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The need to assess progress in the implementation of the Bern Convention

Report[1]
Committee on the Environment, Agriculture and Local and Regional Affairs
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Summary

On the occasion of the International Year of Biodiversity 2010 and the United Nations Decade for Biodiversity 2011-2020, the Parliamentary Assembly refers to the wider legal framework in the field of nature conservation and biodiversity and calls for the assessment of progress in the implementation of the Council of Europe Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention). This convention is the first comprehensive legal instrument for pan-European nature conservation and remains the keystone treaty for biodiversity within the Council of Europe framework.

Environmental degradation, depletion of biological diversity and alteration of ecosystems affect directly and indirectly a range of fundamental human rights defined by the Universal Declaration of Human Rights and by the European Convention on Human Rights, namely the right to life, to access to food and water, to health, to adequate housing, and to property and land use.

The Committee of Ministers is invited to make the Bern Convention and the work of its expert bodies more visible internationally and ensure that it is regarded as one of the priorities of the Council of Europe.

1. 2011 - Second part-session

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A. Draft resolution[2]

1. The Parliamentary Assembly refers to the ceremony of the 30th anniversary of the Standing Committee of the Council of Europe Convention on the Conservation of European Wildlife and Natural Habitats (ETS No. 104) (Bern Convention), to the International Year of Biodiversity 2010 and the United Nations Decade on Biodiversity 2011-2020, to its Recommendation 1918 (2010) on biodiversity and climate change and to the Declaration jointly signed by the Assembly, the Congress of Local and Regional Authorities and the Conference of INGOs of the Council of Europe on the occasion of the European Biodiversity Day on 28 April 2010.

2. In this respect, the Assembly deeply regrets that depletion of biological diversity is currently taking place faster than natural extinction, reflecting the global political failure to meet the Biodiversity Target and stop the biodiversity loss by 2010 as stipulated at the Conference of the Parties to the Convention on Biological Diversity in 2002.

3. In its broadest sense, the environment concerns both human beings and their surrounding natural habitat, to the extent that they form a single entity that is ecologically balanced and conducive to development. The Assembly refers to Principle 1 of the Stockholm Declaration (United Nations Conference on the Human Environment, 1972) which states: “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears solemn responsibility to protect and improve the environment for present and future generations.”

4. The Assembly recalls its Recommendation 1885 (2009) on drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment and Resolution 10/4 of the United Nations Human Rights Council on human rights and climate change and the explanatory study of the Office of the United Nations High Commissioner for Human Rights, and stresses that any degradation in delivery of ecosystem services will closely affect a wide range of universally recognised fundamental human rights, namely the right to life and to food, access to water, health, adequate housing, right to property and land use.

5. Moreover, according to the case law of the European Court of Human Rights, environmental degradation, depletion of biological diversity and alteration of ecosystems also indirectly affect other human rights protected under the European Convention on Human Rights, namely: respect for private and family life as well as the home (Article 8); access to information (Articles 2 and 8); access to justice and other remedies (Article 13); information and communication and the right to receive and impart information and ideas (Article 10).

6. According to scientific studies, Europe is projected to experience warming greater than the global mean warming, with winter warming greatest in northern Europe and summer warming greatest in the Mediterranean region, in both cases double the levels of the projected global mean warming. Changes in habitats, species, their geographical spread, their migratory patterns and ultimately the composition and functioning of European ecosystems will inevitably also affect their ability to deliver the various services upon which human society depends.

7. While mitigation measures for the reduction in greenhouse gas emissions are essential for reducing the negative impacts on the environment and biodiversity in the medium and long term, concrete measures are also necessary to facilitate adaptation of natural and managed ecosystems to ongoing processes of climate change. Spontaneous adaptation will not be sufficient to reduce impacts on biodiversity at all levels, either on vulnerable ecosystems or for long-term human well-being.

8. The Assembly therefore considers that strong measures to protect habitats of flora and fauna, as well as good management and extension of existing networks of conservation areas will be vital to any successful national and European strategies for biodiversity conservation in the face of climate change.

9. The Assembly welcomes the initiative of the European Union aimed at drafting the post-2010 European Union biodiversity strategy in consultation with citizens, stakeholders, public administration, business and civil society, with a view to stepping up the European Union contribution to averting global biodiversity loss.

10. In this respect, the Assembly calls upon the European Union and the relevant member states of the Council of Europe to step up their efforts to increase their contribution in order to meet the Global Biodiversity Target set by the Parties to the Convention on Biological Diversity, and especially to implement the recommendations and resolutions of the Standing Committee of the Bern Convention.

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2. Draft resolution adopted unanimously by the committee on 25 November 2010.

B. Draft recommendation[3]

1. Referring to its Resolution ..., the Parliamentary Assembly calls for an assessment of progress in the implementation of the Council of Europe Convention on the Conservation of European Wildlife and Natural Habitats (ETS No. 104) (Bern Convention), the first comprehensive legal instrument for pan-European nature conservation, which remains the keystone treaty for protection of biodiversity within the Council of Europe framework.

2. The Assembly recalls the wider legal framework in the field of nature conservation and biodiversity which complements the Bern Convention, principally the United Nations Convention on Biological Diversity, the Convention on Wetlands of International Importance (the Ramsar Convention), the Council of Europe European Landscape Convention (ETS No. 176) and the European Union Birds and Habitats Directives.

3. In the light of these considerations, the Assembly recommends that the Committee of Ministers:

3.1. invite the Russian Federation and San Marino to sign and ratify the Bern Convention;

3.2. assess the effectiveness of the Bern Convention in Africa and, if appropriate, invite more countries to accede to it in order to provide comprehensive geographical coverage, investigate possibilities for co-operation with the African Convention on Conservation of Nature and Natural Resources (Algiers Convention) and continue and further develop co-operation with the African-Eurasian Waterbird Agreement (AEWA);

3.3. call on the parties and observers to the Bern Convention to enhance co-operation with the European Union in order to achieve compatibility between the Emerald Network of areas of special conservation interest under the Bern Convention and the Natura 2000 Network of protected habitats resulting from the European Union Habitats Directive, and in particular with regard to:

3.3.1. establishing protected area networks, to:

3.3.1.1. harmonise habitat and species lists through co-ordinated interpretation of the habitat types included in the lists;

3.3.1.2. strengthen the rules for site designation;

3.3.1.3. accelerate designation of conservation areas in all States Parties to the Bern Convention in order to extend and complete the two European conservation area networks;

3.3.1.4. create a comprehensive assessment of the Emerald Network, similar to the Natura 2000 Barometer;

3.3.1.5. make data relevant to areas of special conservation interest available to the public, including mapping of designated areas on a pan-European scale, compatible with geographical information systems and available on the Internet;

3.3.1.6. incorporate development of the Emerald Network into European Union development assistance programmes, namely through European Union accession and neighbourhood policies;

3.3.2. management of protected areas, to:

3.3.2.1. strengthen mechanisms for reporting and implementation with a view to being able to react to non-compliance with infringement procedures, similar to the European Union procedures;

3.3.2.2. strengthen existing guidance with more specific advice with regard to management planning and action;

3.3.2.3. create management planning software that could complement software used for site description;

3.3.2.4. make a more systematic overview of the situation of habitats and species in protected areas on a pan-European basis, using data from the European Diploma of Protected Areas as well as case files and complaints;

3. Draft recommendation adopted unanimously by the committee on 25 November 2010.

3.3.2.5. take stock of the state of implementation of the numerous recommendations adopted by the Standing Committee of the Bern Convention;

3.3.2.6. ensure coherence of networks and avoid infrastructure developments that cut through migratory corridors;

3.3.2.7. secure protection of Emerald sites comparable to Natura 2000 site protection;

3.3.3. the protection of species, to:

3.3.3.1. when species included in Appendix II of the Bern Convention have reached safe ecological levels and such a move would not jeopardise the current favourable status, consider moving some of the biogeographical populations to Appendix III and to consider also the opposite move for species in Appendix III that are not in a favourable position, while avoiding any hasty movements of species form one appendix to another without proper assessment of their status;

3.3.3.2. step up efforts to significantly reduce populations of invasive alien species in Europe and avoid introducing new ones;

3.4. call on the Parties and observers to the Bern Convention to step up implementation of the Standing Committee recommendations, including where necessary efficient enforcement of the environmental legislation, in order to:

3.4.1. fight against global biodiversity loss, loss of habitats and fragmentation of European landscapes and to address issues of habitat diversity protection not related to particular conservation sites;

3.4.2. make use of the ecosystem approach and maintain large networks of heterogeneous habitats;

3.4.3. integrate protection of biological and landscape diversity in all sectors such as spatial planning, infrastructure development, construction, mining, agriculture and forestry, as well as protection of the environment from pollution, including mitigation and adaptation to climate change;

3.5. make the Bern Convention and the work of the Standing Committee and its groups of experts more visible internationally and ensure that it is regarded as one of the priorities of the Council of Europe.

C. Explanatory memorandum by Mr Lotman, rapporteur

1. Introduction

1. The Convention on the Conservation of European Wildlife and Natural Habitats, or the Bern Convention (ETS No. 104), was signed in Bern in 1979. It was the first comprehensive legal instrument for pan-European nature conservation and remains the keystone treaty for protection of biodiversity within the Council of Europe framework.

2. There are at present 50 contracting parties to the convention: all the Council of Europe member states except San Marino and the Russian Federation, four African countries – Burkina Faso, Morocco, Senegal and Tunisia – and the European Union. Both Russia and San Marino, however, participate in the work of the convention as observers, as do the Holy See, Belarus, Algeria and Cape Verde.

3. The Bern Convention was opened for signature on 19 September 1979. Initial signatory states to the convention were Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and the United Kingdom. The European Union (EC at the time) was also among the initial parties to the convention. The convention entered into force upon reaching the condition of five ratifications on 1 June 1982. Iceland, Italy, Liechtenstein, Luxembourg, the Netherlands, Portugal, Switzerland, the United Kingdom and the European Union had all ratified the convention by that date.

2. Institutional and legal background – the Bern Convention and other international activities for biodiversity protection

4. An understanding of the need for international co-operation in the field of nature conservation started to emerge early in the 20th century. The two world wars, however, made effective co-operation virtually impossible until the latter part of the 1940s when finally the International Union for the Conservation of Nature (IUCN) (formerly IUPN) was founded in 1948. The same applies for pan-European political co-operation in general, where historic roots are even deeper, but the first real breakthrough came in 1949 with the creation of the Council of Europe. The two bodies signed an agreement in 1962 thus recognising the need for pan-European activities in nature conservation. This agreement was recently replaced by the memorandum of understanding signed in January 2010. The Council of Europe's activities in the field of environment and nature conservation have of course not been limited to co-operation with the IUCN – several resolutions and recommendations have been adopted by the Committee of Ministers, the Parliamentary Assembly and the Congress of Local and Regional Authorities over the years. The joint declaration by the Assembly, the Congress and the Conference of the International NGOs "Working together for biodiversity, protection of natural areas and the fight against climate change" signed on Biodiversity Day, 28 April 2010, is one of the most recent developments in the field.

5. Mounting pressures on biological diversity gradually led to an understanding of the need for binding international treaties to protect nature. Several of these were signed in the seventies, introducing a new stage of international co-operation for nature conservation. The Ramsar Convention on Wetlands of International Importance was signed in 1971. It is global in scope but is limited to one – though broad and extremely important – group of habitats. The next important step was taken when the Washington Convention on trade in endangered species was signed in 1973. Although global in geographical scope and covering all fauna and flora, it is however limited to combating just one driver of biodiversity loss – unsustainable international trade. The year 1979 brought another crucial global treaty: the Bonn Convention on the Conservation of Migratory Species of Wild Animals.

6. Although global in scope and covering important subject matter, these treaties do not provide comprehensive coverage of the threats to European biodiversity. The need for a treaty covering a wide variety of species and habitats, and addressing the majority of known threats to these was still clear. The time was apparently not ripe for a global treaty of this kind, but it was possible to adopt one of sufficiently wide geographical coverage in the framework of the Council of Europe. The Bern Convention was thus born. It took more than twelve years for a global treaty of even more comprehensive coverage to emerge – when the Convention on Biological Diversity (the Biodiversity Convention) was signed at the Earth Summit in Rio in 1992. However, the Biodiversity Convention lacks annexes listing the protected species – which, given its global scope, would indeed be a formidable task – and some of the other mechanisms present in the Bern Convention. The latter thus still remains a valid tool in European nature conservation.

7. An overview of the general context would be incomplete without mentioning the European Union's two nature directives. Directive 79/409/EEC on the conservation of wild birds (the Birds Directive) was adopted the same year as the Bern Convention, 1979, and Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) was adopted in 1992. Since the European Union is also a party to the Bern Convention – and indeed these two directives are regarded as the way of implementation of the convention by the European Union – a comparative table on the relation between these three instruments is presented in Appendix 1 to this report.

3. Key provisions of the Bern Convention

8. Protection of habitats includes measures to conserve the habitats of flora and fauna, especially the species listed in Appendices I and II, and the conservation of endangered natural habitats, protection of important areas for the migratory species specified in Appendices II and III, and international efforts for the protection of the habitats in frontier areas (Article 4).

9. The strict protection of wild flora species listed in Appendix I include prohibition of deliberate picking, collecting, cutting or uprooting and possession or sale (Article 5).

10. The strict protection of wild fauna species listed in Appendix II includes prohibition of capture, keeping and killing, damage to breeding or resting sites, significant disturbance, particularly during the sensitive periods, destruction, taking or keeping of eggs and prohibition of trade where needed (Article 6).

11. The protection by regulating exploitation of fauna listed in Appendix III includes closed seasons, temporary or local prohibition of exploitation and regulation of trade in order to keep the populations at safe levels (Article 7).

12. The capture and killing methods are regulated in the convention for those species that are listed in Appendix III (and in exceptional cases when these activities are allowed for Appendix II species – see next paragraph – also for these). The use of indiscriminate means or those capable of damaging populations is prohibited. It is also stated that "in particular" the means of capture and killing listed in Appendix IV must be prohibited (Article 8).

13. Exceptions from protection requirements are allowed if there is no other satisfactory solution and these would not threaten the survival of the population concerned. The contracting parties have to report every two years on the exceptions made (Article 9).

14. In addition, special provisions for migratory species such as the obligations of international co-operation are included (Article 10).

15. Reintroduction of endangered species based on available experience is encouraged, while the introduction of non-native species has to be "strictly controlled" (Article 11.2).

16. Contracting parties may adopt stricter measures than those required by the convention but have to inform the Standing Committee of the species not included in Appendices I and II that are granted full protection (Article 12).

4. Implementation of the convention

17. Implementation of the convention by the contracting parties is co-ordinated by the Standing Committee, the highest body and the focal point of communication of the convention (Articles 13, 14 and 15). The Standing Committee is assisted by the secretariat and groups of experts. It adopts resolutions and recommendations and can open case files in cases of suspected non-compliance with the convention by a contracting party.

4.1. Implementation of Article 4 – protection of habitats

4.1.1. Establishing protected area networks

18. The rules laid down in Article 4 of the convention relating to the establishment of protected areas are relatively general in nature. It has therefore been necessary for the Standing Committee to provide the following additional guidance on this matter:

– Resolution No. 3 (1996) concerning the setting up of a pan-European Ecological Network, establishes the Emerald Network of Areas of Special Conservation Interest. It thus clarifies a rather general reference to protected sites in the convention. It also establishes the relevant expert group and invites observer states to the convention to participate in the network.

– Resolution No. 4 (1996) lists in Annex I the habitat types to be protected (since the convention itself does not have an appendix listing such habitat types). This is complementary to the Habitats Directive that lists habitats to be protected within Natura 2000 in its Annex I. It is important to note, however, that the habitat lists in Annex I to Resolution No. 4 and Annex I of the Habitats Directive are not identical.

– Resolution No. 5 (1998) concerning the rules for the Network of Areas of Special Conservation Interest (Emerald Network) states, *inter alia,* that for European Union member states the Natura 2000 sites form the Emerald Network. It also establishes the procedure for depositing data regarding the sites with the convention secretariat and the standard data form for site information.

– Resolution No. 6 (1998) listing the species requiring specific habitat conservation measures provides clarification of the difference of species lists between the relevant appendices to the convention and annexes to the directives, as species listed in all of these documents are listed in the Appendix 1 to Resolution No. 6 (1998).

19. These resolutions are supplemented (and in many cases actually preceded) by numerous recommendations regarding protection of habitats and sites. The most important of these is Recommendation No. 16 (1989). Additional guidance on the principles of the procedure for examining and approving Emerald sites has been submitted to the convention secretariat by the relevant group of experts, but has not yet been adopted by the Standing Committee.

20. Natura 2000 and Emerald data forms and software were developed in a co-ordinated manner and thus have a similar structure. This gives a degree of compatibility between the networks. However, different habitat and species lists may create problems in the coherence of the pan-European network. Co-operation between the European Commission, the European Environmental Agency and the Standing Committee of the Bern Convention is supposed to solve this problem. One of the means to do so is co-ordinated interpretation of habitat types included in the lists. To some extent this has been achieved in the latest versions of the Interpretation Manuals of European Union Habitats for the networks, but further work is required.

21. It can be seen from Appendix 1 to this report that the provisions of the Bern Convention regarding site designation have been incorporated into the two European Union nature directives. The rules of site designation specified in Article 4 of the Habitats Directive are actually stronger than the ones in Article 4 of the Bern Convention. The European Union also has stronger mechanisms of reporting and implementation: the European Commission monitors the creation of the Natura 2000 Network and can react to non-compliance with the infringement procedure. The creation of the Natura 2000 Network is followed by means of the so-called Natura 2000 Barometer, which is available to the public. Hence, it is only natural that the Standing Committee's Resolution No. 5 (1998) leaves implementation of the site protection objectives by the European Union member states to Natura 2000.

22. In spite of this, problems still exist in European Union countries. The Natura 2000 Network has still not been finalised. According to the last Natura 2000 Barometer, the network can be assessed as largely complete for less than half of the European Union member states (Belgium, Denmark, Germany, Estonia, France, Italy, Luxembourg, the Netherlands and Poland for the Birds Directive, and Belgium, Denmark, Germany, Italy and Netherlands for the Habitats Directive) and incomplete for the rest. However, significant progress has been made recently in several member states and there is now no state for which the network would be assessed as notably insufficient.

23. The work in contracting parties outside the European Union has been slower still. Creation of the Emerald Network is at a very initial stage. Pilot projects have been carried out in the relevant countries at different times. Most of the non-European Union contracting parties have received some assistance in setting up the pilot projects, the exceptions being Norway and Switzerland, which carried out the pilot projects with their own resources, and Iceland. In the latter, however, no data on Emerald-related activities is currently in

the public domain. A joint European Union-Council of Europe project for the setting up of the Emerald network in seven central and eastern European and Caucasus countries is currently under way. These projects have contributed to the development of nature conservation networks in the countries involved, but have produced only preliminary site list proposals. At this stage there is no comprehensive assessment of the Emerald Network similar to the Natura 2000 Barometer and in some states there is little information on follow-up to the pilot projects. However, an Emerald Barometer could possibly be adopted by the Standing Committee in December 2010. In conclusion, it could be said that the current coverage of the proposed Emerald network varies from just a few sites in some countries to over 40% in Croatia (see Appendix 2).

24. Pilot projects have also been initiated for some of the African contracting parties but there is no information about the proposed sites.

25. Evaluation of the network is at a relatively early stage and has been carried out for only certain countries, species and habitat groups. It can be seen from the very preliminary survey above that only a couple of countries have proposed a network that would cover a significant proportion of their territories. It is also not clear which of the Emerald pilot projects have resulted only in selecting some of the sites already protected in relevant countries and which have resulted in designation of new sites. For some countries the habitat and species lists that form the basis of the site selection are not entirely adequate.

26. Databases containing information concerning Emerald Network sites are not available to the public, neither are full maps of the network on a Europe-wide basis. As for Natura 2000, some data can be found on the European Environmental Agency's homepage. The Common Database of Designated Areas by the same agency presents only nationally designated sites at present.

4.1.2. Management of the protected areas

27. It is obvious that designating protected areas is only a first step for conserving biodiversity; if a protected area exists only on paper it is not much help. What really counts is how site protection is actually carried out.

28. The protection rules laid down in Article 4 of the convention are quite general. The rules of the Habitats Directive Article 6 are somewhat more specific. The European Union also has stronger mechanisms for reporting and implementation: the European Commission monitors the situation and can react to non-compliance with the infringement procedure. The Commission has also issued guidance on management of Natura 2000 sites, but this deals only with interpretation of Article 6 of the Habitats Directive and does not go any further.

29. Guidance by the Standing Committee of the convention involves:

– Recommendation No. 16 (1989), which provides – in addition to guidance on site selection – guidance on site management, including legislative measures, financing, management planning, boundary marking and monitoring;

– Recommendation No. 71 (1998), which provides guidance to habitat protection and management by private or voluntary schemes, including acquisition of land, conservation by private owners, legislative support for private habitat conservation, promoting tax policies favouring private conservation and involving the voluntary sector.

30. The above-mentioned recommendations are relatively general and do not provide any advice related to habitat types or specific management action. No guidance on management planning has been issued, nor on the development of specific software to complement the software used in site description.

31. No systematic overview of the situation of the habitats and species in the protected areas on a pan-European basis could be found by the rapporteur – either that of success stories or of failures. Data on the European Diploma of Protected Areas can be regarded as a sample of success stories. However, the diploma is not officially linked to the Bern Convention, in spite of the connected objectives, and indeed is older than the convention. Therefore the sites awarded the diploma will not be reviewed in this report.

32. Data on case files and complaints can be used to get an overview of problematic cases, where official complaints have been submitted to the Standing Committee. In addition, some of the data on success and failure in relation to Natura 2000 is available from the European Commission's DG Environment. At present, several site-related case-files are kept open by the Standing Committee:

– Bulgaria: wind farms in Balchik and Kaliakra – Via Pontica. The case concerns the building of wind farms on the Black Sea coast on an important flyway. The Standing Committee has adopted a recommendation regarding the case. Other international bodies involved include the secretariat of the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA) and the European Commission. At present, a significant part of the area is included in Natura 2000 and the threat of new wind farms in the area has been significantly reduced.

– Cyprus: Akamas Peninsula. This case concerns plans for tourist development with detrimental effects on an ecologically valuable area with many rare plant and animal species. The site is especially important for two species of marine turtles included in Appendix I of the Bern Convention; both species are also included in Appendices II and IV of the Habitats Directive. The Standing Committee has adopted a recommendation regarding the case. The dispute has been going on since 1996. In July 2010, the European Union announced that the European Commission had recently received a complaint claiming insufficient designation and protection of the Akamas Peninsula. In that context, the Commission will assess the sufficiency of the designated site as well as the measures implemented to safeguard its conservation values, with a view to ensuring compliance with relevant provisions under European Union nature legislation. The area is at present partly included in Natura 2000, but whether this is sufficient for the long-term protection of the whole site and the relevant species is not clear.

– France: habitats for the survival of the common hamster (*Cricetus cricetus*) in Alsace. Insufficient measures aimed at ensuring the maintenance of the habitats needed for the survival of the common hamster. The European Commission brought the case before the European Court of Justice in June 2009.

– Ukraine: the project for a waterway in the Bystroe estuary (Danube delta). The proposed waterway would go through valuable nature area in the Danube delta that is also a biosphere reserve. The Standing Committee has adopted a recommendation regarding the case. Other international bodies involved in addition to the Standing Committee are the European Commission, UNESCO, UNECE, UNEP, the International Commission for the Protection of the Danube River and the relevant bodies of the Aarhus, Espoo and Ramsar Conventions. The dispute has been going on since 2004 and the situation remains unclear regarding possible damage to the site by the project.

33. Ongoing site-related complaints include:

– Bosnia and Herzegovina: threats to the Vjetrenica cave. The cave site, which is rich in biodiversity, has been protected for a long time, but due to the recent turbulent history continuity of the protection had been lost. Other international actors include the IUCN. At present, there are developments that could secure appropriate protection in the future.

– Italy: wind turbines in Alta Maremma. In an area containing several protected sites and rich in species there is an illegal wind park and a proposal to erect another (legal) one is under discussion. There is no data regarding involvement of the European Commission even though some of the species that might be impacted are protected under the Birds and Habitats Directives. At present, it is hard to assess the magnitude of the problem.

– Morocco: tourism development project in Saïdia affecting the Moulouya wetland site. A major tourism development is proposed in the Moulouya site, a "zone of biological and ecological interest" and a Ramsar site. The authorities claim that the development would not harm the site.

– France: black grouse (*Tetrao tetrix*) in the Drôme and Isère

34. Sites where the existing Standing Committee recommendations are being followed up: a development poses threats to the Fethiye Bay in Turkey, a protected site and an important area for marine turtles. Concerns were expressed by an NGO but no information has been received from the authorities.

– Recommendation No. 144 (2009) of the Standing Committee, on the wind park in Smøla (Norway) and other wind farm developments in Norway.

– Recommendation No. 66 (1998) on the conservation status of some nesting beaches for marine turtles in Turkey.

– Recommendation No. 98 (2002) on the project to build a motorway through the Kresna Gorge (Bulgaria).

– Recommendation No.113 (2004) on military antenna in the British Sovereign Base Area of Akrotiri (Cyprus).

35. There have been many more cases in the past. Some of them have finally been solved in a favourable way while others have not. For example, large dams were built in a valuable nature site in Iceland in spite of the Standing Committee's recommendation.

36. It can thus be said that many important sites in the contracting parties are still not receiving adequate protection.

4.1.3. General issues of habitat diversity protection not related to particular sites

37. Habitat loss is the major threat to European biodiversity and it can only partly be solved by designation and adequate protection of individual sites. In order to put a stop to the decline of biodiversity, measures to avoid policies leading to loss of habitats on the wider landscape scale are also necessary. This has been recognised by the relevant guidance documents of the Standing Committee, the most important of which is Recommendation No. 25 (1991) on the conservation of natural areas outside protected areas proper.

38. Policies that need cross-checking against needs to protect biological and landscape diversity include spatial planning, infrastructure development, building, mining, agriculture and forestry, as well as protection of the environment from pollution and climate change. In the latter context especially, it is clear that even though protected area networks would play a key role in making it possible for European biodiversity to adapt to climate change, successful adaptation would only be possible if sufficient habitat diversity were maintained on a landscape scale, also outside the protected sites.

39. In relation to protection of European biodiversity from climate change, the Standing Committee has adopted the following recommendations:

– Recommendation No. 122 (2006) on the conservation of biological diversity in the context of climate change, adopted on 30 November 2006, which proposes establishing a group of experts;

– Recommendation No. 135 (2008) on addressing the impacts of climate change on biodiversity, adopted on 27 November 2008, which, among other proposed measures, stresses the need to integrate protected area networks within a high-quality landscape conservation approach to provide permeability and connectivity to assist species adjust their spatial distributions, through the provision of habitat "stepping stones" and other tools;

– Recommendation No. 143 (2009) on further guidance for Parties on biodiversity and climate change, adopted on 26 November 2009, which stresses, *inter alia*, the importance of an ecosystem approach and the maintenance of large networks of heterogeneous habitats.

40. The relevant group of experts has been established but otherwise no comprehensive overview regarding implementation of these recommendations has been found by the rapporteur. Given the fragmented nature of current European landscapes, such implementation will clearly be a challenge.

41. Related to climate change is the impact of renewable energy projects on habitats. While renewable energy development can help to slow down man-made climate change, it can – if developed without due consideration – seriously harm habitats. Recommendation No. 109 (2004) on minimising the adverse effects of wind power on wildlife which endorses two relevant documents developed under the Bonn Convention, has been adopted, as well as several site-specific recommendations. Further guidance on wind farms and nature conservation was published in October 2010 in co-operation with the European Commission. Guidance is needed for other forms of renewable energy.

42. Energy-related infrastructure that can seriously harm biodiversity and can make habitats deadly for birds also includes power lines. Standing Committee Recommendation No. 110 (2004) on minimising the adverse effects of above-ground electricity transmission facilities (power lines) on birds was adopted on 3 December 2004. According to a review by an NGO, little action has followed so far and there is very little exchange of information even regarding the limited success.

43. Regarding agriculture, there is a big difference between European Union and non-European Union contracting parties as the former are under direct influence of the Common Agricultural Policy (while the latter are affected only indirectly). The impact of the CAP on biodiversity has been criticised in many publications,

one of the latest being “Through the green smokescreen – how is CAP cross compliance delivering for biodiversity?” prepared by BirdLife International in 2009. No similar overview of biodiversity impacts of agriculture on the pan-European scale has been made available to the rapporteur.

44. The impact of forestry on biodiversity is also far from favourable in spite of stable or increasing forest area, as found by an assessment by the European Environment Agency. In relation to afforestation of valuable open-landscape habitats, at least two cases are currently under consideration:

– Iceland: afforestation of lowland habitats, especially wetlands of importance for birds. In December 2002, the Standing Committee adopted Recommendation No. 96 (2002), concerning the conservation of natural habitats and wildlife, especially birds, in afforestation of lowland habitats in Iceland. The recommendation lists seven specific recommendations for implementation by the Government of Iceland.

– Ukraine: afforestation of steppe habitats. A complaint by an NGO has been received by the secretariat.

45. So far the Standing Committee has not issued any generalised recommendations on forestry or afforestation issues.

4.1.4. Selected issues related to protecting habitats of particular taxa

46. Open cases include: France – habitats of the common hamster in Alsace (case file open) and habitats of the European green toad in Alsace (a possible case file) and Sweden – habitats of the natterjack toad in Smögen (a possible case file).

47. Recommendations adopted regarding protection of the habitats of amphibians and reptiles include:

– General Recommendations Nos. 13 (1988), 26 and 27 (1991), 119 (2006) dealing with several species across several states and more specific ones like Recommendation No. 33 (1991) on protection of the natterjack toad in Ireland, Recommendation No. 70 (1998) on crested newt habitat in Orton Brick Pits (United Kingdom), and several recommendations on marine turtles from Nos. 7 (1987) to 95 (2002).

– Recommendation No. 120 (2006) of the Standing Committee refers to the measures proposed in the European Strategy for the Conservation of Invertebrates where habitat loss is recognised as the key threat and some guidance is provided on habitat management.

– Recommendation No. 132 (2007) of the Standing Committee referring to the guidelines included in the Guidance for the Conservation of Mushrooms in Europe considers habitat management as a priority for the conservation of fungi species in Europe.

48. According to the European Plant Conservation Strategy (2008-2014), endorsed by Recommendation No. 138 (2008), several key threats to European plant diversity are related to habitat loss. These include habitat fragmentation and loss of connectivity, as well as changes in forestry and agriculture practices. Especially in the latter case, both intensification and abandonment leading to loss of high value nature farmland are noted as key threats.

4.1.5. Preliminary evaluation of Article 4 implementation.

49. In spite of significant efforts made by the Standing Committee, and to some extent also by contracting parties, the situation remains largely unsatisfactory. Pan-European protected area networks are still incomplete; protection even within designated protected sites is often insufficient; protection of habitats outside designated areas is very poor; other policies do not take into account the needs of habitat protection; overviews of implementation of recommendations and the actual situation on the ground is scarce. Loss of habitat thus remains the key threat to European biodiversity.

4.2. Implementation of Article 5 – strict protection of plant species

50. Not much information is available on the state of implementation of the provisions of the convention regarding strict protection of the plant species included in Appendix I from direct threats related to picking wild plants. There is no data regarding case files opened concerning the failure of any contracting party to fulfil these obligations and the European Plant Conservation Strategy (2008-2014) does not list these threats as priority issues.

51. Recommendation No. 49 (1996) concerning protection of some wild plant species which are subject to exploitation and commerce is not strictly speaking part of Article 5 implementation but it is related to it. In the convention only Appendix I lists plants, namely the species in need of strict protection from all exploitation. It is recognised that some plant species require an approach where conservation is combined with sustainable use of the wild populations similar to the approach of Article 7 towards relevant animal species. Such plants requiring special attention but where, at the same time, careful exploitation can be compatible with the conservation goals, are listed in the appendix to the recommendation. The need to assure sustainability of harvests and trade are also recognised in the European Plant Conservation Strategy.

52. It can thus be concluded that although not much information is available regarding protection of plants from picking and similar direct threats, it does not appear to be a major threat to European floristic diversity.

4.3. Implementation of Article 6 – strict protection of animal species (Appendix II)

53. The convention has contributed to the improvement of the conservation status of some species, most emblematically the large carnivores. Wolves and brown bears have repopulated parts of their former range. However, the status of these species on a pan-European scale is still far from favourable, while the limited success in their conservation has created significant controversies, especially in Norway and Switzerland. Some progress has been achieved with conservation of the only European endemic carnivore, the Iberian lynx, but the species still remains critically endangered. Within the convention framework co-ordination is performed by the Group of Experts on large carnivores that co-operates with the Large Carnivore Initiative for Europe, which prepared the conservation action plans for the above-mentioned species.

54. Threats from hunting can be important to some endangered European bird species. Recommendation No. 90 (2001) on the catching, killing or trading of protected birds in Cyprus was last followed up in 2008 by BirdLife International. According to the report, the situation is worsening rather than improving. No data of European Commission involvement in the case is available even though the practices of indiscriminate trapping of birds are against both the Bern Convention and the Birds Directive.

4.4. Implementation of Article 7 – protection of fauna species subject to exploitation

55. Several species listed in Appendix III are common in many member states and are hunted as regular game species. Recommendation No. 128 (2007) of the Standing Committee on the European Charter on Hunting and Biodiversity invites contracting parties and observers to take the charter into consideration and thus ensure that hunting is sustainable.

56. Some species covered by this article, however, are at far from secure levels and require more conservation action. The European Bison Action Plan prepared by the Large Herbivore Initiative and endorsed by Recommendation No. 102 (2003) is one example, while the Action Plan for Conservation of Eurasian Lynx in Europe, prepared by the above-mentioned Large Carnivore Initiative, is another.

4.5. Implementation of Article 8 – capture and killing methods

57. An overview of implementation is not easy to obtain, but apparently most of the contracting parties have banned indiscriminate hunting methods as required by this article. Actual implementation of the ban seems to be insufficient in some member states regarding the indiscriminate catching of birds and it can be a serious threat to some species. The problem seems to be serious in some parts of Cyprus according to the above-mentioned BirdLife International report.

4.6. Implementation of Article 9 – exceptions

58. According to this article, member states complete compulsory reports for the granting of exceptions from the protection rules of the convention. At present, there is little data on whether contracting parties are actually reporting all the cases when such exceptions are granted and on the seriousness of the impact of granting these exceptions on biodiversity. However, there is no data suggesting that the use of Article 9 might be causing serious problems.

4.7. Implementation of Article 11.2

59. The Standing Committee has dealt with several threats to biodiversity from invasive species. General Recommendation No. 99 (2003) endorses the pan-European Strategy on Invasive Alien Species. In addition to that, several more specific recommendations have been adopted. A case file is currently open on Italy regarding the American grey squirrel.

5. Summing up the problems

60. As all the recent surveys show, European biodiversity is still in decline. It is thus clear that the main goal of the convention is still far from being achieved. In the following paragraphs we will sum up the main problems.

5.1. Geographical coverage of the convention.

61. At present, two of the Council of Europe member states – the Russian Federation and San Marino – have not joined the convention. While San Marino does not hold a very significant share of European biodiversity, Russia certainly does. It is thus most unfortunate that a country of extreme importance for nature conservation has not yet joined the convention.

62. Belarus – a country rich in nature – is not a member of the convention. The problem is, however, slightly ameliorated by the fact that this country is an observer to the convention.

63. The geographical coverage of African countries by the convention is also not very logical. It covers neither all countries important for European migratory species nor even all the countries close to Europe (for example, those having a Mediterranean coastline).

5.2. Creating protected area networks

64. Pan-European networks are largely incomplete. While Natura 2000 can be regarded as “half-made”, the Emerald Network is still largely in its infancy. The status of the Emerald Network is also not easily visible to the general public. Coherence between the two networks has not yet been fully assured, especially relating to the habitat lists and their interpretation.

5.3. Securing protection of the sites

65. An overview of the situation on a pan-European scale is not available. Enforcement of decisions is weak as the Standing Committee does not have any strong tools to make the contracting parties act upon its recommendations. Within the European Union the situation is slightly better as the Commission has stronger tools, but there is no clear mechanism for a “direct link” between the Standing Committee and the Commission. Therefore, even the European Union member states sometimes continue practices violating both the convention and the directives in spite of the relevant recommendations by the Standing Committee.

66. There is little harmonisation of protection rules and management planning between the contracting parties. No guidance on this matter has been issued by the Standing Committee (or by the European Commission). No management planning software to compliment the Emerald/Natura 2000 software with site specific management plans has ever been developed.

5.4. Securing protection of the habitats on the wider landscape scale

67. No overview of the impact of infrastructure development, agricultural intensification, forestry practices or afforestation on habitat diversity in Europe is available, but it is clear that the situation poses threats to many species. Efforts by the Standing Committee and the European Commission have been insufficient.

5.5. Securing the protection of species

68. Many species have an unfavourable status and often the situation continues to deteriorate. Some cases of non-compliance with the convention have not been properly resolved. In most cases the species are affected by the loss of suitable habitats.

69. Apart from habitat loss, several species are also threatened by unsustainable hunting. The most serious example is the indiscriminate catching of birds in some Mediterranean contracting parties. Here, the lack of a “direct link” between the Standing Committee and the European Commission is clearly a handicap, as these countries are also European Union member states. Protection of large carnivores is also of concern in some member states both within and outside the European Union.

70. It is also worth noting that some provisions of the Bern Convention may not be completely secured by the directives because the appendices of the convention and the annexes of the directives have a somewhat different composition and the provisions related to alien species appear to be somewhat stronger in the convention. At present, the European Commission is active almost exclusively in the framework of the directives.

6. Conclusions

71. Taking the above into consideration, the Assembly should recommend that the Committee of Ministers enhance co-operation with the European Union in order to achieve compatibility between the Emerald Network of areas of special conservation interest under the Bern Convention and the Natura 2000 Network of protected habitats resulting from the European Union Habitats Directive and in particular with regard to establishing protected area networks, the management of protected areas and the protection of species.

72. More generally, the Committee of Ministers should make the Bern Convention and the work of its expert bodies more visible internationally and ensure that it is regarded as one of the priorities of the Council of Europe.

Appendix 1 – Comparison of the key provisions of the Bern Convention and the European Union nature conservation directives

	Bern Convention	**Birds Directive**	**Habitats Directive**
Protection of species' habitats	Article 4.1: protection of wild flora and fauna habitats, especially of species in Appendices I and II	Article 3.1: general protection of the bird habitats Article 4.1: special conservation measures of Annex I species' habitats Article 4.2: similar measures for other migratory species	Article 3.1: protection in the framework of Natura 2000 of Annex II species' habitats Article 12.1: protection of breeding and resting sites of Annex IV animal species
Protection of habitat types	Article 4.1: protection of endangered natural habitats (not specified) Resolution 4: lists in Annex I the habitats requiring special protection	Not relevant	Article 3.1: protection in the framework of Natura 2000 of Annex I habitat types
Protected area networks (creation)	Article 4: general reference to area protection Resolution 3: Emerald Network creation	Article 4.1 and 4.2: listing special protection areas	Article 3.1: Natura 2000 Network, including also special protection areas under the Birds Directive
Co-ordination of protected area network creation	Article 4.4: co-ordination between contracting parties in border areas Resolution 5: rules for Emerald to secure co-ordination on pan-European level	Article 4.3: member states send the European Commission relevant information	Article 4 : member states together with European Commission are responsible for developing coherent network according to Annex III
Management of the sites in the network	Article 4.2: deterioration of the sites has to be avoided or minimised in the planning and development policies.	Article 4.4: pollution or deterioration of the habitats and significant disturbance to be avoided	Article 6.1: conservation measures involving management plans and statutory, administrative or contractual measures Article 6.2: deterioration of the habitats and significant disturbance to be avoided Article 6.3: mandatory assessment of the impact on the site of all plans and projects that can have such an impact and permission of these only if no adverse impact Article 6.4: describes the procedure if in case of overriding public interest the plan must be carried out in spite of negative assessment Article 7: these rules apply also to the sites under Birds Directive
Protection of plant species	Article 5: picking, collecting, etc. prohibited, as well as possession or sale for species included in Appendix I	Not relevant	Article 13: picking, collecting, etc. prohibited, as well as possession, transport, sale etc for species included in Annex IV (b)
Protection of animal species	Article 6: for animals listed in Appendix II the following is forbidden: capture and killing, damaging breeding sites and resting sites, significant disturbance, destruction, taking and keeping of eggs, trade and possession	Article 5: general protection of all birds from killing, capture, etc. (Article 7: allows hunting of birds listed in Annex II) Article 6: general ban on sale of birds not listed in Annex III	Article 12: ban on killing, capture, significant disturbance and taking of eggs of species listed in Annex IV (a)

Regulated exploitation	Article 7: use of species listed in Appendix III has to be regulates so as to secure safe population levels	Article 7: allows hunting of birds listed in Annex II	Article 14: regulates exploitation of species listed in Annex V
Hunting methods	Article 8: when hunting or catching species listed in Appendix III (or in exceptional cases those of Appendix II) indiscriminate means or means capable to cause population extinction or serious disturbance, especially those methods listed in Appendix IV, are prohibited	Article 8: in hunting or catching large scale or non-selective means or means capable of causing local extinction, in particular those listed in Annex IV (a); use of transport means listed in Annex IV (b) is also prohibited	Article 15: in hunting or catching Annex V (or in exceptional cases Annex IV) species indiscriminate means capable of causing local extinction or serious disturbance, in particular those listed in Annex VI (a) are prohibited, and so is hunting or catching form transport means listed in Annex VI (b)
Exceptions	Article 9: exceptions allowed if there is no other satisfactory solution and it will not jeopardise the population in question	Article 9: derogations allowed where there is no other satisfactory solution	Article 16: derogations allowed when there is no satisfactory alternative and this does not jeopardise the conservation status
Migratory species	Article 10: special measures including co-ordination between member states	No special reference	No special reference
Co-operation	Article 11.1: co-operation between contracting parties in protection and research encouraged	No special reference	No special reference
Research	Article 11.1: research encouraged, member states encouraged to co-ordinate it	Article 10: research encouraged, especially in the fields listed in Annex V; European Commission in charge of co-ordination	Article 18: research to be encouraged by the member states and European Commission especially in relation to Natura 2000 Network and conservation of species
Reintroduction	Article 11.2: encouraged if research has shown this to be effective for conservation	No special reference	Article 22: encouraged for Annex IV species if research has shown this to be effective for conservation
Alien species	Article 11.2: introduction to be strictly controlled	Article 11: member states to check that introduction of birds alien to Europe would not jeopardise local flora and fauna	Article 22: ensure that introduction of a species alien to a member state would not jeopardise habitats and species
Co-ordination	Articles 13, 14, 15: Standing Committee	Articles 16, 17: European Commission assisted by a committee	Articles 20, 24: European Commission assisted by a committee
Reporting	Article 9.2: biannual report to the Standing Committee regarding exceptions Article 11.3: informing Standing Committee of protected species not included in Appendices I and II Article 14.1: Standing Committee to keep under review the implementation Article 15: Standing Committee reports to the Committee of Ministers	Article 12.1: member states report to European Commission every three years Article 12.2: European Commission produces composite reports to the member states Article 17: member states communicate the implementing legislation to European Commission	Article 17.1: member states report to European Commission every six years Article 17.2: Commission produces composite reports to the member states, European Parliament, Council, and Economic and Social Committee Article 23: member states inform Commission of the implementing legislation

Appendix 2 – Coverage of the Emerald Network

Please note that the figures below are constantly evolving and represent the situation at the moment of compiling the report in November 2010.

For Armenia, Azerbaijan, Belarus, Georgia, Moldova, Ukraine and the Russian Federation, only the numbers of potential Emerald sites are up to date (30 November 2010), while the coverage of national territory is still being calculated.

The current coverage of the proposed Emerald Network varies among the countries from just a few sites in some countries to over 1 000 sites (40% coverage) in Croatia. For example:

– Albania: 25 sites, covering 18.2% of the country's territory, are proposed in the framework of a project finalised in 2008;

– Armenia: work on the constitution of the Emerald Network is ongoing, with eight potential Emerald sites identified covering 7.7% of the national territory; the aim of the ongoing project is to identify all the country's potential Emerald sites by the end of 2011;

– Azerbaijan: work on the constitution of the Emerald Network is ongoing, with seven potential Emerald sites identified covering 8.2% of the national territory; the aim of the ongoing project is to identify all the country' potential Emerald sites by the end of 2011;

– Bosnia and Herzegovina: 29 sites covering 4.9% of the country's territory were proposed in the framework of a project finalised in 2008, but for some sites the geographical information systems boundaries were not available by the end of the project;

– Croatia: 1 132 sites covering 44% of its territory were proposed in the framework of a pilot project finalised in 2008. Ongoing work is performed in the framework of the accession process to the European Union (Natura 2000);

– "The former Yugoslav Republic of Macedonia": 35 sites covering 29.3% of its territory were proposed in the framework of a project finalised in 2008;

– Georgia: work on the constitution of the Emerald Network is ongoing, with 17 potential Emerald sites identified covering 2.8% of the national territory; the aim of the ongoing project is to identify all the country potential Emerald sites by the end of 2011;

– Moldova: work on the constitution of the Emerald Network is ongoing, with 17 potential Emerald sites identified covering 1% of the national territory; the aim of the ongoing project is to identify all the country potential Emerald sites by the end of 2011;

– Montenegro: 32 sites covering 17.1% of its territory were proposed in the framework of a project finalised in 2008;

– Norway: 11 sites are officially proposed and several more were identified within the pilot project; subsequently, a list of about 1 200 potential sites was identified out of which 39 have been selected. Norway has made a reservation regarding the applicability of the convention to Svalbard thus in effect eliminating the region from Emerald but is currently considering a possible change in order to include the Svalbard sites in the network. An Emerald seminar is planned during 2011;

– Serbia: 61 sites covering 8.6% of the country were proposed in the framework of a project finalised in 2008;

– Switzerland: 37 sites identified; the World Wide Fund for Nature (WWF) and BirdLife International have expressed their dissatisfaction with the process in a letter sent to the Standing Committee in 2008 and stating that these organisations had proposed many more sites but these have never been properly evaluated. An Emerald seminar is planned during 2011;

– Turkey: preliminary data on 10 sites provided in a report from a pilot project initiated in 2001;

– Ukraine: work on the constitution of the Emerald Network is ongoing, with 88 potential Emerald sites covering 2% of the national territory proposed; the aim is to identify 80% of the country potential Emerald sites by the end of 2011;

– Belarus and the Russian Federation: these countries are not contracting parties to the Bern Convention but are participating in an ongoing Emerald project and have identified respectively seven (1.2% of the national territory) and 103 (1.8% of the national territory) sites in 2009. The aim is to identify 50% of the countries potential Emerald sites by the end of 2011.

In January 2011, the evaluation of all candidate Emerald sites (Phase II) in the West Balkan area will start in collaboration with the European Topic Centre on Biodiversity of the European Environment Agency (Albania, Bosnia and Herzegovina, Croatia, Montenegro, Serbia and “the former Yugoslav Republic of Macedonia”).