

## UNITED NATIONS ACTIVITIES

### United Nations

## Report Critical of Environmental Governance

As called for by the UN High-level Panel, first established by Kofi Annan in 2006, the UN undertook a major process for governance reform of the UN structure for development and humanitarian assistance, described in a groundbreaking report entitled “Delivering as One” (EPL, 37/4, p. 274.) In 2008, the UN’s Joint Inspection Unit took one of the next steps in that process,<sup>1</sup> undertaking the review of existing environmental governance within the UN system called for by the delivering-as-one recommendations,<sup>2</sup> and has produced a report in support of ongoing UN reforms in this area.<sup>3</sup>

This report’s objective was “to strengthen the governance of and programmatic and administrative support for Multilateral Environmental Agreements (MEAs) by the United Nations organisations by identifying measures to promote enhanced coordination, coherence and synergies between MEAs and the United Nations system”. It seeks to increase the UN’s system’s contribution towards a more integrated approach to international environmental governance and management at national, regional and international levels.

For purposes of this report, “international environmental governance”<sup>4</sup> consists of:

- a) Coherent decision-making and objective-setting and institutions;
- b) Institutional architecture to implement and coordinate environmental policies and decisions;
- c) Management and operationalisation of the policies and decisions; and
- d) Coordination of the effective implementation of international environmental governance decisions at the country level.

It analyses key areas of environmental governance and management within the UN system by focusing on system-wide provision of programmatic and administrative support for Multilateral Environmental Agreements, in particular common support services. It covers the following subjects:

- 1) Applicable environmental governance principles, policies and framework to ensure synergies among MEAs and other organisations engaged in environment-related activities;
- 2) Management framework for funding, resource management and inter-agency coordination of environmental activities; and
- 3) Mainstreaming environmental protection including through the implementation of MEAs at the country

level, particularly in the context of Common Country Assessment (CCA) and United Nations Development Assistance Framework (UNDAF) processes.

The Report notes that a conceptual consensus already exists within the UN System concerning the aim and scope of environmental governance and the relationship between sustainable development and environmental protection, as well as what needs to be done institutionally to put them into practice.

The 1<sup>st</sup> Meeting of the Consultative Group of Ministers or High-level Representatives on International Governance convenes on 27–28 June in Belgrade (Serbia). To our disappointment, the meeting is not open to the participation of IGOs and NGOs. We will report on the outcome in the next issue.

However, it strongly criticises the shortcomings of the present state and system of international environmental governance and management at national, regional and international levels.

The Review’s findings and conclusions are addressed under two main headings – the *framework for environmental governance* and the *management framework*. The governance of Multilateral Environmental Agreements is dealt with under the first heading and Funding and Financing and the Administrative Services provided to the MEAs are discussed under the latter heading.

### Framework for Environmental Governance

The study concludes that the current framework is weakened by institutional fragmentation and specialisation together with the lack of a holistic approach to environmental issues and sustainable development. It states that the duplication and fragmentation of the work of United Nations system organisations stem principally from a blurred distinction in their work programmes between environmental protection and sustainable development and the absence of a single strategic planning framework.

According to the report, UN system organisations have not defined clearly their responsibilities under the governance framework, which aims at integrating environmental protection into economic and social development and mainstreaming environmental considerations in sustainable development policies.

It notes that despite its mandate under the Cartagena Package<sup>5</sup> to review the effectiveness of MEAs, UNEP has not developed concrete modalities or capacity to fulfil its mandate. Further, its various initiatives to create synergies

and close inconsistencies among MEAs through intricate working arrangements have proved costly.

### Management Framework

There are seen to be three main obstacles to integrating strategic environmental protection and sustainable development goals into a system-wide results-oriented framework for managing programmes and resources:

- 1) There is no single strategic framework embracing the entire UN system.
- 2) The analysis of the United Nations programme performance for the biennium 2004–2005 demonstrated that similar activities were carried out under budget sections for sustainable development, and separately for environment (under the heading of “mainstreaming environment into sustainable development” or “integrating the environmental dimension of sustainable development into the development process”).
- 3) On various occasions, UN system entities formulated duplicative resource requirements, in particular in environmental sectors, without justifying them within a system-wide strategic planning.

Inter-agency bodies have failed to establish an information-sharing mechanism on the many and diverse environment-related projects implemented by United Nations agencies and other organisations. Results-based management (RBM) has yet to be introduced system-wide.

The Report notes that the creation of a variety of new financial mechanisms for MEAs has not impelled UNEP to reform its funding system and that funding for compliance with MEAs is often unpredictable and inadequate.

The delays in administrative actions to implement commitments by Conferences of the Parties (COPs) to MEAs have, in the words of the Report, reached “alarming levels”.

Reasons given are the absence of easily accessible budgetary information in the Integrated Management Information System (IMIS):

- Lack of integrated administrative and programme support for MEAs by UNEP and the UN Office in Nairobi (UNON);
- Failure to attract interest of Geneva-based MEAs in UNEP’s Administrative Support Centre (ASC); and
- Inequitable distribution and use of programme support costs among MEAs.

In addition, the Report states, that “the geographical distribution of staff in the environmental sector is unbalanced”.

The Report’s 12 Recommendations on the above sections are printed on page 182. Recommendations 2, 3, 5 and 9, are directly addressed to legislative organs for action.

### Future Institutional Arrangements

In its final section, “Observations on future institutional arrangements”, the Review notes, that “an overarching authority for global environmental governance is lacking

within the United Nations system ...and that UNEP has fallen short in exercising its original mandate to coordinate all environmental initiatives in the United Nations system.”

The Report stresses that its Recommendations primarily seek to improve the current system of governance based on the legacy and good practices accumulated within the United Nations system since 1972, in particular the large body of principles and policies on environment and sustainable development built by successive global conferences. It acknowledges that these recommendations are not panaceas for ensuring good governance within a system where decision making largely depends on intricate and decentralised networks of policy makers and administrations. It stresses that organisations with environmental responsibilities must have an effective mechanism to discuss and agree on a holistic approach to ensure more productive and cost-effective responses to emerging challenges. Thus, any future institutional overhaul of global environmental governance needs to build on the reform of UNEP and good practices and lessons learned from successful international environment regimes such as the Montreal Protocol. Such reforms should aim at promoting and enforcing:

- Common legally binding principles such as the law of treaties to reconcile substantive differences and contradictions among MEAs;
- A system-wide strategic planning framework for the management and coordination of environmental activities; and
- A set of common guidelines for the provision and use of administrative, financial and technical support services to enhance synergies between United Nations system agencies and MEAs, as well as among MEAs.” (MJ)

### Notes

1 In accordance with the internal standards and guidelines of the Joint Inspection Unit and its internal working procedures, the methodology followed in preparing the report included a preliminary review, questionnaires, interviews and in-depth analysis. Detailed questionnaires were sent to all participating organisations as well as to various MEA secretariats and other organisations and entities (United Nations University, United Nations System Staff College, Global Environment Facility, World Trade Organisation, World Bank and the International Fund for Agricultural Development).

2 See, UN documents A/61/583 and A/61/836.

3 “Management review of environmental governance within the United Nations system” (JIU/REP/2008/3).

4 The 1972 United Nations Conference on the Human Environment (UNCHE) was the first attempt to address the global environment and its relationship to development. The General Assembly, in its resolution 2997 (1972), established the United Nations Environment Programme (UNEP). It also established the Environmental Fund to address the need for effective coordination in the implementation of international environmental programmes not only by UN system organisations but also by “other international organisations”.

At the time of its creation, UNEP was equipped with a powerful system-wide governance framework backed by various coordination bodies and a common planning instrument – the System-Wide Medium-Term Environment Programme (SWMTEP). These mechanisms were discontinued, however, due to the subsequent evolution in the scope and nature of environmental issues.

Over time, UNEP’s cohesive mandate for environmental governance has become eroded by – among other things – the proliferation and fragmentation of environmental initiatives. The continuing deterioration of the overall state of the global environment and growing concern with the problems of sustainable development led to the creation of the Commission on Sustainable Development (CSD) and numerous Multilateral Environmental Agreements. Also, to the Multilateral Fund for the Implementation of the Montreal Protocol and the Global Environment Facility, and the growing involvement of international organisations and bilateral

donors in strengthening norms and institutions, funding, financing and capacity building in the environmental field.

5 The decision includes the IGM report, containing a range of recommendations, commonly referred to as the Cartagena Package:

- Strengthening UNEP's role, authority and financial situation;
- Addressing universal membership of the Governing Council;

- Strengthening UNEP's science base;
- Improving coordination and coherence between MEAs;
- Supporting capacity building, technology transfer and country-level coordination; and
- Enhancing coordination across the UN system, as well as the role of UNEP's Environmental Management Group.



## CSD-17

# Session Outcomes: an Overview

by Eustathia Laina\* and Elsa Tsioumani\*\*

*This year's CSD was quite difficult, not only due to the current economic crisis, but also as a result of its broad coverage of topics in the field of sustainable development. This was especially evident as the original draft document became longer and longer during the negotiations. In the end, every non-controversial proposed amendment was accepted, in hopes of reaching the desired consensus. The 52-page final document on policy options and practical matters was almost too extensive to produce a clear message. The question remains: how can this extensive document be a "part of the solution" in view of addressing climate change and poverty?*

– The Editor-in-Chief

The 17<sup>th</sup> session of the UN Commission on Sustainable Development (CSD-17) convened from 4 to 15 May 2009, at the UN headquarters in New York, and focused on the thematic clusters of agriculture, rural development, land, drought, desertification and Africa.

The Commission on Sustainable Development, which emerged from Agenda 21 as the UN programme of action for sustainable development,<sup>1</sup> meets annually in two-year cycles of review and policy making. CSD-17 was a policy-making session, which negotiated recommendations based on a review of the issues, which took place at CSD-16.

The session took place against the background of current financial crisis and global economic slowdown, due to which developing countries risk suffering serious setbacks to their development objectives. For the first time, the meeting's organisation of work included a tripartite dialogue<sup>2</sup> between ministers, heads of UN agencies, Chairs of Executive Boards/Governing Councils of UN agencies.

At the opening plenary, CSD-17 Chair Gerda Verburg, Minister of Agriculture, Nature and Food Quality, the Netherlands, highlighted a key objective: that negotiations should be seen as a step towards poverty eradication (see Box "Chair's Guidance" for further comments).

Building on the CSD-16 review of issues, participants' negotiation of each thematic area often extended late into the night, throughout the session. The official output of CSD-17,<sup>3</sup> a text prepared by the Chair, was distributed on Friday evening, 15 May, and adopted by acclamation during the closing plenary.

The final outcome was described as being "the best that could be agreed" against the background of current financial

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## Chair's Guidance

Addressing the need to achieve Millennium Development Goal 1 and 7 to reduce by half the number of people living in poverty by 2015 and to ensure environmental sustainability, the Chair, Gerda Verburg stated:

... "Let us not underestimate the challenges we are facing.

Realizing a Sustainable Green Revolution requires revolution in ideas, revolution in technologies, revolution in policies, market access and financial means. It calls for new, creative and innovative thinking as how to combine best science with farmers' knowledge. It must be homegrown. And more importantly, it calls for concrete deliverables and actions to be implemented.

Ladies and Gentlemen,

In my opinion, answers and solutions can be found along a five-track approach. They will be helpful in addressing the issues and challenges faced by agricultural development, water management and rural livelihoods.

First, increasing investments in sustainable agriculture, especially in Africa: Main focus should be on capacity building, improving research, training and extension infrastructure. Here we need a paradigm shift in a way that you can make use of the application of the latest scientific knowledge and experience. But, made available based on local conditions.

Second, creating an enabling environment with the main focus on engaging the private sector supported by favourable policy frameworks: Governments should set conditions and frameworks for attracting private investments.

Third, developing and promoting sustainable production chains for integrating production, processing and marketing to us as consumers.

Fourth, improving market access, especially for developing countries: Not only developing local and regional markets, but also providing more market access for products from developing countries.

Fifth, ensuring food security and emergency food aid via enhanced safety nets programmes for the most vulnerable people.: In addition, micro-credits are crucial in this respect.

Finally, I would like to focus on the role of governance. Governments can and should take a leading role in facilitating and promoting sustainable technological innovations. For instance, through investing more in public-private partnerships."...

crisis that increased the sense of urgency regarding the need to address poverty. The text reaffirmed the Rio Declaration on Environment and Development, including *inter alia* its Principle 7 on common but differentiated responsibilities. Participants highlighted the strong linkages existing among the six issues on the agenda and recognised that policies recommended and measures taken on one issue may have co-benefits for others. They recognised that eradicating poverty is the greatest challenge facing the world today and reaffirmed their commitment to strengthen support to the special needs of Africa. They emphasised that changing the pattern of production and consumption and protecting the natural sources “are overarching objectives of, and essential requirements for, sustainable development”.

### Agriculture

The Commission called upon governments, the UN system and international organisations to take action in order to revive the agricultural sectors in developing countries, in particular in Africa and least developed countries (LDCs), with the objective to address the needs of a growing global population. Delegates reaffirmed that improving soil quality, boosting productivity, improving the nutritional quality and ensuring the safety of food must be done in socially, economically and environmentally sustainable ways. Small and resource-poor indigenous peoples and local, rural communities, embodying traditional lifestyles, must play a critical role in a green revolution. The international community must respect, maintain and promote the wider application of traditional practices relevant to the conservation and sustainable use of biological diversity.

Furthermore, the Commission affirmed the international community’s commitment to finance research for sustainable agricultural development and to promote science-based agricultural approaches. Delegates acknowledged that small farmers in developing countries must have easier access to microfinance, including microcredit. They also acknowledged that international community must provide increased technical assistance to developing countries in order to strengthen rural populations’ training and capacity in sustainable agriculture and integrated crop-forest and crop-livestock production systems. It was also noted that agriculture is dependent on climate and sensitive to climate change; sustainable agricultural practices as well as sustainable forest management can contribute to meeting climate change concerns.

According to the negotiated text, the international community must support the implementation of sustainable water resources management schemes; address the challenges and opportunities posed by biofuels, in view of the world’s food security, energy and sustainable development needs; promote South-South, North-South and triangular cooperation in order to combat desertification, develop sustainable bioenergy production and support arid and semi-arid agriculture; create plans to increase the quantity and quality of small farmers’ production and its value in local markets; support efforts to enhance food quality and safety and reduce waste along the food chain by improving food handling, food testing, process-

ing equipment, storage techniques, cold chain systems and transportation infrastructure; improve farmers’ and agro-industry enterprises’ access to and participation in markets; build efficient and effective agricultural marketing institutions, including small-scale market infrastructure and distribution networks; and provide secure access to food and social safety nets for rural populations.

### Rural Development

CSD-17 participants acknowledged that rural development “is essential for poverty eradication, since global poverty is overwhelmingly rural”. They highlighted the international community’s commitments, including (i) to promote economic integration of rural areas with neighbouring urban areas; (ii) to invest in environmental protection and in rural health and education; (iii) to encourage the retention of skilled people, including youth, in rural areas; (iv) to create employment and income opportunities not only in farming and rural industry, but also in building rural infrastructure and in the sustainable management of natural resources and waste; (v) to address the vulnerabilities of rural populations to financial crisis, climate change and water shortage; (vi) to provide social protection programmes in order to benefit in particular the aged, persons with disabilities and the unemployed, many of whom live in rural areas; (vii) to promote women’s empowerment and gender equality in all aspects of rural development; and (viii) to facilitate the active participation of vulnerable groups in the elaboration of local and national planning of rural development.

Other critical needs acknowledged in the text include the need to expand access to primary health care systems to create and develop educational programmes for rural communities aimed at disease prevention; to eliminate



Courtesy: IISD

illiteracy; and to support sustainable tourism as a valuable source of employment and income supplement to farming and other primary production activities. The needs of indigenous peoples and those living traditional lifestyles were recognised in calls to ensure sustainable use of traditional knowledge in accordance with Article 8(j) of the Convention on Biological Diversity and to promote efforts to harmonise modern technologies with indigenous knowledge and practices. The document underscored an essential need to increase investments in infrastructure in rural areas, including roads, waterways and transport systems, storage and market facilities, irrigation systems,

sanitation services, electrification facilities and information and communication networks.

## Land

The official output of CSD-17 highlighted that “sustainable land management provides multiple benefits, such as sustaining agricultural productivity and food security and enhanced living conditions for local populations, providing ecosystem services, sequestering carbon and contributing to the regulation of climate”. Furthermore the international community affirmed land-related commitments to ensure a balance between sustainability and food productivity in land policies and land management; to support resource-poor farmers to acquire land management technologies and to adopt sustainable practices; to reduce



CSD 17 Chair Gerda Verburg and CSD 18 Chair Luis Alberto Ferrate, Guatemala

Courtesy: IISD

land degradation and rehabilitate degraded land, adopting measures such as establishment of perennial vegetation land cover, agro-forestry, eco-agriculture, diversification and reduced tillage; to implement policies that lead to the recovery of the soil’s physical integrity, increasing the amount of organic matter in it and thus, improving its nutrient status; to address water scarcity by sustainable use of water resources, supporting water conservation, sustainable use of ground water and effluent waste, sustainable desalination and rainwater harvesting; improve the efficiency of irrigation; to address the threat of coastal erosion and land losses caused by sea-level rise, through land-use planning and climate change adaptation programmes; and to promote equitable access to land and clear and secure land tenure, in particular for women, indigenous peoples and other vulnerable groups.

## Drought

The official output also stressed the necessity of combating drought in order to achieve sustainable development and improve the livelihoods of millions of people living in drought-prone regions. Delegates acknowledged that strategies for drought management should be incorporated into sustainable agricultural practices. They reaffirmed the international community’s commitment to take efficient

measures in order to improve irrigation techniques; reduce deforestation; promote conservation and rehabilitation of vegetation cover; and finance research on drought-tolerant seed varieties targeted towards national specificities; and facilitate access to such varieties especially in drought-prone developing countries.

## Desertification

The negotiated text acknowledged the interrelationship between climate change, biodiversity loss and desertification, reaffirming that “combating desertification and land degradation and mitigating the effect of droughts require policies that *inter alia* link land use, food security and livelihoods to the goals of sustainable development”. Delegates affirmed their commitment to promote water conservation, efficient irrigation and utilisation of alternative water sources, including flood water and subsurface flows and to reduce soil erosion through sustainable forest management and agro-forestry practices.

## Africa

The final text highlighted that “Africa needs a green revolution to help boost agricultural productivity, food production and national and regional food security in a way which supports ecosystem functions”. In that context, the international community reaffirmed its commitment to encourage and facilitate investment in rural infrastructure in order to reduce pre- and post-harvest losses and to enhance access to microfinance and skills development for resource-poor farmers. Participants stressed that “conflict prevention, resolution and management and post-conflict consolidation are essential for the achievement of sustainable development in Africa”. They reaffirmed the need to increase the volume of official development assistance to African countries. They also noted the importance of promoting the integration of Africa into world trade; supporting access of African populations to primary health and education services; encouraging efforts to reduce infant and maternal mortality and address HIV/AIDS; and building infrastructure, enhancing the efficiency of international aid to Africa.

## Interlinkages and cross-cutting issues, including means of implementation

The final output acknowledges that poverty and hunger eradication remain overarching objectives of sustainable development. Revitalising agriculture and promoting rural development can make an important contribution to this goal, and actions are therefore needed in order to improve funding and strengthen public health systems; increase investment in education infrastructure; improve and sustain the livelihoods of vulnerable groups; promote the role of local authorities; and strive to manage biodiversity, water, land and forest in a sustainable manner that also supports ecosystem functions.

It recognised that fundamental changes in the way societies produce and consume are indispensable for achieving global sustainable development. Climate change has emerged as a key interlinkage, and impacts all themes under consideration at CSD-17. Recommended actions

with regard to climate change included supporting the integration of climate change adaptation measures and disaster risk reduction strategies in agricultural and rural development strategies and action plans, and supporting the development, transfer and diffusion of new technologies in developing countries.

Acknowledging that the provision of means of implementation is critical to achieving global, regional and national policies in various areas, the text highlighted the need to enhance availability and effective use of finance for sustainable development, including fulfilment of all official development assistance commitments. It called for support to the world trading system and enhancement and promotion of capacity-building efforts and transfer of technologies to developing countries.

#### Notes

1 Adopted by the UN Conference on Environment and Development in Rio de Janeiro in June 1992.

2 1) Responding to the Food Crisis through Sustainable Development; 2) Realizing a Green Revolution in Africa; 3) Integrated Land and Water Management for Sustainable Agricultural and Rural Development.

3 The CSD-17 outcome document "Policy options and practical measures to expedite implementation in agriculture, rural development, land, drought, desertification and Africa" is available online at: [http://www.un.org/esa/dsd/resources/res\\_pdfs/csd-17/Final\\_text.pdf](http://www.un.org/esa/dsd/resources/res_pdfs/csd-17/Final_text.pdf). The meeting's website, including background documentation and relevant material is available at [http://www.un.org/esa/dsd/csd/csd\\_csd17.shtml](http://www.un.org/esa/dsd/csd/csd_csd17.shtml). For a detailed daily coverage, as well as a summary and analysis of the meeting by IISD Reporting Services, see: <http://www.iisd.ca/csd/csd17/>.



### CSD-18

Next year's session will cover transport, energy production in connection with fossil fuels, chemicals and consequences on health, waste, mining, and sustainable consumption and production. To tackle these issues the first meeting of CSD-18 elected the Minister for the Environment and Natural Resources from Guatemala as its Chair. Additional Bureau members were elected from the Philippines and Libya. Further regional groups will decide on their nominations for a decision at a later meeting. (WEB/ATL)

UNCCD

## Conserving Land and Water for a Secure Future

by Luc Gnacadja\*

The Mayans in Mesoamerica experienced it. So did ancient Mesopotamia, Angkor Wat in Cambodia, Great Zimbabwe in southern Africa, and even the statue builders on Easter Island. Remarkable civilisations in their time underwent rapid decline and then collapsed. For a long time this was inexplicable to historians and archaeologists, but recent research has shed new light on the numerous riddles – environmental degradation played a role in toppling these seemingly invulnerable empires, sometimes in just a matter of decades. Once-fertile land suffered under drought. Unsustainable land and water practices that fed thriving societies, simultaneously left them in an untenable situation, often accelerated by increasingly strong neighbours seeking to take advantage of their weakness.

The lessons from these once-great civilisations should resonate throughout our modern world, where the whole planet, not just a single empire or society, is threatened. The earth's security is in danger due to collapses of our land and water resources, which can make us unable to feed ourselves and quench our thirsts. This is a very real possibility that imperils the safety of all states.

### A Security Priority

The concept of "security" has gone through a paradigm shift for much of the past 100 years, particularly after the end of the Cold War. Security has expanded beyond the notion of protecting sovereign nations from hostile acts. It is now a more encompassing notion of assuring people the freedom from want, expressly recognising sustainable development as part of this process.

One aspect of this new security paradigm is soil security. Drought, land degradation and desertification (DLDD) deprive more and more people of their livelihoods. They react by migrating to areas where they believe they can find food, either by growing it themselves or purchasing it, for example in cities. It is projected that, between now and the year 2050, there will be 200 million environmentally induced migrants.<sup>1</sup>

"Desertification" means land degradation in drylands resulting from various factors, including climatic variations and human activities. To guarantee sustainable development in drylands will require a great effort by policy makers who must raise DLDD to a new level of political awareness. For this, the United Nations Convention to Combat Desertification (UNCCD) proposes a two-pronged approach: The first prong is known as "securitizing the ground"; and the second, "grounding security".

"Securitizing the ground" refers to the creation of wider global political awareness on the effect of DLDD on people's lives. DLDD brings a high human cost: it destroys the livelihoods of the farmers, frequently forcing them from the land and throwing them into poverty.

"Grounding security" refers to the creation of proactive short-term, medium-term and long-term strategies for coping with the effects of DLDD from global climate change and the loss of biodiversity. To implement these strategies, the *Desertification Synthesis* of the 2005 Millennium Ecosystem Assessment recommends taking both regional and global approaches. On a regional scale, ecosystem management should be strengthened. Investments in human and social capital will improve knowledge

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about how ecosystems function and how they should be managed, which results in a better understanding of resilience, fragility and the local flexibility of ecosystems. On a broader scale, the vast amounts of technology, engineering capacities and knowledge in the world shall deliver benefits to all.

A general failure to take concerted action against DLDD would leave some of the world's poorest populations susceptible to a worsening situation. People who must rely on degraded lands have few options, nearly all of which are unsound and usually very insecure. The result: forced migration to urban areas or even to other countries.

This year's World Day to Combat Desertification on 17 June carried the motto *Conserving land and water = Securing our common future*. It sought to raise awareness of soil security and food security that accompanies it, so that policy makers at local, national, regional and international levels will take the necessary decisions to reverse desertification and land degradation in drylands, leading to a reduction in poverty, while maintaining a sustainable environment with increased security for all dryland inhabitants.

### Objectives of New 10-year Strategic Plan Provide for Secure Future

The UNCCD has entered the second year of its 10-year strategic plan and framework, called "the Strategy",

which the 193 Parties adopted at the 8<sup>th</sup> Conference of the Parties in Madrid in September 2007. Simply put, the aim of the Strategy is to support both environmental sustainability and poverty reduction. All UNCCD stakeholders and partners have committed to reaching four essential strategic objectives:

- To improve the livelihood of affected populations;
- To improve the productivity of affected ecosystems;
- To generate global benefits; and
- To mobilise resources to support implementation of the Convention through partnerships.

Reaching the goals of the Strategy would do much to maintain our environment and reduce poverty, and hence create the framework for a more secure world. It is with these objectives in mind that the UNCCD and its stakeholders move towards a day when degraded land is returned again to productive land.

With sound policy making, soil and food security can be guaranteed. Unlike the great ancient civilisations that failed to realise that their activities were accelerating environmental, and their own, decline, we have the knowledge and technology to halt and reverse land degradation. By doing so, we can avert the kind of collapse that these civilisations experienced centuries ago.

#### Note

<sup>1</sup> Brown, O. 2008. *Migration and Climate Change*. IOM Migration Research Series 31. Geneva: International Organization for Migration.



UNFCCC

## Bonn Climate Talks: The End of the Beginning

by Joanna Depledge\*

The latest round of negotiations under the UN Framework Convention on Climate Change (UNFCCC) – dubbed Bonn II – took place 1–12 June 2009 in Bonn, Germany, with the eighth session of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWGKP) and the sixth session of the AWG on Long-term Cooperative Action under the Convention (AWGLCA). The two AWGs had also met earlier this year, also in Bonn, from 29 March to 8 April (Bonn I).

In addition, the 30<sup>th</sup> sessions of the two permanent UNFCCC subsidiary bodies, the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI) met in Bonn in parallel with the AWGs at Bonn II. Their work, too, was not uneventful. One highlight was the reconstitution, after 18 months of acrimonious hiatus, of the Consultative Group of Experts on Non-Annex I (developing country) National Communications. Another was the start – again

after years of stalemate – of substantive discussion on adverse effects of climate change and mitigation measures. Less encouraging was failure to agree on the second comprehensive review of the capacity-building framework. Time and energy, however, were concentrated on the two AWGs, whose task is to negotiate a comprehensive agreement on the future of the climate change regime by the time of the Copenhagen conference scheduled for 7–18 December 2009.

### AWGLCA Process

The main achievements of both AWGs at Bonn I and II were to take the procedural steps needed to keep the negotiations moving forward. At Bonn I, AWGLCA Chair Michael Zammit Cutajar (representing Malta, also former Executive Secretary of the UNFCCC Secretariat) presented delegates with a so-called "Assembly document",<sup>1</sup> which compiled and discussed all the proposals received to date from parties. Predictably, delegates complained that their proposals had not been given enough weight.

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The fact that complaints came from all sides, however, suggests that the document was probably well-balanced. Certainly, delegates were sufficiently content to give Chair Zammit Cutajar the all-important mandate to build on the Assembly document and prepare a “negotiating text” in time for Bonn II.

Despite these inevitable grumbles at the opening of the AWGLCA in June, the negotiating text<sup>2</sup> was accepted as the basis for work, enabling parties to move into “full negotiating mode”.<sup>3</sup> At just under 50 pages of actual text, the negotiating text represented a herculean achievement on the part of the Chair and the secretariat, clearly setting out the proposals on the table in legal language, and without attributing them to their proponents. At the Chair’s suggestion, delegates got down to a first reading of the text in a series of informal plenaries. The Chair wisely instructed that this should be a “light” section-by-section reading, but the process was still laborious, as delegations felt the need to repeat, and emphasise the importance of, their particular proposals. Parties were then asked to submit written amendments, which were incorporated overnight into revised versions of each section. With the negotiating text having now ballooned to some 200 pages, the Chair whizzed through an even lighter second reading. Some expressed surprise that the AWGLCA managed to get through two readings of the text, and still finish on time. In large part, this was because the Chair eschewed any serious attempt to address fundamental differences among parties. Doing so, however, was never the aim of the exercise. The point, instead, was to secure ownership over a negotiating document, a prerequisite for any successful negotiation. This was undoubtedly achieved at Bonn II, with parties agreeing to annex the revised negotiating text – nearly four times longer than the first – to the session’s report, and work on it further at Bonn III. The AWGLCA process has clearly turned a corner, moving away from informal discussions and workshops, into real negotiation based on text.

## Financing

Nonetheless, AWGLCA discussions confirmed that parties remain widely separated on the fundamental issues, typically split down the yawningly wide north/south divide. A case in point concerns financing, which developing countries see as a “make or break” issue for Copenhagen. Annex I (developed) countries insist on the central role of the private sector, including the carbon markets, in funding mitigation activities. The developing country Group of 77, however, remain wedded to public financing from Annex II<sup>4</sup> donors, despite the very poor track record of this funding source in actually delivering significant amounts of money. A wealth of innovative financing proposals are reflected in the negotiating text, including the auctioning of a certain portion of international emission allowances, levies on air and marine transport, and funds that would receive finance from a variety of sources, including the private sector, philanthropic organisations and all countries in a position to donate. Large developing countries, however, have rejected many of these proposals, including auctioning and levies. For those countries, it is a question of

principle that the richest governments should themselves put up the cash, as recompense for their historically high contribution to climate change. Some developing countries, however, do take a more pragmatic view, notably the least developed countries (LDCs), which advocate an “international air passenger transport levy” to raise funds for adaptation; Tuvalu, which has championed various forms of innovative financing; and Mexico, which has proposed a multilateral fund to which all would contribute.

## Developing Country Engagement

Perhaps the most intellectually complex element of the AWGLCA negotiations is working out how the 150+ non-Annex I parties will contribute to combating climate change under the new Copenhagen deal. The Bali Action Plan established that “nationally appropriate mitigation actions” would be defined for developing countries, with the acronym “NAMAs” now firmly part of the negotiating jargon. Although there is by no means consensus, the tide of debate seems to be moving towards the direction of a framework whereby each individual developing country would voluntarily assume its own NAMA (*e.g.*, its own package of energy efficiency policies, actions on forestry, sectoral targets) which would then be included on a formal registry. Several countries (*e.g.*, South Korea and Tuvalu) have suggested that there are three possible types of NAMAs: unilateral NAMAs funded by the country itself; NAMAs funded by international finance; and NAMAs generating credits that could enter into the carbon market. Each form of NAMA would require different levels of measurement, reporting and verification (MRV, in the climate jargon), with unilateral NAMAs requiring the least oversight, and crediting NAMAs the most.

Although it is far from agreed, this general framework does seem to be gaining currency as a form of engagement for the bulk of developing countries. Annex I parties, however, have made it clear that they expect a stronger and more quantitative form of action from the larger developing country emitters. Although those concerned are rarely named, it is an open secret that target countries include, at the very least, China, India, Mexico and South Korea, probably also Argentina, Brazil and Singapore, and possibly South Africa. All the proposals from Annex I parties would, to varying degrees, identify a new category of “advanced developing countries”, or “developing countries whose circumstances reflect greater responsibility or capability”, who would take on stronger actions than the bulk of non-Annex I. The G-77 has long opposed this type of differentiation among its members; however, in Bonn I and II, protests from larger emitters were more vociferous than those coming from the mass of smaller developing countries, especially the more vulnerable LDCs and small island states.

## AWGKP Process

By contrast, in the AWGKP, debates were less about text and more about numbers. Over the course of 2009, proposed targets pledged by individual Annex I parties have been trickling in. At the close of Bonn I, the AWGKP mandated its Chair to prepare “a proposal for amendments



to the Kyoto Protocol<sup>55</sup> exclusively focussed on emission targets, and an additional text on other issues. The request to prepare two separate documents reflects the continuing disagreement among parties over the mandate of the AWGKP, with developing countries arguing that this is restricted to amending the list of targets in the Protocol's Annex B. Annex I parties, however, maintain that the AWGKP should also be discussing possible additional amendments to the Kyoto Protocol, for example, with respect to its flexibility mechanisms.

Discussions in the AWGKP at Bonn II focused on the individual and aggregate targets of Annex I parties, this time under the chairmanship of John Ashe (Antigua and Barbuda), who was finally elected after months of division in the G-77 (the alternative candidate from Africa eventually withdrew). At the end of the session, Chair Ashe was requested<sup>6</sup> to prepare "documentation to facilitate negotiations" on: proposals for amendments to the Protocol's list of targets; other proposed amendments to the Protocol; and on draft decisions on other issues. Tellingly, Chair Ashe's mandate specifically states that the documentation will "not constitute a text" in line with the six-month deadline, which requires proposed amendments to the Protocol to be circulated to parties six months before their adoption. This reflects the insistence of Annex I parties that draft targets for themselves proposed by others – notably the Philippines and South Africa – should not form part of a formal negotiating text, as well as the reticence of some Annex I parties to negotiate new emission targets in isolation from other issues. In response, several countries (e.g., Tuvalu, Philippines, the EU) quickly presented draft proposals to the secretariat in the form of protocol amendments. Jumping on the bandwagon, Brazil announced in the closing AWGKP plenary that it had just submitted one such amendment, on behalf of 37 developing countries, including India and South Africa. These announcements were all stimulated by the six-month deadline: unless such proposals were on the table by 18 June, parties in Copenhagen would be precluded from amending the Protocol. Chair Ashe specified in the closing plenary that the several amendment proposals submitted to the secretariat do in fact provide a sufficient legal basis for parties to amend the Protocol in Copenhagen, if they wish.

### The Numbers Game

Since the start of the AWGKP, Annex I and developing countries have taken a different approach to negotiating new targets. The developing countries advocate a "top-down" approach, whereby an aggregate target would first be defined, and individual targets then allocated to Annex I parties using objective criteria. Annex I parties, however, prefer a "bottom-up" exercise, akin to that used in Kyoto, whereby the eventual aggregate goal would simply consist of the summation of individual targets, negotiated primarily on the basis of pledges. Unsurprisingly, the developing country demand that an aggregate target be agreed at Bonn II came to naught.

Most Annex I parties have now pledged individual targets for themselves. The main exception is the Russian Federation, given that other outliers (Croatia,

New Zealand (expected in August) and Turkey (which has only just ratified the Protocol)) have stated that their target/pledges are pending. There was considerable excitement during Bonn II over the imminent announcement of Japan's target. Tension was particularly high, because a Japanese committee had already identified six possible targets, ranging from 4% to 25% cuts from 2005 levels by 2020. NGOs appealed to Prime Minister Aso to take on the mantle of a "climate hero" and adopt the higher target, but in the end, painful talks between industry groups and the environment agency produced the compromise figure of -15% from 2005 levels, equivalent to -8% from 1990, two percentage points deeper than Japan's existing -6% Kyoto Protocol target. Japan's announcement was widely seen as disappointing. UNFCCC Executive Secretary Yvo de Boer undiplomatically declared himself speechless at the news. Japan was quick to point out, however, that its target was stronger than it looked, as it did not include use of offsets or the forestry sector.

It is undoubtedly difficult to compare the pledges of Annex I parties, and assess their aggregate ambition, given their varying base years and target periods, as well as differing assumptions over the use of the land use, land-use change and forestry (LULUCF) sector and the flexibility mechanisms. The secretariat was asked to conduct a comparison and aggregation of Annex I pledges early on at Bonn II, but had to omit those parties that had not yet proposed targets (at the time including Japan), and to develop the collective Annex I target as an estimate by the secretariat. It amounted to a maximum cut of 26% by 2020. The Alliance of Small Island States (AOSIS) prepared its own analysis that incorporated assumptions about the targets of all Annex I parties (including the prospective US domestic target – see below), and concluded that the collective cut would amount only to 13%. All figures remain fraught with uncertainty, but the clear message is that the level of ambition of Annex I parties remains far below the cuts of at least 40% by 2020 demanded by developing countries, and also below the 25-40% range identified by the IPCC as needed to limit the rise in greenhouse gas concentrations to 450 ppm. AOSIS denounced the Annex I pledges so far as having "virtually no chance"<sup>7</sup> of limiting temperature rises to below 2 degrees, and highlighted its proposal, together with African and Latin American allies, for a 45% reduction by 2020 and 95% by 2050.

### Legal Form

A key issue cutting across the two AWGs is the legal form that the expected Copenhagen outcome(s) will take. At the moment, everything is up for grabs, even the Kyoto Protocol itself. For developing countries, retaining the Kyoto Protocol is critical, representing the principle instrument through which Annex I parties demonstrate their leadership in cutting emissions. Several Annex I parties, however, fear that continuing the Kyoto Protocol in its current form will further entrench the division between Annex I and developing countries. Countries such as Australia, Canada, Japan, New Zealand and, perhaps, the US, would all prefer a new treaty that would unify

Annex I and developing country obligations under one legal umbrella. Even those Annex I parties more committed to the Protocol, notably the EU, cannot deny that, if only because of its historical baggage, the US is unlikely ever to ratify the Kyoto Protocol. Instead, its proposal envisages an “implementing agreement”, something unprecedented in the climate change regime. Ironically, however, virtually all parties want the bulk of the Kyoto Protocol’s content – its institutions, methodologies, reporting rules and mechanisms – retained. For their part, many developing countries do not want to see a strong, legally-binding outcome (such as a new protocol) for themselves, preferring a set of decisions or some unspecified “agreement”. There is no common position in the G-77 on this, however, with Costa Rica – supported by many vulnerable countries – tabling a proposed new protocol that incorporates much of the AWGLCA negotiating text, as a means of ensuring that their action does not preclude a strong outcome in Copenhagen. Once again, the aim of this proposal was to meet the six-month deadline. Further proposals for a new protocol were also put forward by Australia, Japan, Tuvalu and the US.

### North/South Divide

Given that it included the first extended discussion of developing country obligations since the negotiation of the Convention itself, it is perhaps not surprising that Bonn II featured strident north/south rhetoric. The notion of “historic responsibility” for climate change erupted as a hot topic, especially in the AWGLCA. The EU pointed out that the term does not actually appear in the Convention, which did not deter China and other developing countries from advocating it as a criterion for determining obligations. Presumably hoping to defuse tension, Chair Zammit Cutajar organised an informal lunchtime briefing on historic responsibility, with contributions from several developing countries with strong views on the topic (e.g., Bolivia, Brazil, China, India), as well as academics. Although welcomed by many developing countries, the briefing proved an irritation for several Annex I delegations, who did not appreciate what they saw as lecturing. Of course, rhetoric and posturing are to be expected at this stage in the negotiations, and it would be politically naïve to let it intimidate. Nevertheless, it is depressing that, despite nearly 20 years of meetings, Annex I and developing country delegations still seem to view the basic elements of the Convention very differently: Annex I parties invoke efficiency, costs, low-carbon strategies, markets and harnessing the private sector; while developing countries appeal to equity, responsibility, rights, poverty eradication and development. The scientific reality of climate change often seems to take a back seat.

### Political change

Underneath all the posturing, there are real signs of tectonic shifts in the famously rigid politics of climate change. One of these is the emergence of new coalitions

of developing countries working on specific issues, notably “Reducing Emissions from Deforestation and Forest Degradation” (REDD) and adaptation, along with the proliferation of innovative proposals tabled by individual developing countries. The negotiating text going into Bonn II, for example, incorporated proposals from more than 25 developing countries, some of them on behalf of coalitions. AOSIS and the LDCs have long articulated their particular interests on climate change, and continued to do so at Bonn I and II, often placing themselves at odds with larger developing countries (e.g., on differentiation). The current Copenhagen negotiations are remarkable, however, in seeing the rise of new voices from developing countries that have traditionally not been very active in the climate change arena. The G-77, although united in its general statements, rarely speaks as a group on specific issues. It has not submitted a single united position in writing in 2009.

The political earthquake for 2009, of course, was the return of an engaged and committed US delegation onto the international climate change stage. In his opening intervention to the AWGLCA at Bonn I, Special Climate Change Envoy Todd Stern told delegates “we are very glad to be back, we want to make up for lost time, and we are seized with the urgency of the task before us”, before referring to the “unique responsibility” of the US.<sup>8</sup> The intervention was greeted with undisguised delight and applause. In the first six months of 2009, the new US administration has moved by leaps and bounds in its approach to climate change, as compared with its predecessor, and not just



L-R: Michael Zammit Cutajar, AWG-LCA Chair; Yvo de Boer, UNFCCC Executive Secretary; and John Ashe, AWG-KP Chair  
Courtesy: IISD

domestically. In terms of developing country engagement, for example, the US has stepped back from its previous position of requiring the same type of actions from all major emitters – developed and developing. Instead, Todd Stern is on record as taking the more nuanced view that “China and other developing countries *do not need to take the same actions that developed nations are taking*. But they do need to take significant national actions that they commit to internationally, that they quantify and that are ambitious enough to be broadly consistent with the lessons of science”<sup>9</sup> (emphasis added).

The US, however, remains a massive stumbling block to the Copenhagen negotiations. For a start, much of the US international position is dependent on the progress of domestic legislation, notably the Waxman-Markey

Climate and Energy Bill that is currently passing through Congress. This Bill, which envisages a cut in emissions from 2005 levels of 17% by 2020 and 83% by 2050, was approved by the House Energy and Commerce Committee in late May, but still needs to get through the full House of Representatives and the Senate before it can become law. The US has warned it will be unable to commit to any quantitative targets internationally before this happens, although it could strike deals on other issues, such as financing. The overall US proposal submitted to the AWGLCA, structured as it is on an “implementing agreement”, envisages prior domestic legislation as the basis for an international agreement, rather than the other way round. Moreover, the scale of US ambitions remains weak compared to the rest of Annex I: the Waxman-Markey figures – which may yet be weakened – amount to a mere 4% cut by 2020 from 1990 levels, less than the existing US target under the Kyoto Protocol.

### Outside the negotiations

With all the frenzied activity in Bonn, it is easy to forget that the AWGs are not the only arenas – many would say not even the most important – for intergovernmental talks on the future of the climate change regime. The G-8 will address climate change at the highest level at its forthcoming summit in Italy, while US President Obama has continued the “major economies” process that he inherited from George W. Bush. Other bilateral and multilateral gatherings on climate change convene on an almost weekly basis. While delegates were wrangling over historic responsibility at Bonn II, a series of high-level meetings took place between the US and China in Beijing. In an unmistakable sign of where the action is, Special

Envoy Todd Stern flew to Beijing rather than Bonn, and his Deputy, Jonathan Pershing, abandoned the AWGs to join him. Privately, senior negotiators are not talking about the G-8 anymore, but focusing on the G-2 – the US and China – the two super-emitters who hold the key to meaningful agreement in Copenhagen.

### Next steps

Three more AWG sessions are now scheduled before Copenhagen: in August (Bonn III), September (Bangkok) and November (Barcelona). This relentless negotiating agenda, unprecedented in the history of environmental negotiations, reflects the enormity of the task still ahead. With the six-month deadline now passed, and debates now based on written texts, both AWGs have perhaps reached, if not the “beginning of the end” of their work, at least the “end of the beginning”.

### Notes

- 1 FCCC/AWGLCA/2009/4 (Parts I and II), *Fulfillment of the Bali Action Plan and components of the agreed outcome*.
- 2 FCCC/AWGLCA/2009/8, Negotiating text.
- 3 ENB (2009), Vol. 12, no. 241, Summary of the Bonn Climate Talks: 1–12 June 2009.
- 4 Annex II countries include only the OECD members of Annex I (minus Turkey). They alone are obliged to provide financial and technological assistance to developing countries.
- 5 FCCC/KP/AWG/2009/7, *A proposal for amendments to the Kyoto Protocol pursuant to its Article 3, paragraph 9*.
- 6 FCCC/KP/AWG/2009/L.10, *Consideration of further commitments for Annex I Parties under the Kyoto Protocol*.
- 7 See ENB (2009).
- 8 Stern, T. (2009), Intervention of the United States: Plenary Session of the Ad Hoc Working Group on Long-term Cooperative Action Under the Convention, Bonn, Germany, 29 March 2009. <http://www.state.gov/g/oes/ris/remarks/2009/120974.htm>.
- 9 AFP (2009), US, China wrap up climate talks. 11 June. <http://www.spacedaily.com/2006/090611080408.obhrb33t.html>.



## CBD / Cartagena Protocol

# Towards 2010 – Negotiations for New Legal Instruments –

by Elsa Tsioumani\*

The upcoming tenth Conference of the Parties (COP-10) to the Convention on Biological Diversity (CBD), to be held in October 2010, in Nagoya, Japan, marks a major milestone in the history of the Convention and in policy related to biological diversity in general. Not only is this COP going to assess achievement or not of the target to significantly reduce biodiversity loss by 2010 and celebrate the International Year on Biodiversity 2010 as designated by the UN General Assembly; it is also expected to adopt or take a major step toward an international instrument on access to genetic resources and benefit sharing (ABS),

in accordance with Decision IX/12. In addition, the fifth Conference of the Parties serving as Meeting of the Parties to the Cartagena Protocol on Biosafety (COP/MOP-5), immediately preceding CBD COP-10, is expected to adopt an international instrument on liability and redress for damage resulting from transboundary moves of living modified organisms (LMOs). This report provides an update on the state of play of the two critical negotiations leading to COP-10: those on ABS and liability and redress.

### ABS Negotiations

The seventh meeting of the CBD Working Group on ABS was held from 2–8 April 2009, in Paris, France.<sup>1</sup> The

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meeting marked the most recent step in the negotiation of an international regime on ABS, initially mandated by the World Summit on Sustainable Development (WSSD) (September 2002, Johannesburg, South Africa). The WSSD called for negotiation, within the CBD framework, of an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilisation of genetic resources, making no reference to access to genetic resources. Two years later, CBD COP-7 (February 2004, Kuala Lumpur, Malaysia), however, in setting out the negotiating mandate and terms of reference of the ABS Working Group, included both access and fair and equitable benefit sharing, and called for the "elaboration and negotiation" of an international regime on ABS.

Following four more meetings of the entire ABS Working Group, as well as two COPs in which ABS was addressed as a major item on the agenda, the Paris meeting continued negotiations. Still unable to agree on a working text, the Group's work focused on operational text on the objective and scope of the regime, as well as certain regime components, including compliance, fair and equitable benefit sharing, and access. The meeting's recent history included a very successful sixth meeting of the Working Group (January 2008, Geneva, Switzerland), where delegates produced a concise initial working document, consisting of a list of the main components necessary for the regime, divided into lists of items "to be further elaborated with the aim of incorporating them in the international regime" in the case of agreement in principle (items identified by delegates as "bricks"), or "for further consideration", in the case of disagreement or need for further clarification (items identified as "bullets"). Some months later, CBD COP-9 (May 2008, Bonn, Germany) continued to refer to the "bricks and bullets" approach in its decisions authorising the future work of the ABS Working Group, authorising it to meet three times before the 2010 COP, by which the Group must complete and report its negotiations, and established three expert groups (one on compliance; another on concepts, terms, working definitions and sectoral approaches; and the third on traditional knowledge associated with genetic resources).

The document prepared by the sixth Working Group was widely believed to provide the preconditions for a successful seventh meeting. However, the brick/bullet structure that had assisted negotiations in the past triggered lengthy procedural debates and obstructed substantive progress in Paris. With regard to the components of the regime, the structure was empty: it only included the agreed elements ("bricks" or "bullets") as interim headings. Delegations needed to put forward their textual proposals under each element, so that operational text is developed to serve as the basis of further negotiations. A number of such proposals had been submitted inter-sessionally, and presentation of additional ones was allowed during a first reading of each item. Nevertheless, for indefinable reasons (including possibly the inter-connectivity of different elements, or the negotiating tactics of various delegations and regional groups), this

exercise failed. The Working Group spent most of its time arguing whether a proposed text belonged to the element under which it was submitted, with regional groups accusing each other of trying to promote "bullets" to "bricks" through their proposed operational texts. The most severe problems eventually broke out in the contact group on compliance: while delegates were addressing a "brick" on enforcement of national ABS legislation in a section on tools for compliance, the EU introduced negotiating language, which would link the issue of compliance with international access standards (a strong priority of the EU with regard to ABS) as a precondition for any requirement that the country of the user enforce compliance with national ABS legislation. In previous meetings, including Group 6 and COP-9, the EU clarified that it places particular importance on the negotiators' agreement on international access standards, and has declared that "the international ABS regime could include some binding components, if it also includes international standards on national access law and practice, linked to compliance support measures".<sup>2</sup> However, other regional groups, in particular the Like-Minded Megadiverse Countries (LMMC), insist that access to genetic resources belongs to the core of the principle of national sovereignty over natural resources enshrined in the CBD.

As a result, regional group representatives convened in a closed-door meeting, facilitated by contact group Co-Chair René Lefeber (the Netherlands), where they eventually agreed that the bricks and bullets concept had ended its useful life and would be abandoned. They also agreed to retain the structure of the working document, which is the only firm document agreed by the parties, and the best avenue for further work on text proposals. By this point, there was little time remaining, so that the discussions could only focus on suggesting additional text or bracketing language, and not for actually achieving compromises to resolve differences. The meeting's outcome therefore, as reflected in the negotiating document, provided an indication of divergences, but has not served to finalise any outstanding matter with regard to compliance, benefit sharing, and access.

Negotiations on the objective and scope of the regime were only slightly more effective in addressing issues of substance, and remained "frustrating", according to the assessment of Birth Ivars (Norway), Co-Chair of the contact group on the objective and scope, during the meeting's closing plenary. It was all too clear from this side of the negotiations that delegations' expectations and ideas with regard to the regime under development are still fundamentally different. These fundamental differences are reflected in debates on other items, as well as the entire negotiating document, resulting in innumerable brackets. To provide some examples, the African Group wants the regime to cover not only genetic resources, but also biological resources, derivatives and products, while developed countries do not perceive the regime in such a broad way. Developing countries call for close attention to implementing sharing of benefits, while developed countries focus on facilitating access. It is still not agreed upon whether the regime would establish laws, rules

and procedures to ensure benefit sharing, as preferred by developing countries, or rely solely or primarily on individual contracts, as preferred by most developed ones. Exclusions from the scope of the regime and the regime's relationship to other international legal instruments, particularly the International Treaty on Plant Genetic Resources for Food and Agriculture, are still not clear. Finally a novel issue of disagreement that arose in Paris was whether pathogens should be included in the scope of the regime, pointing to the links between the CBD ABS negotiations and the World Health Organization (WHO) negotiations on a pandemic influenza preparedness framework for the sharing of influenza viruses and access to vaccines and other benefits.

The issue of whether viruses and other pathogenic material will be included in the scope of the regime provoked a heated after-midnight debate in the contact group on the objective and scope. Industry submissions before the Paris meeting all asked for the exclusion of plant, animal and human pathogens from the ABS regime. During the meeting, the EU noted that "certain uses of pathogens" can be excluded from the scope of the regime, and generally reserved its position on the item pending internal consultations. Japan called for "special consideration" of resources addressed under the WHO multilateral framework. On the other side, the LMMC (with China still holding consultations on the issue) made a declaration claiming that the WHO negotiations are inconsistent with the scope of the CBD; that the objectives and provisions of the CBD should be recognised; and that those negotiations should not prejudice the outcome of negotiations under the CBD. The African Group further noted a tendency to subordinate the CBD to non-environmental instruments and cautioned against expanding the list of exclusions from the scope of the regime. The debate is reflected in the outcome document, with bracketed text stating that the international regime applies to viruses and other pathogenic, as well as potentially pathogenic, organisms and genetic sequences regardless of their origin.

The issue of whether viruses are covered by the scope of the CBD was also raised during the WHO Intergovernmental Meeting on Virus and Benefit Sharing, held from 15–16 May 2009, in Geneva. Brazil once again presented the LMMC declaration.

One of the few points where agreement was reached concerning the objective of the regime was the collective view that the regime document(s) should reference CBD Articles 15 (access to genetic resources) and 8(j) (traditional knowledge), but disagreement remained with regard to references to Articles 1 (objectives), 3 (principle), 16 (access to and transfer of technology) and 19.2 (access to results and benefits from biotechnologies). The heavily bracketed outcome of the deliberations on objective addresses the following issues: facilitating or regulating access to genetic resources/biological resources/derivatives and products, recognizing the sovereign rights of states over their natural resources; ensuring fair and equitable sharing of benefits arising out of the utilisation of genetic resources and associated traditional knowledge; preventing

the misappropriation and misuse of genetic resources and/or associated traditional knowledge; securing/supporting compliance in user countries with the international regime/national laws and requirements/domestic regulatory ABS frameworks in provider countries; rights over those resources or all sovereign rights of states over their natural resources, including the rights of indigenous and local communities, subject to national legislation, and the UN Declaration on the Rights of Indigenous Peoples, where appropriate.

The next stage of negotiations will be held from 9–15 November 2009, in Montreal, Canada, where delegates will address the nature of the regime, traditional knowledge associated with genetic resources, and capacity building.

### Liability and Redress Negotiations

The first Meeting of the Group of Friends of the Co-Chairs on Liability and Redress under the Cartagena Protocol on Biosafety convened from 23–27 February 2009, in Mexico City, Mexico.<sup>3</sup> The meeting continued the



Jane Bulmer representing IUCN in the ABS meeting

Courtesy: IISD

negotiation of international rules and procedures on liability and redress for damage resulting from transboundary movements of LMOs in the context of the Biosafety Protocol, based on the proposed operational texts on liability and redress, annexed to Decision BS-IV/12.<sup>4</sup> Prior to this meeting, the issue had been the subject of intense negotiations in COP/MOP-4. While not adopting an international regime within the deadline set in Article 27 of the Protocol (four years after the Protocol's entry into force), COP/MOP-4 reached a compromise that envisions a legally binding supplementary protocol focusing on an administrative approach but including a provision on civil liability that will be complemented by non-legally binding guidelines on civil liability.

Until COP/MOP-4, negotiations were conducted in a Working Group on liability and redress, established

by COP/MOP-1, under the co-chairmanship of Jimena Nieto (Colombia) and René Lefeber (the Netherlands). With certain issues remaining outstanding, including standard of liability, causation and the choice of instrument, a Friends of the Co-Chairs group attempted to finalise negotiations immediately before COP/MOP-4. Negotiations were not concluded, and the COP/MOP-4 decided to reconvene the Friends of the Co-Chairs group intersessionally in order to finalise the instrument. This group consists of six representatives for the Asia-Pacific region (Bangladesh, China, India, Malaysia, Palau and the Philippines); six representatives for the African region (Burkina Faso, Namibia, Ethiopia, Liberia, Zambia and South Africa); six representatives for the Latin American and Caribbean region (Mexico, Paraguay, Cuba, Colombia, Brazil and Panama); Moldova for the Central and Eastern European region; the Czech Republic and the European Commission for the EU; and New Zealand, Norway, Switzerland and Japan.

Building on the compromise achieved at COP/MOP-4, the Mexico meeting produced a draft text for a supplementary protocol on liability and redress to the Biosafety Protocol. This is considered to be a major step as such, although a series of outstanding issues remains; also, the group still needs to work on the guidelines for non-legally binding provisions on civil liability, and the supplementary compensation scheme, which were not discussed at all at the Mexico meeting.

The issue of definitions attracted significant debate, with work done both in plenary and in informal groups, particularly with regard to “damage”, “incident”, “response measures”, “operator”, “imminent threat of damage”, with text remaining largely bracketed and including various options. A paragraph on factors to determine a significant adverse effect is broadly agreed, with the only outstanding issue being whether the list of factors should be qualified as exhaustive. The following factors are listed: the long-term or permanent change, to be understood as change that will not be redressed through natural recovery within a reasonable period of time; the extent of the qualitative or quantitative changes that adversely affect the components of biological diversity; the reduction of the ability of components of biological diversity to provide goods and services; the extent of any adverse effects on human health in the context of the Protocol; and the extent of adverse effects on locally or regionally important components of biological diversity – the reference to locally or regionally important components of biological diversity remains bracketed.

Debate on functional scope (Article 3) centred on whether the liability protocol would apply only to LMOs or also to products of LMOs, with the latter supported by Malaysia and the African Group on the basis of recent scientific evidence of horizontal gene transfer among higher organisms. No agreement was reached, and reference to “products thereof” remained bracketed. On geographical scope (Article 4), delegates agreed that the protocol should apply to damage in areas within the limits of parties’ national jurisdiction.

Limitations in time (Article 5) proved to be a complex issue, and the text remains heavily bracketed. One key

issue that remains is the starting point for the beginning of the protocol’s application: transboundary movement that started after the entry into force for the party concerned; or damage that occurred after the entry into force notwithstanding the time of the movement. Another unresolved issue concerns domestic law on damage from transboundary movement of LMOs before the protocol’s entry into force.

The Protocol’s primary compensation scheme is often viewed in terms of the administrative approach covered in Articles 7–12. In this meeting, however, the variety of options for national administration was discussed, with negotiations focused on how flexible the protocol should be in allowing States to implement it without national legislation. For the time being, the group retained two alternative texts for further consideration, requiring parties to provide for domestic measures in accordance with international obligations and domestic law. Agreement was reached on the powers of the competent authority, namely that the competent authority shall/should identify the operator who caused the damage, assess the significance of such damage and determine the response measures to be taken by the operator, including general references to undertake such activities in accordance with domestic law. The issue of coverage (Article 12) triggered lengthy discussions, regarding whether parties should require the operator to establish and maintain financial security during the time limits; whether the costs of evaluation of damage conducted by the competent authority should be included; and whether the text should specify that cost be recovered from the operator.

With regard to civil liability (Article 13), delegates discussed a list of elements to be considered in a civil liability regime, also considering legal issues relating to enforcement of judgments. Another issue of importance involved civil liability, and a text that would provide for the review of the guidelines that would work towards a non-legally binding approach on civil liability. That discussion included questions such as whether such guidelines should be revised with a view to elaborating a more comprehensive binding regime on civil liability. The outcome text remains largely bracketed.

Negotiations will now continue in Kuala Lumpur, Malaysia, where the second meeting of the Friends of the Co-Chairs group will convene from 8–12 February 2010.

## Notes

1 The official report of the meeting, including the negotiating document, is available at: <http://www.cbd.int/doc/meetings/abs/abswg-07/official/abswg-07-08-en.doc>. For a detailed daily coverage, as well as a summary and analysis of the meeting by IISD Reporting Services, see: <http://www.iisd.ca/biodiv/abs7/>.

2 See the Council Conclusions: Preparation for the ninth ordinary meeting of the Conference of the Parties to the Convention on Biological Diversity, 2856<sup>th</sup> Environment Council meeting, 3 March 2008, available at: [http://ec.europa.eu/environment/biodiversity/international/un\\_cop9/pdf/council\\_conclusions\\_cop9.pdf](http://ec.europa.eu/environment/biodiversity/international/un_cop9/pdf/council_conclusions_cop9.pdf).

3 The official report of the meeting, including the negotiating document, is available at: <http://www.cbd.int/doc/meetings/bs/bsgflr-01/official/bsgflr-01-04-en.doc>. For a detailed daily coverage, as well as a summary and analysis of the meeting by IISD Reporting Services, see: <http://www.iisd.ca/biodiv/bs-gflr/>.

4 Available at: <http://www.cbd.int/decision/mop/?id=11691>.



## UNCLOS

## Fisheries Consultations

by Rebecca Paveley\*

The eighth round of the Informal Consultations of States Parties (ICSP) to the Agreement for the Implementation of the Provisions of the UN Convention of the Law of the Sea (UNCLOS) relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the Agreement) met from 16–19 March at UN headquarters in New York.

The substantive themes of the session were promoting wider participation in the Agreement and the start of preparations for the resumption of the Review Conference in 2010.

More States have signed up to the Agreement since the seventh round of consultations last year – there are now 75 parties with the newest signatories being Palau, Oman, Hungary, Slovakia, Mozambique, Panama and Tuvalu. Though this advance was welcomed, the meeting focused on increasing participation from developing and coastal States, and several barriers to progress in this area were identified, though not resolved, during this session. Remaining contentious issues include funding for capacity building for developing States, boarding and inspection procedures on the high seas, and compatibility of conservation and management measures between areas within and beyond national jurisdiction. Of all, the genuine dialogue between parties and non-parties, which many delegates hoped may bear fruit in the months and years to come, was perhaps the most significant development noted in this session.

### Background

The UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was convened to address the problems of harvesting these stocks on the high seas. The Agreement came into force in 2001. It aims to ensure the conservation and sustainability of straddling and highly migratory fish stocks and contains a set of rights and rules for States to conserve and manage these stocks and also protect the marine environment. A Review Conference on the Agreement was held in 2006 to test its adequacy, and this Review Conference is set to resume in 2010.

### Continuing Dialogue

Continuing dialogue was the main theme of this round of consultations, with the aim of increasing participation in

the Agreement. Informal consultations were held by delegates to consider this theme and focused on participation, the relationship between the Agreement and the Convention, capacity building, compatibility of conservation and management, and enforcement. Joji Morishita of Japan was appointed as moderator of this session.

**Participation:** Several barriers to wider participation in the Agreement were noted during discussions on this topic. Brazil noted that almost half of the parties currently signed up are developing States, and said lack of capacity hindered wider participation. The EC mentioned the high cost of implementing the Agreement, particularly for developing countries, and highlighted how many States ratify RFMOs (Regional Fisheries Management Organisations) but not the Agreement. Other barriers to participation included political and legal ones, which were often peculiar to each state.

Delegates agreed that increased participation is worth pushing for because it would enhance the ability of the international community to manage fisheries resources sustainably. Some parties called for more information sharing about the benefits of signing up, including, among others, access to capacity-building assistance under the Assistance Fund.

**Capacity building:** There is a tension inherent in capacity building, that of increasing developing countries' fisheries harvest capacity while dealing with the overcapacity

of the world's fishing fleet as a whole. This was acknowledged by delegates, but developing countries called for increased contributions to the Part VII Assistance Fund from developed countries. Mexico demanded more financial incentives for countries to join the Agreement but the Food and Agricultural Organization of the UN (FAO) said there had been an increase in demand for the Part VII Assistance Fund since 2008,

with heavy demand from one region. Moderator Morishita clarified that the fund was used for capacity building to support compliance, not to develop countries' capacity to fish, and the Fund was severely limited.

More information was called for on sources of funding that might be accessed by developing States. Technical support was also needed by states.

**Compatibility of conservation and management measures:** This topic is based upon Article 7 of the Agreement, and is a major concern for prospective parties. It was noted that Article 7 represents a careful balance of



Chair David Balton banging the gavel

Courtesy: IISD

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interests and does not alter the balance struck by UNCLOS. It requires coastal States and States fishing on the high seas to mutually take into account the measures they have each adopted. It does not require those measures to be the same. Some found that there was a “constructive ambiguity” in the article but that generally it balanced the interests of coastal and high-seas fishing States. It was suggested that compatibility was best achieved at regional rather than global level, and that different approaches were needed for different stocks. On the ground, it was observed that members of RFMOs had achieved compatibility through cooperation and that the decision-making systems of RFMOs, particularly in settling disputes, was important in security compatibility.

**Enforcement and port State measures:** Enforcement and boarding is a key concern for States considering becoming party to the Agreement. Chair of the Consultations, Ambassador Balton (US) clarified that parties to the Agreement do have the right to board and inspect each other’s vessels where a regional agreement exists, or based on alternative mechanisms adopted by RFMOs. It was noted that implementing the boarding and inspection provisions in the Agreement had led to a reduction in illegal, unreported and unregulated (IUU) fishing.

Experience from RFMOs showed the ways that enforcement could be ensured, while maintaining a balance between the rights of flag States and the rights of inspecting States.

But it was still suggested that provisions for enforcement were behind some States’ unwillingness to become parties to the Agreement, and that other methods of enforcement – other than boarding and inspection – should be considered. Some called for more flexible methods, such as onboard onlookers, satellite monitoring and IUU lists.

In his summary of discussions, Moderator Morishita noted that concerns still remain, and called for countries to

share experiences. It was hoped that experiences of peaceful boarding would help to dispel concerns about this issue.

### Preparatory Work for the Resumption of the Review Conference

Most parties viewed the upcoming Conference as a chance to review the adequacy of the Agreement’s provisions and strengthen implementation rather than make any amendments. Some issues should be considered more specifically, including assistance for developing countries, conservation and management, compliance and enforcement, and institutional accountability. It was also noted that the UN Secretary General’s report should contain updated information on the status of relevant fish stocks, and analysis and recommendations.

The focus of next year’s informal consultations will be on preparations for the Review Conference, parties decided.

Regarding the report of the Secretary General to the resumed Review Conference, parties agreed it would be useful for a questionnaire to be sent to all. This should have “lighter” language on implementation of the Agreement, so both parties and non-parties would be able to fill it in.

Finally, it was agreed that ICSP should be held in March 2010 and the resumed Review Conference should be held, tentatively, from 24–28 May 2010. The final text asks the UN Office of Legal Affairs/Division for Ocean Affairs and the Law of the Sea, and FAO to provide guidance for the Secretary General’s report on the status of straddling fish stocks, highly migratory fish stocks and discrete high-seas fish stocks; a review of implementation of the 2006 Review Conference Recommendations; information on developing States’ capacity-building needs, and a performance review of RFMOs.

For more information see [www.un.org/Depts/los/convention\\_agreements/fishstocksmetings/icsp8report.pdf](http://www.un.org/Depts/los/convention_agreements/fishstocksmetings/icsp8report.pdf) and [www.iisd.ca/oceans/fsaic8/](http://www.iisd.ca/oceans/fsaic8/).



## CITES

### Scientific Committees’ Meetings in 2009

by Elisa Morgera\*

The two Scientific Committees of the Convention on International Trade in Endangered Species of Fauna and Flora (CITES) met in spring 2009, holding their last meetings before the next CITES Conference of the Parties (COP), which is currently scheduled for early 2010. The 18<sup>th</sup> Plants Committee meeting was held on 17–21 March 2009 in Buenos Aires, Argentina, while the Animals Committee met on 20–24 April 2009 in Geneva, Switzerland. Both Committees addressed draft guidelines on Non-Detriment Findings and the Review of Significant Trade. This note will also report on discussions on ranching and proposed future listing. In that con-

nection, the Plants Committee focused significantly on tree species, while the Animals Committee was dominated by discussions on marine species, and made some additional recommendations to upcoming meetings in the framework of the Convention.<sup>1</sup>

The Animals and Plants Committees generally meet twice between COP meetings. They report to the COP and, if so requested, provide advice to the CITES Standing Committee between such meetings.<sup>2</sup>

#### Guidelines for Non-Detriment Findings

Non-detriment findings (NDFs) are a mandatory precondition for countries authorising exports of CITES species – implicit in the text of the Convention (Articles

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II–IV). Parties may authorise trade in specimens of species in Appendices I and II only when their national scientific authorities conclude that the export will not be detrimental to the survival of species concerned. NDFs were created to address the needs of State parties and others who have been “continuously challenged” to define in each case whether the proposed export may be detrimental.<sup>3</sup> Ongoing discussions in CITES have focused on the need for guidance and methodologies to assist countries in making NDFs, as a mechanism to improve implementation of the Convention. At present, succinct guidance can be found in CITES Resolution 10.3, which suggested that findings of the Scientific Authority should be based on a scientific review of available information on the population status, distribution, population trend, harvest and other biological and ecological factors, as appropriate, and trade information relating to the species concerned.<sup>4</sup>

In 2009, both Scientific Committees considered the report of an international expert working group (held in Mexico in November 2008) in which guidelines for carrying out NDFs had been preliminarily elaborated. The two Committees offered very different reactions, however, when confronted with the NDF issue. The Plants Committee agreed on a preliminary draft resolution which contained six principles for NDFs: data requirements tailored according to the resilience or vulnerability of a species; the implementation of an adaptive management scheme; basing NDFs on resource assessment methodologies; and employing broad-scale assessments, such as total harvest assessments. It should be noted that during negotiations, Argentina objected to including the principles in the body of the proposed resolution arguing that parties’ sovereignty in performing NDFs should not be affected.<sup>5</sup> The objection is likely to be motivated by the limited human technological and financial resources of several national authorities that may restrict their ability to perform sound NDFs for certain species.<sup>6</sup> The Plants Committee further developed specific recommendations and principles for making NDFs for timber species and *Prunus Africana*, for medicinal plants and on agarwood-producing species.<sup>7</sup>

The Animals Committee had to address the issue without first engaging in dialogue with the Plants Committee. Eventually, the Animals Committee followed the lead of the Plants Committee, with the result that an instrument addressing NDFs cannot be ready for adoption at the COP-15, but may possibly be ready in time for COP-16. The Animals Committee in fact recommended that parties continue to consider the usefulness of the outputs of the NDF Workshop, particularly those related to the methodologies, tools, information, expertise and other resources needed to formulate NDFs. It further recommended that both Scientific Committees prepare a discussion paper for consideration at COP-16 with options on how to use the workshop outputs, including, if considered appropriate, a draft resolution on the making of NDFs. The hesitation within the Animals Committee was arguably based on the fears regarding how NDFs might be used. Even though the general principles are voluntary, there was concern that they could be used by NGOs as a checklist, leading to challenges in future when a country adopts an NDF and/or harvest-

ing quota. Another concern related to the need to further refine guidance so that it is better adapted to countries with limited capacity (possibility to provide options for voluntarily harmonising certain aspects of the process).

### Review of Significant Trade

The Review of Significant Trade (RST) is a process through which the Scientific Committees advise when certain species are subject to unsustainable trade, *i.e.*, in situations in which countries of export are not performing adequate non-detriment analysis or providing NDFs, and recommend remedial action. Specifically, RST does not evaluate illegal trade, but rather focuses on species with high levels of legal trade that are suspected of being unsustainable. Statistics on legal trade in wildlife are used as a basis for several rounds of discussions and, together with responses by parties, form the basis for recommendations to Parties. After three stages of evaluation where those countries found in compliance are excluded from the process and the rest continue to the next phase, countries found in non-compliance may be subject to an international ban on all trade in that species. The process starts in the Scientific Committees, which begin by simply checking trade statistics and responses by range states. In a second stage, a consultant – usually funded by an NGO – is engaged to carry out a field study on the impact of legal trade on such species. RSTs may be country-specific or species-specific.

During negotiations in 2008, the CITES Secretariat noted that RST should be based on sound and detailed information, possibly including experts on compliance and process issues in any advisory group. The Secretariat also had the opportunity to clarify that RST was not meant to “punish” countries and lead them into establishing export quotas to avoid the review, but rather to support countries in their efforts to ensure sustainable trade.

In 2009, the Scientific Committees continued to address RST and species selected for RST. The Plants Committee recommended using *Prunus Africana*, *Pericopsis elata* and Madagascar as case studies for evaluation of RST, and supported the *modus operandi* for an RST evaluation advisory working group proposed by the Secretariat. Along the same lines, the Animals Committee recommended including Madagascar as a country study and supported the Secretariat’s *modus operandi*. This carries on an evaluation of the Review of Significant Trade, which was agreed upon by COP-13 (Bangkok, 2004). It called on the Scientific Committees, with the help of an advisory working group to evaluate the contribution of the Review of Significant Trade to the implementation of Article IV, paragraphs 2(a), 3 and 6(a) on species included in Appendix II; assess the impact over time of the actions taken in the context of the Review of Significant Trade on the trade and conservation status of species selected for review and formulate recommendations which take into consideration the possible effects of these measures on other CITES-listed species. The Secretariat will start the evaluation as soon as resources become available.

With regards to species already selected for RST following COP-14, the Plants Committee agreed to

exclude mahogany from Peru from the RST, based on information concerning the sustainability of trade, and to retain mahogany from Nicaragua, Bolivia, Ecuador, Honduras and Venezuela. That report also included all varieties of *Aloe capitata* and *Euphorbia primulifolia*. Following a progress report on significant trade in Asian medicinal plants, the Committee further recommended that range states, regional representatives and the Secretariat ensure implementation of regionally-coordinated action to improve management and prevent illegal trade in relation to seven Asian medicinal plants: *Cistanche deserticola*, *Dioscorea deltoidea*, *Nardostachys grandiflora*, *Picrorhiza kurroo*, *Pterocarpus santalinus*, *Rauvolfia serpentina* and *Taxus wallichiana*.

The Animals Committee recommended, *inter alia*, retention of Hippopotamus from Ethiopia, Burkina Faso, and other species in the RST; and asked to include *Hippocampus kelloggi* (Kellogg's sea horse), *H. spinosissimus* (Hedgehog seahorse), *H. kuda* (Estuary seahorse),



Courtesy: FishBase

as well. The Committee further recommended that Beluga sturgeon (*Huso huso*) and two species of African cranes (*Balearica regulorum* and *B. pavonia*), as well as Giant clams and Bottlenose dolphins from the Solomon Islands should all be included in the RST.

Beyond these broader issues, with regards to the Bottlenose dolphins, the Committee instructed the Secretariat to draft a letter to the Solomon Islands notifying them of the Committee's recommendation that it use a more conservative export quota and reassuring them that inclusion of the species in the RST was not a punitive measure.

The decision was considered a carefully balanced one, as the issue had already been controversial in 2008. During the previous meeting of the Animals Committee (19–23 April 2008, in Geneva), Israel had put forward, and then withdrawn, a proposal to include Bottlenose dolphin from the Solomon Islands in the RST, given that their nondetriment finding had not been publicised or peer-reviewed. The Solomon Islands had in reply stressed the importance of dolphin harvesting for livelihoods and considered the proposal an infringement of its sovereignty.<sup>8</sup>

### Tree Species

Discussions in the Plants Committee were also dominated by tree species-related issues, focusing in particular on Bigleaf mahogany and the action plan for cedar and rosewood. On the former, parties underscored the success achieved in mahogany sustainable management, since it was added to Appendix II in 2002. The Bigleaf Mahogany Working Group was further tasked, in a draft decision to be submitted to COP-15, with continuing reporting regularly to the Plants Committee as an element for conveying and exchanging experience on the management of Bigleaf mahogany, and preparing a report on the progress attained in the management, conservation and trade of Bigleaf mahogany and lessons learned.

The Committee also agreed to task the Bigleaf Mahogany Working Group to go forward with additional information gathering and regional coordination on cedar and rosewood, analysing existing trends in trade in these species. The decision was based on the correlation between growing trade pressures on cedar and rosewood and the decrease in trade in mahogany, as well as on the hope of using lessons learnt from the success story of mahogany.<sup>9</sup> The Committee further agreed to recommend that the COP urge range states to include all the populations of all four cedar and rosewood species in Appendix III.

### Marine Animal Species

Discussions during the Animals Committee focused significantly on marine species, in particular on sturgeons, paddlefish, stingrays and sharks. With regards to sturgeons and paddlefish, the Committee requested the Standing Committee to urge range States to consider all recommendations of a 2008 Technical Workshop on Stock Assessment and Total Allowable Catch (TAC) methodologies that had been convened by CITES and the Food and Agriculture Organization of the United Nations. This work commenced in coordination with the Commission on Aquatic Bioresources of the Caspian Sea, which was working to improve the sturgeon stock assessment and TAC determination methodology, and to report to COP-15 on progress.

With regards to sharks, the Committee recommended that parties improve data collection, management and conservation of shark species of concern, with the possibility for the Animal Committee to refine the list of species of concern. Parties were further recommended to continue research to improve understanding of the situation and identify the linkages between international trade in shark fins and meat, and illegal, unreported and unregulated

fishing. Shark fishing States were called upon to develop a national shark plan at the earliest opportunity and take steps to improve research and data collection on both fisheries and trade.

The Animals Committee further recommended that range States of South American freshwater stingrays consider implementing or reinforcing national regulations on management and reporting of capture and international trade of freshwater stingrays for all purposes, including commercial fisheries for food and ornamental trade, and standardising these measures across the region. Range states were also encouraged to consider the listing of endemic and threatened species of freshwater stingrays in CITES Appendix III.

### Ranching

Responding to concerns that source code "R" (Ranching) had been used erroneously by parties, *i.e.*, where the country had no ranching operations, the CITES Secretariat highlighted the conditions required for a species to qualify for specialised treatment as a product of ranching. These were much stricter than those required for export of wild species, thus providing little incentive to use ranching programmes to take the trade pressure off the species in the wild and otherwise benefit the wild population through reintroduction or in other ways.<sup>10</sup>

The Animal Committee chose not to recommend deleting source code "R" completely, but rather to use it only for Appendix II species and populations that have been down-listed under CITES Resolution 11.16 (Ranching and trade in ranches specimens of species transferred from Appendix I to Appendix II) and its predecessors. It further recommended defining ranching as: "the rearing in a controlled environment of specimens which have been taken as eggs or juveniles from the wild where they would have a very low probability of surviving to adulthood". It also suggested that all approaches for the down-listing of populations from Appendix I to Appendix II, whether for ranching or not, should be done under provisions of CITES Resolution 9.24 (Rev.CoP14) (Criteria for amendment of Appendices I and II). The Secretariat was finally called upon to assess, in consultation with the Animals Committee, implications of the approach suggested for populations previously down-listed for ranching under CITES Resolution 11.16 and its predecessors.

### New Listing Proposals

Preparatory for consideration by COP-15, the Plants Committee made some recommendations regarding listing proposals, suggesting that the Parties:

- maintain the current listing of *Tillandsia harrisii* (Harris' tillandsia) in Appendix II;
- maintain the current listing of *Podocarpus parlatorei* (Japanese Yew) in Appendix I;
- maintain the current listing of *Euphorbia antisyphilitica* (Candelilla) but exempt finished products;
- delist *Welwitschia mirabilis* (Welwitschia) from

Appendix II, following formal consultations with range State Namibia confirming their agreement with this recommendation; and

- maintain the intersessional working group and instruct it to consult with Madagascar.

Argentina indicated that, in COP-15, it will propose the uplisting of *Bulnesia sarmientoi* (Verawood) from Appendix III into Appendix II (PC18 Doc.16.1.4), which was supported by Germany and Switzerland and suggesting the possibility of exempting seeds, pollen and finished products to avoid enforcement problems.<sup>11</sup>

The Animals Committee agreed to present COP-15 a proposal to delete *Anas oustaleti* (Mariana mallard) from Appendix I, given that the species was considered extinct in the absence of sighting since 1979.

### Upcoming Meetings

The next meeting in the CITES framework will be the Standing Committee, which is scheduled on 6–10 July 2009 in Geneva, Switzerland. One of the most remarkable items on its agenda is consideration of a study of the relationship between CITES and livelihoods, a topic that is being addressed by a working group established in 2008.

For the first time in the history of the Convention, this group has been tasked with addressing possible tools for rapid assessment of the positive and negative impacts of implementing CITES listing decisions on the livelihoods of the poor, and ways to address them. It was expected to consider consumptive

and non-consumptive uses of wildlife resources, and the development of alternatives to avoid resource over-exploitation.

As recently announced by the CITES Secretariat, COP-15 will be convened on 13–25 March 2010 in Doha, Qatar.<sup>12</sup>

### Notes

1 This note is based on documentation resulting from the meetings available on the CITES website as of 10 June 2009: <http://www.cites.org/eng/com/PC/index.shtml> on Plants Committee meetings; and <http://www.cites.org/eng/com/AC/index.shtml> on the Animals Committee meetings, respectively.

2 Background information available on the CITES website, available at: [http://www.cites.org/eng/disc/ac\\_pc.shtml](http://www.cites.org/eng/disc/ac_pc.shtml).

3 As noted in the Preamble of the Proposed draft Resolution on non-detriment finding, PC18 Sum, Annex 4.

4 All CITES Resolutions cited in this report may be found at: <http://www.cites.org/eng/res/index.shtml>.

5 *Earth Negotiations Bulletin* vol. 21, no. 64, available at: <http://www.iisd.ca/vol21/enb2164e.html>.

6 *Id.*

7 Recommendations adopted by each Committee are reflected in the Executive Summaries of each meeting, that are available in draft form at: <http://www.cites.org/eng/com/PC/18/E-PC18-sum-DRAFT.pdf> for the Plants Committee and <http://www.cites.org/eng/com/AC/24/sum/index.shtml> for the Animals Committee respectively.

8 *Earth Negotiations Bulletin* vol. 21, no. 62, available at: <http://www.iisd.ca/vol21/enb2162e.html>.

9 *Earth Negotiations Bulletin* vol. 21, no. 64, *supra* n. 5.

10 *Earth Negotiations Bulletin* vol. 21, no. 65, available at: <http://www.iisd.ca/vol21/enb2165e.html>.

11 *Earth Negotiations Bulletin* vol. 21, no. 64, *supra* n. 5.

12 CITES press release (14 May 2009), available at: [http://www.cites.org/eng/news/sundry/2009/CoP15\\_dates.shtml](http://www.cites.org/eng/news/sundry/2009/CoP15_dates.shtml).

