to protect endangered species.<sup>16</sup>

Kiss and Shelton are of the opinion that the CITES as a whole 'functions well' and that 'COP interpretations have narrowed exceptions while allowing flexibility to accommodate short-term special needs'.<sup>17</sup> However, they also refer to problems and disagreements about the effectiveness of trade bans, pointing at the same time to the fact that CITES:

is not a general nature protection agreement, but only one component of many international measures assisting in the conservation of biological diversity.<sup>18</sup>

Guruswamy and Hendricks conclude that, overall, 'the CITES regime has performed well given its limited resources and broad scope'.<sup>19</sup> According to Ebbesson:

[it] is difficult to assess the effectiveness of the Convention from the point of view of environmental protection but the work within the framework of CITES is generally considered to be relatively successful and efficient compared to other global conventions dealing with protection of species.<sup>20</sup>

<sup>16</sup> See n. 8 above, at 480.

<sup>17</sup> See n. 9 above, at 343.

<sup>18</sup> Ibid.

<sup>19</sup> See n. 10 above, at 117.

<sup>20</sup> See n. 11 above, at 200.

Epiney and Scheyli highlight CITES because of its potential field of application to all species of living resources.<sup>21</sup> Beyerling, on the other hand, does not show much appreciation for this convention as he refers to its '*rigide Schutzsystem*' (rigid protection system).<sup>22</sup>

It is extremely difficult to dismiss CITES with only a few observations of a personal nature because so much could be said about it. CITES is a fascinating convention, speaking strictly in legal terms. There is no doubt that, from a legal point of view, it functions well. COP decisions, which are generally implemented and complied with, have permitted CITES both to overcome legal problems and to adapt to new concepts such as 'sustainable development'.

A CITES COP is like a big market or emporium. The COP has its distinct brash and direct culture, and normally a huge number of proposals. Parties negotiate and strive to achieve compromises on the species that should be included, or taken out, from the Convention's annexes. If there is no agreement, the proponent will either withdraw the proposal or ask for a vote, which finally decides whether the proposal is accepted or not. It is quite a straightforward and effective regime.

## BONN CONVENTION (CMS) 1975

The Bonn Convention now has 76 contracting parties. It contains two concrete, two general and five soft obligations.

The reviews of the Bonn Convention reflect its development in a very clear manner. Birnie and Boyle, reviewing the Convention in the early 1990s, are rather negative. They point to the fact that 'neither of the techniques it provides – listing or conclusion of agreements – has been fully or effectively put to use'. They are also negative regarding the small number of parties to the Convention.<sup>23</sup> Birnie and Boyle consider that, due to these factors, it is:

<sup>21</sup> A. Epiney and M. Scheyli, *Umweltvölkerrecht. Völkerrechtliche Bezugspunkte des schweizerischen Umweltrechts* (Stämpfli Verlag AG, 2000), at 270.

<sup>22</sup> U. Beyerling, *Umweltvölkerrecht* (Verlag C.H. Bech, 2000), at 188, 195 and 335. Beyerling regards the notion of sustainable use as a necessary corrective principle to the strict 'conservative' protection system of CITES. However, the application of the principle of sustainable use in the framework of CITES is progressing. See R. Cooney, 'CITES and the CBD: Tensions and Synergies', 10:3 *RECIEL* (2001), 259, at 266, stating that 'CITES has steadily moved from being a negative regulation mechanism... towards being a positive mechanism to facilitate sustainable trade'.

<sup>23</sup> See n. 8 above, at 473.

difficult to argue on the basis of practice under the Convention that any customary obligation to conclude agreements on conservation of migratory species has emerged,<sup>24</sup>

which is probably true.

Guruswamy and Hendricks conclude that 'the Bonn Convention has dramatically improved its record over the last five years'.<sup>25</sup> This has been achieved by soliciting a number of new contracting parties, the adoption of a series of special agreements or memoranda of understanding under the Convention, and due to its increasingly strong working relationship with other biodiversity-related conventions.

Ebbesson, presenting one of the most recent reviews, observes that the Convention 'has with good reason been criticized for being unclear and inefficient'.<sup>26</sup> He mentions, in this respect, problems associated with the small number of parties, ambiguous obligations, a lack of species in the annexes, the paucity of developing special agreements and the absence of financial incentives to attract parties. However, Ebbesson states that 'during the last years the Convention has come alive due to regional agreements and non-binding action programmes'.<sup>27</sup>

Most of those who participated in the negotiations to conclude the Bonn Convention probably realized at the time that it would be difficult to fulfil its ambitions, namely to conclude separate agreements dealing with individual migratory species listed in Annex II of the Convention, and including all relevant range States. Such actions take a lot of political will, are time-consuming and demand considerable funds, but no alternative was found. From a scientific, technical and legal point of view, the Convention still seems to have the right approach. However, it is a pity that major countries such as Brazil, Canada, China and Mexico are still not parties to the Bonn Convention. Also, the alliance between the US and the former Soviet Union to stay out of the Convention still seems to exist.

## BIODIVERSITY CONVENTION (CBD) 1992

Finally, we come to the CBD, which is the most recent convention but in a way the most important one due to the fact that it has 182 contracting parties. The CBD contains only one concrete obligation, counterbalanced by three general and seven soft obligations.

<sup>24</sup> Ibid., at 475.

<sup>25</sup> See n. 10 above, at 122.

<sup>26</sup> See n. 11 above, at 168.

<sup>27</sup> Ibid.

Philippe Sands states that the CBD:

is likely to become the principal framework within which the development and implementation of rules on biodiversity conservation will occur.<sup>28</sup>

He continues on that the Convention is:

particularly important because it is global, adopts an ecosystem approach, and introduces on a broad basis the linkage between conservation and financial resources.<sup>29</sup>

Ebbesson notes that the CBD's legal obligations are not particularly concrete but that the Convention:

does offer a number of instruments for the conservation of species and is establishing principles for future work giving the Convention a process-oriented character. In this way it will be possible to develop protocols and legal principles with regard to a number of legal issues ... *inter alia*, the utilization and conservation of biological diversity and sharing of benefits arising from the exploitation of genetic resources.<sup>30</sup>

Beyerlin argues that with its focus on sustainable use, the CBD differs decisively from the species conservation agreements of the 1970s, which focus on exploitation prohibitions or limitations.<sup>31</sup> Epiney and Scheyli characterize the CBD as a considerable step forward *vis-à-vis* existing international law. They point at the important role of the CBD in the development of recent international environmental law, as it explicitly combines conservation and development.<sup>32</sup> However, in their conclusion, Epiney and Scheyli note that it is doubtful whether the CBD can provide effective protection because it offers concrete obligations to act only in exceptional cases, especially with regard to habitats. This is why the CBD does not include sectorial and concrete obligations to protect specific aspects.<sup>33</sup>

Guruswamy and Hendricks refer to the great deal of criticism that the CBD has received due to 'its lack of substantive provisions, and because its most general obligations contain heavily qualified language'.<sup>34</sup> They also note that others have defended the CBD, referring to 'its resolution of long-standing problems such as access to biological resources' and 'the forward-looking nature of the framework approach in setting the stage for future solutions among political difficulties'.<sup>35</sup> Their conclusion points out that, over time, the CBD may function as a type of 'umbrella'

<sup>28</sup> P. Sands, *Principles of International Environmental Law I* (Manchester University Press, 1995), at 387.

<sup>29</sup> Ibid., at 451.

<sup>30</sup> See n. 11 above, at 164.

<sup>31</sup> See n. 22 above, at 199.

<sup>32</sup> See n. 21 above, at 281.

<sup>33</sup> Ibid., at 299.

<sup>34</sup> See n. 10 above, at 91.

<sup>35</sup> Ibid.

convention (the proverbial 'gleam in the eye' of the United Nations Environment Programme Governing Council back in 1987) eliminating inefficient jurisdictional overlaps and filling perceived gaps.<sup>36</sup>

The CBD is a most challenging convention. In spite of its weak provisions, there is no doubt that it has already accomplished a great deal. Nevertheless, the CBD is also a milestone in a legal sense. The achievements of this Convention include:<sup>37</sup>

- the principle of sovereign rights over natural resources and that access to genetic resources is subject to prior informed consent;
- conservation of biological diversity as a common concern of humankind;
- codification of the principle of sustainable development embodying the idea of inter-generational equity;
- reflection of the precautionary principle;
- incorporation of Principle 21 of the Stockholm Declaration;<sup>38</sup>
- environment impact assessment (EIA) for the first time in a global convention in a non-transboundary context;
- protection of knowledge and innovations of indigenous and local communities;
- putting trade in an ecological context; and
- the foundation of a legal regime for biotechnology resulting in the Cartagena Biosafety Protocol, the first global environmental instrument in the new millennium.<sup>39</sup>

To briefly summarize, the CBD is much more than a framework convention, as has been suggested by some international lawyers.<sup>40</sup> The scope, breadth and nature of the CBD provides States with the inspiration and principles to move forward to protect biodiversity in almost every respect, or rather obliges States to do so, without waiting for additional, international legal instruments. The CBD itself thus provides the crucial basis upon which national instruments can be – and should be – built and developed.

<sup>36</sup> Ibid., at 106.

<sup>37</sup> This enumeration of points does not provide any differentiation between principles contained in the preamble and those contained in substantive convention provisions, nor does it reflect the manner in which the principles are drafted.

<sup>38</sup> Principle 21 of the Stockholm Declaration states: 'States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction'.

<sup>39</sup> See V. Koester, 'The Cartagena Protocol on Biosafety: A New Hot Spot in the Trade-Environment Conflict', 31:2 *Environmental Policy and Law* (2001), at 82.

<sup>40</sup> For instance, see D. McGraw's article in this issue of *RECIEL*.

## CONCLUSIONS

### NUMBER OF CONTRACTING PARTIES

Seen from the perspective of the number of contracting parties, the CBD has taken the lead with its 182 parties. But it is closely followed by the WHC with 167 and CITES with 155 parties.

Why has the CBD taken the lead with regard to its general acceptance, in spite of being the most recent convention? Are the reasons for its success due to its political importance, its philosophy, financial potential or lack of real commitments? Nobody knows the true answer. And why is the WHC the next most ratified convention? Is this due to its very limited scope and its more or less self-evident objective, combined with the fact that it mostly protects what is already protected at the national level? The answer is uncertain. And why is CITES so widely ratified? Is it because of its commercial implications combined with its implications for non-parties? Again the answer is uncertain. However, all biodiversity-related conventions, but to a lesser degree the Bonn Convention, generally have gained worldwide acceptance and they are all very much alive.

### MAIN FEATURES

With regard to the legal content of the conventions, the picture is mixed. Of the 50 obligations, which, according to Beer-Gabel and Labat, these conventions contain,<sup>41</sup> the CBD accounts for almost 20% of them. But when we consider concrete and specific obligations, it can only claim 5–6% (or 1 out of 18) of the obligations. In this respect, CITES is at the forefront with almost 35% (or 6 out of 18) of the concrete obligations.

Calculating the various obligations of the conventions<sup>42</sup> is not easy because it is not always clear how to identify and categorize them. For example, the obligations in CITES, Articles III–V about trade in specimens of species included in Appendices I–III contain provisions to the effect that trade must not be detrimental to the survival of the species, that shipments shall be prepared so as to minimize the risk of injury and that document requirements must be fulfilled. In this context, it is difficult to determine whether we are dealing with one or three obligations.

<sup>41</sup> See n. 1 above, at 161, 204, 212, where the various kinds of obligations of all the agreements are analysed.

<sup>42</sup> Ibid., at 52, 56, 58, 70, 114. The calculations based upon the tables are found on these pages respectively for the following conventions: Ramsar Convention, WHC, CITES, Bonn Convention and the CBD.

These difficulties are probably why the figures listed herein vary considerably from those of Beer-Gabel and Labat. As an example, the total number of obligations according to the author's calculation is 83 while the corresponding number of Beer-Gabel and Labat is 50. But the general thrust remains the same:

- CBD has the largest number of soft obligations;
- CITES has the highest number of concrete obligations;
- the WHC, the Bonn Convention and CBD contain more soft obligations than concrete ones;
- the Ramsar Convention and CBD are at the forefront with regard to general obligations; and
- sixty per cent of the total obligations of the five conventions are of a concrete or general nature with the remaining 40% being soft obligations, mostly in the format of incentives.

Generally speaking, the overall figure of 60% of all obligations being true obligations, according to both Beer-Gabel and Labat and the assessment done herein, is not that negative, as every convention represents the art of the possible. The remaining 40% containing soft obligations provide potential for development through cooperation between parties as well as for refinement and gradual enforcement by the means of COP decisions and the like.

## ASSESSMENTS OF THE CONVENTIONS

It is noteworthy that all the comprehensive books on international environmental law which have been referred to contain some kind of an assessment with regard to the CBD (strangely enough with the exception of Kiss and Shelton). The same applies, directly or indirectly, to CITES with the exception of Sands. Three of the books (Sands, Beyerlin and Epiney and Scheyli) do not evaluate the Ramsar Convention, WHC or the Bonn Convention. One of them (Epiney and Scheyli) does not even offer any survey of the contents of these conventions, arguing (indirectly) that only CITES and the CBD have the potential for a field of application covering all species of living resources.<sup>43</sup> This is a somewhat arbitrary criterion and an argument certainly not being fair to the Ramsar Convention, WHC or Bonn Convention. Each convention must be assessed on the basis of its subject and not on the basis of what it is *not* dealing with.

Three of the books (Birnie and Boyle, Guruswamy and Hendricks, and Ebbeson) review the Ramsar Convention, WHC and Bonn Convention, while Kiss and

Shelton assess the Ramsar Convention and WHC. To the extent that the five global biodiversity-related conventions are reviewed in comprehensive works on international environmental law, they are mostly reviewed positively or at least are considered as having a promising potential.

Legal articles often heavily criticize the philosophy or the nature of one of the conventions or refer to implementation and compliance problems, which obviously do occur.<sup>44</sup> However, reviewing the biodiversity-related conventions in an overall international environmental law context provides a special dimension, because the conventions are evaluated directly or indirectly on the background of legal instruments in other environmental fields.

## FINAL REMARKS

According to Philippe Sands, 'the conservation of biodiversity probably presents greater regulatory challenges to international law than any other environmental issue'.<sup>45</sup> This is likely to be true. It is challenging to deal with biodiversity in an international context. It should also be added that it is not only challenging but also inspiring because of the diversity of the people involved. Participants in the negotiations of these conventions range from the 'diverse women for biodiversity' (one of the groups in the context of CBD), to the individuals in the various convention secretariats, lawyers practising international

<sup>44</sup> The specialized literature on the conventions is vast. The CBD and CITES might be characterized as the most controversial conventions. References to literature where the CBD is criticized can be found in V. Koester, 'The Biodiversity Convention Negotiation Process and Some Comments on the Outcome', 27:6 *EPL* (1997), 175, at 175. A recent example of criticism is C. Wold, 'The Futility, Utility, and Future of the Biodiversity Convention', 9:1 *Colorado Journal of International Environmental Law and Policy* (1998), 1, at 1. A critical approach to CITES is contained in several of the contributions in J. Hutton and B. Dickson (eds), *Endangered Species – Threatened Convention: The Past, Present, and Future of CITES* (Earthscan, 2000). A. Wood, P. Stedman-Edwards and J. Mang (eds), *The Root Causes of Biodiversity Loss* (Earthscan, 2000) contains a positive statement by one of its authors to the effect that CITES does 'a great deal to regulate the use of biological resources' (at 89) and also contains the following very negative statement by another author: 'CITES is not an effective treaty and may actually promote biodiversity loss rather than the reverse' (at 146). For a recent assessment of, *inter alia*, the Bonn Convention and the Ramsar Convention, see M.J. Bowmann, 'International Treaties and The Global Protection of Birds – Part 1', 11:1 *International Environmental Law* (1999), 87 and M.J. Bowmann, 'International Treaties and The Global Protection of Birds – Part 2', 11:2 *International Environmental Law* (1999), 281. According to the 'strength index' referred to in n. 6, the CBD is ranked as number nine and CITES as number four among the 11 agreements examined in that study. See n. 5 above, at 180 and 239.

<sup>45</sup> See n. 26 above, at 450.

<sup>43</sup> See n. 21 above, at 270.

environmental law and diplomats from almost every country. Human beings are the most fascinating component of biodiversity.

All five global biodiversity-related conventions are in a reasonably good shape and that is already something of an achievement. However, when faced with the question 'have we really accomplished anything?', the only answer is: what would be the condition of our biodiversity if these conventions did not exist?

Veit Koester is head of section for Multilateral Cooperation of the International Division of the Danish National Forest and Nature Agency and was formerly head of the Ecological Division at that Agency. He is also an external professor at Roskilde University. He has been heavily involved in shaping environmental legislation in Denmark and has taken an active part in international bodies dealing with nature conservation and biodiversity. He has published numerous papers and articles on nature conservation and international environmental law.