UNITED NATIONS ACTIVITIES

UN / SC

Duty of States: Prevent Use of Natural Resources in Conflict

On 25 June, the UN Security Council issued a statement (see page 428) calling on United Nations peacekeeping operations to consider helping Governments of resource-rich countries ensure that their resources are not used to fuel international conflict. It noted a "shared responsibility" among all countries to prevent and combat "trafficking, illicit trade and illegal exploitation of natural resources".

The Council cited several African experiences as "lessons from its imposition of embargoes on various natural resources, including diamonds and timber" and noted a special connection to three African countries (Liberia, Sierra Leone and the Democratic Republic of the Congo) which are "now emerging from conflict". While reaffirming sovereign rights over these resources, and their importance to national economic growth and sustainable development, the statement links these concerns to "transparent and effective national security and customs structures in managing those resources".

Beginning from the recognition that "natural resources were often at the heart of conflicts, and that civil strife was often fuelled by a diverse group of players, including huge multinational corporations, people smugglers, corrupt local officials, arms dealers and drug traffickers", the statement ultimately recommends specific measures, such as commodity monitoring, certification schemes and strengthening targeted sanctions, committees and various groups and panels created by the Council in this regard.

It notes that these measures are especially necessary in "countries emerging from conflict" where lawful, transparent and sustainable management and exploitation of natural resources can be critical to stability and preventing "a relapse into conflict". In particular, the international cooperative approach known as the "Kimberley Process" through which diamonds were certified to have come from conflict-free sources was raised as a possible means for addressing the exploitation of other natural resources such as copper, gold, coltan, cobalt and timber, as well as, for some countries, species and their products (such as ivory). It was recognised that this process still needs additional development "to thwart evasive tactics".

The Council also noted favourably the potential contribution of "voluntary initiatives aiming at improving revenue transparency, such as the Extractive Industries Transparency Initiative", as well as the United Nations Global Compact and two OECD documents, the *Guidelines for Multinational Enterprises*, and the *Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones.*

One of the most important elements of this statement is contained in the words of Sheika Haya Rashed Al Khalifa (Bahrain), President of the General Assembly, and Daliuscekuolis (Lithuania), President of the Economic and Social Council. Both of these leaders strongly emphasised the interrelationship between the UN's peace and security mission and the broader human welfare ("peacebuilding") objectives embodied in the Economic and Social Council. They called for a multidisciplinary approach, and a direct collective debate how best to come up with a development-oriented approach to fostering stability and prosperity and preventing relapse into conflict.

Particular increased risks have been noted, owing to the "increasing scarcity of resources, driven by rising world population and unsustainable consumption", leading to the fear that price rises could destabilise governmental structures or amplify conflicts. Although oil was not mentioned prominently in the Council's statement, it quoted Pakistan's representative as saying that the international community would very soon need to focus on promoting the equitable exploitation of oil and water. This comment was not uncontested, as other statements claimed that "it would have been more useful to address the relationship between natural resources and development, rather than approaching natural resources as a source of conflict".

Perhaps most important, the discussions before the Council gave intense attention to the importance of the rule of law, in promoting attainment of these objectives. In this connection, they emphasised several issues – democracy, capacity, equitable distribution of natural bounty, the political independence of States, and the role of multinational corporations in ensuring that natural resources are not used in non-exploitive ways that support conflict. (TRY)

Courtesy: UN

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G8 / Summit 2007

Beginning to Look at Social and Environmental Welfare

During the G8's meeting in the seaside town of Heiligendamm, Germany, the much anticipated G8 discussions of climate change and other environmental issues were not, perhaps, as pronounced as had been expected. Predictably, matters of trade, finance and security far overshadowed social and environmental issues in the talks.

To some, however, the fact that social/environmental matters came to the table at all is highly significant. The simple fact that the leaders of the world's eight largest economies would use any part of their relatively rare three-day opportunity for head-to-head discussion to discuss environmental and climate matters is somewhat groundbreaking. Although the Chair's summary[1] of those discussions includes only a few sentences on all social issues, those comments are worthy of note. Regarding the climate change issue, the summary notes that "Combating climate change is one of the major challenges for mankind and it has the potential to seriously damage our natural environment and the global economy…. We are convinced that urgent and concerted action is needed and accept our responsibility to show leadership in tackling climate change". Taking note of the IPCC Report, the summary stated that "we have agreed in Heiligendamm [that] we will consider seriously the decisions made by the European Union, Canada and Japan which include at least a halving of global emissions by 2050". Although not committing to any particular reduction, this statement is even more powerful given that it represents not only the G8 countries but also the world's other "major emitters" – Brazil, China, India, Mexico and South Africa.

The statement supported the UNFCCC, and called on all parties to "actively and constructively participate in the UN Climate Change Conference in Indonesia in December 2007 with a view to achieving a comprehensive post 2012-agreement that should include all major emitters. To address the urgent challenge of climate change, it is vital that the major emitting countries agree on a detailed contribution for a new global framework by the end of 2008 which would contribute to a global agreement under the UNFCCC by 2009." Most important, given that it comes from the G8, the summary stresses the principle of common but differentiated responsibilities and capabilities, and the link between the climate change issue and energy security (as discussed in the 2006 G8 meeting in St Petersburg).

Other environmentally focused statements issuing from the meeting include a commitment to "support increased transparency and build good governance in developing countries with social and environmental standards" with regard to trade in raw materials, as well as the following comment on social responsibility:

> *In the context of investment we also discussed social responsibility issues. Open markets need social inclusion. We therefore agreed on the active promotion of social standards, of corporate social responsibility, and on the need to strengthen social security systems in emerging economies and developing countries.*

Angela Merkel and George W. Bush Courtesy: FTD

In addition to the Chair's Summary, the discussions led to the issuance of a "Joint Statement by the German G8 Presidency and the Heads of State and/or Government of Brazil, China, India, Mexico and South Africa on the occasion of the G8 Summit in Heiligendamm, Germany, 8 June 2007" which contains a number of environmental messages, reproduced in this issue at page 429.

Perhaps most important of all, Japan has focused most of the preparatory discussion for the 2008 Summit of the G8, which is to be held in Hokkaido, on climate change issues, announcing a three-part "Cool Earth" proposal, which it will refine and promote during the coming year, in preparation for that meeting.[2] (TRY)

Notes

1 The Chair's summary and other documents can be obtained from the website at http://www.g-8.de/Webs/G8/EN/Homepage/home.html.

2 The Presidential press briefing and other critical documents can be found in the official website of the Hokkaido meeting, at http://www.mofa.go.jp/policy/economy/summit/2007/press.html.

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ICP-8

Discussions of Marine Genetic Resources

by Elsa Tsioumani*

The eighth meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (ICP-8) was held at the UN Headquarters in New York, from 25 to 29 June 2007. The meeting focused on options to enhance international cooperation and coordination on a range of issues relating to the world's marine genetic resources. A number of panel discussions addressed different aspects of the topic, while on the final day of deliberations, the meeting formally considered a Co-Chairpersons' draft text on possible elements to be suggested to the General Assembly. Although by the end of the day delegates had reached agreement on most of the elements, they were unable to reach consensus on text referring to the relevant legal regime for marine genetic resources in areas beyond national jurisdiction. As a result, the meeting will not forward to the General Assembly a consensus outcome document, but the meeting's report, including the Co-Chairpersons' draft elements, and an explanation of the divergence of views.

Background

Marine genetic resources include a broad range of macro- and micro-organisms of direct or indirect value to humans. According to the Secretary-General's report (document A/62/66, Chapter X), both scientists and industry use marine genetic resources to improve understanding of the Earth's ecosystems, develop new products, such as novel drugs, and create cleaner and cost-effective industrial processes. Apart from their economic value, marine micro-organisms also have great environmental value. Nearly half of the oxygen in the atmosphere is derived from the photosynthetic process of planktonic microalgae and marine angiosperms and macroalgae. Planktonic marine microalgae contribute between 80–90% to the ocean's productivity, both in terms of carbon assimilation and oxygen generation.

Conservation and sustainable use of marine genetic resources, as well as socio-economic aspects, capacity building and technology transfer, are among the issues that need to be addressed. A balance is required between the need to support activities that may lead to the development of valuable products, the need to ensure the equitable and efficient utilisation of marine genetic resources and the need to conserve these resources and their ecosystems.

While genetic resources within national jurisdiction are managed by coastal States, there are divergent views on the legal regime applicable to genetic resources in areas beyond national jurisdiction. Views also differ as to the issues that need to be addressed by the international community, which include how best to ensure the conservation and sustainable use of genetic resources, access to such resources and equitable sharing of benefits arising out of their utilisation.

The UN Convention on the Law of the Sea (UNCLOS) provides the legal framework within which all activities in the oceans and sea must be carried out, including those relating to marine genetic resources. A number of other fora, including the Convention on Biological Diversity (CBD), the FAO and its Commission on Genetic Resources for Food and Agriculture, as well as intellectual property organisations, have also been dealing with different aspects of the issue.

In 2006, the UN General Assembly decided that ICP-8 should focus its discussions on marine genetic resources and on ways to enhance cooperation and coordination in this field (Resolution 61/222). On the basis of consultations with delegations and of an informal preparatory meeting held at UN Headquarters on 30 March, the ICP Co-Chairpersons Lori Ridgeway (Canada) and Cristián Maquieira (Chile) proposed three main areas for discussion: understanding marine genetic resources, their vulnerability and the services they provide; current activities relating to marine genetic resources; and international cooperation and coordination.

Legal Controversies

On Friday, 29 June 2007, the final day of deliberations, the meeting commenced its formal consideration of a Co-Chairpersons' draft text on possible elements to be suggested to the General Assembly, which had been revised three times during the meeting on the basis of informal comments in writing and raised through discussions. Although by the end of the day delegates had reached agreement on most of the paragraphs, they were unable to reach consensus on text referring to the relevant legal regime for marine genetic resources in areas beyond national jurisdiction.

The inability to reach consensus reflects fundamental differences of opinion on the issue, namely whether marine genetic resources fall under the regime for the Area or under the regime for the high seas. Under UNCLOS, the two maritime areas beyond the limits of national jurisdiction, the high seas (water column) and the Area (seabed and subsoil) have different legal regimes. Specifically, Part XI of the Convention on the Area identifies the mineral resources of the seabed as "common heritage of mankind", but does not mention its living marine resources, since these had not been discovered when the Convention was negotiated. States (namely the G-77/China) arguing that

* Researcher, Democritus University of Thrace; Lawyer, Thessaloniki, Greece; and regular contributor to EPL.

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living marine resources of the seabed should also be covered by the principle of the "common heritage of mankind", point to General Assembly Resolution 27/49 of 1970, which declares all resources of the Area to be the common heritage of mankind. On the other side, several developed countries argue that the high seas regime for living resources, according to UNCLOS Part VII, also applies to living resources in the Area. This side of the debate was represented in ICP-8 by the USA, the Russian Federation, Australia, Iceland and Norway. Other delegations also shared the view that marine genetic resources in areas beyond national jurisdiction did not fall within the definition of the resources of the Area, but considered that UNCLOS did not provide a clear comprehensive framework for their management, and proposed that a new framework for exploring and exploiting such resources should be developed by the international community under UNCLOS.

L-R: UN-DOALOS Director Václav Mikulka, ICP Co-Chairs, Lori Ridgeway and Cristián Maquieira and Secretary Alice Hicuburundi Courtesy: IISD

When negotiations began on the draft paragraph recognising UNCLOS as the legal framework for all ocean and sea activities, the G-77/China asked to highlight in the text the divergence of views concerning the legal framework of marine genetic resources in areas beyond national jurisdiction. Such language was opposed by the USA, the Russian Federation, Australia, Iceland and Norway. Despite informal consultations and several drafting efforts, no consensus could be reached.

Ultimately, the lack of consensus was addressed by the Co-chairpersons, who opted to prepare, as an Annex to their Report, a set of "Possible Elements to be Suggested to the General Assembly." That document is reproduced in this issue.[1]

Panel Presentations

In addition to the primary discussions, however, the Informal Consultative process provided its primary service, informational consultations through a series of Panel presentations and subsequent discussions, held on the three areas above, as identified by the Co-Chairpersons.

Understanding Marine Genetic Resources, their Vulnerability and the Services they Provide

Frank Glöckner, Max Planck Institute for Marine Microbiology and Jacobs University, Germany, explained and demonstrated how marine micro-organisms were the gatekeepers of the world's biogeochemical cycles. Curtis Suttle, University of British Columbia, Canada, explained that oceans represented a vast reservoir of unexplored and dynamic genetic diversity, in particular at the microbial level, although the distribution, composition and diversity of different genetic information was largely unknown and required considerable public research which, to date, had not been a priority for governments. Libby Evans-Illidge, Australian Institute of Marine Science, described various sources of data on marine genetic resources widely available, including the UN Atlas of the Oceans, the Aquatic Sciences and Fisheries Abstracts and the Ocean Biogeographic Information System. David Rowley, University of Rhode Island, USA, provided examples of services provided by marine genetic resources, from regulating the carbon cycle and oxygen production and ecosystem stability to drug discovery and industrial applications. He concluded that further development and understanding of these services was required, taking into consideration the conservation of marine ecosystems, access to remote environments, cross-disciplinary collaboration among scientists and engineers, and knowledge sharing through open-access databases.

Understanding the Activities Related to Marine Genetic Resources and Other Relevant Aspects: Experiences in Collection

Sophie Arnaud-Haond, Institut Français de Recherche pour l'Exploitation de la Mer (IFREMER), described the processes and challenges involved with research associated with deep sea-ecosystems, in particular hydrothermal vent ecosystems. She stressed the need to continue scientific research in order to enhance knowledge of the ecology and dynamics associated with these ecosystems, support conservation of these ecosystems and explore biotechnological applications. Marcia Creary, University of the West Indies, Jamaica, described the Jamaican experience in building its capacity to understand, exploit and conserve its marine genetic resources, and the challenges and opportunities involved therein, including the preoccupations with other basic economic and social priorities. John Hooper, Queensland Museum and Griffith University, Australia, described the steps already taken in

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Australia to establish an enabling regulatory framework for bioprospecting, and the benefits for both coastal and researching States, as well as for both public and private actors. He stressed the importance of capacity building, particularly in the field of taxonomy. Emma Sarne, Permanent Mission of the Philippines to the UN, delivered a paper prepared by Maria Eguia, Southeast Asian Fisheries Development Centre, in the Philippines. The presentation described research activities, national policies and laws, and challenges relating to the access, utilisation and management of marine genetic resources in the Philippines. She also addressed problems of illegal extraction and use of marine organisms and associated traditional knowledge.

Understanding the Activities Related to Marine Genetic Resources and Other Relevant Aspects: Experiences in Commercialisation

Geoff Burton, Jean Shannon and Associates, Australia, described the changing business environment in commercialisation and the rise of small, specialised biotechnology companies, and the synergy between commercialisation and public research activities. He concluded that governments could help companies manage legal and commercial risk and attract investment by providing legal certainty for collection and reliable taxonomy. Marc Slattery, University of Mississippi, USA, emphasised the tremendous potential of marine genetic resources in biotechnology applications, such as public health and food security, and other direct and indirect benefits for society, but underscored the significant investment needed and the risks involved in the discovery and launch of marine pharmaceuticals. Maureen McKenzie, Denali BioTechnologies, USA, presented experiences in nutraceuticals and successful partnerships with Alaskan native communities in commercialisation of traditional subsistence resources. She highlighted as key elements of such partnerships the role of recognition of local rights to resources, self-imposed corporate ethical standards and social responsibility, and mutual participation in the economic benefits from commercialisation, including shared intellectual property. Simon Munt, PharmaMar, Spain, described his company's work in the discovery and development of marine-derived bioactive compounds to enhance cancer care, which has led to the discovery of new families of bioactive compounds and novel chemical structures, but emphasised the long and high-risk commercialisation cycle, and the need for research investment and legal certainty.

International Cooperation and Coordination on Issues Related to Marine Genetic Resources: Current Activities at the Global and Regional Levels

Jihyun Lee, CBD Secretariat, described the Convention's activities with regard to the conservation and sustainable use of marine genetic resources, highlighting the role of the CBD in providing scientific and technical information. Rama Rao, World Intellectual Property Organization (WIPO), described the work of WIPO on genetic resources and intellectual property, in particular the work of its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. He highlighted issues related to patent protection for inventions based on genetic resources, work on disclosure of origin requirements and the relation between patents and benefit sharing. Anthony Ribbink, South African Institute for Aquatic Biodiversity, presented an example of regional cooperation and coordination for the conservation and sustainable use of ocean resources, catalysed by the existence and protection of the coelacanth in the western Indian Ocean, and highlighted challenges faced by African countries in terms of capacity building and sustainable development of coastal communities. Margaret Tivey, Woods Hole Oceanographic Institution, USA, described the promotion of responsible research practices at deep-sea hydrothermal vents, including through the adoption of a voluntary code of conduct developed by scientists for scientists.

International Cooperation and Coordination on Issues Related to Marine Genetic Resources: Current and Future Challenges

Harlan Cohen, the World Conservation Union (IUCN), explained the challenges facing the conservation and sustainable use of marine genetic resources, and highlighted principles that could be applied towards that end, and lessons drawn from existing practice at national and international levels. Marcos de Almeida, Ministry of Defense, Brazil, presented a paper prepared by Cassiano Monteiro Neto, Fluminense Federal University in Niteroi, Brazil. He described the current state of knowledge and legal framework regarding marine genetic resources, including in Brazil, and suggested areas where there was a need to clarify the regime applicable to marine genetic resources. Timothy Hodges, Co-Chair of the CBD Working Group on Access and Benefit Sharing, described the issues and opportunities surrounding capacity building and transfer of technology related to marine genetic resources, noted the connections between activities on marine genetic resources under UNCLOS and the CBD, and outlined the CBD Action Plan on capacity building related to access and benefit sharing. Sam Johnston, Institute of Advanced Studies, United Nations University, described the state of bioprospecting in the Antarctic region, as well as the structure and functions of the Antarctic Treaty System in relation to marine genetic resources and the lessons to be drawn from that experience. Lisa Speer, Natural Resources Defense Council, USA, described the threats to marine genetic resources located in areas beyond national jurisdiction and highlighted measures that could be taken to ensure their conservation and protection. She called for a new UNCLOS implementing agreement to manage marine genetic resources in these areas.

Notes

1 An advance unedited version of the report of the meeting is available at: http://www.un.org/Depts/los/consultative_process/documents/8_advance_unedited_report.pdf. The Annex containing the "Co-Chairpersons' Possible Elements to be Suggested to the General Assembly" is reproduced in this issue at page 430.

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UNCLOS / MSP-17

The seventeenth Meeting of States Parties (MSP-17) to the UN Convention on the Law of the Sea (UNCLOS) was held from 14–22 June 2007, at the UN Headquarters in New York. Its agenda included the elections of members of the International Tribunal on Law of the Sea (ITLOS) and of the Commission on the Limits of the Continental Shelf (the CLCS), as well as other matters. These are addressed in the two reports that follow.

General Background

UNCLOS was adopted on 10 December 1982, and became operational on 16 November 1994. With 155 States Parties to date, the Convention governs all aspects of ocean space and maritime issues, ranging from navigational rights, maritime limits and marine scientific research to management of resources, protection of the marine environment and settlement of disputes. It is complemented by the 1994 Agreement relating to the implementation of UNCLOS Part XI (the Area) and the 1995 Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement. The Convention has established three institutions: the ITLOS, the CLCS, and International Seabed Authority.

The MSP is a standing body created by the 1982 United Nations Convention on the Law of the Sea. It is convened by the Secretary-General of the United Nations, in accordance with article 319, paragraph 2(e), of the Convention and relevant decisions of the General Assembly. It operates under the Rules of Procedure for Meeting of States Parties (SPLOS/2/Rev.4 of 24 January 2005) and is serviced by the Division of Ocean Affairs and the Law of the Sea of the United Nations.

The seventeenth Meeting of States Parties was chaired by Ambassador Rosemary Banks, Permanent Representative of New Zealand to the United Nations.

Regarding future work, States Parties agreed to hold their next meeting from 23 June–3 July 2008. (TRY)

Re: International Tribunal for the Law of the Sea

by Ximena Hinrichs Oyarce*

It has been said that the Meeting of States Parties is to the International Tribunal for the Law of Sea what the General Assembly of the United Nations is to the International Court of Justice.[1] The matters regarding the Tribunal which were on the agenda of MSP-17 include the Tribunal's annual report, financial and budgetary matters of the Tribunal, staff pension committee and future arrangements regarding the equitable distribution of the Tribunal's judges.

Report of the Work of ITLOS

Every year, the Tribunal transmits a report concerning its work to the Meeting of States Parties, which is presented to it by the President of the Tribunal.[2] As is the practice, the annual report submitted to the seventeenth Meeting gave an account of the various activities of the Tribunal during the preceding year, i.e. 1 January to 31 December 2006.[3] Following the statement by President Wolfrum, the Meeting gave consideration to the annual report for 2006. Several delegations underlined the significant contribution of the Tribunal to the settlement of disputes by peaceful means. A number of delegations expressed appreciation for the efforts made by the Tribunal to promote its work, including through the establishment of the Chamber for Maritime Delimitation Disputes,[4] the organisation of regional workshops, and the publication of the *Guide to Proceedings before the Tribunal*.[5] Furthermore, various delegations welcomed the entry into force of the Headquarters Agreement between the Tribunal and the Federal Republic of Germany.[6] The seventeenth Meeting took note with appreciation of the annual report of the Tribunal for 2006.

Budgetary and Financial Matters

Another standing item on the agenda of the Meeting of States Parties is the Tribunal's report on budgetary and financial matters, which is also presented to the Meeting by the President of the Tribunal. In his statement introducing the report on budgetary matters for the period 2005–2006, the President of the Tribunal mentioned that savings from 2002 and 2004 and a supplementary budget approved in 2005 had not been utilised by the Tribunal.[7] Further to a proposal by the Registrar of the Tribunal, the seventeenth Meeting decided to surrender the amounts of €65,816 from the 2002 savings and €208,670 from the 2004 savings and deduct them from the assessed contributions of States Parties for 2008. It also decided to surrender and deduct €351,899 from the assessed contributions for 2008, corresponding to the approved supplementary budget.

According to regulation 12.1 of the Financial Regulations of the Tribunal, the financial statements of the Tribunal are audited by an external auditor.[8] The auditor for the financial period 2005–2006 was appointed by the Meeting of States Parties in 2005. After being examined

* Legal Officer, International Tribunal for the Law of the Sea. The opinions contained in this article are expressed by the author in her personal capacity and do not reflect the views of the Tribunal.

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by the Tribunal, the audit report for 2005–2006 was submitted to the seventeenth Meeting of States Parties.[9] In line with the suggestions made during the sixteenth Meeting, the Tribunal completed the audit process for 2005–2006 earlier than usual which permitted the Meeting to consider the audit report in the year during which the audit took place. In his introductory statement, the President of the Tribunal indicated that the annual financial statements of the Tribunal presented a true and fair view of the net assets, financial position and results of operations of the Tribunal. The Meeting took note of the report of the external audit for the financial period 2005–2006.[10]

In 2005, the Meeting of States Parties had considered a proposal by the Tribunal concerning the establishment of a staff pension committee. During the Meeting, the President of the sixteenth Meeting of States Parties, Ambassador Raymond Wolfe, reported on his consultations regarding the appointment of a member and an alternate member to the Staff Pension Committee of the Tribunal. Further to his report, the Meeting confirmed the nomination of Senegal and Canada as member and alternate member, respectively, of the Staff Pension Committee.

Joint African-Asian Proposal on Reapportioning Membership in Key Bodies

An additional item entitled "Future arrangements regarding the equitable distribution of Members of the Tribunal and of the Commission on the Limits of the Continental Shelf" was included in the agenda of the seventeenth Meeting of States Parties. With regard to the composition of the Tribunal, a relevant provision is to be found in article 3, paragraph 2, of the Statute of the Tribunal which provides that "[t]here shall be no fewer than three members from each geographical group as established by the General Assembly of the United Nations." In adopting the procedure for the first election, the fifth Meeting of States Parties decided that the 21 members of the Tribunal should be elected as follows:[11]

- five judges from the African group;
- five judges from the Asian Group;
- four judges from the Latin American and Caribbean Group;
- four judges from the Western European and Other States Group;
- three judges from the Eastern European Group.

The fifth Meeting of States Parties also decided that the arrangements would be applicable to the first election and would not prejudice the arrangements for any other election.[12] This procedure has been applied in the first election of judges of the Tribunal as well as in subsequent elections.

During the seventeenth Meeting of States Parties, Tunisia, speaking on behalf of the African Group, presented a joint draft proposal from the Asian and the African Groups to revise the mechanism for allocating seats in the Tribunal in order to ensure equitable geographical representation. According to that proposal, in view of the past growth in the number of African and Asian States Parties, the Members of the Tribunal would be elected as follows:

- five members plus one from the African Group;
- five members plus one from the Asian Group;
- three members from the Eastern European Group;
- four members from the Latin American and Caribbean Group; and
- three members from the Western European and Other States Group.

The additional one seat from the African and Asian Groups would alternate, i.e. Asia would occupy six seats in the next elections to the Tribunal and Africa would occupy six seats in the elections thereafter, and so on. According to the proposal, no regional group would have fewer than three seats. The proposed arrangements would be applicable to future elections, while not prejudicing new arrangements required by the proportional growth of any regional group. It may be noted that a similar proposal was made for allocating seats in the Commission on the Limits of the Continental Shelf.

Prof. Rüdiger Wolfrum, President of the International Tribunal for the Law of the Sea Courtesy: UN

Following deliberations in the plenary, informal consultations were held under the coordination of the Vice-President of the Meeting, Diego Malpede of Argentina. As a result of the consultations, the Meeting adopted a decision which was read out by the President of the Meeting as follows:

The Meeting of States Parties,

…

1. Decides that further work on proposals for the allocation of seats would be required to adopt decisions at

the commencement of the eighteenth Meeting of States Parties.

2. Decides also to take up at the next Meeting of States Parties the issue of allocation of seats on the Commission and the Tribunal, under the item "The allocation of seats on the Commission and the Tribunal".

In her statement, the President of the Meeting also indicated that the next elections in 2008 would proceed on the basis of the existing allocation of seats.

Notes

1 See P. Chandrasekhara Rao, "ITLOS: The First Six Years", in J.A. Frowein and R. Wolfrum (eds.), *6 Max Planck Yearbook of United Nations Law* (2002), pp. 183–300, p. 294.

2 The Tribunal's annual report is submitted to the Meeting under rule 6, paragraph 3(d), of the Rules of Procedure for Meetings of States Parties.

3 The annual report of the Tribunal for 2006 is contained in document SPLOS/152 of 23 March 2007. The statement of President Rüdiger Wolfrum presenting the annual report for 2006 at the seventeenth Meeting of States Parties is available on the Tribunal's website: http://www.itlos.org.

4 On 16 March 2007, the Tribunal adopted a resolution to form the Chamber for Maritime Delimitation Disputes, as a standing special chamber, pursuant to article 15, paragraph 1, of the Statute of the Tribunal. For more information, see ITLOS/Press 108 of 16 March 2007.

5 "A Guide to Proceedings before the Tribunal" is available on the Tribunal's website: http://www.itlos.org.

6 The Agreement between the Federal Republic of Germany and the International Tribunal for the Law of the Sea regarding the Headquarters of the Tribunal, which was signed in Berlin on 14 December 2004, entered into force on 1 May 2007. For more information, see ITLOS/Press 109 of 11 April 2007.

7 The report of the Tribunal on budgetary matters for 2005–2006 is contained in document SPLOS/154 of 27 March 2007.

8 The Financial Regulations and Rules of the Tribunal are contained in document SPLOS/120 of 1 February 2005.

9 See regulation 12.8 of the Financial Regulations of the Tribunal.

10 The report of the external auditor for the financial period 2005–2006, with financial statements of the Tribunal is contained in document SPLOS/153 of 28 March 2007. The President's statement is available on the Tribunal's website: http://www.itlos.org.

11 See documents SPLOS/L.3/Rev.1 of 31 July 1996 and SPLOS/14, para. 15.

12 See document SPLOS/L.3/Rev.1, para. 12.

Re: Commission on the Limits of the Continental Shelf

by Elsa Tsioumani*

One primary focus of MSP-17 was the Commission on the Limits of the Continental Shelf. With regard to the Commission, the Parties elected its 21 expert members and considered the issue of its growing workload.[1]

Background

The Commission on the Limits of the Continental Shelf was established at the sixth meeting of the States Parties (10–14 March 1997). Its functions are: to examine submissions made by coastal States[2] to delimit the outer limits of their extended continental shelves and make recommendations thereupon; and to provide scientific and technical advice, if requested by the coastal States concerned, during the preparation of a submission. The Commission's recommendations and actions are without prejudice to the delimitation of boundaries between States with opposite or adjacent coasts. The limits of the continental shelf established by a coastal State on the basis of the Commission's recommendations are final and binding.

UNCLOS gives coastal States sovereign rights to explore and exploit the natural resources of the continental shelf.[3] The continental shelf is defined as the "seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance".[4] In turn, the continental margin is defined as comprising "the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof."[5]

The outer limits of the continental shelf divide the area of seabed that falls under the jurisdiction of the respective coastal States and the international area of seabed which constitutes common heritage of mankind.[6] The resources of the seabed beyond the limits of national jurisdiction are to be managed jointly by the States Parties through the International Seabed Authority.[7]

Election of the Commission Members

On 14 June, the opening day of the meeting, the States Parties elected 20 out of 21 expert members of the Commission on the Limits of the Continental Shelf, after four rounds of balloting.

From the African group, Indurlall Fagoonee of Mauritius (143 votes), Lawrence Folajimi Awosika of Nigeria (129 votes), Isaac Owusu Oduro of Ghana (124 votes) and Michael Anselme Marc Rosette of the Seychelles (124 votes) were elected in the first round of balloting, while after four rounds of balloting, three restricted, between Cameroon and Togo for the remaining African seat, Cameroon was elected by 106 votes.

From the Asian group, all five experts were elected in the first round of balloting: Kensaku Tamaki of Japan (141 votes), Lu Wenzheng of China (130 votes), Sivaramakrishnan Rajan of India (129 votes), Park Yong-ahn of Republic of Korea (123 votes) and Abu Bakar Jaafar of Malaysia (122 votes).

From the Eastern European group, Mihai Silviu German of Romania (143 votes), Yuri Borisovitch Kazmin of the Russian Federation (143 votes) and George Jaoshvili of Georgia (136 votes) were all elected in the first round.

* Researcher, Democritus University of Thrace; Lawyer, Thessaloniki, Greece; and regular contributor to EPL.

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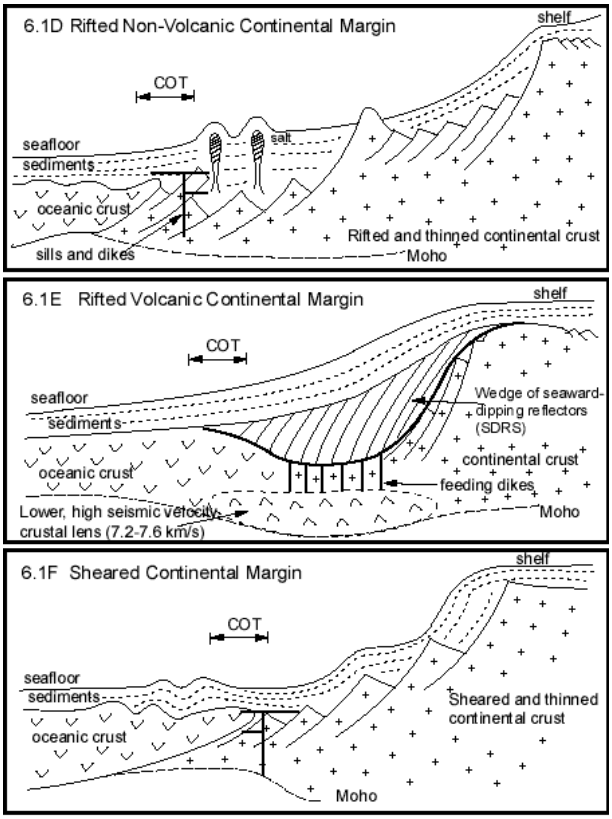
From Latin America and the Caribbean, Alexandre Tagore Medeiros de Albuquerque of Brazil (144 votes), Francis L. Charles of Trinidad and Tobago (144), Galo Carrera Hurtado of Mexico (141 votes) and Osvaldo Pedro Astiz of Argentina (139 votes) were all elected in the first round.

From the Western European and Others group, Harald Brekke of Norway (115 votes), Philip Alexander Symonds of Australia (106 votes) and Peter F. Croker of Ireland (105 votes) were elected on the first round. Elections for the group's remaining seat continued the following day, when States Parties elected Fernando Manuel Maia Pimentel of Portugal by 106 votes, in the seventh round of balloting.



COT – Continent/Oceanic crust Transition
Moho – Boundary surface separating the crust from the subjacent mantle

Courtesy: UN

Commission's Workload

On 19 June, the meeting addressed the issue of the workload of the Commission on the Limits of the Continental Shelf (documents SPLOS/157 and 144). Following the Commission Chairman's warning that, due to the growing number of submissions by coastal States on the outer limits of their continental shelf, under the current system, States Parties could wait until 2035 to have their anticipated submissions processed, significantly curtailing exploration and exploitation of natural resources beyond the 200 mile Exclusive Economic Zone limits, several States Parties called for increased equipment, manpower and work hours to enable the Commission to efficiently manage its growing workload. Many also called for easier access to financial and technical assistance for developing coastal States struggling to meet the May 2009 submission deadline.

On 22 June, the meeting adopted a decision on the Commission's workload (SPLOS/162), calling upon States Parties whose experts serve on the Commission to do everything possible to ensure those experts' full participation in its work and to contribute voluntarily to the trust funds to help developing coastal States in preparing submissions to the Commission on the outer limits of their respective continental shelves, in accordance with the Convention. The meeting also called on the Commission to continue searching for ways to improve its working methods in order to ensure timeliness and efficiency and to consider adding more work hours to its regular sessions. Further, the meeting requested that coastal States Parties inform the Commission by the end of November 2007 if they intended to make a submission and, if so, by what date. States Parties also decided to continue to address issues related to the workload of the Commission and to funding for its members attending sessions of the Commission and subcommissions, as a matter of priority.

Joint Asian-African Proposal on Future Allocation of Seats

The seat allocation proposal and decision, as described in the facing article by Ximena Oyarce, applies equally to the Commission's membership, but as noted therein, has not yet been decided.

Other Matters

On 18 June, the meeting heard a briefing by the head of the Commission on the Limits of the Continental Shelf (document SPLOS/156). Presented by its Chairman Peter Crocker, the report further detailed recent decisions and the status of matters currently being addressed by the Commission.

On 20 June, the meeting discussed the Secretary-General's report on oceans and the law of the sea (document A/62/66), which addresses such matters as piracy on the high seas, unreported and unregulated fishing, and trans-shipment of hazardous materials. Some delegations, including Germany on behalf of the European Union, noted that the meeting of States Parties was not the forum to discuss the report in substance, as its role was limited to financial and administrative issues. On the other hand, Indonesia said the meeting could discuss any issues relating to the Convention's implementation, and not just budgetary and administrative matters.

Notes

1 The report of the meeting (SPLOS/164) is available at: http://www.un.org/Docs/journal/asp/ws.asp?m=SPLOS/164.
2 Law of the Sea Convention, Article 76.8.
3 *Ibid*., Article 77.
4 *Ibid*., Article 76.1.
5 *Ibid*., Article 76.3.
6 *Ibid*., Article 136.
7 *Ibid*., Article 157.

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POPs / COP-3

Stockholm Convention: Non-compliance Negotiations

A non-compliance mechanism was almost achieved at COP-3 of the Stockholm Convention on Persistent Organic Pollutants, but due to consensus decision-making rules, three countries were able to make it clear that they would not be able to agree to a mechanism with a Party-to-Party trigger.

Non-compliance mechanisms have become *de rigeur* for all modern MEAs, and Article 17 of the Stockholm Convention requires the Parties to develop such a mechanism "as soon as practicable". There have been varying perspectives on how quickly the Parties should tackle this requirement. Some Parties have expressed the view that further experience is needed to determine which aspects of the treaty are not being complied with; others believe that as all provisions must be complied with after ratification a mechanism is needed immediately; some in a state of non-compliance believe that a mechanism will be the vehicle for financial and technical capacity building; still others have indicated that their current non-compliance makes a mechanism a rather threatening proposition.

At the first Conference of the Parties, it was agreed that an Open-ended Working Group would be created to begin work on the negotiation of the mechanism. OEWG-1 worked successfully prior to COP-2 to review and negotiate on the text provided by the secretariat, based on submissions and other MEA precedents. Although substantial progress was made, there was a need to continue during COP-2. However, at COP-2, developing countries resisted further discussions, noting that with their small delegations, they would not be able to participate in compliance discussions in a contact group on non-compliance during the COP, and preferred to focus their efforts on financial and technical assistance – matters that would help them better comply. However, it was agreed at that meeting that an OEWG-2 would be organised immediately before COP-3, and that developing countries and CEITs would have one delegate funded to focus solely on compliance matters through the OEWG-2 and during a contact group at the COP.

Anne Daniel of Canada, who had chaired OEWG-1, also chaired the second OEWG. Because of the length of the original text provided by the secretariat, which reflected submissions received by Parties and others, she used several strategies to streamline and move towards a consensus text. This included eliminating groups of text provisions that were redundant, using text for non-controversial issues that was previously agreed in other treaty mechanisms, and using contact groups on particularly difficult issues. Among the issues that were most difficult were the principles section at the beginning of the text, the methods of invoking/triggering the non-compliance procedures, and the actions/measures that could be taken by the Committee or the Conference of the Parties to address non-compliance. Although progress was initially slow in the OEWG due to the difficulties of three Parties in particular, by the end of the meeting the original text was substantially improved. Nevertheless, it was clear by the end of the three-day meeting that further work during the Conference of the Parties would be required if there was to be any hope of adopting the text at COP-3.

Although there were some reservations by several Parties about continuing work through the COP, once reminded of the special funding arrangements in place for compliance delegates, it was agreed that the OEWG would recommend to the COP that a contact group be established to continue the work. Over the weekend, the Bureau agreed with the chair's suggestion to move the compliance agenda item up to Monday afternoon so the group could get working immediately on Tuesday. Work continued every day and evening through the week through both a contact group and a Friends of the Chair group, which later in the week examined a Chair's compromise text.

The substantive issues that were most difficult during the two weeks of negotiation were those typically difficult in compliance negotiations.

The principles section, improved during the contact group of the OEWG, was only slightly modified in the COP contact group. While the Montreal Protocol and draft Rotterdam procedures contain no principles, the original text contained a number of them. A number of delegates suggested the paragraphs were not necessary or were more appropriate in a draft decision. Developing countries in particular wanted to see reflection of "common but differentiated responsibilities" or at a minimum a reference to all principles in the Convention, where the latter is reflected in the preamble through a reference to Rio Principle 7, while others felt this was not an appropriate matter for inclusion in a compliance mechanism. This section of the text was close to resolution by the end of the meeting, but agreement on it was withheld in exchange for progress in other areas. It became part of the Chair's compromise proposal at the end of the week.

Another key issue was which measures the Committee would be allowed to impose on a non-compliant Party on its own, and which measures the Conference of the Parties should be allowed to impose.

As regards the Committee, these were powers that it could exercise independently, without the need of supervision through a COP decision. Thus Parties wanted to ensure that the powers given were appropriate to that circumstance. Further, there was some concern expressed about the nature of the resources at the Committee's disposal, and while it could, for example, facilitate technical assistance, it had no independent means by which to provide it. After a half day of negotiation, the Committee measures text was agreed, which provides the Committee

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with the right to consider individual Party non-compliance submissions with a view to establishing the facts and root causes of the matter of concern and to assist in its resolution. In consultation with the Party whose non-compliance is in question, it may: provide advice; issue non-binding recommendations; facilitate technical and financial assistance; request the Party to develop a voluntary compliance action plan, including timelines, targets, indicators and progress reports; provide assistance, upon request, in the review of the implementation of the action plan; report to the COP on a Party's efforts to return to compliance.

COW Chair, Karel Blaha Courtesy: IISD

The possible actions that the Committee could recommend to the Conference of the Parties were more difficult to resolve and became part of the final package in the Chair's compromise text. Although reference was made to the draft Rotterdam text, and other precedents from the Basel Convention, Montreal Protocol and Biosafety Protocol, a text specific to the Stockholm Convention is evolving.

After using the Committee's facilitation procedure, and taking into account the cause, type, degree, duration and frequency of compliance difficulties, the Committee may recommend to the Conference of the Parties a number of courses of action. The Parties have agreed that the Committee can recommend to the COP: the provision of further support for the Party concerned, such as the facilitation of financial and technical assistance; provision of advice regarding future compliance in order to help Parties implement the provisions of the Convention and avoid non-compliance; any additional action that may be required for the achievement of the objectives of the Convention under Article 19(5)(d). The latter was the subject of much discussion, as it in effect provides for an open-ended list of measures, but the counter-argument which carried the day was that the COP already has those powers under Article 19. Although the reference to international law is still bracketed, there was almost unanimous agreement that it would be appropriate to include this reference – although some delegates felt it was implied, others felt it was necessary with an open list – and it was included in the Chair's compromise proposal.

Still in brackets, however, are three proposed actions or measures for the COP: issuing a statement of concern regarding current non-compliance; requesting the Executive Secretary to make public cases of non-compliance; for repeated or persistent non-compliance, suspension of rights and privileges under the Convention. Some developing countries supported a provision that ensured that none of these three measures, nor the open-ended powers of the COP would be available against developing country Parties.

With respect to the statement of concern, most delegations were comfortable with this language, considering it to be comparable to the issuing of a caution, part of the Montreal Protocol compliance procedures. Only India was not comfortable with this paragraph and the brackets were removed from it in the Chair's proposal.

Having the ES make non-compliance cases public raised concerns for a few delegations, while others pointed out that under the proposed procedures, reports of the Committee and the COP on compliance matters would be the subject of reports made available on the website in any case. However, some delegations were not prepared to see additional actions taken to expose non-compliant Parties to public scrutiny.

For cases of repeated or persistent non-compliance, the idea of suspending rights and privileges was supported by some delegations, but others were concerned with giving the COP powers to suspend treaty rights and privileges. It was suggested that the articles enumerated might also not be the correct ones or a full list, and some of the Parties concerned about this provision wanted a very specific articulation of which rights and privileges would be involved. Although this has a precedent under the Montreal Protocol procedures, there is extremely limited experience with it in practice, due to its controversial nature. Some developing countries supported the provision on the basis that it would not apply to them. This was deleted from the Chair's compromise proposal in exchange for a Party-to-Party and secretariat trigger.

The key issue that prevented agreement on the procedures was that of how the procedures would be invoked

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or "triggered". It was agreed that a Party could trigger the procedures about its own non-compliance, but the contact group could not reach agreement on the Party-to-Party trigger nor the secretariat/committee trigger.

For virtually all delegations, without a Party-to-Party trigger, there is no non-compliance mechanism, and this ultimately was the issue that precluded agreement at COP-3, as India, China and Iran were not prepared at COP-3 to accept such a trigger. Although the text within the trigger was completely agreed by all Parties, those three countries would not release the brackets on the paragraph as a whole. It currently provides that a submission may be made by a Party "that is affected or may be affected by another Party's difficulties in complying with the Convention's obligations". This text was arrived at after extensive debate: a number of delegations felt that no qualification was necessary, but those wary of the trigger seemed to be of the view that there needed to be proof that another Party's non-compliance was affecting the triggering Party, something they considered difficult in the context of long-range transport of POPs.

Similarly controversial, and also part of the final Chair's proposal, was the secretariat trigger. Some delegations, like the European Union, supported a strong secretariat trigger, while other delegations worried that allowing the secretariat to trigger the procedures could compromise its neutral role as a servant of the Parties to the Convention. There are two proposals for this trigger: one would have the secretariat trigger if it becomes aware of compliance difficulties on the basis of second and subsequent reports received under Article 15; the other would have the Committee able to trigger the procedures if a Party's second or subsequent report to the COP "indicates difficulties in complying with its obligations under the Convention". The reference to second and subsequent reports was an attempt to alleviate the concerns expressed by a few Parties that they were not currently in compliance with their obligations and would not likely be so for a number of years. As the second reporting period would be several years away, it was hoped that this deferred trigger would give those countries some comfort. The second proposal attempts to address two other issues: (1) getting rid of the controversial secretariat role; (2) not having the Committee interpreting Article 15 reports, but only responding to non-compliance identified by the Party concerned. Both of these proposals were retained in the Chair's compromise text as alternatives.

Later in the week, the Chair established a Friends of the Chair process with nine Parties, representing the full range of views, and either representing themselves or a regional group. As a result of bilateral consultations with these Parties, a Chair's compromise proposal was drafted and discussed within the Friends of the Chair group. The proposal received wide support and with some tweaking could have become the basis of a final compromise for almost all delegations and regions – except the three Parties that could not agree to a Party-to-Party or secretariat trigger. While other Parties retained concerns about a secretariat trigger, these appeared resolvable through further negotiation. However, once it became apparent that no further progress would be made on the Party-to-Party trigger, and that progress on financial and technical assistance in other contact groups would not change that situation, the Chair reconvened the contact group on Friday afternoon to forward the revised text and Chair's proposal to the Committee of the Whole.

Ultimately, the Conference of the Parties adopted the work of the contact group and decided to negotiate the non-compliance procedures further and consider them for adoption at its fourth meeting, based on the cleaned up version of the text annexed to the decision, and "bearing in mind the proposal of the Chair of the contact group". This latter annex should help ensure that the progress made at OEWG-2 and COP-3 is not lost.

While a number of delegations were frustrated that three delegations held the larger group of Parties back from adopting non-compliance procedures, it is interesting that the reason they did so appeared to be their current non-compliance situations. While this did not stop other developing countries from being supportive of a mechanism, as they were relying on it to provide enhanced technical and financial assistance, this appeared to make some Parties reluctant to agree to a mechanism at this time. While that means that the adoption of the procedure is delayed until COP-4 in 2009, it also means that all Parties are cognisant of their obligation to comply with the provisions of the Stockholm Convention – even those who are not doing so now. And, it gives all Parties an opportunity to get final negotiating instructions on both triggers in particular in order to adopt the procedures at COP-4.

Thierno Lô, Minister for the Environment and Protection of Nature, Senegal and COP-3 President
Courtesy: IISD

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CITES / COP-14

On Caviar, Sharks and Mahogany
– Can CITES Promote Sustainable Management? –

by Soledad Aguilar*

The fourteenth meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species (CITES COP-14) met in The Hague, from 3–15 June 2007, providing a venue for countries, international organisations and civil society to adopt measures to regulate international wildlife trade and ensure its sustainability.

Adopted in 1975, CITES is one of the first multilateral environmental agreements (MEAs) with global membership. Its 172 country parties have agreed to regulate international trade in endangered species through the establishment of a uniform system of permits and certificates to accompany shipments of any specimens, parts or derivatives of species listed in CITES Appendices I and II, in order to ensure the legality of trade and enable control and enforcement of CITES regulations at a global scale.

CITES won a reputation as an effective instrument to enforce trade bans for the protection of species most seriously affected by international trade, such as elephants and whales. However, its potential to promote the sustainable use of wildlife species that are subject to large volumes of commercial trade, particularly those involved in timber and fisheries industries, is still generating lively debates.

The conflict between those countries favouring or opposing the inclusion of valuable commercial species in Appendix II underlay many of the key discussions at COP-14. It emerged in debates over whether to include a specific focus on timber and fisheries in the strategic vision to guide CITES from 2008–2013, in discussions over proposed incorporations and amendments to the list of marine and forest species in the CITES Appendices, and even surfaced in budget discussions, where countries opposed an initiative by the Secretariat to incorporate a fisheries officer in its staff.

This paper will reflect on key questions emerging from the timber and fisheries debate, which were discussed during COP-14.[1] The first section will review the result of discussions regarding fish and timber species management within CITES' mandate and strategic vision; the second will look at debates to include such species in the CITES Appendices during COP-14; and the third will address CITES' broader approach to species management through the promotion of regional agreements on species listed in its Appendices, focusing on whether in practice CITES has the tools to address, not just international trade in, but the sustainable management of, fish and timber species.

It concludes that, despite its restricted mandate, CITES is steadily advancing toward the goal of sustainable management of fish and timber species, focusing on regional solutions and providing a venue for regional agreements to take management decisions and mechanisms for them to use the strength of CITES to enforce decisions and monitor implementation at a global scale.

Background

The aim of CITES is to ensure that international trade of animal and plant species does not threaten their survival in the wild. It was signed by representatives from 80 countries in Washington, DC, United States, on 3 March 1973, and entered into force on 1 July 1975. CITES is widely reported as one of the most effective environmental treaties based on its global membership and its capacity to regulate international trade of species listed in its Appendices. The regulation of international trade, and the deriving possibility of instituting trade bans for CITES-listed species is a tool most other MEAs, like the Convention on Biological Diversity, lack. This capability has enabled CITES, since its entry into force in 1975, to evolve and succeed in providing an effective instrument to curb illegal international wildlife trade, and support conservation of endangered species.

There are approximately 5,000 animal and 28,000 plant species (including several entire genera) listed on the three CITES appendices. They include some whole groups, such as primates, cetaceans (whales, dolphins and porpoises), sea turtles, parrots, cacti and orchids, and also subspecies or geographically separate populations of a species (for example the population of just one country). Of these, however, it is notable that fish account for only 77 species and timber for 59 species in Appendices I and II.[2]

Can CITES Accommodate Timber and Fisheries' Management within its Mandate and Vision?

In COP-14, CITES Parties discussed a new Strategic Vision for the years 2008–2013, addressing specifically the breadth of the Convention's mandate: Should CITES take a more proactive approach towards sustainable management, and pay more attention to fish and timber species. The draft strategy[3] that formed the basis of these dis-

* Soledad Aguilar (LLM) is an international environmental lawyer who specialises in multilateral negotiations, and a regular contributor to the EPL. She has participated in CITES and related conventions' meetings as a delegate for Argentina and as a team leader for IISD's Earth Negotiations Bulletin. Margarita Clemente, Jorge G. Alvarez Romero and Hesiquio Benitez Diaz provided peer review and double-checked to ensure that these matters were factually correct.

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cussions, emanated from a Strategic Plan Working Group, which met intersessionally within the Standing Committee. It presented several points reflecting this debate:

(i) Its introduction raised *inter alia* the concept of "giving greater attention to international trade in timber and aquatic species";
(ii) Its proposed Vision statement suggested the shared desire "to conserve biodiversity by ensuring that no species of wild fauna or flora becomes or remains subject to unsustainable exploitation through international trade"; and
(iii) In Objective 3.2, it portrayed CITES as "[...] the proper global instrument to ensure the sustainability of wildlife trade".

In its pre-COP comments on the draft, the Secretariat recognised that it expanded CITES' horizons, but took it as a signal of a positive evolution of the Convention, commenting on the draft that it "is simply undeniable that developments in CITES are affected by developments in other international forums, comprising the same States, aimed at balancing environmental aims and priorities with the needs of people. CITES has shown its durability and adaptability to changing circumstances over more than 30 years, and must continue to do so."[4]

COP-14 President Gerda Verburg, Minister of Agriculture, Nature and Food Quality, the Netherlands Courtesy: IISD

Some countries, however, did not share this expansive view insisting on a strict definition of the CITES mandate to limit its impact on commodity or natural resources international trade. Their concerns were ultimately addressed by deleting the comment from the introduction, and replacing Objective 3.2 with a new Objective 3.5, which suggests a weaker role. It requests parties and the Secretariat to "cooperate with other relevant international organizations and agreements dealing with natural resources as appropriate, in order to achieve a coherent and collaborative approach to species which can be endangered by unsustainable trade, including those which are commercially exploited."

The Vision statement was also amended to add CITES' contribution to sustainable use and reaching the 2010 target and ultimately reads as follows:

"Conserve biodiversity and *contribute to its sustainable use* by ensuring that no species of wild fauna or flora becomes or remains subject to unsustainable exploitation through international trade, *thereby contributing to the significant reduction of the rate of biodiversity loss*".[5]

This adjustment reflects the subtle currents of opinion in these discussions, giving CITES a lead role in the conservation of biodiversity, but only a "supporting role" as contributor to sustainable use and the Millennium Development Goal of reducing biodiversity loss. A fine reading of the adopted language thus shows CITES' traditional mandate has been restated, and proposals to expand its scope to more actively promote sustainable species management were unsuccessful.

Are there any Obstacles in CITES Criteria for the Listing of Timber and Fisheries Species?

CITES COP-14 was presented with eleven marine and timber species proposals for inclusion in the Appendices. It adopted three of these proposals: the inclusion of sawfish (Pristidae) in Appendix I with one species from Australia, freshwater sawfish (*Pristis microdon*), in Appendix II; and the listing of Brazilwood (*Caesalpinia echinata*) and eels (*Anguila anguila*) in Appendix II. It rejected proposals to add several sharks, corals, cedar and rosewood to the Appendices.

CITES Criteria for Inclusion in the Appendices

From a formal point of view, a party wishing to list a species in the CITES Appendices I and II must submit a proposal for approval by the COP following the CITES criteria for such listings, and supported by scientific and biological data on population and international trade trends. A proposal adopted by consensus or a two-thirds majority of parties present and voting, will then apply to all countries engaged in trade in such species irrespective of which country the species is exported from. Appendix III listings are voluntary listings by range countries and apply only to their own exports.[6]

Species will be added to Appendix I when they are "threatened with extinction" according to the CITES biological criteria.[7] Species will be listed in Appendix II (which is generally where commercially exploited fish and timber species will be listed) where, *inter alia*:

- listing is necessary to avoid the species from becoming eligible for inclusion in Appendix I in the near future; or
- listing is required to ensure that the harvest of specimens from the wild is not reducing the wild population to a level at which its survival might be threatened.[8]

A species is thought to be "threatened with extinction" in CITES where it has suffered a marked decline in the population size in the wild (observed or inferred by

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certain criteria). Listing is therefore not based on some absolute population number, but on the rate of decline. This point affects the arguments that timber and fisheries are in good shape due to their absolute population numbers, since those claims do not take into account their rates of decline. A specific footnote to the Appendix I listing criteria refers to commercially-exploited aquatic species, noting the historical extent of decline and the recent rate of decline should be considered in conjunction with one another. The higher the historical extent of decline, and the lower the productivity of the species, the more important a given recent rate of decline will be.

The CITES criteria, thus, place a strong emphasis on the biological grounds to list species and present no specific obstacles to timber or fisheries. On the contrary, the consideration of the rate of decline allows fish and timber species to be incorporated in the Appendices even if still abundant in one particular area. In COP-14, as instructed by prior COPs, proposals relating to marine species were circulated prior to the CoP, to the United Nations Food and Agriculture Organization *Ad Hoc* Expert Advisory Panel for the Assessment of Proposals to Amend Appendices I and II of CITES Concerning Commercially-exploited Aquatic Species (the FAO Expert Panel.)[9] The Panel's recommendations to COP-14[10] presented an interesting view of their interpretation in practice.

Sharks

COP-14 addressed three shark species (porbeagle, spiny dogfish and sawfishes), ultimately determining that only sawfishes met the criteria for inclusion in the CITES Appendices. This result coincided with the FAO Expert Panel's assessment. During the meeting, discussions focused on the status of geographically separate stocks of the same resource. For example, spiny dogfish (*Squalus acanthias*) is a type of shark whose meat is mostly consumed by the European Union. Discussions of this proposal centred on the significant level of commercial fishing and declining populations in the Northeast and Northwest Atlantic, asking whether that merited an Appendix II listing. On this point, the FAO Expert Panel's report concluded that *Squalus acanthias'* "northeast Atlantic population meets the decline criterion for listing on Appendix II [but] [...] in the southern hemisphere, surveys in the southwest Atlantic and southwest Pacific indicate stable or increasing abundance."

During discussions in the COP Committees,[11] a number of countries (including Algeria, Canada, China, Guinea, Japan, Argentina and Norway) accepted the Expert Panel's conclusions.[12] They questioned whether an Appendix-II listing would have any impact on the Northeast Atlantic population, noting that CITES permits would not be required for the majority of international trade which occurs amongst the countries in the European Union, and encouraged range States to develop and implement regional fishery measures to ensure sustainable use. As New Zealand put it: "Will the listing of a species with potentially one billion individuals set a precedent for listing additional commercially exploited aquatic species on the Appendices?"[13]

However, other participants, including the CITES Secretariat, the Species Survival Network, TRAFFIC and WWF interpreted that the listing proposal satisfied CITES criteria for inclusion in Appendix II. They noted that sustained demand in the European Union coupled with the imminent collapse of the North Atlantic fishery was likely to increase pressure on other populations of the same species and lead to their unsustainable exploitation, unless measures were taken to regulate such trade. The United States and others also voiced concern about the ongoing "serial depletion" of shark stocks around the globe, whereby resource exhaustion in one region is directly accountable for larger pressures on these resources in other regions, leading to consecutive exhaustion of one region after the next.[14]

The extent of countries' polarisation on this matter was shown by the final vote of 55 votes in favour and 58 against

Dutch tulips Courtesy: IISD

the inclusion of this species in the Appendices. Under CITES Rules of Procedure, a substantive proposal must receive at least two-thirds of the non-abstaining votes cast.

The proposal by the European Union to include porbeagle shark (*Lamna nasus*) in Appendix II[15] followed a similar pattern. Opposition to the listing was stated by interventions of Canada and Norway, both supporting the FAO's evaluation that the species did not meet the CITES criteria. The recommendation and both statements emphasised the need for domestic and regional fishery management measures on overfishing and bycatch issues to be identified and enforced, asking for further clarity on what measures were being taken within the European Union or the North East Atlantic Fisheries Commission.[16] The listing of porbeagle shark also fell short of the necessary two-thirds vote within the Committee (with 54 votes in favour and 39 against).

Finally, in Committee 2, a related proposal from the European Union, asked the CITES Animal Committee in consultation with FAO to give an opinion on the need to establish trade measures, specific quotas or other trade restrictions for the porbeagle shark and spiny dogfish. That proposed decision failed as well, this time by just two votes.

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Timber

Regarding timber species, a proposal by Brazil to list its own *Caesalpinia echinata* (Brazilwood) in Appendix II prospered and was approved by consensus.[17] Brazilwood is a tree of exceptional quality used in the construction of musical string instruments and the listing in Appendix II will allow Brazil to control trade flows, ensuring a sustainable harvest, while excepting manufactured products from the need to carry CITES permits.[18]

Other Appendix-II listing proposals in the timber area, both submitted by the European Union[19] met with opposition however. Proposals to list cedar (*Cedrela* spp.*)* and rosewood (*Dalbergia retusa, Dalbergia granadillo* and *Dalbergia stevensonii*) – two neotropical timber species – were strongly opposed by Latin American range States, ultimately prompting the European Union to retire its proposal in exchange for an agreement among range and import States to take further measures to increase knowledge and regional information sharing on the species trade and population status and trends.[20] This decision may be read as a first step towards the coordination of a regional policy for the sustainable use of these timber species. It encourages information sharing among range States and a regular follow-up of compliance with the decision, bringing the species status to light, and allowing a future Appendix-II listing if needed.

Although showing that CITES listing criteria do allow listings of fisheries and timber species, these results show that countries' positions are highly polarised, easily swaying one way or the other depending on the species at stake. COP-14 results coincide with the FAO Expert Panel's assessment of aquatic species meeting the listing criteria, which some see as a positive outcome given the scientific nature of this Panel. Votes were quite tight, however, and in some cases more than half of the countries voting on a particular proposal disagreed with the FAO Expert Panel's assessment.

Can CITES Accommodate Timber and Fisheries' Management in Practice?

Several times during COP-14, various parties raised arguments to the effect that CITES should not attempt to engage in species management, but should restrict its actions to the regulation of international trade. There is a fine line between these two realms, however, and in practice CITES decisions do address species management even if focused on their international trade aspects. CITES' capabilities to address species management issues are relevant for their potential effectiveness in the protection of timber and fish species, as such populations subject to intense use need strong management programmes to ensure their sustainability and the continuation of trade.

Contrary to some species trade where sustainability can be managed by simple or single-country measures, such as self-imposed quotas or trade bans, the case of timber and fisheries requires a more comprehensive approach to sustainable management and regional coordination, in order to keep a balance between sustainability and high levels of international trade. COP-14 decisions on the African elephant, vicuña, sturgeons and mahogany provide an interesting trend and precedents in this regard.

African Elephants

During CoP14, several African nations presented conflicting proposals to amend the listing of the African elephant in Appendix II: some to include an exception allowing a one-off sale of ivory stocks from Botswana, Namibia, South Africa and Zimbabwe;[21] and another to impose a 20-year ban on ivory trade.[22] Such conflicting proposals derived from the absence of a regional African elephant management organisation where countries could agree on a common and harmonised approach to the species management.

In order to fill this gap, the CITES Secretariat, instructed by the Standing Committee, organised a dialogue meeting of range states of the African elephant prior to COP-14. The Netherlands, as COP-14 host, also organised parallel meetings of African Environment Ministers at COP-14 in an effort to reach an agreement on this matter.

The dialogues fostered by CITES resulted in a concerted agreement by all African-elephant range States to allow a one-off sale of ivory stocks from Botswana, Namibia, South Africa and Zimbabwe, and to impose a nine-year moratorium on any further ivory stock sales. Other decisions taken with direct relevance to species management called for the development of an African elephant action plan and establishment of an African elephant fund. The COP also called on all parties to report ivory seizures, changes in legislation and enforcement measures.

The value-added that CITES gave to such an agreement was the provision of a venue and logistics for discussions to take place, and the adoption by consensus of all its Parties of decisions taken by African nations, thereby guaranteeing their global enforcement and providing mechanisms for monitoring and control (such as the ETIS programme to monitor illegal killing of elephants) to ensure international trade takes place within strict limits and does not promote an increase in poaching.

Vicuñas

CITES has been working as a global support system for management decisions taken by a relatively small South American regional agreement, the Vicuña Convention. At COP-14 parties endorsed a decision by the Vicuña Convention, to expand Bolivia's possibility to sell wool sheared from live vicuñas from the whole country, rather than from two pilot areas.[23] CITES parties adopted the proposal by consensus, which, as in previous cases, guarantees the effectiveness of such a decision in importing countries (as they are parties to CITES but not to the regional agreement), thus highlighting a case where a regional sustainable management agreement with CITES support, is having good results and providing a valuable income to local communities.

Sturgeons

Another example is given by sturgeons, a fish species that produces the valuable caviar, and is managed by range states under the aegis of CITES. Since 1998, international

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trade in all species of sturgeons has been listed in CITES Appendix II owing to concerns over the impact of unsustainable harvesting and illegal trade over wild populations. Of particular concern at the time of listing was the situation in the Caspian Sea, which after the break-up of the Soviet Union lost existing management and control systems.

Within the CITES context, numerous measures have been taken to manage the species, including

- export quotas;
- a universal system for caviar labelling (to assist the Parties in identifying legal caviar in trade);
- the promotion of fishery management programmes;
- calls for improvement in national legislation;
- support to the development of regional agreements;
- support to the development of marking systems and aquaculture; and
- the control of illegal trade.[24]

COP-14 addressed the situation of sturgeons and adopted an agreement presented by range States to request Caspian Sea range States to participate in an FAO two-year Technical Cooperation Programme. It also asked that range States that share stocks should recommend that total export quotas for 2008 do not exceed those agreed in 2007 for each species, which were set on the basis of scientific information. Finally, it encourages parties to document international caviar trade in the database hosted by United Nations Environment Programme/World Conservation Monitoring Centre (UNEP/WCMC).[25]

Bigleaf Mahogany

The decision to list bigleaf mahogany (*Swietenia macrophylla*) in Appendix II during the COP in Santiago de Chile in 2002, inaugurated a trend that many hope will be the "poster" for timber species management within CITES. During the past five years, the listing of bigleaf mahogany has spurred regional efforts to improve the management of this timber species, through information sharing among range States and the formation of a Bigleaf Mahogany Working Group (BMWG) under the aegis of the CITES Plants Committee.

Through the BMWG, range States are still able to control the management of their species with international support to enforce their decisions. For example, during COP-14, the Plants Committee presented the results of the BMWG's work including proposed decisions and an action plan, which were adopted by COP by consensus with only minor amendments.[26] Such decisions and action plan focus on sharing information, developing specific criteria to support non-detriment finding studies for timber species, and giving CITES species special treatment in forest management plans and rejecting international trade without proof of legal origin of the timber. They therefore assume a holistic approach to forest conservation and sustainable management of this timber species.[27]

Conclusions

After more than thirty years of implementation, and with several successful examples of species recovery, many are looking towards CITES in their efforts to address the most challenging wildlife issues of our times, namely the sustainable use of forests and marine resources. Some question, however, whether CITES is the appropriate instrument to deal with fish and timber trade, and whether it can accommodate its procedures to allow sustainable levels of trade without imposing high transaction costs.

COP-14 provided a venue for countries to debate these two approaches and discussions were especially heated. Some participants emphasised that CITES provides a useful instrument to cover existing gaps in the sustainable management of endangered resources subject to intense pressure by international trade, like sharks and cedar. Opposing this trend, others considered management decisions regarding heavily harvested species to be matters of national sovereignty, and eyed with suspicion efforts to promote sustainable management from the platform of CITES. Most countries, however, oscillated between these positions according to the particular species in question.

? Courtesy: IISD

COP-14 outcomes thus present a dual approach to fish and timber species. Formally, countries shied away from recognising – in writing – CITES' role as a lead actor in sustainable management of biodiversity, or promoting more attention for fisheries and timber, as was reflected in the Strategic Vision for 2008–2013. In practice, however, measures to address regional management issues for key fish and timber species are progressing and showing positive results. Indeed, examples from mahogany and sturgeons, and precedents set by agreements over the African elephant and vicuñas, showed how CITES manages to overcome its restrictive mandate to assume a leadership role in species management, and become an umbrella species management organisation.

The examples also reflect that parties are starting to consider the benefits of Appendix II listings, and are combating the popular misconception that all CITES listings are trade bans. Controls derived from an Appendix II listing, aimed at preventing unsustainable use and maintaining ecosystems, may provide valuable instruments to sustain industries and livelihoods that depend on heavily harvested commercial species.

An unhurried pace in timber and fish species entering CITES should not be confused with wide opposition by

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countries to this notion. The need for a two-thirds vote in approval of a listing may slow the pace for this trend, however, there is no sign that it is reversing. Indeed many of the proposals to list fish species in CITES Appendices failed by a narrow margin of votes to achieve the needed majority.

The key question is whether CITES will be able to absorb the additional weight of management of significant international trade, that would be required if the Convention is to play a larger role in the management of fish and timber products. Provisional results are pointing in a positive direction. The above-described examples (elephants, sturgeons, vicuña and bigleaf mahogany) embody reasonably successful (albeit still in its initial phases) regional management regimes under the aegis of CITES, where the Convention plays the role of an umbrella organisation contributing the instruments to promote implementation and control compliance at a global scale.

If guided wisely, this hybrid solution providing a space and support for regional groups to take species management decisions, and a legal framework to make such decisions binding at a global scale, may place CITES once again at the forefront of species conservation and sustainable use, paving the way for a global solution to the serious situation of some critical marine and forest resources.

Notes

1 For a summary of all the issues addressed by COP-14, see IISD (Aguilar, Brooke, Cherny Scanlon, Gordon and Jinnah), 2007, "Summary of the Fourteenth Conference of the Parties to CITES", *Earth Negotiations Bulletin*, IISD, http://www.iisd.ca/vol21/enb2161e.html; and CITES summary records of COP-14 available at http://www.cites.org/eng/cop/14/rep/index.shtml.
2 CITES, 2007: http://www.cites.org/eng/disc/species.shtml; and USDA, 2007, *CITES I-II-III Timber Species Manual*.
3 "CITES Strategic Vision 2008–2013", CITES COP-14 Doc. 11.
4 CITES COP-14 Doc. 11.
5 COP-14 Com.II.20, italics added.
6 CITES Resolution 9.25 (Rev.CoP10) on inclusion of species in Appendix III.
7 CITES Resolution 9.24 (Rev.CoP13) on criteria for amendment of Appendices I and II.
8 *Ibid.,* Annex 2 a.
9 The FAO tasked the evaluation of proposals to an *Ad Hoc* Expert Advisory Panel composed of a core group made up of nine experts acting in their personal capacity, thirteen species and implementation experts, and a member of the CITES Secretariat.
10 "Report of the Second FAO *Ad Hoc* Expert Advisory Panel for the Assessment of Proposals to Amend Appendices I and II of CITES Concerning Commercially-exploited Aquatic Species", Rome, 26–30 March 2007. CITES COP-14 Inf.18.
11 Nearly all matters that are before the CoP for decision are first brought forward in meetings of Committee 1 (focused on listing proposals) and Committee 2 (addressing other proposed decisions and resolutions).
12 CITES Summary Records Com.I Rep.8.
13 *Ibid.*
14 *Ibid.*
15 CITES COP-14 Prop.15.
16 COP-14 summary records Com.I Rep.7.
17 CITES COP-14 Prop.30.
18 Clemente Margarita, 2007. "Comercio de Especies Silvestres: una via para aliviar la pobreza?", ABC, Madrid, 31 July 2007, p. 22.
19 CITES COP-14 Props. 31, 32 and 33.
20 CITES COP-14 Com.I.10.
21 CITES COP-14 Prop.4 and Prop.5.
22 CITES COP-14 Prop.6.
23 CITES COP-14 Prop.8.
24 CITES Resolution Conf. 12.7 (Rev. CoP13) on conservation of, and trade in, sturgeons and paddlefish.
25 CITES COP-14 Com.II.25, and COP-14 summary records Com.II Rep.13.
26 CITES COP-14 Com.I.17
27 *Ibid.*

IWC / 59th Meeting

Whaling Moratorium Upheld

The 59th Annual Meeting of the International Whaling Commission took place in Anchorage, Alaska from 28–31 May 2007. Authorised and acting under the authority of the International Convention for the Regulation of Whaling[1] (the Convention), this meeting is essentially the equivalent of a Conference of Parties, with all Convention Parties entitled to attend and vote. Its results have been widely applauded by the conservation community, due in large part to the fact that the majority of countries seemed to favour conservation issues, reversing a feared trend of previous years. As a result, several of the Meeting's resolutions[2] documented a higher level of governmental support for the international protection of whales.

The Commission expressed its appreciation that the Convention on the International Trade in Endangered Species of Fauna and Flora (CITES) continues to recognise the IWC's Scientific Committee as the predominant scientific authority to address the taking of and international trade in whales. Noting that the IWC has still not completed the measures necessary to enable regulated commercial whaling, however, the IWC parties specifically affirmed the continuation of the commercial whaling moratorium, clearly declaring that the reasons for it are still relevant and will remain so into the future. The strong support for this decision (37 for, four against and four abstentions) sent a clear signal to the Conference of the CITES Parties in Den Haag (page 376).

Relevant to whales, CITES again followed the IWC's lead, rejecting Japan's request for a review of the listing of whale species on CITES Appendix I. They did not (could not) take any other action, given the IWC's further request that the Parties respect the relationship between the two Conventions by committing not to downlist cetacean species (moving them from the completely-protected status of CITES Appendix I to the more limited protection (controlled sustainable use) status of CITES Appendix II), so long as the IWC moratorium remains in place.

Majority opposition prevented Japan from obtaining quotas for the commercial harvesting of Minke whale under the designation of small-scale coastal whaling. In its proposal, Japan sought an amendment to paragraph 10

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of the current (harvesting) Schedule to the convention,[3] asking that it include Minke whale harvests for the years 2007–2011, with the condition that the meat and products to be used exclusively for local consumption. The stated purpose underlying this request was Japan's desire to maintain community-based local whaling, which has been ongoing since harpoon technology was developed 400 years ago.

Another resolution adopted specifically recognised the legitimate management strategy and socio-economic and scientific benefits derived from the "non-lethal" use of living whale populations, especially "whale watching". They also encouraged the States to work constructively to incorporate the needs for this in future declarations and agreements. This was later bolstered by a further resolution with great political significance in which a clear majority voted against Japan's so-called scientific whaling policy.

A special view Courtesy: Daily Mail

Finally, the Commission commended Mexico's intense recent efforts to prevent the extinction of Vaqita (a small whale species in the waters around Mexico) and urged the world community to support these efforts. It also noted with approval the recent announcement of the President of Mexico regarding the creation of a conservation programme for the species. Regarding indigenous whaling, with the exception of quotas for Greenland whales off the coast of West Greenland, the Meeting was unanimous in agreeing with the Scientific Committee recommendations. The scientific recommendation for Greenland whale quotas will undergo further monitoring to ascertain if they are appropriate.

Not all conservation-oriented requests were granted, however. In particular, Brazil, Argentina and South Africa unsuccessfully petitioned to establish a South Atlantic Whale Sanctuary (SAWS) to parallel the Indian Ocean Sanctuary established in 1979. Such areas can be designated under Article V of the Convention which states that "the IWC may amend the Schedule by adopting regulations with respect to the conservation and use of whales and whale products, including the designation of sanctuary areas". In addition to the Indian Ocean Sanctuary, the Parties have designated one other such area, the Southern Ocean Sanctuary, encompassing all waters below the Antarctic Convergence, as sanctuaries for the purposes of whale research, management and conservation.

Despite varying opinions as to the future reform of the Commission, a common opinion was voiced that a "reflection" process is necessary. Considering past problems to reach decisions under the IWC, three independent meetings[4] had been organised leading up to Anchorage to discuss the Commission's future. There is now a broad intention to begin on a good note while keeping in mind the importance of international protection and the efficiency of relevant institutions. A special meeting on the future of the IWC will be convened to begin the "reflection" process. (WEB/ATL)

Iceland Suspends Commercial Whaling

The government of Iceland's Fishing Ministry has decided not to issue whaling quotas for the new whaling year beginning 1 September 2007, citing a "weak demand for whale meat". Fishing Minister Einar Kristinn Gudfinnsson noted in a national radio programme that "it is senseless to kill whales when so few customers are demanding the products". He went on to say that quotas would be issued once again if the market for whale products picked up. The Head of the Fin Whale Hunting Association countered this argument saying, "It is not the concern of the Fishing Ministry if a market for our products exists or not".

Iceland has practised whale hunting since the time of the Vikings. In 1915 Parliament decided on a moratorium and in 1948 acceded to some exceptions. In 1989, Iceland followed the international moratorium but left the IWC three years later. Most recently they joined again in 2002 but did not see themselves legally bound by its provisions due to the IWC Schedule amendment of whaling for scientific purposes. There are currently no further plans for a scientific research programme. (WEB/ATL)

Notes

1 The text of the International Convention for the Regulation of Whaling (1946) is online at: http://www.iwcoffice.org/commission/convention.htm#convention.

2 All documents from the 59th Annual Meeting of the International Whaling Commission can be found at: http://www.iwcoffice.org/_documents/commission/IWC59docs/iwc59docs.htm. They will also be published in *International Protection of the Environment: Conservation in Sustainable Development* (Oxford University Press).

3 The Schedule amended by the Commission at the 58th Annual Meeting, St Kitts and Nevis, 16–20 June 2006 is online at: http://www.iwcoffice.org/commission/schedule.htm.

4 These meetings included (i) "The Latin American Conference for the Conservation of Cetaceans" including Argentina, Brazil, Chile, Guatemala, Mexico, Panama and Peru, along with representatives of Colombia, the Dominican Republic, Ecuador, Uruguay and Venezuela, which are observer nations; (ii) a February conference organised by the Government of Japan and attended by 34 of the 72 government members of the IWC, to discuss the role of the IWC as a mechanism for enabling and regulating whaling rather than impeding it; and (iii) the PEW Foundation held the "Symposium on the State of the Conservation of Whales in the 21st Century" (April).

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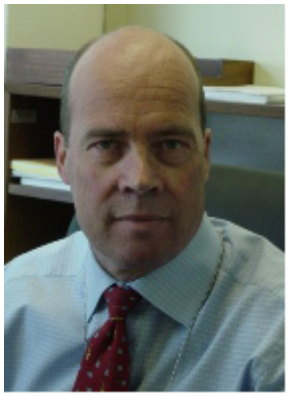
UNFF

International Cooperation in Forest Management: Choosing a Non-legally Binding Status

In their most recent sessions, the Parties participating in the UN Forum on Forests (UNFF) have decided again that there is no need for an international Legally Binding Instrument (LBI) on forest issues. This year's Seventh Session of the UNFF (UNFF-7) completed negotiations and adopted a new "Non-legally Binding Instrument on All Types of Forest",[1] supplementing the prior instruments to date. This decision's importance is not only in giving further evidence that countries are currently less willing to accept additional binding obligations, but in its indication of a further shift of international attention and effort away from forests and into a more intensive focus on climate change, as an indirect medium for achieving forest conservation.

History

The history of international forest action is generally considered to begin in 1992 in Rio, with the UN Conference on the Environment and Development (UNCED). At UNCED, significant international attention was focused on the common goal and responsibility of preserving forests of all types, as the "lungs of the planet". Out of a high level of consensus regarding the importance of this goal, the UNCED negotiators developed the *Rio Forest Principles*[2] – a non-binding instrument setting forth agreed principles of good forest management for the planet. They also supported the development of Chapter 11 "Combating Deforestation" of Agenda 21, another non-binding instrument. The decision to limit their initial work to non-binding instruments was made initially from a combination of logistical factors. Three binding instruments (the Convention on Biological Diversity, the Convention on Desertification and the Convention on Climate Change) were under negotiation with pressure for all three to be finished by the UNCED conference. All three were recognised to have intensive links to forest management issues. The idea of converting an extreme burden on negotiators into an impossible task, by adding a fourth binding instrument negotiation seemed inadvisable, at least. Beyond this, the impact of these three new instruments on forests would have to be determined and analysed, in order to maximise the value of a binding instrument. Since each square metre of forested lands is indisputedly under the sovereignty of a particular state, the notion of how international instruments on forest issues would function and what they might contribute to national forest management and conservation was far from clear.[3]



Pekka Patosaari, Director, UNFF Secretariat

Courtesy: UN

In Rio, however, the forest negotiators, NGOs and other delegates were infused with a high level of commitment and enthusiasm. Much of the discussion in that meeting expressed a confident intention that a legally binding instrument would be developed in future. This enthusiasm continued in the years following UNCED, particularly through an Intergovernmental Panel on Forests (the IPF), convened by the UN Commission for Sustainable Development (CSD). The IPF met four times between 1995 and 1997, producing a detailed document called the "IPF Proposals for Action", which advocated an aggressive programme for improvement of integrated forest management and conservation.

Following the IPF, the CSD convened a follow-on process, the Intergovernmental Forum on Forests (IFF) which met four times between 1998 and 2000. The IFF included as one critical and controversial element of its discussions, the question of whether a legally binding instrument (called the "LBI") should be developed. Ultimately, the IFF's final recommendations determined to postpone the LBI question until the effectiveness of other measures, such as the formation of a permanent UN Forum on forests, could be evaluated.

The LBI question arose again in 2004, as part of the evaluation of the performance of the IPF Proposals and the decisions of the IFF. In 2006, the CSD decided that no legally binding instrument was needed. It called instead for the development of a new non-legally binding instrument. An *ad hoc* committee was formed to assist in the development of the new instrument, which was completed and adopted at the Seventh Session of the UNFF, this April.

The New Instrument

The new instrument's stated objectives are strengthening political commitments to sustainable forest management, enhancing the contribution of forest to the Millennium Development Goals and other key objectives, and providing a framework for international forest cooperation. It is built on a series of voluntary principles which it says, "build upon the Rio Declaration on Environment and Development and the Rio Forest Principles". It identifies four specific objectives, phrased as indicators of accomplishment:

- reversing the loss of forest cover worldwide, through a variety of sustainable forest management measures including protection, restoration, afforestation, refor-

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estation and increasing efforts to prevent deforestation;
- enhancing forest-based livelihoods and other economic and social developments;
- increasing the area of protected forests, and other sustainably managed forests, and increasing the extent to which their need for forest products are met from sustainably managed forests; and
- reversing the decline in development assistance for sustainable forest management, and the mobilization of new and additional financial resources for these objectives.

It lists 25 recommended national policies and measures that should be undertaken toward the achievement of these objectives. Perhaps the most intensive focus of the new instrument, and of the decisions associated with its adoption, are those relating to the fourth objective – assistance and financial resources. The development of "proposals for a voluntary global financial mechanism/portfolio approach/forest financing framework" is a key correlative element of the decisions of UNFF-7.[4]

Evolving Interests of the Forest Community

Reportedly, the discussions in UNFF-7 were significantly less energetic and the discussions much less intense than the similar discussions under the UNCED, IPF and IFF. It is generally agreed that the international forest negotiators have generally switched their attention to the UN Framework Convention on Climate Change as a source of the funding and incentives that can help them achieve their national objectives. The proposals in that forum relating to Reducing Emissions from Forest Degradation and Deforestation (REDD) have been seen as a link of national forest management practices into the Kyoto Mechanisms which are still perceived by some to be a source of significant funding for conservation and sustainable forest management. The more direct efforts at addressing threats and problems in forest, represented by the Rio, IPF and IFF instruments, have been temporarily eclipsed.

The upcoming UNFCCC COP in Bali, and its adoption of a forest-related programme, may have a significant impact on, and contribute to, international forest management and its financing. If and when it does so, it is hoped that the new non-legally binding instrument will provide a basis for addressing all elements and creating a new coordinated approach to protecting the lungs of the Earth. (WEB/TRY)

Notes

1 The new instrument is included as Appendix 1 of Chapter 1 of the Report of the Seventh Session of the UNFF (E/2007/42 E/CN.18/2007/8).

2 Officially known as the "Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types Of Forests" (June 1992) available online at http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm.

3 Prior to that time, international forest instruments such as the International Tropical Timber Agreement (Geneva, 1983 and its successor, adopted in Geneva, 1994, which entered into force in 1997). The ITTA has somewhat evolved from a predominantly market-oriented instrument into a broader, sustainable development focus.

4 See especially "Programme Budget implications of the recommendations contained in the report of the UNFF on its seventh session" (E/2007/L.22).

Courtesy: UN

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CBD

The Institutional Dimension of Sustainable Development

by Ahmed Djoghlaf*

The United Nations Conference on Environment and Development, held in Rio de Janeiro in June 1992, was a landmark event for multilateral cooperation for development. In delivering his closing remarks, one of its architects, Maurice Strong, Secretary-General of the Conference, declared that it "was an extraordinary human experience". It was the first international conference focusing on the relation between environment and development, as well as the largest multilateral gathering ever held, both in terms of numbers of participants and the level of representation. It was, therefore, the starting point for a new institutional era and a new approach to multilateral cooperation for environmental protection. One of its most important outcomes was the concept of sustainable development – which continues today to be heavily laden with meaning. This concept emerged to transcend the North-South divide, as well as the gap between economy and environment. It presented and continues to present an imposing challenge to be met by a far-reaching international agenda as well as international institutions fully equipped to respond with efforts aimed at protecting life on Earth.

Stockholm 1972 – A New Framework for Addressing Global Environment Challenges

In June 1972, 1,400 participants, representing 113 States, met in Stockholm for the United Nations Conference on the Human Environment. This event laid the conceptual and institutional foundations of international cooperation on environmental protection and brought forth a new dynamism in the dialogue between developing and industrialised countries concerning the need to ensure economic growth while responding to the environmental challenges including biodiversity loss, as well as water and air pollution. In addition to placing environmental protection firmly among the international community's main concerns, this Conference laid the foundations of sustainable development, to be established more formally some twenty years later.

In 1971, in preparation for Stockholm, a meeting in Founex, Switzerland, considered the relationship between environment and development. The Founex Report, to which some experts attribute the contemporary acceptance of the concept of sustainable development, noted that, to a large extent, the environmental problems facing developing countries can only be resolved through development. The report advocates a different model of economic growth, replacing the existing one which focuses primarily on gross domestic product. The Report came to an important, forward-looking and somewhat unexpected conclusion – that "development is the remedy to environmental problems of developing countries". Some experts cite this as the first definition of the concept of sustainable development. The "Founex approach" is interwoven with the results of the United Nations Conference on the Human Environment. This approach is fully reflected in the Stockholm Declaration. Though the concept of sustainable development is not mentioned explicitly in the Stockholm Declaration, no less than one third of its 26 principles relate to the environment-development link as defined in the Founex Report.

Principle 10 of the Stockholm Declaration provides that "For the developing countries, stability of prices and adequate earnings for primary commodities and raw materials are essential to environmental management, since economic factors as well as ecological processes must be taken into account." Principle 11 states that "The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all". Principle 1 of the Stockholm Declaration establishes the responsibility of the present generation to preserve the environment for the benefit of future generations. It declares that "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 a solemn responsibility to protect and improve the environment for present and future generations."

The Stockholm Conference adopted the first global action plan for environmental protection containing 109 national and international recommendations as well as 150 separate proposals. The Action Plan, like the Stockholm Declaration, laid the groundwork for international cooperation on environmental protection and contributed to the emergence of modern international environmental law. The Stockholm Conference also led to the creation of the first United Nations entity devoted entirely to the protection of the environment.

The United Nations Environment Programme

Following a recommendation adopted by the Stockholm Conference, the United Nations General Assembly, in adopting its resolution 2997 on 15 December 1972, decided to establish the United Nations Environment Programme, with the following main functions and responsibilities:

- Advance international cooperation in the environment sector and recommend, as appropriate, policies oriented in that direction;
- Provide general policy guidance for the coordination

* Executive Secretary of the Convention on Biological Diversity.

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of environmental issues throughout the United Nations system;
- Receive and assess regular reports of the UNEP Executive Director on the implementation of environmental programmes throughout the United Nations system;
- Monitor the global environmental situation in order to ensure that problems of international impact will be appropriately examined by the governments;
- Encourage the scientific community and other competent international professional communities to contribute to the acquisition, assessment and exchange of knowledge and information concerning the environment, as well as to, if possible, the technical side of

Ahmed Djoghlaf Courtesy: IISD

developing and implementing environmental programmes throughout the United Nations system;
- Perform ongoing analyses of (i) the impact that national and international environmental policies and measures have on developing countries, and (ii) the problem of supplementary costs that arises for developing countries when implementing environmental programmes and projects; and
- Ensure that environmental programmes and projects implemented in developing countries are compatible with the development plans and priorities of those countries.

To mark the tenth anniversary of the Stockholm Conference, the UNEP Governing Council organised a special session in Nairobi in May 1982. This first special session brought together a new generation of environmental experts from around the world to provide, based on the experience gained in the 70s, a new impetus to projects, policies and institutions in the environmental field. At this occasion, the Governing Council adopted a resolution on the results achieved in the implementation of the Stockholm Action Plan and the challenges to be met by the international community. At the tenth session of the Governing Council, held immediately after the special session, the Montevideo Programme for Development and Periodic Review of Environmental Law was adopted, intended to provide strategic guidelines to UNEP for promoting the development of treaties and other international agreements in the environmental field.

Multilateral Agreements on the Environment

The Stockholm Conference also paved the way for the strengthening of the international legal regime for environmental protection through new international agreements on the environment. Prior to 1962, fewer than 42 international environmental treaties existed. Today, there are more than 500,[1] of which more than 60% were adopted after the United Nations Conference on the Human Environment. Forty per cent concern biodiversity.

Since 1972, the pace of creating multilateral environment agreements continued to increase. Of a sample of 302 such agreements, 197 (almost 70%) were regional in focus, a trend enhanced by the creation of regional integration bodies dealing with the environment in regions such as Central America and Europe. In many cases, the regional agreements are directly linked to global agreements or programmes. The underlying value of the regional approach is exemplified by, for example 17 multisector conventions and action plans for regional seas, established through a process of 46 regional seas conventions, protocols, amendments and subsidiary agreements. Indeed, multilateral environmental agreements concerning the marine environment represent more than 40% of the total number of MEAs, including the United Nations Convention on the Law of the Sea (1982), the new conventions and protocols of the International Maritime Organization on marine pollution, and agreements on regional seas, as well as regional conventions and protocols related to fisheries.

Legal instruments related to biodiversity form a second major group and include also the major global biodiversity conventions such as the Convention Concerning the Protection of the World Cultural and Natural Heritage (1972), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973), the Convention on the Conservation of Migratory Species of Wild Animals (CMS) (1979), etc.

The Stockholm Conference also provided for the emergence of two new groups of major agreements, namely, conventions concerning chemical products and hazardous waste on the one hand, and conventions concerning the atmosphere and energy on the other hand. The first group includes a number of conventions com-

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ing under the International Labour Organization and concerning occupational risks in the workplace. The most progressive conventions on the atmosphere and energy are the Vienna Convention for the Protection of the Ozone Layer (1985) and its sequel, the Montreal Protocol (1987).

Implementational and Financial Mechanisms of the Stockholm Era of the Multilateral Environmental Agenda

The thirty-fourth session of the United Nations General Assembly, in adopting resolution 2997 on institutional and financial arrangements for international environmental cooperation, decided, in creating the United Nations Environment Programme, to establish a mechanism for financing activities under the Stockholm Action Plan. The Environment Fund was created to allow the United Nations Environment Programme to play its coordinating role in environmental action and to finance, in whole or in part, the cost of new environmental initiatives and projects of general interest such as assessment and follow-up of the state of the global and regional environment, the gathering of environmental information, the exchange and dissemination of information, public education, training, and support to regional and international environmental institutions. Financed through voluntary contributions, the Environment Fund quickly reached its limits. At the peak of its activities, the Fund had an annual budget of barely 120 million dollars to assist no fewer than 132 countries, members of the Group of 77, in dealing with their diverse environmental challenges. Based on this experience, the Group of 77 was adamant to put the issue of financing environmental action at the heart of the preparatory process of the Rio Conference on the Environment and Development, held 20 years after the Stockholm Conference.

The Institutional Architecture of Environmental Governance in the Rio Era

While the first conference on the environment took place in Stockholm in 1972 with the participation of just two heads of State, including the representative of the host country, Rio assembled, for the first time in the history of the United Nations, more than 100 heads of State or government. The Rio Summit was also a singular event due to the very purpose of its deliberations. It was not a second Stockholm meeting. The Rio Conference was the first United Nations conference to address the nexus of environment and development. At Rio, Maurice Strong first promoted the idea of the Earth Charter, although eventually the participants chose to adopt a Declaration articulating the fundamental principles of sustainable development popularised by the Brundtland Commission.[2]

The Rio Conference also constituted a historical turning point because of the level of representation. It was not the first international conference on the environment attended by heads of State, but it was the first to be held directly under the auspices of the United Nations organisation. In the spring of 1989, the President of France, François Mitterrand took the initiative to convene a mini-summit of twenty-five heads of State – the first-ever summit of heads of state on environment – at The Hague as part of the preparations for the negotiations on the framework convention on climate change. This initiative, held outside the United Nations, was the forerunner of the UN-sponsored Rio process. More than 100 Heads of state attended the Earth Summit (The United Nations Conference on Environment and Development), which elevated the issue of the environment to the level of heads of state, and in turn into an issue of relevance to peace and security, requiring the attention of the highest level of decision makers. Environmental decision-making was seen to set the course of the history of nations, with governments recognising that the severity of damage to the planet's physical integrity represents one of the most severe threats to the survival of the human species.

The massive participation of heads of State in Rio was accompanied by an unprecedented involvement of civil society on issues related to environment. For the first time in the history of the United Nations, more than 1,500 representatives of NGOs attended the meeting and made their voice heard. While there were only 2,890 international NGOs dealing with the environment at the time the conference ended, more than 29,000 were already in existence just a few years later. India, for example, has more than one million NGOs today. In Rio, the civil society movement emerged as a main actor for the protection of the environment and was determined to play its role. Today, the ten biggest NGOs mobilise greater financial resources for the environment than all the countries in the OECD Development Assistance Committee taken together.

In June 1992, twenty years after the Stockholm Conference, the First Earth Summit led to the adoption of the Rio Declaration and of Agenda 21 containing some 2,500 recommendations. Chapter 38 of Agenda 21 on institutional matters redefines the tasks of environmental actors, including those of the United Nations Environment Programme. It also led to the creation of the Commission on Sustainable Development. The Rio Declaration specifically emphasises that "the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations". Principle 1 provides that "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature". Principle 4 states that "in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it". The 1993 World Conference on Human Rights held in Vienna insisted, in the wake of attention given to sustainable development in Rio, that the right to development and a healthy environment are the other side of the same coin. The subsequent 1995 World Summit for Social Development, in Copenhagen, referred to the concept of sustainable development by emphasising its social dimension.

The Commission on Sustainable Development

Following the recommendation of the Rio Summit, the United Nations General Assembly created, as a technical

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commission of the United Nations Economic and Social Council, the Commission on Sustainable Development (CSD). Its mission: to ensure effective follow-up of decisions of the Earth Summit as well as to integrate environment and development into intergovernmental processes.

Comprising 53 States elected by the United Nations Economic and Social Council, the CSD has been given the following main functions:

- Assess the progress achieved in the implementation of Agenda 21 and in the integration of goals related to the environment and development throughout the United Nations system;
- Examine the progress achieved in the execution of commitments made in Agenda 21, including those related to financial contributions and technology transfer;
- Regularly assess and monitor the progress accomplished in the realisation of the United Nations goal that developed countries will devote 0.7 per cent of their gross domestic product to public development programmes;
- Receive and analyse information provided by appropriate NGOs, the scientific community and the private sector concerning the implementation of Agenda 21;
- Strengthen dialogue in the United Nations system with NGOs and the independent sector as well as with other non-United Nations organisations;
- Examine, if need be, information concerning progress achieved in implementing conventions related to the environment;
- Examine recommendations of the Secretary-General concerning measures to strengthen capabilities, information networks, special teams and other mechanisms likely to promote the integration of environmental and developmental issues at regional and sub-regional levels.

The Revitalisation of the United Nations Environment Programme

Chapter 38 of Agenda 21 calls for the strengthening of the United Nations Environment Programme in order to allow it to play its role as principal organ of the United Nations system responsible for the environmental dimension of sustainable development. In the framework of preparations for Rio+5, the nineteenth session of the UNEP Governing Council, held in February 1997, adopted the Nairobi Declaration, recognising the new key role of UNEP in the post-Rio era as the main United Nations organisation concerned with the environment and encouraging the coherent integration of the environment as a major global concern into the United Nations system. Reaffirming the pertinence of the initial UNEP mandate arising from General Assembly Resolution 2997 (XXVII), the signatories of the Nairobi Declaration mandated UNEP to follow the evolution of the environmental situation at the global level so that new environmental problems of major international scope are examined appropriately and adequately by governments.

UNEP's mandate thus concerns the ethical dimension of global issues. To solve the main environmental problems, it must ensure development that is economically efficient and socially fair while being ecologically sustainable. The underlying ethical considerations are indispensable elements that must be considered in developing solutions to major global challenges. Sustainability supported by an ethical dimension has an essential place in sustainable development as it comprises the foundation and support base for all action. UNEP was then mandated to:

a) Analyse the state of the global environment and determine the evolution of the environment at the global and regional levels, propose guidelines, issue warnings in case of environmental threats, and initiate and promote international cooperation and measures through state-of-the-art scientific and technical means;
b) Promote the development of international legal systems related to the environment with the goal of achieving sustainable development, including the building of sound relations between the international environmental conventions in force;
c) Advance the application of international standards and policies, monitor and promote compliance with international principles and agreements concerning the environment and encourage cooperation activities when dealing with new environmental problems;
d) Strengthen its role as coordinator of environmental activities within the United Nations system as well as its role of executing body of the Global Environment Facility by applying its relevant advantages as well as its specialised scientific and technical knowledge;
e) Increase awareness among all sectors of society and all those who take part in implementing international action in favour of the environment, promote true cooperation between them, and serve effectively as a link between the scientific community and decision-makers at the national and international levels;
f) Define policies and provide consulting services for governments and the appropriate institutions in key areas.

Adopted in the framework of preparations for the nineteenth special session of the United Nations General Assembly, convened five years after the Rio Summit, the Nairobi Declaration was endorsed by the Programme for the Further Implementation of Agenda 21 adopted on that occasion.[3] Accordingly, a stronger role was given to UNEP in coordinating multilateral environmental agreements.

Multilateral Environmental Agreements in the Rio Era

In addition to the political declaration, the Rio Conference provided an ambitious guideline for the 21st century (Agenda 21), guidelines on forests (the Forest Declaration), as well as the first international legal instruments translating into legal terms the concept of sustainable development thus integrating this concept into the reality of the international legal system (the Convention on Biological Diversity and Framework Convention on Climate Change, also paving the way for the June 1994 adoption of the Convention to Combat Desertification), now commonly known as the "Rio Conventions".

Compared to the preceding legal instruments, the Rio Conventions are groundbreaking, in that they implicitly

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define methods for complying with the major principles of sustainable development in order to achieve their respective purposes. They emphasise, among other matters, the importance of social and economic development as underlying conditions in the integrity of ecosystems. Without the Rio Conference deadline, it is highly probable that the negotiations for adopting a Framework Convention on Climate Change, as well as the negotiations for the Convention on Biological Diversity, finalised in record time and ready for signing in Rio, would have got bogged down and lost their initial momentum. In Rio, for the first time in the history of international environmental law, an impressive number of heads of State and government readily put their personal signatures to these two new-style international agreements.

In addition to their approach, which clearly stands apart from conventional environmental considerations, the Rio Conventions also translate into legal terms other key principles contained in the Rio Declaration. For example, the principle of shared but differentiated responsibility of States was laid out in article 3(1) of the Framework Convention on Climate Change, articles 16 and 20 of the Convention on Biological Diversity, and articles 3, 5 and 6 of the Convention to Combat Desertification.[4]

Like all multilateral environmental agreements adopted since 1972, the Rio Conventions have the following institutional elements: a secretariat, a Bureau or a standing committee, advisory bodies, an information mechanism. The conferences and the meetings of the Parties constitute the bodies that have a final say on the application and evolution of each accord, including the work programme, the budget and the adoption of protocols and appendices. The Rio Conventions, for their part, stand out from other international legal agreements because of the explicit designation of a distinct financial mechanism mandated to provide developing countries with new and additional financial resources required to implement their contractual commitments, in compliance with the principles of shared but differentiated responsibility of States established by the Rio Declaration.

The Global Environment Facility: a New Financing Mechanism for Sustainable Development

Based on the principle of new and additional financial resources, the Rio Conventions called for the establishment of a distinct financial mechanism to assist developing countries in implementing their contractual commitments contained in the Rio Conventions. These provisions utilised the principles of the first special fund set up by a convention, the Multilateral Fund for the Implementation of the Montreal Protocol for the protection of the ozone layer.[5]

Created in the wake of preparations for the Earth Summit, the Global Environment Facility (GEF) very quickly emerged as the financial mechanism of the Rio Conventions and, consequently, as the principal financial mechanism of sustainable development. It has since encompassed a separate global mechanism set up by the Convention to Combat Desertification for mobilising financial resources for eligible countries under the auspices of the International Fund for Agricultural Development (IFAD) and in partnership with the World Bank and UNDP. That brokerage mechanism has the mission of enhancing the effectiveness and efficiency of existing financial mechanisms and of promoting the mobilisation of financial resources for the application of the Convention, and is now presented as a GEF/IFAD partnership.

This financial mechanism, innovative in many ways, is without a doubt one of the most important achievements of the Rio dynamic. It embodies the very idea of inter-agency institutional partnership at two levels. The first level represents the United Nations as represented by the United Nations Environment Programme (UNEP) and the United Nations Development Programme (UNDP). The second level represents the Bretton Woods institutions and the United Nations system. In this way, it is the first tangible manifestation of a strategic alliance between the United Nations and the World Bank Group. The GEF operates with three "implementation agencies" (UNEP, UNDP and the World Bank) and seven "execution agencies" (four regional development banks, FAO, IFAD and UNIDO).

In the course of its first decade, the GEF allocated more than US$4.2 billion in donations and mobilised no less than US$16 billion in additional resources to finance more than 1,600 projects for global environmental protection in more than 160 eligible countries. In this way, 46 million dollars were distributed to 139 countries to assist them in preparing their strategies or action plans to comply with the Convention on Biological Diversity. A similar financial allocation was provided to 120 developing countries to assist them in the preparation of their greenhouse gas inventories in keeping with their obligations as contractual Parties to the Framework Convention on Climate Change. A similar contribution was granted to 110 countries to enable them to prepare their national implementation plans under the Stockholm Convention on persistent organic pollutants. The Stockholm Convention can be considered as the fourth Rio convention and was opened for signature in May 2001. Without the support of the GEF, it is highly probable that such commitments would not have gone beyond the stage of good intentions.

GEF projects respond to the demands of 15 operational programmes in the following fields:

a) Biodiversity: arid and semi-arid ecosystems; coastal and marine ecosystems; forest ecosystems; mountain ecosystems; and agro biodiversity. The GEF also provides a strategy to finance eligible activities included in the Cartagena Protocol on Biosafety;
b) Climate change: elimination of obstacles to energy yield and energy savings; promotion of renewable energy use by eliminating obstacles and reducing the costs of applying renewable energy; in the longer term, reduction of the costs of energy technologies with low greenhouse gas emissions; promotion of ecologically viable transport;
c) International waters: an operating programme based on specific bodies of water; an operating programme integrated with many areas of activity involving land

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and water; an operating programme based on contaminants;
d) Multiple areas of intervention: integrated management of ecosystems;
e) The fight against desertification;
f) Persistent organic pollutants.

However, the proliferation of sustainable development actors has led the international community – in the framework of preparations for the Summit on Sustainable Development in Johannesburg, held ten years after the Rio Summit – to emphasise the need for a greater coherence of multilateral action for sustainable development.

The Institutional Architecture of Environmental Governance in the Johannesburg Era

In 1998, the Secretary-General of the United Nations, Kofi Annan, decided to set up, in the framework of United Nations reforms, a Task Force on Environment and Human Settlements, comprising 21 eminent personalities and headed by Klaus Töpfer, then UNEP Executive Director. The Task force was mandated "to examine the existing arrangements and structures with regard to the environment in order to evaluate their effectiveness and to submit recommendations aiming to improve their functioning". The Task Force met four times in 1998, ultimately providing recommendations, that were presented to the UNEP Governing Council and adopted in 1999 by the General Assembly under resolution 53/242. The Task Force expressed its concerns about the proliferation of institutional players in the environment and the lack of coherency of the environmental governance. It recommended the establishment of the Environment Management Group, which was subsequently established by the United Nations General Assembly. The Task Force also recommended setting up a Global Ministerial Environment Forum to meet once a year outside the regular sessions of the UNEP Governing Council sessions, and away from its headquarters in Nairobi in order to be closer to the regions.

At their first meeting, held in Malmö, Sweden, in May 2000, the participants of the Global Ministerial Environment Forum adopted the Malmö Declaration, agreeing that the 2002 Global Summit on sustainable development should "review the requirements for a greatly strengthened institutional structure for international environmental governance based on an assessment of future needs for an institutional architecture that has the capacity to effectively address wide-ranging environmental threats in a globalizing world. The UNEP's role in this regard should be strengthened and its financial base broadened and made more predictable."

In February 2001, the 21st session of the UNEP Governing Council adopted decision 21/21 instituting an intergovernmental group of ministers on international environmental governance. The group was mandated "to undertake a comprehensive policy-oriented assessment of existing institutional weaknesses as well as future needs and options for strengthened international environmental governance, including the financing of UNEP". The Group met four times in that year, and submitted and adopted its report at the seventh special session of the UNEP Governing Council held in Cartagena in February 2002. Then in September 2002, the World Summit on Sustainable Development called for the implementation of this "Cartagena initiative on international environmental governance".

This recommendation, contained in the Johannesburg Plan of Implementation, coincided with the launch of the initiative of the French President Jacques Chirac to transform UNEP into a World Environment Organisation, a proposal that was considered in detail by a working group comprising 26 countries, which submitted its report in April 2005. The French President's proposal was reflected in the declaration adopted by the 154 heads of State or government who met in New York in September 2005 in the framework of the Millennium Summit on the Assessment of Development Commitments. The Paris Conference for a Global Ecological Governance, held on 2–3 February 2007, adopted the Paris Message for the transformation of the United Nations Environment Programme into a "fully-fledged international organisation that is genuinely universal". Modelled on the World Heath Organization, the United Nations Environment Organization will be a strong voice with global recognition. To this end a group called "the Friends of the United Nations Environment Organization", comprising 40 countries, was established.

The outcome of the World Review Summit of the United Nations General Assembly on the issue of international environmental governance reflects the willingness of the international community to continue exploring ways and means to build new international environmental governance that can respond more effectively to the environmental challenges facing mankind while avoiding institutional duplication and overlap. A parallel study, undertaken as a follow-up to the 2005 Review Summit, was conducted by a panel of eminent personalities appointed by the UN Secretary General to explore how the United Nations system could work more coherently and effectively across the world in the areas of development, humanitarian assistance and the environment.[6]

The panel comprised 15 members and was co-chaired by the Prime Ministers of Pakistan, Mozambique and Norway. Never in the history of the United Nations had a panel of eminent personalities succeeded in gathering together such an impressive number of government high officials for the task in hand. The report of the panel entitled "Delivering as one" was submitted to the Secretary General on 9 November 2006. It noted that the United Nations now encompasses 17 specialised agencies and related organisations, 14 funds and programmes, 17 departments and offices of the United Nations Secretariat, five regional economic commissions, five research and training institutions and a number of regional and country-level structures. Its report was submitted at the sixty-first session of the General Assembly.

It noted that more than 30 United Nations agencies and programmes are involved in environmental issues.

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A survey of the panel revealed that the three Rio Conventions have up to 230 meetings annually. The figures for the global environment agreements, not included the regional agreements, rises to almost 400 days. As an example, more than 300 meetings were convened under the Convention on Biological Diversity since its first meeting of the Conference of the Parties held in Nassau, Bahamas, in December 1994. Ultimately, the Panel recommended that the Secretary General should commission an independent assessment of the current United Nations system of international environmental governance. In addition, the President of the sixtieth session of the General Assembly called on the ambassadors of Switzerland and Mexico to initiate consultations on international environmental governance.

Addressing the Regional High-Level Consultation in support for greater coherence of the United Nations family, held in March 2007 at the initiative of Norway and Indonesia, the Secretary General of the United Nations, Ban Ki-Moon stated:

> *It is a priority for the United Nations to bring its many disparate forces together to address the world's pressing development needs. That challenge was at the heart of the recommendations put forward last year in the report of the High-Level Panel on United Nations System-Wide Coherence. The Panel's report, "Delivering as One", presents an ambitious, yet achievable, vision of a harmonised and accountable United Nations system. I intend to set out for Member States my views on the substance of the report, and how to approach its follow up, in close consultation with them.*

He cautioned however that "to succeed fully, we need strong political support from the Member States".

Conclusion

The complexity of the institutional dimension of sustainable development at the international level reflects both the difficulty of translating the concept into reality and the complexity prevailing at national level. The nations of the world, small or big, are still struggling to integrate the environmental concerns into their economic processes at all levels. Such a challenge is reflected in the mosaic of international organisations dealing with the four pillars of sustainable development namely: economic, social, environmental and cultural. At the national level many actors and institutions are involved in issues related to these four dimensions. The coherency of multilateral actions in sustainable development demands more effective coordination of national actors, as stakeholders of multilateral organisations.

Coherence of the institutional environmental governance calls for the translation into reality, at the national level, of the concept of sustainable development, which will require an enhanced coherence of all actors involved. The fragmentation of the current international environmental governance reflects also the difficulty of adapting the original mandates of existing institutions to the needs and requirements of integrating the environmental dimension within the economic, social and cultural development processes.

The development of international environmental law and the emergence of associated institutions are a sign that the international community is entering an important phase in which technologies, communications and science are evolving more rapidly than ever and present special opportunities for responsible institutional changes – changes which cannot be achieved without strong political will and a North-South consensus.

Since Rio, new national actors in the international arena have emerged. The growing and evolving role of the emerging developing countries need to be fully taken into account in re-shaping the institutional component of sustainable development. The voice of their people and their legitimate economic needs should be taken into account so as to ensure a broad-based international consensus for an institutional reform agenda. In this regard the G8+5 action plan on biodiversity adopted in Potsdam, on 15–16 March 2007, by the ministers of the environment of the eight richest countries in term of finance and technology and the five richest countries in term of biodiversity, should be welcomed as a model to address global environmental challenges including its institutional component.

In working together as members of the same family of nations, the international community will be able to meet the major environmental challenges of the 21st century. The measures we will take and the investments that we will make in the course of the next few years will be decisive for our evolution. As stated by the Brundtland report, twenty years ago, the name of our future is sustainable development and can only be common and shared by all, present and future generations alike.

Notes

1 Depending on definition, some experts estimate the number of international and regional treaties on the environment to range between 800 and 1,000.

2 In adopting its resolution 38/161 of 19 December 1983, the United Nations General Assembly created a World Commission on Environment and Development mandated to propose long-term environmental strategies for achieving sustainable development by the year 2000. In 1987, the Commission published its report – today known under the name of its President, Gro Harlem Brundtland, a former prime minister of Norway – which summarises the main institutional challenge of the 1990s as follows: "The ability to choose policy paths that are sustainable requires that the ecological dimensions of policy be considered at the same time as the economic, trade, energy, agricultural, industrial, and other dimensions – on the same agendas and in the same national and international institutions."

3 S-19/2, appendix.

4 That principle is also reflected in the different time frames and grace periods accorded to developing countries in eliminating substances that deplete the ozone layer, specifically in accordance with article 5 of the Montreal Protocol and the London Amendment of 1990. Through its first article, the Cartagena Protocol on Biosafety, which entered into force on 11 September 2003, promoted the principle of precaution of the Rio Declaration into a legal norm.

5 Established as a pilot project in 1991 under the auspices of UNEP and in partnership with the World Bank, UNDP and UNIDO, the Multilateral Fund was transformed into a permanent mechanism of the Protocol in January 1993. It contributes financial and technical cooperation and ensures technology transfer for implementing their commitments to the Protocol at no cost to the eligible Parties or under favourable conditions.

6 Some of the environmental aspects of this decision will be reported in a detailed report on CBD developments, in issue 37/6.

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