

10-1-1998

# Implementation of the Protocol Concerning Specially Protected Areas and Wildlife (SPAW) in the Wider Caribbean Region

Alessandra Vanzella-Khoury

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## Recommended Citation

Alessandra Vanzella-Khoury, *Implementation of the Protocol Concerning Specially Protected Areas and Wildlife (SPAW) in the Wider Caribbean Region*, 30 U. Miami Inter-Am. L. Rev. 53 (2015)

Available at: <http://repository.law.miami.edu/umialr/vol30/iss1/5>

# IMPLEMENTATION OF THE PROTOCOL CONCERNING SPECIALLY PROTECTED AREAS AND WILDLIFE (SPA) IN THE WIDER CARIBBEAN REGION

ALESSANDRA VANZELLA-KHOURI\*

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\* Ms. Vanzella-Khoury is a biologist by training and received a M.Sc. degree in Marine Microbial Ecology from Florida International University. She has worked as a teacher and laboratory assistant and she has participated in a number of marine environment restoration projects. Since 1987 she has worked for the United Nations Environment Programme (UNEP), initially in UNEP's headquarters in Nairobi, Kenya, and since 1989, at the Regional Co-ordinating Unit (RCU) for the Caribbean Environment Programme (CEP) in Kingston, Jamaica. At the RCU, she was responsible for the regional programme on assessment and control of marine pollution and more recently for the regional programme on Specially Protected Areas and Wildlife.

## I. INTRODUCTION

In 1981, Governments of the Wider Caribbean Region adopted the Action Plan of the Caribbean Environment Programme (CEP) in recognition of the need to address, through regional cooperation, the environmental problems affecting the coastal and marine environment of the Region.<sup>1</sup> The Action Plan emerged as a result of many years of work by governmental and non-governmental representatives of the Wider Caribbean community, under the aegis of the United Nations Environment Programme (UNEP). The CEP constitutes one of the Regional Seas Programmes of UNEP.

This was a process initiated at the regional level, set in motion by a deep concern about the future of social and economic development and resource management in the Region. Its evolution was an exhaustive process involving extensive discussion and consultation. Eventually, differing viewpoints and political perspectives were overcome in the interest of regional co-operation. In adopting the Action Plan, the Governments of the Wider Caribbean Region created a forum for discussion and debate on issues of vital importance to achieve a balance between economic development and environmental protection.<sup>2</sup>

The Action Plan has the following objectives:

- to assist all countries of the region, recognising the special situation of the smaller island countries;
- to co-ordinate international assistance activities;
- to strengthen existing national and sub-regional institutions; and
- to provide technical co-operation in the use of the region's human, financial, and natural resources.<sup>3</sup>

In 1983, the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region

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1. Action Plan for the Caribbean Environment Programme (CEP), United Nations Environment Programme (UNEP), 26 UNEP REGIONAL SEAS REP. & STUDIES (1983) [hereinafter Action Plan]. See generally, UNEP, CARIBBEAN REGIONAL CO-ORDINATING UNIT, ACTION PLAN FOR THE CARIBBEAN ENVIRONMENT PROGRAMME: A FRAMEWORK FOR SUSTAINABLE DEVELOPMENT 3 (1987).

2. See Action Plan, *supra* note 1.

3. See *id.*

(Cartagena Convention) was adopted in Cartagena, Colombia, as the legal framework for the CEP.<sup>4</sup> The Cartagena Convention, which has been ratified by twenty-one Governments (out of twenty-eight possible) of the region, entered into force in 1986. This Convention has been supplemented by three Protocols:

Protocol Concerning Co-operation in Combating Oil Spills (adopted together with the Convention)<sup>5</sup>

Protocol Concerning Specially Protected Areas and Wildlife (SPAW Protocol) (adopted in 1990),<sup>6</sup> and

Protocol Concerning Pollution from Land-Based Sources and Activities (currently under negotiation for tentative adoption in early 1999).<sup>7</sup>

The CEP, with its associated Action Plan, is still the only environmental programme that officially commits the Governments of this vast and diverse Region to join together in the pursuit of the common objectives to protect and manage coastal and marine resources. The CEP enjoys the further distinction of being supported by the only environmental treaty for the Region, the Cartagena Convention.

## II. THE WIDER CARIBBEAN REGION

### A. *The Diversity and Complexity of the Region*

In order to comprehend better the process of evolution and implementation of legal agreements such as the SPAW Protocol,

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4. Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, Mar. 24, 1983, 22 I.L.M. 221 (1983) [hereinafter Cartagena Convention].

5. Protocol Concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region, Mar. 24, 1983, T.I.A.S. No. 11,085, available in 22 I.L.M. 240 (1983).

6. Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, Jan. 18, 1990, available in 1 Y.B. INT'L ENV'TL L. 441 (1990) [hereinafter SPAW Protocol].

7. Revised Second Draft Protocol Concerning Pollution from Land-Based Sources and Activities to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, available as Annex IV to the Report of the Second Meeting of the Legal/Technical/Policy Experts for the Development of a Protocol Concerning Pollution from Land-Based Sources and Activities to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean, UNEP, U.N. Doc. UNEP(WATER)/CAR WG.21/6 (1997) [hereinafter Revised Second Draft of LBS Protocol].

it is important to understand the diversity and complexity of the Wider Caribbean and the Region's myriad environmental and developmental issues.

The area of the Wider Caribbean Region as defined by the Cartagena Convention includes all of the insular and coastal States and Territories bordering the Caribbean Sea and the Gulf of Mexico, from the U.S. Gulf Coast States to the Central and South American countries bordering the Caribbean Sea up to the Department of French Guiana in South America.<sup>8</sup> It is a vast maritime region, of great strategic importance with respect to the global economy, struggling to achieve its own economic development. The twenty-eight States and ten Territories of the Wider Caribbean Region constitute the largest membership of any of the Regional Seas Programmes of UNEP.

The Region has a combination of the most important geographical and biological diversity of the planet, and the countries vary enormously in the size of their populations and resource bases.

A significant portion of the economic activity in the Region is linked to the marine and coastal resource base.<sup>9</sup> The larger continental nations—Colombia, Venezuela, Mexico and the United States—have abundant agricultural and mineral resources. The Gulf States of the United States are major oil and gas producers with large coastal cities and deep-water industrial ports. Offshore of Mexico are major oil and gas producing fields, as is the case with the coastal states of Venezuela. These countries are three of the eight leading oil-producing countries in the world. This makes the Region one of the largest oil-producing areas of the world, with a production of approximately  $170 \times 10^6$  tons per year.<sup>10</sup>

Many of the Central American and island nations have more limited natural resources. These nations, with few exceptions, are seriously affected by changes in the world markets for many of their major exports such as sugar, bananas and bauxite.

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8. Cartagena Convention, *supra* note 4, art. 2, 22 I.L.M. at 227-28.

9. See *Environmental Problems Affecting the Marine and Coastal Environment in the Wider Caribbean Region* (Draft), UNEP, U.N. Doc. UNEP(OCA)/CAR IG.9/INF.5 (1992) [hereinafter *Environmental Problems*].

10. See Action Plan, *supra* note 1.

These changes have resulted in often desperate problems of inflation, high unemployment and severe trade imbalance.<sup>11</sup>

In addition to oil, the Region contains large reserves of gas and asphalt sands, which are currently being exploited. There is also extensive shipping within the region, transporting oil and raw materials through the Panama Canal, and there are numerous petroleum refineries. Many of the economies of the countries of the Region are highly dependent on their coastlines for tourism and fishing. Hence, the various intensive economic activities have had considerable impact on the ecosystems of the Region.<sup>12</sup>

The Region has a high level of biodiversity, even for tropical areas. It is the home of more than ten percent of all endemic bird areas in the world and includes countries among the richest in the world in biodiversity: Colombia, Mexico and Costa Rica. Although species diversity is much lower in the insular Caribbean than on the larger land masses, the majority of the islands, especially the larger ones, support high levels of endemism. When considering Biogeographic Provinces, the diversity of the Region is impressive, with nineteen tropical and three temperate terrestrial ecosystems represented.<sup>13</sup>

In a study on the effectiveness of the Cartagena Convention, three main factors were identified to account for this regional diversity:

First, in the region there are major powers of the developed world with large modern industrial centres co-existing alongside some of the less developed countries that have subsistence economies. This disparity in the strength of the economies of the Region has implications for the ability of States to allocate human, technical and financial resources for the protection of the environment in general and the coastal and marine environment in particular.

Second, there is, in geographic terms, considerable variation in the size or surface areas of the States of the Region. The land masses of a number of the continental States exceed, in certain instances, more than one million square kilometers while other

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11. See *id.*; see also *Environmental Problems*, *supra* note 9.

12. See *Environmental Problems*, *supra* note 9.

13. See UNEP, *Status of Protected Area Systems in the Wider Caribbean*, 36 CEP TECHNICAL REP. (1996) [hereinafter *Status of Protected Area Systems*].

States, in particular, a number of the island States, do not exceed five hundred square kilometres.

A third feature is the fragmentation of the Region and the significant number of islands. Indeed, given the size and population, this Region is, from a political point of view, the most fragmented in the world, with twenty-eight politico-administrative units, with different types of political organization not only within each State but also within States' legal systems, administrative structures and approaches to natural resources management. There is a co-existence of States in which "common law" and "civil law" systems are in effect.<sup>14</sup>

For these reasons, it is essential that the Action Plan encourage positive linkages between resource management and economic development so that the goal of sustained long-term growth can be realized. Although CEP stresses protection of the natural environment as a principal objective, it also embraces the goal of assisting nations of the Region in the pursuit of programmes that result in sustained economic development.<sup>15</sup>

### *B. The Nature of Environmental Problems in the Wider Caribbean Region*

There has been no major change in the nature of the problems affecting the marine and coastal terrestrial environment in the Wider Caribbean Region in the last few decades. However, the magnitude of the problems has multiplied and continues to increase. There has been a marked change in the incidence and extent of human activities in coastal areas, as well as our perception of the main threats and corresponding solutions, due to the knowledge and experience gained within this same time frame. Today, environmental problems are recognized as problems stemming from population pressure combined with inadequate or improper development.<sup>16</sup>

The physical and ecological degradation of coastal terrestrial areas and increased pollution of inland and near-shore waters

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14. *Effectiveness of the Cartagena Convention and the Protocol on Regional Cooperation in Combating Oil Spills in the Wider Caribbean Region*, UNEP, at 4, U.N. Doc. UNEP(OCA)/CAR IG.12/4 (1994).

15. See Action Plan, *supra* note 1.

16. See *Environmental Problems*, *supra* note 9.

from land-based sources are accelerating at an alarming rate in the Region. The often dramatic and irreversible alteration of natural coastal ecosystems and extensive pollution of the sea and inland waters are primarily caused by the rapid growth of coastal populations, the expansion of recreational areas, inappropriate agro-forestry practices and the concentration of industrial development in coastal zones, coupled with inadequate environmental, technological and economic policies.<sup>17</sup> It has been estimated that the population of coastal dwellers in the Wider Caribbean Region will reach seventy million persons by the year 2000. A population growth of fifty-eight percent has been estimated for thirteen countries of the Region during the 1980–2000 period.<sup>18</sup> The impact expected from predicted climate changes will exacerbate the present problems of the Caribbean region and may, in areas such as low-lying islands and coastal zones, significantly influence or even imperil their future development and use.<sup>19</sup>

In the Wider Caribbean, as in other regions of the world, the major sources of coastal and marine pollution originating from land-based sources vary from country to country, depending on the nature and intensity of the specific development-related activities. While there is great similarity in the nature of the environmental problems of this area, there are considerable differences in the economic potential of the countries in the Region and thus in their capability to resolve these problems.<sup>20</sup>

Studies have indicated that only ten percent of the sewage generated in most parts of the region is properly treated and that the percentage of the population served by sewage systems varies from two to sixteen percent in most of the island countries. The sewage problem is also of concern as the flow of visitors to many countries is increasing. The past decade has witnessed growth in the region's tourism, an industry dependent on the quality of the natural environment. Total stay-over tourist arrivals to the Caribbean are close to twelve million visitors per year, increasing at a yearly rate of nine percent. For many of the island countries, tourist arrivals more than double the local population

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17. See *id.*

18. See UNEP, *Regional Overview of Land-Based Sources of Pollution in the Wider Caribbean Region*, 33 CEP TECHNICAL REP. (1994) [hereinafter *Regional Overview*].

19. See *Environmental Problems*, *supra* note 9.

20. See *id.*



sizes, exacerbating existing environmental problems. According to a survey of treatment plants operating in a number of countries, only twenty-five percent of the treatment plants operated by hotels and resort complexes were in good condition. Cruise-ship-generated waste in the Region varies from 0.3-3.5 kg/person/day, while the generation of waste per capita in Latin America and the Caribbean is estimated at 0.5-1.0kg/person/day. Furthermore, it is estimated that water consumption by tourists may be up to ten times more per person than consumption by the local residents.<sup>21</sup>

Industries producing large pollutant loads include oil refineries, sugar factories and distilleries, and food and drink processors and manufacturers. For example, oil refineries contribute eighty percent of the total oil pollution loads constituting the most significant source of industrial pollution to the marine environment of the Wider Caribbean Region.<sup>22</sup>

Regarding ecosystem protection in the Region, the greatest issue is not lack of declared protected areas but rather lack of adequate management of these areas. In the insular Caribbean alone, where approximately 300 protected areas have been declared, seventy percent are only partially managed or not being managed at all. The majority of these areas have been declared only during the last twenty years; they are being established at a faster rate than their management regimes.<sup>23</sup> Nevertheless, the number of protected areas is still insufficient, particularly in terms of protecting important wildlife habitats. Wildlife species are being depleted at an alarming rate through both over-exploitation and destruction of their habitats. The Caribbean monk seal is most probably extinct, the West Indian manatee is rapidly disappearing with a few numbers left in most of the countries where it exists, and all species of Caribbean sea turtles are recognized as endangered. Not to mention the species of flora and fauna that are being over-exploited without proper assessment of their population status.

The causes of present-day environmental problems and their visible manifestations in the Wider Caribbean Region are very

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21. See UNEP, *Coastal Tourism in the Wider Caribbean Region: Impacts and Best Management Practices*, 38 CEP TECHNICAL REP. (1997).

22. See *Regional Overview*, *supra* note 18.

23. See *Status of Protected Area Systems*, *supra* note 13.

complex and cannot be easily described. However, a number of factors can be identified as those that more commonly contribute to the environmental degradation of the Region:

- the lack of integrated coastal area management plans,
- the lack of an integrated and concerted approach towards land-use and maritime planning,
- inappropriate management of solid waste and sewage,
- destruction/alteration of habitats,
- over-exploitation of natural resources (mainly fisheries, mangroves and forests),
- weak and conflicting policies, legislation and regulatory frameworks, often developed with a sectarian approach, and
- insufficient human and financial resources to address institutional weaknesses and lack of enforcement.

### III. THE PROTOCOL CONCERNING SPECIALLY PROTECTED AREAS AND WILDLIFE (SPAW PROTOCOL)

#### A. *The Development of the SPAW Protocol*

The Cartagena Convention sets forth general obligations for the Parties with regard to many areas of activity, including pollution from ships, the dumping of waste in the ocean, pollution from land-based sources and sea-bed activities, airborne pollution, specially protected areas, emergency co-operation, environmental impact assessment, scientific and technical co-operation and dispute resolution. Article 10 of the Cartagena Convention requires Parties to take "all appropriate measures" to protect and preserve "rare or fragile ecosystems" as well as the "habitats of depleted, threatened or endangered species" and to this end, to establish specially protected areas.<sup>24</sup>

Furthermore, at the adoption of the Cartagena Convention in 1983, the Conference of Plenipotentiaries passed two resolutions encouraging the Contracting Parties "to actively pursue the process for the development of two additional

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24. Cartagena Convention, *supra* note 4, art. 10, 22 I.L.M. at 229.

protocols.<sup>25</sup> Resolution 3 proposed, in accordance with Article 10, the development of a Protocol to deal more specifically with specially protected areas and wildlife and threatened fragile ecosystems.<sup>26</sup> The following account of the process of development of said Protocol is a summary of David Freestone's article on the subject.<sup>27</sup>

At the First Meeting of the Parties to the Cartagena Convention in 1987, it was agreed that a meeting of experts for the development of the Protocol be convened within one year. This meeting of experts was preceded by two sub-regional workshops organized in preparation for the meeting: The Wider Caribbean Eastern Sector Preparatory Workshop, held in July 1988, and the Preliminary Latin American Meeting, held in August 1988.<sup>28</sup> The reports of these two workshops were circulated at the meeting of experts and were of great significance in the negotiations.

Many of the delegations, which had been represented at these meetings, were in favor of a more developed structure for the Protocol than that which was presented by the other Regional Seas Programmes. There was also agreement on the need for annexes or lists of protected areas and species and for some form of institutional framework for the Protocol, including a scientific and technical committee. However, considerable controversy was generated when addressing those issues.

There was disagreement on the functions and mechanisms for designating protected areas within the territory or jurisdiction of contracting States, and it was believed that it was primarily a matter for the State concerned. However, it was also recognized that the designation of such areas could have particular significance for the region as a whole and that the inclusion of an area on a list or annex should be preceded by some form of scientific evaluation. A consistent procedure for that evaluation—either by each sovereign State or jointly by the parties—was not accepted. Similarly, in relation to species, there was agreement that protected species of flora and fauna be listed

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25. David Freestone, *Specially Protected Areas and Wildlife in the Caribbean—The 1990 Kingston Protocol to the Cartagena Convention*, 5 INT'L J. ESTUARINE & COASTAL L. 362 (1990).

26. *Id.* at 363.

27. *See id.*

28. *Id.* at 364.

in an annex to the Protocol, but consensus could not be reached on the procedure. The institutional mechanisms to support the Protocol also generated considerable discussion. The need for a scientific and technical committee was recognized, but there were divergent views on the mechanisms of its composition and management. It soon became clear that another lengthy meeting would be needed to resolve outstanding differences of opinion on a number of key issues.

Less than a year later, a second meeting of experts was held to examine the revised text of the Protocol and to prepare the final text for its adoption. The representation of a number of States that had not previously participated in the process generated much debate; nonetheless, substantial progress was made at this meeting. Additionally, a number of CEP members who were non-Parties to the Convention participated in the meeting.

Two main views existed on the composition of the scientific and technical committee: the minority wanted a small, completely independent, committee with membership from the World Conservation Union (IUCN), while the majority view was that all Parties should be represented. The majority view had its difficulties as a number of delegations proposed that representatives to the committee should be able to be accompanied by experts and advisors; the Parties accepted this proposal. More significant and more problematic was the position of the Netherlands and the United Kingdom, who argued that each of the Territories they represented in ratifying the Convention should be represented independent of the metropolitan area. The Meeting did not accept separate representation for these Territories.

It is important to note that the representation of dependent Territories is an issue of perennial controversy and discussion within CEP. A number of dependent Territories participate in CEP (for example, the U.K. Territories of Anguilla, the British Virgin and Cayman Islands, Montserrat, the Turks and Caicos Islands, and the Dutch Territories of the Netherlands Antilles and Aruba (the French Departments are constitutionally part of metropolitan France)). The Territories are assessed separately for financial contributions, but because they are not regarded as separate countries internationally, they are not recognized separ-

ately from their metropolitan state at meetings of the Parties to the Convention.

It was agreed that a list of protected areas of regional importance, which met the criteria set out in the Protocol, should be established by the Parties. Additionally, the procedure for listing the areas would simply involve agreement by the scientific and technical committee that the guidelines and criteria as specified by the provisions of the Protocol had been met. Agreement was also reached on the method of developing the lists of protected species for the annexes, a method different from that agreed to for protected areas. The initial lists were to be developed and agreed to by consensus; thereafter, amendments would be introduced, if possible by consensus, but failing that, by three-quarters majority vote according to the procedure outlined in Article 18 of the Cartagena Convention.

There were, however, outstanding areas of disagreement, which were indicated by the use of brackets. The United States was concerned about the provisions relating to freedom of navigation through protected areas. Discussion was generated by the suggestion that the terms "rare" and "depleted" species be included in the text of the Protocol, resulting in these terms being bracketed for later consideration. It was expected that at a subsequent meeting, outstanding difficulties with the text could be resolved, and the Secretariat was asked to finalize the draft text and annexes, prepared in collaboration with IUCN.

The Conference of Plenipotentiaries for the Adoption of the Protocol was held January 15-16, 1990. It was evident, however, that considerably more than two days would be needed for discussion of the outstanding problems with the text of the Protocol. The Plenipotentiaries met for two additional days of negotiations (including one overnight session) to prepare the final text, which was finally signed on the evening of January 18, 1990. Because it took so long to hammer out the Protocol itself, the parties did not have time to consider the annexes even though lists of species had been presented for consideration and inclusion. An amendment was therefore introduced which stated that the Protocol would not come into force until a follow-up meeting of Plenipotentiaries had approved the annexes. A few of the States were in favor of the adoption of "token" annexes, to expedite the Protocol entering into force, but this suggestion had limited support. In an effort to avoid further delays in the

completion of the annexes, a small Working Group drafted a strict time-table for the preparation of the draft text of the annexes, which was adopted as a Resolution and part of the Final Act of the Conference.

The Conference of Plenipotentiaries for the adoption of the Annexes to the SPAW Protocol was an astounding success. The initial versions of the three annexes were adopted on June 11, 1991. These annexes list protected marine and coastal flora (Annex I), fauna (Annex II) and species of flora and fauna to be maintained at a sustainable level (Annex III). The draft Annexes, which had been prepared by an Ad Hoc Meeting of Experts, were adopted in their entirety. The Region showed its commitment to a strong Protocol by listing entire groups of species, such as most corals, all mangroves, and all sea turtles and major groups of sea mammals.

The listings under the Annexes are as follows:

Annex I: Fifty-six species of *Trachaeophyta* (vascular plants).

Annex II: All species in the order of *Cetacea* (whales and dolphins) and *Sirenia* (manatees) and all species of the *Phocidae* family (monk seals); all six species of sea turtles: *Caretta caretta* (loggerhead), *Chelonia mydas* (green sea), *Eretmochelys imbricata* (hawksbill), *Lepidochelys kempii* (Kemps ridley), *Lepidochelys olivacea* (olive ridley), and *Dermochelys coriacea* (leatherback); and 109 other species of fauna.

Annex III: All species in the order of *Gorgonacea* (soft corals), *Antipatharia* (black coral), and *Scleractinia* (stony coral), and also all species of the families of *Stylasteridae* (soft coral) and *Milleporidae* (fire coral); all species of mangroves (*Conocarpus erectus*, *Laguncularia racemosa*, *Rhizophora mangle* and *Avicennia germinans*); thirty-six other species of *Trachaeophyta* (vascular plants), including a number of species of sea grasses and thirty other species of fauna.

The Conference of Plenipotentiaries recognised the possibility of States' having reservations with regard to initial listings, and it provided criteria for the selection of flora and fauna to be included in the Annexes to the Protocol. The Conference named specific factors for evaluating and classifying the "threatened or endangered" status of a species: (1) that whether the species were subject to international trade be considered; (2) that, given the Caribbean situation, the listing not

be limited to marine and coastal species; (3) that endemic species not be regarded 'en masse,' unless international co-operation is vital to recovery efforts; (4) that higher taxa, covering all lower taxa, be utilized where appropriate; and (5) that priority be given to species essential for the maintenance of fragile and vulnerable ecosystems.

The Conference endorsed the recommendation made by the Ad Hoc Group of Experts to give priority consideration to include some species of migratory birds, waterfowl, mollusks and marine plants in Annex II and III at the next available opportunity. The Conference also agreed to give priority consideration to Species recommended by those delegations who did not attend the Ad Hoc Group of Experts Meeting.

Additionally, the Conference clarified the scope of some provisions of the Protocol, stressing the importance of protecting habitats as an effective means of protecting the listed species. The participants reaffirmed their support of U.N. Resolution 44/225 of December 22, 1989, on the issue of large-scale pelagic drift net fishing and called for its full implementation in the region.

At present, the complete Protocol has been signed by fifteen Contracting Parties to the Cartagena Convention but ratified by only seven: Antigua and Barbuda, Colombia (ratified), Cuba (ratified), Dominican Republic (acceded), France, Guatemala, Jamaica, Mexico, the Netherlands (ratified), Panama (ratified), St. Lucia, St. Vincent and the Grenadines (ratified), Trinidad and Tobago, the United Kingdom, the United States, and Venezuela (ratified).

Obviously, the development of the Protocol generated great interest and support from Governments of the Region. Governments supported its development not only at the political and technical levels, but also by providing financial support for the convening of the relevant negotiating meetings, especially the Governments of France and the United States. Paradoxically, neither of these two Governments has ratified the Protocol. It should also be noted that nongovernmental organizations were also very active and instrumental in the development of the Protocol.

### B. *The Importance of the SPAW Protocol*

As previously noted, the SPAW Protocol is a specialized mechanism of the Cartagena Convention, which sets broad goals, principles and guidelines for Parties and encourages them to further pursue more specific protocols and agreements. The Protocol, however, goes beyond Article 10 of the Cartagena Convention and contains detailed provisions addressing the establishment of protected areas and buffer zones for *in situ* conservation of wildlife, both national and regional co-operative measures for the protection of wild flora and fauna, the introduction of non-native or genetically altered species, environmental impact assessment, research, education, and other topics.<sup>29</sup>

The specific objectives of the SPAW Protocol are:

- to establish protected areas in the marine environment and associated ecosystems in order to sustain the natural resources of the Wider Caribbean Region and to protect rare and fragile ecosystems and the habitats of endangered and threatened species;<sup>30</sup>
- to protect endangered and threatened species, their habitat and associated ecosystems;<sup>31</sup> and
- to promote sustainable management (and use) of fauna and flora to prevent their endangerment.<sup>32</sup>

By adopting the SPAW Protocol, it is hoped that the biological diversity and vital ecological functions of the Region can be managed for the benefit of future generations. The importance of the Protocol is due in large part to its emphasis on the broader realm of ecosystems rather than on the more limited objective of individual species. In the past, legal regimes for protected areas and species reflected a more limited and single-purpose approach. The ecosystem approach that is stressed

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29. See *Report of the Meeting, Workshop to Assist with the Formulation of National Legislation to Implement the SPAW Protocol in the Common Law Countries of the Wider Caribbean Region*, UNEP, U.N. Doc. UNEP(OCA)/CAR WG. 13/5 (1993) [hereinafter *Report of the Meeting*].

30. SPAW Protocol, *supra* note 6, pmbi., arts. 3.1(a), 3.2, 4.1, 1 Y.B. INT'L ENV'T'L L. 450-53.

31. *Id.* at arts. 3.1(b), 3.2, 10, 1 Y.B. INT'L ENV'T'L L. 452-53, 458.

32. *Id.* at art. 3.3, 1 Y.B. INT'L ENV'T'L L. 452-53.



throughout the Protocol is in response to lessons learned in the field. As a result, the Protocol requires States to address a broad array of activities that may have an impact on an entire ecosystem.<sup>33</sup>

This ecosystem-management approach reflected in the SPAW Protocol has been shown to be, in many respects, a precursor to what the international community has subsequently endorsed on a global level. Agenda 21, the Action Programme adopted in June 1992 by the U.N. Conference on Environment and Development (Earth Summit), recognized the need for comprehensive protection of resources and called on Governments to provide integrated management that is precautionary and anticipatory in its approach.<sup>34</sup> Likewise, the global Convention on Biological Diversity (CBD), also signed at the Earth Summit, emphasizes the critical role of ecosystem protection and management.<sup>35</sup>

The SPAW Protocol has been referred to as:

arguably the most comprehensive regional wildlife protection treaty in the world—it is certainly the most comprehensive of its kind. In addition to the formal annexing requirements and the institutional structure that it establishes, its provisions on environmental impact assessment, planning and management regimes and buffer zones, as well as the range of protection measures it envisages (including species recovery plans), reflect much of the best in modern thinking on wildlife protection and management.<sup>36</sup>

The SPAW Protocol provides a clear and well-organized framework for both regional co-ordination and national interventions over a wide range of activities. Additionally, it has

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33. See *Assessment of the SPAW Protocol for the Development of Relevant National Legislation* (Revised Draft), UNEP, U.N. Doc. UNEP(OCA)/CAR WG.13/4 (1993) [hereinafter *SPAW Assessment*].

34. Adoption of Agreements on Environment and Development, Agenda 21, U.N. Conference on Environment and Development, 134-73, U.N. Doc. A/CONF.151/4 (Part II) (1992).

35. United Nations Conference on Environment and Development: Convention on Biological Diversity, June 5, 1992, S. Treaty Doc. 20, 103d Cong. (entered into force Dec. 19, 1993) reprinted in 31 I.L.M. 818 (1993) [hereinafter CBD]. See also *Legislative Guide to Implement the SPAW Protocol*, UNEP, U.N. Doc. UNEP(OCA)/CAR WG.13/3 (1993) [hereinafter *Legislative Guide*].

36. Freestone, *supra* note 25, at 368.

the advantage of being supported through the existing and operational SPAW Regional Programme.<sup>37</sup> The SPAW Protocol, when implemented, will also help to discharge obligations imposed by other international agreements, including many important portions of the CBD and the biodiversity conservation components of the Convention on International Trade in Endangered Species (CITES),<sup>38</sup> the Convention on Wetlands of International Importance Especially as Waterfowl Habitats (Ramsar Convention),<sup>39</sup> the Convention on Migratory Species of Wild Animals (Bonn Convention)<sup>40</sup> and the Cultural and Natural Heritage Convention.<sup>41</sup>

### C. *Implementation of the SPAW Protocol*

Although the Protocol has not yet entered into force, a number of activities have been implemented through CEP in support of the objectives of the Protocol during the eight years since its adoption. The main consequence of the adoption of the SPAW Protocol is the formulation and implementation of the SPAW Regional Programme as an integral part of the Action Plan of CEP. As such, the SPAW Regional Programme has been promoting the objectives of the Protocol and assisting all member Governments with meeting those objectives, irrespective of their status of Party or non-Party to the Convention and the SPAW Protocol.

A Scientific and Technical Advisory Committee (STAC) was established under Article 20 of the Protocol to advise the Parties on the scientific and technical matters relating to the Protocol.<sup>42</sup> The functions of STAC have been carried out by an interim STAC

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37. See discussion *infra* Part III.C.

38. Convention on International Trade in Endangered Species of Wild Fauna and Flora, *opened for signature* Mar. 3, 1973, 993 U.N.T.S. 243 (entered into force July 1, 1975) [hereinafter CITES].

39. Convention on Wetlands of International Importance, Especially as Waterfowl Habitat, *opened for signature* Feb. 2, 1971, 996 U.N.T.S. 245 (1983) [hereinafter Ramsar Convention].

40. Convention on the Conservation of Migratory Species of Wild Animals, June 23, 1979, 19 I.L.M. 11 (1980) [hereinafter Bonn Convention].

41. Convention for the Protection of the World Cultural and Natural Heritage, UNESCO, *adopted* Nov. 16, 1972, T.A.S. 8226, 27 U.S.T. 37, *reprinted in* 11 I.L.M. 1358 (1972). See also discussion *infra*, Part IV.C (discussing the relationship of SPAW to other agreements.).

42. SPAW Protocol, *supra* note 6, art. 20, 1 Y.B. INT'L ENV'T'L L. 465-66.

(ISTAC). Since the adoption of the Protocol, ISTAC has met three times (1992, 1993, and 1995) to provide guidance on the implementation of the Protocol and the SPAW Regional Programme. All members of CEP have been invited and funded through CEP to participate in the ISTAC meetings.

Article 21 of the Protocol calls for the development of the STAC and adoption by the Parties of common guidelines and criteria for the identification, establishment and management of protected areas, as well as for the identification and management of protected species including migratory species.<sup>43</sup> In this context, ISTAC has developed common guidelines and criteria for the identification, selection, establishment and management of protected areas in the Wider Caribbean which were adopted by Governments in 1995.

General guidelines have also been developed to assist Governments with revenue generation in protected areas. Additionally, a "training of trainers" programme for protected areas management, a regional network of marine protected areas and a detailed database on the status of marine protected areas for the entire Wider Caribbean Region have also been developed through the SPAW Regional Programme.

Article 11 calls for the Parties to adopt co-operative measures to ensure the protection and recovery of endangered and threatened species of wildlife listed in the three Annexes.<sup>44</sup> In support of Articles 11 and 21, regional management guidelines that flag priority species such as sea turtles and the West Indian manatee, have also been developed and endorsed by Governments.<sup>45</sup> These species management plans have also been accompanied by national recovery plans developed in a number of countries where those species are present. The SPAW Regional Programme continues to provide assistance to Governments for the development and implementation of the national recovery plans.

In keeping with the ecosystem approach of the Protocol, one of the major activities of the SPAW Regional Programme is related to the protection and management of coral reefs and associated ecosystems. In this context, the Programme has also

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43. *Id.* art. 21, 1 Y.B. INT'L ENV'T'L L. 466.

44. *Id.* art. 11, 1 Y.B. INT'L ENV'T'L L. 459.

45. *See generally Report of the Meeting, supra* note 29.

been very active in the International Coral Reef Initiative (ICRI), launched globally in 1995.<sup>46</sup> The CEP Regional Co-ordinating Unit of UNEP, as Secretariat to the SPAW Protocol, was designated contact point for ICRI in the Wider Caribbean, by the Montego Bay Declaration of ICRI. As a result of this, a major regional project on the promotion of best environmental management practices within the tourism industry is being implemented in an effort to protect the fragile coastal ecosystems on which the tourism industry is so heavily dependent in the Region. This project is being implemented through innovative partnerships with the private, public and academic sectors. Assistance regarding coral reef monitoring and management is also provided through the Programme.

Other activities that the SPAW Programme has been implementing in support of the Protocol include the preparation and dissemination throughout the region of information and relevant educational and public awareness materials. Additionally, given the highly integrated nature of CEP relating to the management of coastal and marine resources, the other Regional Programmes of CEP on Integrated Coastal Area Management, Assessment and Control of Marine Pollution,<sup>47</sup> Education, Training and Awareness and Information Management Systems and Networking<sup>48</sup> have been implementing

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46. International Coral Reef Initiative (ICRI) is a partnership among nations and organizations seeking to implement Chapter 17 of Agenda 21, and other international conventions and agreements, for the benefit of coral reefs and related ecosystems. ICRI was founded by eight governments, Australia, France, Japan, Jamaica, the Philippines, Sweden, the United Kingdom, and the United States and was at the first Conference of the Parties to the CBD in December, 1994. *International Coral Reef Initiative (ICRI)* (visited Nov. 5, 1998) <<http://www.vpservices.com/vps/icri/about/html>>.

47. Formerly referred to jointly as the Integrated Planning and Institutional Development and the Assessment and Control of Marine Pollution Programmes, the Assessment and Control of Marine Pollution Programme concerns the assessment and management of environmental pollution as predicated by the still-evolving Land-Based Sources of Pollution Protocol to the Cartagena Convention. This Programme is responsible for the regionalization of such global agreements as the Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities, Agenda 21. It is likely that this Programme will also be responsible for the implementation of the Wider Caribbean Area's forthcoming Protocol on Land-Based Sources of Pollution. See Revised Second Draft of LBS Protocol, *supra* note 7. The CEP has also published *Guidelines for Integrated Planning and Management of Coastal and Marine Areas in the Wider Caribbean Region*. See UNEP/CEP, GUIDELINES FOR INTEGRATED PLANNING AND MANAGEMENT OF COASTAL AND MARINE AREAS IN THE WIDER CARIBBEAN REGION (1996).

48. Information Systems for the Management of Marine and Coastal resources (CEPNET) is a Sub-Programme of CEP. CEPNET is responsible for the production and dissemination of *CEPNews*, the *CEP Technical Report*, and select global information

activities in support of the Cartagena Convention and its Protocols. Because all CEP Programmes are mutually supportive and integrated, they have all contributed to the technical implementation of the SPAW Protocol.

#### *D. Legal Implementation of the SPAW Protocol*

The member Governments of CEP have requested that as part of the activities of the Programme the Secretariat promote the development of national legislation, as well as the establishment and development, as appropriate, of an institutional framework that will permit compliance with these laws. In this context, the Secretariat was requested to convene a series of workshops to assist the Governments of the Wider Caribbean Region, with the development of national legislation to implement the SPAW Protocol.

A workshop for the Common Law Countries of the Region was convened in 1993 with the following objectives:

- to analyze the legislative requirements of the SPAW Protocol, including its objectives and article provisions;
- to review specific aspects which are fundamental to the successful implementation of the SPAW Protocol at the national level, including funding, public awareness, formal education and community participation;
- to review existing and proposed national approaches to implement the SPAW Protocol; and
- to provide recommendations and options to assist the Common Law Countries of the region with the development of national legislation to implement the SPAW Protocol.<sup>49</sup>

Considerable progress was made at this first meeting, which presented a number of practical recommendations and guidelines to facilitate the implementation of the Protocol at both regional and national levels.<sup>50</sup> Among the most practical products were

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systems. CEPNET Information Systems for the Management of Marine and Coastal Resources (visited Aug. 3, 1998) <<http://www.cep.unep.org/programmes/cepnet/cepnet.html>>.

49. *Report of the Meeting, supra* note 29, at 1.

50. *Id.* Annex IV, ¶ 7(b) at 2.

the *Legislative Guide to Implement the SPAW Protocol*<sup>51</sup> and the *Assessment of the SPAW Protocol for the Development of National Legislation*,<sup>52</sup> which include both a practical checklist and guidelines to be used when developing legislation on each specific article. Additionally, this document contains the specific elements recommended for inclusion in the proposed legislation.

The Meeting considered it necessary to distinguish between the provisions that are mandatory and those that are recommendations.<sup>53</sup> An additional study, however, concluded that the provisions contained in the SPAW Protocol are not easily categorized into mandatory requirements as opposed to mere optional provisions.<sup>54</sup> The report noted that as with other UNEP Regional Seas agreements, there appears to be an attempt to involve all possible participants by reducing requirements for national implementing regulations to the most basic.<sup>55</sup> The intention was to make the requirements as "elastic" as possible in order to attract widespread support. This approach, no doubt influenced by the political difficulty of getting state support for stringent environmental agreements, was probably reinforced by the consideration that the Protocol itself was optional. Under the provisions of the Cartagena Convention, States of the Wider Caribbean Region may become Parties to the Convention and participate in the Action Plan without becoming Parties to the SPAW Protocol.<sup>56</sup>

At the same time, there is the general provision in Article 3 of the Protocol, which forms the core or irreducible minimum of the Agreement.<sup>57</sup> According to Article 3, paragraph 1:

*Each Party shall, in accordance with its laws and regulations and the terms of the Protocol, take the necessary measures to protect, preserve and manage, in a sustainable way, within areas of the Wider Caribbean Region in which it exercises sovereignty, or sovereign rights, or jurisdiction: (a) areas that*

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51. See *Legislative Guide*, *supra* note 35.

52. See *SPAW Assessment*, *supra* note 33.

53. *Report of the Meeting*, *supra* note 29, ¶ 28, at 6.

54. See *id.*

55. See *id.*

56. Cartagena Convention, *supra* note 4, art. 27, 22 I.L.M. 236.

57. SPAW Protocol, *supra* note 6, art. 3, 1 Y.B. INT'L ENV'T L. 452-53.

require protection to safeguard their special value; and (b) threatened or endangered species of flora and fauna.<sup>58</sup>

This overarching mandate ensures the integrity of the Protocol and serves to measure the absolute minimum required for compliance. Even here, however, the provision is drafted in general terms. The Protocol attempts to reconcile this "elastic" approach by providing a minimum of core legal requirements in the formulation of its provisions.<sup>59</sup>

However, the Meeting agreed that the intention was not, thereby, to indicate that there was any legal requirement that all provisions had to be implemented by national legislation. There are many provisions that cannot appropriately be subject to national legislation and others where new legislation would probably be necessary. Other provisions, whilst highly desirable as postulates of national law, cannot be seen as strictly required under the Protocol.

In this context, the Meeting generated a categorization of the checklist contained in the assessment document to distinguish mandatory requirements from optional provisions.<sup>60</sup> This study divided the provisions of the SPAW Protocol into two main categories as follows:

Class 1:

Mandatory provisions. These require implementation through direct legislation. In this case the provisions may either appear (i) substantively, in the words and phrases used in the legislation; or (ii) as functions of an organization concerned with relevant resource management; or (iii) in earlier relevant legislation.

Class 2:

Optional provisions. These provisions are optional in the sense that whilst desirable, they need not be legislated for by the Party either because (i) the formulation of the provision in the Protocol is so subjective as to give a blanket discretion to the Party as to whether to legislate; or (ii) are merely explanatory or illustrative of the provisions in the Protocol or the reason for the

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58. *Id.* (emphasis added).

59. *See id.*

60. *Report of the Meeting, supra* note 29, Annex IV, ¶ 7(d) at 2.

adoption of those provisions; or (iii) are not, strictly speaking, required by the Agreement itself; or (iv) comprise provisions fulfilled by the fact of the state sovereignty and willingness to engage in relevant international relations.<sup>61</sup>

This categorization was provided for each of the provisions, and, in some instances, further detail was provided by way of indication of the particular subset of the class relevant to the classification.

Another major issue discussed during the Meeting was the process required to enact legislation at the national level to satisfy the provisions of the Protocol. A number of States indicated that, according to their national policies, it was necessary to update and formulate new legislation prior to ratifying the SPAW Protocol. In this context, the Meeting recommended that, to maintain momentum during the interim period prior to enactment of implementing legislation, States undertake other processes in support of the implementation of the Protocol by way of examining existing measures (both legislative and administrative), establishment of technical advisory committees, provisional identification of designated agencies, identification of required resources for implementation and the integration and co-ordination of agency activities.<sup>62</sup>

Subsequent meetings for the Civil Law countries and the Region as a whole were also envisaged but were never implemented due to lack of resources.

While many Caribbean countries have a strong record of protecting the environment, it is likely that legislation will have to be enacted or updated at the national level before countries can ratify or comply with the SPAW Protocol. This legislation should reflect the Protocol's policies as well as empower specific agencies to administer and enforce its obligations. Additionally, institutional structures will likely have to be strengthened and co-ordinated. It appears that current legislation, much of which is from the pre-independence period, is deficient in providing adequate institutional support for implementation and co-

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61. UNEP, *Categorization of the Checklist in the Assessment of the SPAW Protocol for the Development of Relevant National Legislation to Distinguish Mandatory Requirements from Optional Provisions* (1994) (unpublished manuscript) (on file with the *Inter-American Law Review*).

62. See *Report of the Meeting*, *supra* note 29.



ordination with activities in related areas. Additionally, in many cases, legislation is not implemented by regulations, and enforcement has been compromised by inadequate financial and human resources.<sup>63</sup>

Even in cases where there is modern legislation those laws may fail to meet the broad scope of management activities required by the SPAW Protocol's emphasis on ecosystem protection. For example, existing unified draft legislation on fisheries, the basis for fisheries legislation in the Eastern Caribbean States, provides authority for the creation of marine reserves, but it does not include clear authority to manage the impact of tourist or shipping or to regulate the trade of a species or archeological objects. In general, these types of legislation lack a mechanism, as called for by the SPAW Protocol, for regulating and controlling activities beyond the boundaries of a protected area that may cause such problems as watershed degradation, polluted runoff, or increased sediment loads.<sup>64</sup>

Similarly, many wildlife laws cover only certain categories of species such as birds or sea turtles, or they discriminate between animals and plants, while the Protocol seeks to protect all endangered and threatened plant and animal species throughout their life-cycle, together with their habitats and associated ecosystems. For compliance with the Protocol, it may be necessary to expand such laws. When drafting national implementing legislation, especially in regard to management directives that need authorization and in regard to activities that may be regulated or prohibited, it will be helpful to keep in mind the Protocol's emphasis on ecosystems.

An ecosystem approach also requires dynamic management—one that is both comprehensive and integrated. This approach requires inputs from other government agencies, such as those related to wildlife, fisheries, forestry, agriculture, pollution prevention and control, land-use planning, shipping, energy production, and so on. Effective management of an ecosystem depends on integrating all the relevant local, national and regional governmental and non-governmental inputs.<sup>65</sup>

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63. See *Legislative Guide*, *supra* note 35.

64. See *SPAW Assessment*, *supra* note 33.

65. See *Legislative Guide*, *supra* note 35.

#### IV. RELATIONSHIP WITH OTHER BIODIVERSITY-RELATED TREATIES

The SPAW legislation workshop mentioned above noted the compatibility between the SPAW Protocol and the CBD and strongly recommended that this relationship be taken into consideration at the national level when developing or updating relevant legislation.<sup>66</sup>

Subsequently, during an intergovernmental meeting, CEP member Governments and Contracting Parties to the Cartagena Convention identified the SPAW Protocol as a vehicle to assist with the implementation of the CBD.<sup>67</sup> They requested the Cartagena Convention Secretariat to develop a co-operation programme between CBD and SPAW to include as equal partners the Secretariats of all related global and regional agreements (for example, CITES,<sup>68</sup> Ramsar Convention,<sup>69</sup> Bonn Convention<sup>70</sup>), as well as all international and regional organizations relevant to the Wider Caribbean in the field of biodiversity. In this context, a comparative document of the SPAW Protocol, the CBD and the CITES was prepared to identify the comparable and non-comparable elements of the three treaties, as well as the supporting elements to utilize the SPAW Protocol to assist with the implementation of the CBD in the Wider Caribbean.<sup>71</sup> This document was revised and endorsed by the Wider Caribbean Governments and was used as an important reference for the development of the Memorandum of Co-operation signed in 1997 between the Secretariats to the CBD and the Cartagena Convention and SPAW Protocol. Additional supporting documents were also prepared outlining the possible programmatic linkages and co-operative activities between both treaties and their Secretariats. These documents were reviewed

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66. See *Report of the Meeting*, *supra* note 29.

67. See *id.*; see also *Seventh Intergovernmental Meeting on the Action Plan for the Caribbean Environment Programme and Fourth Meeting of the Contracting Parties to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region*, UNEP, U.N. Doc. UNEP(OCA)/CAR IG.12/7 (1994).

68. See CITES, *supra* note 38.

69. See Ramsar Convention, *supra* note 39.

70. See Bonn Convention, *supra* note 40.

71. See *Programmatic Linkages for the Wider Caribbean region Between the Convention on Biological Diversity and the Cartagena Convention and its Protocols*, UNEP, U.N. Doc. UNEP(WATER)/CAR IG.13/INF.7 (1996).

and supported by Governments of the Region at relevant international fora.<sup>72</sup>

CITES, like the CBD is a global agreement. It contains very concrete and specific provisions to regulate trade in endangered and threatened species.<sup>73</sup> The SPAW Protocol encourages the use of CITES' administrative mechanisms in implementing SPAW's requirements for control of such trade.<sup>74</sup> SPAW's Article 25 Convention also links the Bonn Convention to CITES.<sup>75</sup> Although the CBD does not specifically address the trade of endangered species, controlling such trade is an important factor in conservation of biodiversity. Therefore, the implementation of CITES will also assist in meeting those comprehensive CBD provisions related to conservation of species and their sustainable use.<sup>76</sup>

Although the CBD is often referred to as a framework convention, that is, an agreement that defines broad objectives and obligations and creates mechanisms for further definition of these through protocols, regional agreements, and national legislation, it is actually quite specific in many areas. In other areas, however, it is not very clear and its scope is very broad. Additionally, the CBD also creates innovative obligations for which there is little precedent to help guide implementation.<sup>77</sup> In contrast, the SPAW Protocol is especially helpful in that it is very concrete and specific in its obligations. Nevertheless, the two agreements have been found very compatible, and actions taken to implement the Protocol will in almost all cases assist with the implementation of the CBD as well. The Protocol calls for an unusual degree of international cooperation and collaboration. This is an advantage, as co-operation greatly increases efficiency in implementation of the agreements and provides mechanisms for the exchange of information and technical assistance, a very

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72. *See id.*

73. *See CITES, supra note 38.*

74. Final Act of the Conference of Plenipotentiaries for the Adoption of the Annexes to the Protocol concerning Specially Protected Areas and Wildlife in the Wider Caribbean Region, art. 25, UNEP, U.N. Doc. UNEP(OCA)/CAR IG. 7/3 (1991).

75. SPAW Protocol, *supra note 6*, art. 25, 1 Y.B. INT'L ENV'T'L L. 469.

76. *See Relationship between the Convention on Biological Diversity (CBD), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the Protocol Concerning Specially Protected Areas and Wildlife (SPAW) in the Wider Caribbean Region*, UNEP, U.N. Doc. UNEP(OCA)/CAR WG.19/4 (1995).

77. *See id.*

important consideration for the developing nations that are the great majority in the Region.<sup>78</sup>

The SPAW Protocol and the CBD take different but complementary approaches to biodiversity conservation. The SPAW Protocol focuses on conservation of ecosystems and specific species of wildlife. It is targeted primarily, though not exclusively, at the marine and coastal environments, including estuaries and country-designated terrestrial areas related to the marine and coastal environment. The CBD has a wider focus, both within and outside of the natural environment. The CBD also addresses other issues such as intellectual property rights over technology to utilize genetic resources, the traditional knowledge of indigenous peoples, and biotechnology. The SPAW Protocol, however, has the very great virtue of being clear, detailed, and highly practical in its contents.

It can be concluded that the CBD and the Cartagena Convention, particularly its SPAW Protocol, are both comprehensive in scope and are congruent in most of their provisions. The few elements unique to each instrument are nevertheless mutually supporting as they contribute towards achieving the overall objectives of both treaties. The Cartagena Convention and its SPAW Protocol provide in many instances more concrete and specific guidance to implement the strong and broader obligations of the CBD. In particular, the detailed obligations contained in the SPAW Protocol (1) to manage the components of biodiversity on an ecosystem basis, (2) to establish protected areas, (3) to establish protection programmes for endangered and threatened species of wildlife, and (4) to manage wildlife to try to prevent species from becoming threatened or endangered with extinction will serve to provide concrete guidelines on these high priority issues for the implementation of the CBD at the regional level.

In this context, national legislation to implement the SPAW Protocol will assist Governments with the implementation of requirements of a variety of other international agreements, such as: (1) the Western Hemisphere Convention (Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, entered into force in 1942);<sup>79</sup> (2) the Ramsar

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78. *See id.*

79. Convention on Nature Protection and Wildlife Preservation in the Western

Convention (entered into force in 1975);<sup>80</sup> (3) the CITES (entered into force in 1975)<sup>81</sup>; (4) the Bonn Convention (entered into force in 1983)<sup>82</sup>; and in particular the CBD (entered into force in 1993).<sup>83</sup>

Governments of the Region participate in at least eighteen global, regional and subregional environmental agreements and programmes relevant to the SPAW Protocol.<sup>84</sup> The great majority of Wider Caribbean Governments are now Parties to the CBD, CITES, the UN Convention on the Law of the Sea and the World Heritage Convention. The Cartagena Convention, as indicated before, also includes an important number of Parties. The Ramsar and Bonn Conventions have a significantly lower number of Parties from the Region, and the Western Hemisphere Convention and the SPAW Protocol include the smallest number of Parties. However, the participation by member Governments in CEP as well as in the SPAW Regional Programme is relatively high.

It could be assumed that in light of the great number of agreements and programmes in which countries of the Region participate, it might be difficult for most countries to respond adequately to the various acquired obligations due to the institutional weaknesses and insufficient human and financial resources mentioned before. In this context, it is obvious that, for many countries, some form of prioritisation would have to take place. This could result in some countries' opting to participate in those agreements or programmes that will be more politically and financially beneficial. It is important to note that those agreements that emanated from the Earth Summit, such as the CBD, are supported by financial mechanisms like the Global Environment Fund (GEF). This certainly could help to motivate participation, in particular from developing nations. Other agreements, however, require financial contributions to the Secretariat or the Organization from the Parties to assist with implementation. The Cartagena Convention and its Protocols were adopted independently from the financial mechanisms of

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Hemisphere, Oct. 12, 1940 (ratified by the United States Apr. 28, 1941), T.S. No. 981.

80. Ramsar Convention, *supra* note 39.

81. CITES, *supra* note 38.

82. Bonn Convention, *supra* note 40.

83. CBD, *supra* note 35.

84. *See Status of Protected Area Systems, supra* note 13.

CEP. Therefore, there are no financial obligations for the Parties to the Cartagena Convention, and assistance for implementation is provided through CEP, which is primarily funded through voluntary contributions from member Governments.

## V. CONCLUSIONS

The Cartagena Convention is a comprehensive umbrella agreement for the protection and development of the marine environment in the Wider Caribbean Region. Its mission is to ensure sound environmental management of the coastal and marine resources and prevent, reduce and control pollution in the Region. The Cartagena Convention with its Protocols, the Action Plan and other organs such as the Intergovernmental and Contracting Parties Meetings, comprise one of UNEP's Regional Seas Programmes, CEP, which has been in operation for almost twenty years. The Cartagena Convention has been ratified by twenty-one Governments of the region, and entered into force in 1986, together with its associated Protocol Concerning Co-operation in Combating Oil Spills.

The SPAW Protocol was adopted in 1990 and its Annexes of protected species in 1991. The Protocol has not entered into force as only seven Governments are party to this treaty. Nonetheless, a number of its provisions are currently under implementation through CEP and in particular through the SPAW Regional Programme of CEP, developed specifically to support the implementation of the Protocol.

Through its catalytic, facilitating and co-ordinating role, CEP has promoted co-operation within a region full of political and economic contrasts and has helped to attract important financial resources from the international level. However, CEP and in particular the Cartagena Convention with its SPAW Protocol have the potential to play a much more significant role, as long as the Governments of the Region will commit themselves to promote, utilize and implement the Convention and the SPAW Protocol in a more active way. This will be the only way to achieve the objectives for which these instruments were created and to contribute at the same time to the co-ordinated and concerted implementation of other relevant global treaties.

To date, the SPAW Protocol has not been resoundingly ratified. Absence of wide ratification has less to do with the

Protocol itself than with the overall political and economic contexts in which it was adopted. The Protocol was adopted at a time when Governments were preparing for the most important environmental global forum of the last two decades (the Earth Summit) and were also negotiating major global agreements, such as the CBD. This could have detracted the attention of Governments from regional initiatives and other important agreements. Given the financial and institutional constraints of most countries of the Region, it is understandable that greater attention be paid to other agreements, which are supported by solid financial mechanisms such as the GEF. The detailed provisions of the SPAW Protocol might be interpreted as too demanding and requiring major revisions to national legislation. There is still no full understanding by Governments of the benefits of regional agreements such as the SPAW Protocol. Governments must recognize that the Protocol not only greatly contributes to the protection, preservation and management of important natural resources but also assists with the implementation of more general and difficult-to-implement provisions of related global agreements such as the CBD.

In a decade where biological diversity has been recognized as global and fundamental to the sustainability of the planet, it is necessary to assign utmost priority to the implementation of biodiversity-related agreements, in particular those developed within a regional and subregional context that obviously will be more applicable and relevant to local conditions and realities. This is the case of the SPAW Protocol, which has been demonstrated to provide clarity and specificity to most of the provisions of the CBD.

It is the aim of the Secretariat to the Cartagena Convention to have the SPAW Protocol enter into force during 1998, the Year of the Ocean. A number of Governments have recently expressed renewed interest in the Protocol and have informally informed the Secretariat that the process of ratification has been initiated at the national level. In light of this recent interest expressed by a number of member Governments and efforts of the Secretariat regarding the promotion of the Protocol, it is expected that it would be possible to accomplish this task during this year.

However, it is clear that the ratification of the Protocol will not necessarily imply its implementation. It is therefore necessary that the Governments revise and update current

legislation in a concerted and integrated way to ensure compliance with relevant biodiversity-related agreements and, where appropriate, take the necessary measures to develop new legislation. Additionally, greater efforts should be made to ensure the application and enforcement of the legislation and regulations. In this regard, it is important to resolve conflicts and/or duplication of functions among governmental agencies and strengthen the entire institutional framework and capacity.

The Secretariat to the SPAW Protocol continues to promote its ratification and implementation among the Governments of the Region. Parties to the Cartagena Convention and CEP member Governments are urged to ratify the SPAW Protocol, in particular in light of its relationship with other biodiversity-related treaties and its contribution to the preservation and management of critical natural resources necessary for the sustainable development of the Wider Caribbean Region.