

methods of habitat and species protection, as well as innovative instruments, ranging from the use of intellectual property rights to the regulation of biotechnology. Traditional legal approaches to general conservation in Namibia are outlined in section 5.3 below, while innovative methods which are still new to the country are discussed in section 5.4.

A second feature of the CBD is that it does not lay down substantive rules. Instead, it lays down overall principles, objectives and goals, leaving it up to contracting states to develop and adopt detailed means to achieve these. It is **facilitative rather than substantive**. With this framework in mind, the CBD leaves it up to individual countries to determine exactly how to implement most of its provisions. Therefore, major decisionmaking is placed at a national level.

Unlike other treaties related to the conservation of biodiversity, the CBD lays down no lists of accepted sites or species to be protected. These are left to individual countries to determine.

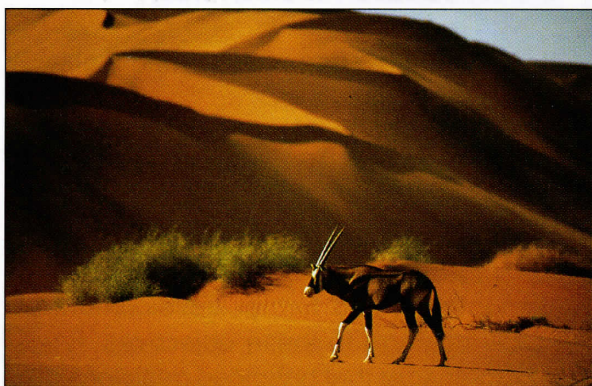


Fig. 5.1 Courtesy P Tarr

## 5.2 Threats to biodiversity in Namibia

The Convention recognises that the conservation of global biodiversity is a common concern of humankind, and a common and shared responsibility exists based on its paramount importance to the global community. While recognising that biodiversity knows no national borders and that international legal instruments must thus be adopted, the CBD respects national sovereignty.

Any programme to conserve biodiversity must recognise underlying reasons for biodiversity loss. The root causes of diversity loss recognised globally<sup>2</sup> also apply to Namibia:

- population growth and increasing resource consumption;
- ignorance about the roles of species and ecosystems;
- poorly conceived policies;
- effects of global trading systems;
- inequal resource distribution;
- failure to account for the value of biodiversity.

It is evident from this that human actions, economies and policies are the cause of most biodiversity loss. Legal efforts to address this loss must urgently consider these and other factors, and not only focus on the species and habitats which require direct priority action.

## 5.3 Environmental law in the context of Namibia's political and legal system

Namibia is a young country, having only attained Independence in March, 1990. It then inherited Roman Dutch common law from South Africa, and took over laws put in place by that country. Many of its environmental laws are accordingly outdated and inappropriate for the newly independent country, still reflecting vestiges of its colonial *apartheid* past.

For these reasons, Namibia is undertaking a four year donor-funded programme to review and revise its environmental legislation, and has appointed an environmental lawyer to manage the project.

The Namibian Constitution stipulates that both common law (its Roman Dutch legal heritage) and customary law shall remain