

REFERENCES TO OTHER TOPICS

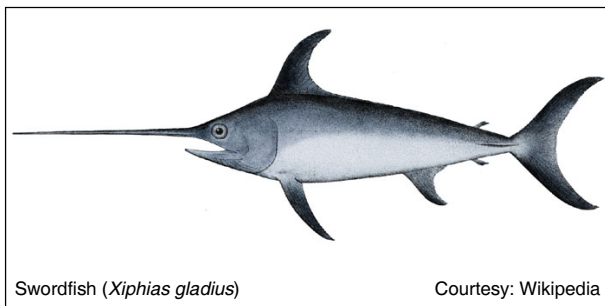
Political Tensions between Peru and Chile

Continuing disputes over the maritime boundary between their two countries have been brought before the ICJ. Although essentially a legal claim (which of three bilateral agreements is/are controlling the boundary between the two countries' national waters), the dispute is causing a high level of political concern, following Chile's decision to recall its Ambassador to Peru. Substantively, the lawsuit would resolve the countries' mutual desires for exclusive control over the fisheries and other resources in a 37,900km² area of ocean. The filing of the dispute in the ICJ, rather than the International Tribunal of the Law of the Sea (ITLOS) arises out of two facts: (i) Peru is not a Party to the UN Convention on the Law of the Sea (UNCLOS); and (ii) Chile executed a declaration when it signed UNCLOS, exercising its rights under Article 298 of that agreement (*i.e.*, refusing to accede to the Tribunal's jurisdiction over maritime boundary disputes). The ICJ estimates that the litigation process will take at least five years before it can decide this claim, on the basis of international customary law.

(<http://www.icj-cij.org/homepage/index.php?lang=en>).

Swordfish Conservation Issues Remain Active between Chile and the European Union

The longstanding "swordfish dispute" between the EU and Chile remains open in both the WTO and ITLOS, as the two countries continue to attempt to resolve what has become a perennial negotiation between them. Originally filed by the EU in the WTO, and by Chile in ITLOS, the case ostensibly revolves around the imposition and/or need for conservation measures governing the international swordfish fishery in the South-east Pacific. It also questions the Parties' rights under UNCLOS regarding marine conservation and sustainable development of fisheries and fish stocks. If both are activated, the cases will necessitate judicial balancing between UNCLOS and the WTO's provisions regarding the use of environmental laws as hidden barriers to trade, as the EU claims that Chile's restrictions on unloading swordfish in Chilean ports constitutes an impermissible trade distortion. Sword-



Swordfish (*Xiphias gladius*)

Courtesy: Wikipedia

fish are considered to be "highly migratory species", potentially bringing the provisions of the UN Fish Stocks Agreement under scrutiny. The two lawsuits were initially filed in 2000, and suspended but not withdrawn, based on a settlement agreement. The suspensions have been continued several times due to disputes over whether the parties are complying with the settlement.

See websites of the ITLOS and WTO.

Conservation Measures in the Atlantic Tuna Fishery

During its 20th regular meeting in Antalya (Turkey) the International Commission for the Conservation of Atlantic Tunas adopted a range of species conservation measures, primarily calls for better recordkeeping and reporting, and the use of accepted equipment to prevent by-catch. These measures focused on non-commercial species affected by the fishery, such as mako and porbeagle sharks, as well as seabirds. The Commission also strongly supported international programmes for the use of vessel monitoring systems (VMS) throughout the fishery. It adopted a wide range of quota-setting and seasonal closure provisions, including seasonal closure of the Mediterranean swordfish fishery (see above) and considered a three-to-five-year closure of

the fishery, based on fears of potential collapse and the example of the EC which recently decided to close its bluefin tuna fishery for the rest of the year, once its quota limits had been exceeded. (TRY/ATL)



Courtesy: Wikipedia

CITES: Caviar Tracking Mechanism

Recognising the serious challenge posed by the international caviar trade, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in conjunction with the UNEP World Conservation Monitoring Centre (UNEP-WCMC) has developed a computerised database designed to "track shipments of caviar around the world". Owing to its negative impact on endangered sturgeon populations, trade in caviar has been limited under CITES for several years. At the same time, in recognition of the significance of this trade to the economic well-being of many countries in Central and Eastern Europe, those limitations have sought to enable a relatively high level of sustainably harvested caviar. The high value of increasingly scarce caviar has led to a significant "black market". The new system hopes to curtail illegal trade as a first step in the slow process of recovery of this long-lived species.

(<http://www.unep-wcmc.org/citestrade/caviar/>).

UNFCCC: Developing Countries Perceive Support

News reports in India describe the expressed position of Yvo de Boer, Executive Secretary of the United Nations Framework Convention on Climate Change, to be clear support for the developing countries' position on climate change. These reports are based on the fact that de Boer "pulled up the United States for its failure to do enough to curb the green house gas (GHG) emissions" while stating the view that developing countries "cannot be forced to compromise by setting emission targets at the cost of their development". He also made strong and impassioned pleas for global cooperation in tackling the climate change problem, while recognising the need to define "measurable, reportable, and verifiable appropriate emission limitation commitments for developed countries as well as mitigation actions for developing countries".

UNCCD Highlights the Global Mechanism

In remarks at the International Conference on Combating Desertification (Beijing, China), UNCCD Executive Secretary, Luc Gnacadja, highlighted the Convention's Global Mechanism, noting that it "stands ready to assist countries in the development of integrated financing strategies in order to maximize access to resources available from the domestic, foreign, public and private sectors".

Further information on the Global Mechanism is available at <http://www.un.org/esa>. Information on the Beijing meeting is at http://www.un.org/esa/sustdev/sdissues/desertification/beijing2008/beijing_statement.pdf.

Davos Forum Considers Climate Change

The theme of the World Economic Forum (Davos, Switzerland) was "The Power of Collaborative Innovation". Following the lead of recent G-8 meetings, the forum included specific sessions on climate change, disease eradication, natural resources and other environmental factors, including the relevance of environmental issues in the goal of "bridging global divides". The meeting's environmental discussions focused most significant attention on regulatory issues.

Gorilla Conservation Measures

The Convention on Migratory Species (CMS) concluded negotiations on the conservation of gorillas and their habitats (the Gorilla Agreement) in Paris. Nine of the ten gorilla Range States were represented in the negotiations. Also present were representatives from three non-range (donor) States, UN bodies, 12 NGOs and scientific institutions. The negotiators also approved a Resolution on Interim Arrangements under which the CMS Secretariat was asked to perform interim secretariat services. Two countries signed the instrument with four others joining in signing the final act. The Agreement will remain open for signature for six months. The Agreement will enter into force when three range states ratify it.

(http://www.cms.int/bodies/meetings/regional/gorillas/gorilla_meeting.htm). (ATL)



Courtesy: Wikipedia

ECOSOC Annual Ministerial Review

ECOSOC has adopted the themes for its next two Ministerial Reviews (AMR). The 2008 theme is "Implementing the internationally agreed goals and commitments in regard to sustainable development" and the theme for 2009 is "Implementing the internationally agreed goals and commitments in regard to global public health". The AMR for 2008 will take place during the High Level Segment of ECOSOC, to be held at UN Headquarters during the first week of July.

See: <http://www.un.org/ecosoc/newfunct/amr2008.shtml>. (ATL)

ITTO: 43rd Session Council

ITTC-43 in Yokohama (Japan) was the first Council session to be held during the tenure of the new Executive Director, Emmanuel Ze Meka. Delegates discussed issues related to operational, project and policy work for 2008–2009, including, *inter alia*: the CITES listing proposals by members; annual review and assessment of the international timber situation; and preparations for entry into force of the International Tropical Timber Agreement, 2006. The Council adopted the ITTO Biennial Work Programme for 2008–2009, with a total budget of US\$9.2 million. Part of the funding announced included US\$4 million targeted at Tropical Forest Law Enforcement and Trade. Currently, the ITTA, 2006, has only been ratified by four states – the USA, Malaysia, Switzerland and Poland – and must be ratified by 10 consumer and 12 producer countries before it enters into force. Documents can be found under "Councils and Committees" on the ITTO website at: <http://www.itto.or.jp/live/index.jsp>. (ATL)

Doha Round: Discussions of Fisheries Subsidies

The WTO has opened its first formal negotiations toward a draft consolidated text on fisheries subsidies, which had been

tabled by the Chair, Ambassador Guillermo Valles Games (Uruguay). At issue are the typical blend of WTO concerns. On the one hand, discussions seek to address the problem of overfishing (by banning subsidies that operate to encourage it), while not distorting trade relations. On the other, many negotiators are focusing on the need to differentiate between subsidies that "level the playing field for developing countries" and other subsidies. The first round of negotiations has been described as a "search for an acceptable middle ground between supporters of a 'top-down' blanket ban on fisheries subsidy payments (with negotiated exceptions), and countries that want a 'bottom-up' ban only on specific kinds of subsidies".

(<http://www.ictsd.org>).

Tehran Convention Update

Further to Elena Kvitsinskia's article "Implementing the Caspian Convention – Ancillary Protocols" (EPL 37/6 pp. 494–500), the Tehran Convention's Interim Secretariat convened an expert meeting to harmonise and finalise the four ancillary draft protocols. In a remarkable show of spirit and cooperation, they concluded the preparatory work to the point that the relevant bodies in the states might begin to move towards approval and signing. Therefore, in accordance with the provisions of the Convention concerning the procedure of adoption of Protocols and after consultations with the host country, the COP-2 has been postponed until autumn 2008. (ATL)

Forests in Europe

Upon the occasion of the 5th Ministerial Conference on the Protection of Forests in Europe, which took place in Warsaw (Poland) the UNECE and FAO released their report *State of Europe's Forests 2007* on the status of sustainable forest management (SFM) in Europe. It concludes that, *inter alia*, Europe is moving towards SFM, the use of indicators is working and cautions that a few countries have not given sufficient policy priority to monitoring forests and some possess weak forest sector institutions.

The SOEF report is online at: http://www.mcpfe.org/files/u1/publications/pdf/state_of_europes_forests_2007.pdf. (ATL)

Mexico: Biofuels Initiatives

Despite international controversies regarding the effect of biofuels on agriculture, Mexico has recently stated that it will begin issuing permits to companies to produce biofuels. The move is part of the country's continuing effort to cut emissions from cars, improve air quality and increase business opportunities available to the rural poor. The initiative will focus on biodiesel, where Mexico believes it can take a competitive position. Using biological products specially grown for the purpose, the nascent biofuel industry produces biologically based fuels (usually ethanol or biodiesel) which can be used as additives in gasoline and diesel fuel. In Mexico, the primary biofuel crops are expected to be beets, yucca root and sorghum.

South Korea: Oil Spill

Following the worst oil spill in its history, the Republic of South Korea received a team of eight marine pollution and civil protection experts, deployed by the UN and the European Commission to complement clean-up efforts. The spill was caused when a barge slammed into a tanker spilling 10,000 tons of crude oil. The response to the spill catalysed the Oil Spill Contingency Plan, which was developed by South Korea, China, Japan and the Russian Federation, and adopted in 2004, under the auspices of UNEP and IMO within the Northwest Pacific



Over 6,000 people are working to clear up the spill

Courtesy: BBS News

Action Plan (NOWPAP). The spill illustrates the lesson that adequate policies and arrangements for responding to environmental disasters enable local and regional governments to coordinate their efforts quickly and efficiently.

For further information on NOWPAP go to: <http://www.nowpap.org/>. (ATL)

Managing Mangroves

According to the *World's Mangroves 1980–2005*, recently released by the UN/FAO, the world has lost around 3.6 million hectares of mangroves since 1980, equivalent to a 20% loss of this



A red mangrove, *Rhizophora* sp.

Courtesy: Wikipedia

habitat globally. The report indicates a recent slowdown in the rate of mangrove loss, which may reflect increasing awareness of their value (or more effective management.) For more information on the work of the FAO in sustainable management of mangroves see: <http://www.fao.org/forestry/site/mangrove/en/>. (ATL)

USA:

– Endangered Species Act May Recognise Climate Change as a Danger

The US Department of Interior is said to be nearing a decision on whether to list polar bears as “threatened with extinction” as a result of the diminution of sea ice in northern regions. If this decision is adopted, it will constitute the first time in the USA that a species has been listed due to a warming planet. A listing, and



Courtesy: WWF

particularly the fact that it is being taken by the Bush Administration, will have a far greater impact than might normally be expected. Polar bears are a “charismatic species” – inspiring special affection in the human population. As such, the governmental recognition that they are threatened owing to warming of the arctic regions may add further weight to the growing public opinion within the USA calling for action on climate change.

– Sonar Ruling in Turmoil

A November decision by a Federal Appeals court (*Natural Resources Defense Council, Inc. v. Winter*, 508 F.3d 885, 2007 Daily Journal D.A.R. 16,926, C.A.9 (Cal.), November 13, 2007) in the State of California has already precipitated another major rift between the current US Administration and the courts and citizens regarding environmental issues. The decision holds that the US Navy may not use sonar in coastal waters which have been

designated for special protection of marine mammals. The use of these technologies, both for patrolling these coastal waters and for training its personnel in the use of sonar surveillance techniques has been shown to cause major disruption and mortality among protected marine mammal populations. Following several months of legal action, the Appeals Court (CA 9) upheld earlier decisions which called on the Navy to find and use another method, specifically forbidding further use of these technologies in areas in which they are banned by environmental and conservation laws. The decision also called upon the earlier court to provide a focused ruling on how to satisfy the law. The Bush regime was quick to issue a response to this decision preparing an “exemption” excusing the Navy from all future violation of the ruling. Legal justification for this exemption is questionable, and further litigation has already been filed in the same matter (Case number 08-55054, at — F.3d —, 2008 WL 170312, 08 Cal. Daily Op. Serv. 1167, C.A.9 (Cal.) January 16, 2008).

WTO's Ruling on EU-US Biotechnology Dispute

The EU has missed a deadline to comply with a WTO ruling against its practices for the approval and marketing of biotech products. The successful litigants (the USA, Canada and Argentina) have temporarily suspended their right to impose retaliatory trade sanctions against EU exports in an effort to give its member states more time to demonstrate “meaningful progress on the approval of biotech products” in order to “normalize trade” in such commodities. The challenge for the EU remains the sovereignty of EU member states. Austria, for example, has adopted a ban on genetically modified food products. Similarly, France added oil to the flames, banning imports of genetically modified maize.

OECD: Denmark's Environmental Performance

According to a new OECD report, Denmark has been cautioned to reduce the health and environmental risks related to transport, agriculture and energy sectors. While the report welcomes Denmark's progress in basing its environmental policies on good economic analysis and good use of economic instruments such as taxes, fees and charges; it highlights further steps needed, especially in the areas of international environmental cooperation and economic development. The Review makes 37 recommendations including setting environmental targets for fine particulates, integrating transport policies with environmental concerns, reducing pollution of water resources, giving more priority to marine protection, and redoubling efforts to meet greenhouse gas emission targets. The full report is online at <http://www.oecd.org/>. (ATL)

Australia:

– Whaling Cases

Recent well publicised news stories picturing two Australian environmentalists who boarded a Japanese whaling vessel (Yushin Maru No 2) in Antarctic waters have failed to mention the significant international legal controversy which that event has engendered. Japan takes the position that whaling in the “southern ocean” (as the whaling community refers to Antarctic waters) by Japanese ships is conducted for “scientific purposes” and therefore legal under an exception to the general ban, while Australia's position in international negotiations has generally opposed all whaling – a position strongly supported by the majority of Australians – while agreeing to recognise the scientific exception in the course of international maritime enforcement activities. Currently Japanese officials are reportedly asserting that Australia is violat-



Courtesy: Greenpeace

ing the latter agreement and more-than-tacitly supporting environmentalist actions such as the illegal boarding, as documented by the fact that Australian Coast Guard vessels removed the activists without taking any action against them.

– Whaling in Australia-claimed Antarctic Waters

On 14 January 2008, the Australian Federal Court, deciding in the case *Human Society International Inc v Kyodo Senpaku Kaisha Ltd* [2008] entered a judgment against the Japanese whaling company Kyodo. The case arose from a claim that Kyodo's whaling activities violated Australian law, because they were conducted in an Antarctic area on which Australia maintains a claim of national jurisdiction (a claim currently recognised by only four countries: New Zealand, France, Norway and the UK). Applying the Australian Environment Protection and Biodiversity Conservation Act of 1999 (EPBC Act), the court enjoined further whaling in the area, noting that the EPBC Act does not contain a "scientific whaling" exemption, which is the general basis on which Japanese whaling companies justify their whaling activities in the rest of the Southern Ocean Whaling Sanctuary. Kyodo did not attend the Court hearing, leading to doubts about the ultimate impact of this action.

The complete judgment is available online at: http://www.austlii.edu.au/au/cases/cth/federal_ct/2008/3.html. (TRY/ATL)

Bavarian Administrative Reform: Increasing GHG Emissions?

There is a running staff joke around the State of Bavaria's environmental agency that to conserve the environment, civil servants must now commute between all three offices. The so-called administrative reform in recent years has led the agency to split its operations between Augsburg, Hof and Munich. The increased commuting is now referred to as "special support for global warming". (WEB)

World's Largest Marine Reserve Created

The island nation of Kiribati (the former Gilbert Islands) has declared that an 164,200-square-mile area of ocean wilderness will now become the Phoenix Islands Protected Area (PIPA). Located about halfway between Hawaii and Fiji, the PIPA includes

pristine reefs and eight coral atolls, including more than 120 species of coral and 520 species of fish, some of which are entirely new to science. With this decision, Kiribati seeks to conserve one of the Earth's last intact oceanic coral archipelago ecosystems.

The official website of PIPA is: <http://www.phoenixislands.org/index.php>. (ATL)

Invasive Toads Threaten Crocodiles

Reports indicate that invasive species problems are increasing on all continents, and one of the most problematic may be in Australia – the spread of Cane toads, which are known to be toxic



Courtesy: Reuters

to crocodylians. The toads apparently prefer habitats that are also preferred by a very rare breed of pygmy crocodiles, and it is feared that the spread of the amphibians is already too far out of control to enable the salvaging of many populations of the pygmy crocodiles. Crocodiles are protected in Australia, but this protection lies heavily on some parts of the human population, who feel that the potential of these animals to injure or kill human beings, and their presence near human settlements, should override conservation concerns.

(All References written by TRY unless otherwise credited.)



SELECTED DOCUMENTS

UNFCCC

Bali Action Plan

The Conference of the Parties,

Resolving to urgently enhance implementation of the Convention in order to achieve its ultimate objective in full accordance with its principles and commitments,

Reaffirming that economic and social development and poverty eradication are global priorities,

Responding to the findings of the Fourth Assessment Report of the Intergovernmental Panel on Climate Change that warming of the climate system is unequivocal, and that delay in reducing emissions significantly constrains opportunities to achieve lower stabilization levels and increases the risk of more severe climate change impacts,

Recognizing that deep cuts in global emissions will be required to achieve the

ultimate objective of the Convention and emphasizing the urgency to address climate change as indicated in the Fourth Assessment Report of the Intergovernmental Panel on Climate Change,

1. **Decides** to launch a comprehensive process to enable the full, effective and sustained implementation of the Convention through long-term cooperative action, now, up to and beyond 2012, in order to reach an agreed outcome and adopt a decision at its fifteenth session, by addressing, *inter alia*:

(a) A shared vision for long-term cooperative action, including a long-term global goal for emission reductions, to achieve the ultimate objective of the Convention, in accordance with the provisions and principles of the Convention, in particular the principle of common but differentiated responsibilities and respective capabilities, and taking into account so-

cial and economic conditions and other relevant factors;

(b) Enhanced national/international action on mitigation of climate change, including, *inter alia*, consideration of:

(i) Measurable, reportable and verifiable nationally appropriate mitigation commitments or actions, including quantified emission limitation and reduction objectives, by all developed country Parties, while ensuring the comparability of efforts among them, taking into account differences in their national circumstances;

(ii) Nationally appropriate mitigation actions by developing country Parties in the context of sustainable development, supported and enabled by technology, financing and capacity-building, in a measurable, reportable and verifiable manner;

(iii) Policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest

* Advance unedited version. Decision -/CP.13. See also page 14.