



Environmental LAW Programme

January-April 2000

Cartagena Protocol on Biosafety: Overview

The Cartagena Protocol on Biosafety (adopted 29 January 2000, in Montreal) represents the culmination of three and a half years of formal negotiations. As its central operative mechanism, the Protocol sets out an advance informed agreement (AIA) procedure, applicable to the transboundary movement of living modified organisms (LMOs). Core areas of disagreement in the negotiations included

- ◆ the scope of the Protocol and of the application of this AIA procedure,
- ◆ the relationship between the Protocol and relevant World Trade Organisation agreements,
- ◆ the role of the precautionary principle in decision-making on imports, and
- ◆ identification and labelling requirements for LMO shipments.

This article provides a brief overview of these issues.

The AIA mechanism

In brief, the basic AIA requirement of the Protocol gives Parties the right to receive information from the exporter on any LMO intended for intentional introduction into the envi-

ronment, prior to first import, and to approve, prohibit or restrict imports of that LMO. The Party of Import's decision must be based on a risk assessment carried out in a scientifically sound manner, and taking into account recognised risk assessment techniques. A Party can require the exporter to carry out and bear the costs of risk assessment.

Scope of the Protocol's Requirements

The Biosafety Protocol generally addresses "the transboundary movement, transit, handling and use of all living modified organisms that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health" (Article 4). However, LMOs which "are pharmaceuticals for humans" are excluded from the Protocol if they are covered by another international arrangement or agreement.

In addition to this general exclusion, the Protocol also contains specific exemptions for a number of important categories of transboundary movement of LMOs, to which the

Protocol core mechanism, the AIA procedure does not apply.

The AIA procedure applies only to the *first intentional transboundary movement of an LMO intended for intentional introduction into the environment of the Party of import*. A number of other actions involving the movement of LMOs are excluded from the AIA procedure, including,

- ◆ LMOs in transit,
- ◆ LMOs destined for contained use in the Party of import,
- ◆ LMOs intended for direct use as food or feed or for processing.

The meeting of the Parties to the Protocol may also in future decide to exempt additional LMOs from the AIA procedure.

As this list of exemptions indicates, the actual coverage of the AIA pro-

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CEL Steering Committee

The Steering Committee of the IUCN Commission on Environmental Law held its first meeting for the new millennium at the Law Centre, 16-19 April. The meeting provided an opportunity for the Commission to reassess its achievements since the World Conservation Congress in 1996, and to plan for the upcoming World Conservation Congress (Amman, Jordan, in October 2000.)

Memorial Tributes

The Committee paid special tribute to long-time CEL Members Oleg Kolbasov and Cyrille de Klemm, who died last year, for their pioneering work in international environmental law, and for their service to the IUCN. The Steering Committee expressed their gratitude on behalf of ELP and the IUCN to both men.

The committee decided unanimously to award the first Wolfgang E. Burhenne Medal of Honour to the memory of Cyrille de Klemm.

IUCN Observer Status at the United Nations General Assembly

The Chair reported on UN Resolution A/RES/54/195, which designates IUCN to receive observer status in all proceedings of the UN General Assembly. The IUCN Director General is developing procedures regarding use of this privilege and its meaning to members and Commissions.

Quadrennial Programme

The IUCN Quadrennial Programme is a major planning document – a long-term strategy addressing environmental challenges and needs of the Union during the next four years. The Steering Committee discussed and reviewed the QP, and made substantive recommendations. Based on (and consistent with) the QP, the Environmental Law Programme will be revising its own planning documents, and will prepare an ELP quadrennial programme, to be circulated to CEL members at Amman for comment and approval.

“Centres of Excellence”

The Committee reviewed progress on the development of regional “Cen-

tres of Excellence” – whose aim is to promote the knowledge and capacity building in environmental law in all geographic regions. The ELP has concluded Memoranda of Understanding for this purpose with China, Russia, and Kuwait. It has also entered into an MOU with Brazil, addressing cooperation in the development of a country-wide network of environmental law experts.

Reporting on the programme on “Promoting Environmental Law in China” (launched at a meeting at the Research Institute of Environmental Law, Wuhan University in October 1999), Prof. Wang Xi described the progress of the Centre’s objective of establishing a network of institutions and experts in Chinese environmental law.

As described by Prof. Fadhel Nasserallah, the “Arab Centre of Environmental Law” is being launched this year, at the University of Kuwait, to promote capacity building in environmental law in the Arab region.

Prof. Irina Krasnova gave an update on the activities of Ecopravo Eurasia, including the publication of a bulletin on environmental law, the Internet publication (in English and Russian) of the full-text of selected Russian environmental laws, and the development of project proposals for training activities.

Finally, Antonio Benjamin reported on a proposal to establish a regional centre in Brazil, through the cooperative agreement between IUCN and “Lawyers for a Green Plant Institute”. This centre is planning a conference on Agriculture and Biodiversity, to be held later this year.

Regionalisation

The Secretariat updated the Steering Committee on the development and activities of regional environmental law programs, including work in the IUCN Regional Office for Southern Africa and in the Country Office for Pakistan. The ELC administrator of the IUCN-BMZ Regionalisation Project reported on that project, and

its goal of developing legal capacity in IUCN Regional and Country Offices, enabling them to focus on the environmental law priorities at the regional and national levels (described on page 18).

World Conservation Congress

The Steering Committee and other CEL members will participate in WCC Committees in many ways, including work on the Credentials, Resolutions, Programme, and Audit and Finance Committees and direct involvement in interactive sessions.

Inter-Commission Activities

CEL is participating in several inter-commission activities, including (i) the Global Invasive Species Program – a CBD initiative addressing the problems of alien invasive species (CEL and SSC); (ii) various initiatives relating to the Biodiversity Conservation Information System (CEL and CEM) and (iii) the Working Group on “Parks for Peace” (transboundary protected areas), whose recent draft outputs have included a formal definition/mission statement, “Good Practice Guidelines” and the “Code of Conduct for Transboundary Protected Areas” (CEL and WCPA).

Other Business

The Steering Committee approved the nominations of new CEL members, bringing the total CEL membership to approximately 650. CEL has more than doubled in size since the World Conservation Congress in Montreal.

The next Steering Committee meeting will be held on 3 October in Amman, followed by a full meeting of the Commission on 4 October. More information about both meetings and the World Conservation Congress is available from the IUCN website at: <http://www.iucn.org>

We look forward to seeing you in Amman.

– NWI

Commission on Environmental Law

CHAIRMAN'S LETTER **Attaining Environmental Law Compliance** **Via Auditing**

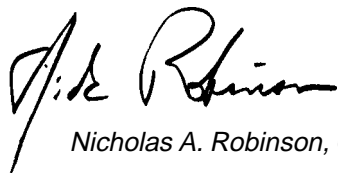
The Commission on Environmental Law ("CEL") convenes 3-4 October 2000 in Amman, Jordan, immediately prior to the World Conservation Congress. In anticipation of our CEL deliberations, I invite all Members of the CEL to write to me, either at the Environmental Law Centre in Bonn, or at my offices at the Pace University School of Law Center for Environmental Legal Studies in New York State. I welcome your suggestions about the positioning of IUCN's Environmental Law Programme over the next few years in order best to advance the objectives of our field of law. The Congress will adopt a new Mandate for CEL in Amman and we would benefit greatly from receiving your best thinking and contributions.

One of the themes that the IUCN Environmental Law Commission's Steering Committee introduced into our CEL Strategic Plan at its meeting in Bonn on 17-19 April 2000, is environmental auditing. CEL Vice Chairs such as Jorge Caillaux (South America) and Koh Kheng Lian (East Asia) and Donna Craig (Oceania) strongly advocated this new priority. All present agreed to add this new dimension to our work. Given that both compliance with environmental legislation and the national implementation of multilateral environmental agreements have been identified as top priorities for attaining the remedial objectives of Environmental Law in every region of the Earth, the Steering Committee chose environmental auditing ("EA") as a cross-cutting theme which might be emphasized in capacity building, continuing legal education, and drafting new legislation or treaties. EA is a fundamental tool for assuring that both governmental ministries and private sector enterprises alike observe, and can objectively verify that they observe, the requirements of environmental laws.

An international consensus exists that environmental auditing should be a standard "best management" practice, and become as accepted universally as is the case with financial accounting. As the volume of environmental legislation has become enormous in every State, it is through EA that an enterprise can best demonstrate how it satisfies its complex environmental obligations. Beyond the positivist force of treaties and legislation, many soft-law instruments posit that environmental standards should be integrated into the ongoing missions and economic equations of both commercial enterprises and governmental programmes. Among these soft-law instruments, framed mostly for multinational companies but potentially applicable a fortiori to governmental enterprises or projects, are the following: Intergovernmental: OECD Guidelines for Multinational Corporations; ILO Tripartite Declaration of Principles; EU Proposed Code for Multinational Companies; Industrial: ICC Charter for Sustainable Development (and ICC Rules of Conduct on World Business Council Working Group on Bribery and Corruption), CAUX Round Table Principles for Business; International Code of Ethics for Canadian Business; Civil Society: CERES Principles, "New" Sullivan Principles; Oxfam Campaign for "Basic Rights"; Consumers International Charter for Global Business; Interfaith Declaration on International Business Ethics; University of Friborg Charter of Common Responsibilities in Business.

At this point, it is not essential to express a preference for one particular recipe for compliance, but to support and foster general acquiescence in the basic concept, and acceptance of EA-related responsibilities. Every enterprise or ministry must design an environmental management system ("EMS") for compliance, and employ an auditing process to ensure that its EMS is observed rigorously. If managers have not established an environmental management system, and cannot demonstrate objectively how they comply with their own EMS, then it is safe to assume that they are not in compliance with all environmental norms. At this point in the maturation of environmental law, this does not seem too bold a statement to make.

If IUCN is fully to assist its Members in securing observance of environmental obligations, we must devote time to building the use of EMS and environmental auditing. The tools of the International Standards Organization's ISO 14000 Series, and other auditing methodologies, are available but are under-utilized. In most enterprises (public or private) affecting biodiversity conservation, these tools are rarely used. The time has come to design systems of environmental auditing across the board.



Nicholas A. Robinson, Chair

Biosafety

The successful completion of the negotiations of the Cartagena Protocol on Biosafety was welcome news for IUCN generally, and the IUCN Law Programme in particular. This Newsletter gives the floor to five individuals who have been closely connected to the negotiation process:

Veit Koester chaired the Ad Hoc Working Group on Biosafety (BSWG) which met from 1996 to 1999 and shaped the protocol text until the Cartagena COP. His role in shepherding the negotiation process through four of five difficult years has been fundamental, and he may rightly be hailed as the 'father' of the Protocol!

Ruth Mackenzie followed the entire negotiation process for the Foundation for International Law and Development (FIELD); she is a dedicated environmental lawyer truly specialising in biodiversity-related issues.

Louise Gale represented Greenpeace throughout the negotiations, and played a key role in presenting the negotiators with NGO views throughout the process – including through the preparation of Greenpeace position statements advocating alternative language.

Thomas Yongo was, until after the end of the negotiations, a member of the staff of the CBD Secretariat and the staff attorney in charge of biosafety. He was thus an important member of the negotiation support team.

Richard Tapper's contribution to the process was as a member of the WWF team which monitored the negotiations and provided an input, in particular through the preparation of WWF position statements, on key issues.

We thank them all for their contribution to this Newsletter, and look forward working with them and other experts in order to foster the implementation of the Protocol in any way we can.

– FBG

...Overview

cedure is actually quite limited. However, while these categories of LMOs are excluded from the Protocol's *specific* AIA procedure, this does not imply that countries may not regulate their import. On the contrary, this right of countries of import is recognised in various provisions of the agreement.

The most contentious of the exemptions from AIA are those related to agricultural commodities, e.g. shipments of GM soya or maize, which are referred to in the Protocol as "living modified organisms for direct use for food, feed or processing" ("LMO-FFPs"). While the vast majority of developing countries insisted that these commodities should be subject to AIA, the Miami Group argued that they should properly be outside the Protocol's AIA procedure, because they are not intended for intentional introduction into the envi-

ronment and do not therefore present a threat to biological biodiversity.

For LMO-FFPs, the Protocol establishes a special procedure – essentially a multilateral information exchange mechanism through the Biosafety Clearinghouse (Article 11). Rather than setting out detailed notification and consent procedures here, the Protocol requires Parties to give notice of domestic authorisations of LMO-FFPs through the Biosafety Clearinghouse, and also requires Parties to make copies of relevant national laws and regulations available through the Clearinghouse. A Party may make decisions on imports of LMO-FFPs through its domestic regulatory framework (which must be consistent with the Protocol's objectives), or, if it is a developing country or economy in transition without a domestic regulatory framework, in accordance with a risk as-

essment and within a specified time period.

Precautionary Principle

The incorporation of the precautionary principle into operative provisions of the Protocol on decision-making on imports is particularly noteworthy. It is significant that its provisions apply not only to the application of the AIA requirements, but also in relation to LMO-FFPs. In both cases, the Protocol provides that lack of scientific certainty due to insufficient relevant scientific information and knowledge regarding the extent of potential adverse effects of an LMO shall not prevent a Party of import from taking a decision with regard to the import of that LMO in order to avoid or minimise such potential adverse effects. Socio-economic considerations arising from the impact of LMOs on biodiversity may also be

taken into account in import decisions.

Relationship with the WTO

Since the Protocol sets out procedures to regulate the import of LMOs, the relationship between these procedures and relevant trade disciplines under the WTO was a constant theme in the negotiations. The Like-Minded Group (which included most developing countries) wished to assert the primacy of the Protocol over any relevant WTO rules, in the event of any conflict between the two. The Miami Group, however, sought to include a wide-ranging "savings clause" preserving rights and obligation under existing international agreements, including the WTO.

In the end, the Protocol addresses its relationship with other international agreements, including the WTO, in three preambular paragraphs. These, however, leave the relationship between the regimes unclear. While in most respects the basic provisions of the Protocol appear to be consistent with relevant WTO rules, the precise scope of application of certain provisions remains uncertain and subject to national decision-making. For example, it is not clear how decisions will be evaluated with regard to issues such as the level of risk that the party considers acceptable; the precise circumstances for application of the

precautionary approach; the impact of socio-economic considerations; and the role of human health considerations in relation to imports of LMOs for release into the environment. The Protocol does not rule out the possibility of future disputes on these issues.

Identification and Labelling of Shipments

Disagreements arose as to the appropriate documentation and identification of shipments of LMO-FFPs – including specifically whether shipments of GM commodities should be clearly identified as LMOs. This requirement is particularly important with regard to the traceability of LMOs, and to the feasibility of domestic labelling regimes. For the time being at least, such shipments may simply be accompanied by documentation identifying that they "may contain" LMOs and are not intended for intentional introduction into the environment. Detailed requirements on documentation will be revisited by the meeting of the Parties within two years of entry into force of the Protocol.

The Next Steps

The Protocol will enter into force three months after the deposit of the fiftieth ratification. It is presently expected that the Protocol should enter into force late in 2001 or in 2002,

and that the first meeting of the Parties could be held in 2002.

Important decisions to operationalise and elaborate certain provisions of the Protocol are due to be taken at the first meeting of the Parties. In preparation, an Intergovernmental Committee on the Cartagena Protocol (ICCP) has been formed, which will meet for the first time in December 2000. Issues on the ICCP's agenda include the consideration of a compliance procedure for the Protocol; the functioning of the Biosafety Clearing House, a crucial component of the Protocol's machinery; and capacity building. Disagreements emerged at COP 5 as to whether the ICCP should begin any detailed work on liability and redress and on identification and documentation requirements for LMO-FFPs.

In the long run, prospects for the Protocol seem likely to depend on whether any international consensus begins to emerge as to the extent and nature of any risks posed by LMOs. Interestingly, the Protocol does not establish any specific mechanisms for investigating these risks, although the meeting of the Parties may decide to seek advice from the Convention's Subsidiary Body on Scientific, Technical and Technological Advice. At present, proposals for mechanisms to advance international understanding of risks associated with LMOs are coming not from the CBD, but from other fora.

In the short and medium-term, the most critical issue in implementation of the Protocol will be building the capacity of developing countries to assess and manage risks associated with LMOs. In this respect at least, everyone agrees that much remains to be done.

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LAST MINUTE NEWS

The Protocol was opened for signature in Nairobi on 24 May. It recorded a resounding 65 signatures in that day! A record number, as the UN confirms!

Excellence in the Art of the Possible

Early in the morning of Saturday, 29 February 2000, delegates of more than 130 Parties to the Convention on Biological Diversity (CBD), including approximately 40 ministers, adopted the Cartagena Protocol on Diversity.

The Cartagena Protocol thus became the first global, legally binding instrument (as well as the first international environmental agreement) of the new millennium.

No other international agreement deals so extensively with both environment and trade – and trade based on a multi-billion-dollar global industry with a potential for even more dollars. So in this respect also the Protocol should be considered a milestone. No wonder that the delivery was difficult, troublesome and hard-won.

The process did not start in 1994, nor in 1996 as has been suggested in various press releases. In reality, it started in 1991, when the idea of a protocol was launched by Malaysia by the end of the negotiation process of the CBD. The fight about the language of the provision in the Draft CBD dealing with the protocol issue continued until the very last moments of the negotiation process in May 1992, ending only with a trade-off between a non-mandatory provision on the development of a protocol and another controversial issue.

The fight about whether or not a protocol should be developed went on at meetings before the CBD entered into force late 1993 and thereafter until the "Jakarta Mandate" was agreed at the CBD COP 2 in Indonesia in 1995.

An Ad Hoc Working Group was established to negotiate a protocol on biosafety. The Group held six meetings comprising 30-35 working days. Starting from scratch at its first meeting in 1996 in Aarhus, Denmark, the

group established a list of roughly 50 items to be considered. The substantive content of the protocol was a building process, based almost entirely on input from delegations. A true bottom-up process!

In the end, the Working Group failed to produce a consensus result at its last meeting in Cartagena, Colombia in February 1999. Whether this was due to time constraints, "obstruction", the upcoming WTO meeting in Seattle, a mixture of these reasons, or still other reasons is an issue that should, perhaps be analysed in greater depth. But probably the true answer will always blow in the wind!

The more than two days of negotiations in the framework of the Extraordinary COP back to back with the final meeting of the Working Group also did not result in a consensus. Finally, after informal consultations in July and September 1999 and consultations as well as negotiations during a week in Montreal by the end of January 2000 the Draft Negotiating Protocol was transformed into the Cartagena Protocol.

The Protocol represents a compromise – *the art of the possible*. Therefore, there are undoubtedly some weaknesses. They will be identified and analysed by others. But the Protocol is also a strong agreement first of all because the Protocol is building on the Precautionary Principle expressed in a clear, concise and rather detailed manner not found in any other international agreement.

A balance was found with regard to existing multilateral agreements, *inter alia* in the framework of WTO. Personally, I believe that no other solution was possible and would have been suitable. If the Protocol becomes a success, and if it is loyally applied in accordance with its philosophy and intentions, I am convinced that the Protocol will be fully respected by WTO's Panels and its Appellate Body.

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Application of the Precautionary Principle to Biosafety

The Cartagena Protocol on Biosafety is a landmark for many reasons. Obviously, its first importance is embodied in its recognition in international law that living modified organisms (LMOs) should be covered by a specific regulatory framework. But it is also momentous in the prominence of its espousal of the precautionary principle, in operative (non-preambular) provisions.

Basic statements of the Principle

Article 10 of the Cartagena Protocol specifically calls for countries to apply the Precautionary Principle to their permitting decisions regarding the import of any LMO intended for introduction into the environment, and the conditions that shall apply to such import. Article 11 applies the Precautionary Principle to the introduction of LMOs for direct use as food or feed, or for processing. In both, the Protocol states that lack of scientific certainty or insufficient scientific evidence regarding potential adverse effects shall not be used as a reason to delay action to control or protect against such effects.

A related provision, Article 26, identifies additional factors to be considered relevant to the ultimate decision. It provides that, in reaching their decisions on import of any LMO, Parties may take socio-economic considerations “arising from the impact of living modified organisms on the conservation and sustainable use of biological diversity, especially with regard to the value of biological diversity to indigenous and local communities” into account, “consistent with their international obligations”.

Risk Assessment

The Protocol's procedures are based on the utilisation of a risk assessment procedure, “to identify and evaluate the possible adverse effects of living modified organisms on the conservation and sustainable use of biological diversity, taking also into account

risks to human health” with regard to particular introductions or classes of introductions. The parameters of this procedure are further described in Annex III to the Protocol.

The Protocol recognises that determining what is an acceptable level of risk is a matter for society not scientists, and explicitly states in Annex III.4 that “Lack of scientific knowledge or scientific consensus should not necessarily be interpreted as indicating a particular level of risk, an absence of risk, or an acceptable risk.” As a result, the Protocol and its Annexes do not prescribe any particular method or approach concerning how to determine whether an LMO may have potential adverse effects, beyond stating that risk assessment shall be carried out in a “scientifically sound and transparent manner.”

Annex III.4 addresses the interpretation of scientific information and lack of information, in relation to risk, and the risk assessment process. For example, where researchers have failed to investigate a potential risk because they assume that it is low, this fact should not necessarily constitute evidence that the risk is zero or negligible.

This provision also recognises that there may be a lack of scientific consensus on relevant issues, and that different countries may legitimately make different choices in relation to the acceptability of any given level of risk.

Decision-making

Articles 10.6 and 11.8 apply the Precautionary Principle to decision-making, including decisions on the acceptability of risks and levels of risk, within this context. The Protocol directly discusses the handling of cases where there is “insufficient relevant scientific information and knowledge.” Given that “decision-making” is a broader concept than

(and includes) risk assessment, these references in the main text clearly have a broader application than Annex III.4. This ensures that compliance with the requirements of Annex III cannot be asserted as overriding the more general application of Articles 10.6 and 11.8.

One mechanism by which the Protocol supports the precautionary Principle is its provisions for transparency in decision-making. Countries are specifically required to state the reasons for their decisions, except where unconditional approval is given for an LMO to be imported.

The formulation of the Precautionary Principle in Articles 10 and 11 allows countries to set conditions on, or to refuse, imports of LMOs where the science concerning potential adverse effects that might arise from such imports may be unclear, insufficient, or uncertain. This is particularly important with respect to LMOs since the vast majority of scientific effort is being expended on their development, rather than on understanding potential adverse effects. Thus the state of knowledge regarding those effects is limited, and likely to change dramatically over the coming years. Furthermore, certain risks of adverse effects from LMOs are dependent on the receiving environments into which an LMO is introduced, and will therefore vary across the range of applications.

Application

The development of LMOs is mainly conducted in the private sector, and the current absence of an international regime for liability and compensation in relation to any damage resulting from transboundary movements of LMOs, means that incentives for development and marketing are greater than for assessing potential problems. This is one of the rea-

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AN NGO PERSPECTIVE ON THE NEGOTIATIONS

The adoption of the Biosafety Protocol in Montreal in January of this year was warmly welcomed by the NGO community. The Protocol is an outstanding example of the important role that NGOs play in working with governments to achieve progress in protecting the world's environment.

To understand why, after protracted negotiations and in the face of staunch opposition from some governments, the Protocol negotiations were eventually successful, one must necessarily consider and recognise the contribution of NGOs to this conclusion and to the final contents of these important international environmental rules. The ultimate achievement of a signed and accepted Biosafety Protocol can be attributed to two key factors: the par-

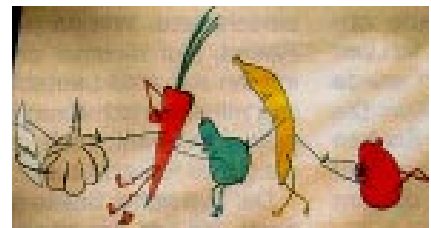
ticipation of NGOs in the negotiations, and the enormous public concern over the safety of genetically modified organisms in food and agriculture.

People power

In many respects, the odds were stacked against a positive final outcome in Montreal. Right up until the last moments, the Miami Group of 6 countries (Argentina, Australia, Canada, Chile, Uruguay and the USA) were indicating clear opposition to an international environmental treaty regulating living modified organisms, particularly in relation to the exports of living modified organisms for use in food and agriculture. These messages were taken seriously, since the collapse of the negotiations in Colombia (in February

1999) was broadly attributed to this group of countries.

However, it is unlikely that the Miami Group had expected the momentum and expectations that had been building up around the world since the failure of the Colombian negotiations. NGOs and governments had invested more than five years in – in most cases – earnest negotiations to draft a Biosafety Protocol to the Convention on Biological Diversity (CBD). Important issues were now



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sons why domestic regulatory regimes are so essential for control of LMOs, and why development of an effective liability and compensation regime is a priority for the Protocol.

Consistent with application of the Precautionary Principle, WWF is currently seeking a moratorium on use or release of GMOs into the general environment until ecological interactions are fully researched and safeguards put in place. There are many areas where the science shows that GMOs may have damaging environmental effects. These include potentially disruptive effects of GMOs on ecological and agricultural systems, such as ecological effects of GMOs in the soil; evolution of resistance to 'bio-pesticides'; and gene transfer from GMOs to relatives. They also include uncertainties and unpredictability associated with genetic engineering, for example, in gene silencing and related effects, and the potential for viral recombination with engineered genes.

In the USA, the US EPA has confirmed concerns that there are serious environmental problems associated with widespread planting of maize engineered with *Bt* genes to confer resistance to insect pests. It has issued immediate risk-management-based restrictions, applicable to all cultivation of *Bt* maize. Farmers plant at least 20 percent conventional corn in most areas, (50 percent in areas where cotton is grown) near to their *Bt* maize in order to reduce *Bt* pressures on insects and delay the evolution of resistance in pest populations.

A recent report published by WWF outlines risks associated with GM trees, including instability of genetic modifications. Uncertainties surrounding side effects over the lifetime of GM trees, which is far longer than that of short-lived agricultural crops, are illustrative of the difficulties arising from GMOs more generally. The report notes scientific evidence that engineered genes in GM trees can be switched on or off unpredictably

as environmental stresses change over the lifetimes of GM trees.

In the face of such uncertainties and disputes concerning science, the Precautionary Principle emphasises the need for more and better science, including a focus on long-term and complex interactions. In particular, it recognises that there can be more than one scientifically valid viewpoint. This point is particularly important and must be underscored, particularly as the funding and focus of genetic engineering activities become dominated by commercial interests. Through the Cartagena Protocol, the Precautionary Principle gives a strong mandate to the Parties in their national decision-making, to take the inherent uncertainties that surround genetic engineering into account.

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recognized to be at stake – the future of international environmental rules, the robustness of the CBD, and the power that a minority grouping of countries can wield over the rest of the world.

Coupled with these international issues, were increasing pressures exerted in many countries by the public, asking what their governments would do to protect them from the potential adverse risks of GMOs. NGO awareness-raising activities had specifically alerted the public to the threat that governments might not be able to agree on an environmentally effective Biosafety Protocol. This peril was perhaps better understood in light of action items (proposed but not decided) from the ill-fated World Trade Organisation meeting in Seattle (November 1999). Specifically, proposals had been offered by the US and Canada which would have taken biosafety issues out of the purview of the CBD and place them squarely within the remit of international free-trade rules.

The public in Canada clearly played a critical role in the outcome of the Biosafety Protocol's final negotiations. The peaceful marches through the streets of Montreal and vigils in sub-zero temperatures not only impressed upon delegates the strength of the very real concern that normal people have about genetically modified organisms, but also reminded them of what could happen in their own countries if they did not represent the public's interest at these negotiations. It was crystal-clear that the focus of this public protest was against what they felt was the position of the Miami Group, and the position of Canada (the meeting's host country) in that Group. The Canadian government, which had, to that date, given out only low-key information about the negotiations, was suddenly faced with a barrage of questions on the viability of its position in the Miami Group.

In a number of cases, the impact of NGO activity was clearly visible. For example, NGOs clearly questioned the decision of the Government of Canada not to send its environment minister to these international *environmental* negotiations. In response, the Canadian environment minister changed his agenda, came to Montreal and became actively immersed in the details of the negotiations.

Throughout the process, governmental and public pressure continued to mount on the Miami Group, who, until the very last moments, sought to continue to weaken key elements contained in the draft text. In some cases, for example in relation to labelling, their tactics were successful. In others, particularly in relation to attempts to undermine the precautionary principle, they were not.

Transparency and participation

Right up until the moment, in the early hours of that January morning, when Colombian chair Juan Mayr announced that the Protocol was concluded, NGOs remained in contact with governments at these negotiations. In this way, they were enabled to understand the process and the positions of various delega-



tions, and in many instances to exert public pressure on governments creating obstacles in the way of the Protocol.

The rise of recognition and legitimacy of NGOs in international dialogue can be clearly seen in their role in the Cartagena negotiations. From the outset, NGOs were accredited as observers under the rules of the UN Convention on Biological Diversity. The original chair of the negotiations, Veit Koester, established a high level

of transparency in the proceedings by allowing NGOs to make contributions in working groups, and statements in plenary sessions. As a result, delegates had access to a range of up-to-date scientific and legal skills from NGO experts, to guide them through the maze of procedural, technical and political language, claims and concepts arising in the negotiation process. It also gave delegates the opportunity to become aware of and address concerns of the general public that had not been anticipated when the mandate for the Protocol was originally formulated.

The full potential of NGOs was not tapped, however. Unlike other recent international and regional fora, the Cartagena negotiations did not allow NGOs to submit written positions for formal circulation, in the same way that governments or international governmental organisations do. This limitation should be reviewed before it is applied in other contexts. For the Biodiversity Protocol process, it meant that constructive proposals from NGOs with a close understanding of political, legal and scientific developments could not be formally considered within the negotiations.

In the lead up to Montreal, few people would have bet that the Biosafety Protocol would be signed, or that its critical provisions on precaution would remain more or less in tact in the final document.

Much still remains to be done, however, to ensure that the principles and commitments under the Biosafety Protocol are implemented and applied. Governments now need to work closely with NGOs and the public interests they represent and should make every effort to ensure increased participation by NGOs in the various working groups and other sessions which will take place over the next couple of years.

– Louise Gale
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153 Regent's Park Road
London NW1 8BB
e-mail: lousiegale9@hotmail.com

Info needed:

The Chair and the ELC would be pleased to hear from CEL members who plan to attend or participate in any of the following meetings.

CALENDAR C

As of 12 J

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|-------------|------------------------|--|
| 12-16 June | Bonn, Germany | 12th Session of the UNFCCC Subsidiary Bodies
Contact: UNFCCC Secretariat, Haus Carstanjen, Martin-Luther-King-Strasse 8, D-53175 Bonn, Germany; tel.: (49 228) 815-1000; fax: (49 228) 815 1999, e-mail: secretariat@unfccc.de; Internet: www.unfccc.de |
| 13-16 June | Rome, Italy | The Interim Commission on Phytosanitary Measures Exploratory Working Group on Phytosanitary Aspects of Genetically-Modified Organisms, Biosafety and Invasive Species
Contact: Christina Devorshak, IPPC Secretariat, Viale delle Terme di Caracalla, 00100, Rome, Italy, tel.: (39 6) 5705-4812; fax: (39 6) 5705-6347; e-mail: ippc@fao.org or Christina.Devorshak@fao.org |
| 19-20 June | London, United Kingdom | The Kyoto Protocol: The End of the Beginning?
Contact: Georgina Wright, Royal Institute of International Affairs (RIIA) Conference Unit, Chatham House, 10 St James's Square, London SW1Y 4LE, tel: (44 20) 7957 5700, fax: (44 20) 7321 2045; e-mail: info@riia.org; Internet: www.riia.org |
| 4-7 July | St. Petersburg, Russia | UNEP Regional Workshop on Alternatives to POPs Pesticides
Contact: UNEP Chemicals (IRPTC), tel: (41 22) 979-9111; fax: (41 22) 797-3460; e-mail: Murray Newton at mnewton@unep.ch or Heidi Fiedler at hfiedler@unep.ch; Internet: www.irptc.unepch/pops |
| 5-6 July | Geneva, Switzerland | World Trade Organization Committee on Trade and Environment Meeting
Contact: Sabrina Shaw, Secretary of the CTE, WTO, 154 rue de Lausanne, 1211 Geneva 21, Switzerland; tel: (41 22) 739 5482; e-mail: sabrina.shaw@wto.org; Internet: www.wto.org/wto/environ/te030.htm |
| 7 July | New York, USA | Annual Environmental Law Coordinating Forum -- Standing Committee on Environmental Law (Annual coordinating forum at the American Bar Association Annual Meeting for ABA entities working in environmental law)
Contact: American Bar Association, Standing Committee on Environmental Law Staff, tel: (1 202) 662-1694; e-mail: itohc@staff.abanet.org; Internet: www.abanet.org/publicserv/envupdate.html |
| 10-14 July | Dundee, Scotland | Dundee Water 2000: Equitable and Sustainable Access to Water
Contact: Moira McKinlay, Seminar Co-ordinator, CEPMLP, University of Dundee, Dundee, DD1 4HN, Scotland, UK; tel: (44 1382) 344303; fax: (44 1382) 345854; e-mail: m.r.mckinlay@dundee.ac.uk; Internet: www.dundee.ac.uk/cepmlp/water |
| 11-14 July | Geneva, Switzerland | 20th Session of the Open-Ended Working Group of Parties to the Montreal Protocol
Contact: Ozone Secretariat, tel: (254 2) 62 1234; fax: (254 2) 62 3601; e-mail: ozoneinfo@unep.org; Internet: www.unep.org/ozone/ |
| 20 July | London, United Kingdom | Global Climate Change: Planning for the Big Contingency: Section of the Environment, Energy and Resources
Contact: American Bar Association, Section Staff, tel: (1 312) 988-5602; Internet: www.abanet.org/annual/2000/plenary.html#20. |
| 24-25 July | Nadi, Fiji | International Conference on Climate and Health in Small Island States
Contact: Dr. H. Ogawa, World Health Organization, Regional Office for the Western Pacific; fax: (632) 521-1036 or (632) 526-0279 or (632) 526-0362; e-mail: ogawah@who.org.ph |
| 24-26 July | Bristol, U.K. | 3rd Meeting of the Parties to EUROBATS
Contact: Andreas Streit, EUROBATS; Haus Carstanjen, Martin-Luther-King-Strasse 8, D-53175 Bonn, Germany; tel.: (49 228) 815 2420; fax: (49 228) 815 2445; e-mail: eurobats@uno.de; Internet: www.eurobats.org |
| 25-29 July | London, U.K. | The 69th Biennial Conference of the International Law Association
Contact: International Law Association, Charles Clore House, 17 Russell Square, London WC1B 5DR, United Kingdom, tel.: (44 0171) 323 2978; fax: (44 0171) 323 3580, e-mail: secretariat@ila-hq.org; Internet: www.ila-hq.org |
| 17-21 Aug | Belo Horizonte, Brazil | 5th International Symposium on Environmental Geotechnology and Global Sustainable Development
Contact: Symposium Secretary, Departamento de Engenharia de Transportes e Geotecnia, Universidade Federal de Minas Gerais, Avenida do Contorno, 842 sala 104, Belo Horizonte, Minas Gerais, CEP 30 110-060, Brazil, fax: (55 31) 2381793; e-mail: cassia@etg.ufmg.br; Internet: www.5iseggsd.eng.ufmg.br/ |
| 11-14 Sept | Prague, Czech Republic | 4th International Conference on Environmental Impact Assessment
Contact: EIA Prague 2000, Czech Medical Association JEP, P.O. Box 88, Sokoská 31, 12026 Prague 2, Czech Republic; tel.: (420 2) 296-889 or 297-271; fax: (420 2) 2421-6836 or 2491-9740; e-mail: lonekova@cls.cz; Internet: www.congress.cls.cz/IUAPPA2000 |
| 11-15 Sept. | Lyon, France | 13th Session of the UNFCCC Subsidiary Bodies
Contact: UNFCCC Secretariat, Haus Carstanjen, Martin-Luther-King-Strasse 8, D-53175 Bonn, Germany; tel.: (49 228) 815-1000; fax: (49 228) 815 1999, e-mail: secretariat@unfccc.de; Internet: www.unfccc.de |

Info needed:
Please inform us of important meetings on environmental law and policy that are not reflected in this list.

OF MEETINGS

June 2000

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|------------------|----------------------------|--|
| 18-22 Sept. | Cape Town, South Africa | Global Invasive Species Programme Synthesis
Contact: Laurie Neville, Conference Coordinator, Global Invasive Species Programme, Stanford University; tel: (1 650) 728-2614; fax: (1 650) 723-1530; e-mail: Lneville@leland.stanford.edu; Internet: http://jasper.stanford.edu/gisp/ |
| 22-23 Sept. | Cambridge, Mass., USA | International Conference on Biotechnology in the Global Economy: Science and the Precautionary Principle
Contact: Derya Honca, Science, Technology and Innovation, Center for International Development at Harvard University; 79 John F. Kennedy Street, Cambridge, MA 02138, USA; tel.: (1 617) 495-1923; e-mail: Derya_Honca@KSG.Harvard.Edu; Internet: www.cid.harvard.edu/cidbiotech/hompage.htm |
| 25-29 Sept. | Geneva, Switzerland | 7th Session of the International Negotiating Committee (INC) for the Preparation of the Conference of the Parties of the Rotterdam Convention for the Application of the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade
Contact: Niek Van der Graaf, FAO, Viale delle Terme di Caracalla 00100 Rome, Italy; tel.: (39 6) 5705 3441; fax: (39 6) 5705 6347; e-mail: Niek.VanderGraaf@fao.org; Internet: www.fao.org/waicent/FaoInfo/Agricult/AGP/AGPP/Pesticid/ |
| 4-11 Oct. | Amman, Jordan | IUCN World Conservation Congress
Contact: Ursula Hiltbrunner, IUCN, Rue Mauverney 28, 1196 Gland, Switzerland; tel: (41 22) 999-0001; fax: (41 22) 999-0020; e-mail: ursula.hiltbrunner@iucn.org ; Internet: www.iucn.org |
| 24-25 Oct. | Geneva, Switzerland | World Trade Organization Committee on Trade and Environment Meeting
Contact: Sabrina Shaw, Secretary of the CTE, WTO, 154 rue de Lausanne, 1211 Geneva 21, Switzerland; tel: (41 22) 739 5482; e-mail: sabrina.shaw@wto.org ; Internet: www.wto.org/wto/enviro/te030.htm |
| 25-27 Oct. | Madrid, Spain | Simposio Internacional: Legislación y Derecho Ambiental
Contact: Ilustre Colegio de Abogados de Madrid, Programa Internacional en Derecho Ambiental, Serrano Nº 11, 4ª Planta, 28001 Madrid, Spain; e-mail: zsogon@iies.es or zsogon@teleline.es |
| 30 Oct. - 3 Nov. | Geneva, Switzerland | 7th Session of the Intergovernmental Negotiating Committee (INC) for an international legally binding instrument for the application of the prior informed consent (PIC) procedure for certain hazardous chemicals and pesticides in international trade
Contact: Niek Van der Graaf, FAO, tel.: (39 6) 5705-3441; fax: (39 6) 5705-6347; e-mail: Niek.VanderGraaff@fao.org ; Internet: www.fao.org/waicent/FaoInfo/Agricult/AGP/AGPP/Pesticid/Events |
| 13-24 Nov. | The Hague, The Netherlands | 6th Conference of the Parties to the UNFCCC
Contact: UNFCCC Secretariat, Haus Carstanjen, Martin-Luther-King-Strasse 8, D-53175 Bonn, Germany; tel.: (49 228) 815-1000; fax: (49 228) 815 1999, e-mail: secretariat@unfccc.de ; Internet: www.unfccc.de |
| Nov.-Dec. | Kingston, Jamaica | 9th Intergovernmental Meeting on the Action Plan for the Caribbean Environment Programme; 6th Meeting of the Contracting Parties to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region
Contact: UNEP-Caribbean Environment Programme, Regional Co-ordinating Unit, 14 - 20 Port Royal Street, Kingston, Jamaica, W.I.; tel.: (1 876) 922 9267; fax: (1 876) 922 9292; e-mail: uneprcuja@cwjamaica.com ; Internet: www.cep.unep.org/ |
| 4-9 Dec. | Johannesburg, South Africa | 5th Session of the Intergovernmental Negotiation Committee for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants (INC-5)
Contact: UNEP Chemicals (IRPTC), tel: (41 22) 979 9111; fax: (41 22) 797 3460; e-mail: dodgen@unep.ch ; Internet: www.irptc.unep.ch/pops/ |
| 11-15 Dec. | Montpellier, France | First Meeting of the Intergovernmental Committee on the Cartagena Protocol
Contact: Cyrie Sendashonga, CBD Secretariat, World Trade Center, 393 St. Jacques Street, Suite 300, Montreal, Quebec H2Y 1N9, Canada; tel: (1 514) 288-2220; fax: (1 514) 288-6588; e-mail: cyrie.sendashonga@biodiv.org ; Internet: http://www.biodiv.org/ |
| 11-15 Dec. | Ougadougou, Burkina Faso | 12th Meeting of the Parties to the Montreal Protocol
Contact: Ozone Secretariat, tel.: (254 2) 62 1234; fax: (254 2) 62 3601; e-mail: ozoneinfo@unep.org ; Internet: www.unep.org/ozone/ |
| 11-22 Dec. | Bonn, Germany | 4th Session of the Conference of the Parties to the Convention to Combat Desertification
Contact: CCD Secretariat, Haus Carstanjen, Martin-Luther-King-Strasse 8, D-53175 Bonn, Germany; tel: (49 228) 815-2800, fax: (49 228) 815 2899; e-mail: secretariat@unccd.de ; Internet: www.unccd.de |
| 2001 | | |
| 8-12 Jan. | San José, Costa Rica | World Congress of Environmental Law and Policy
Contact: CIACA, Oficina Europea, Villa Asunción, AV Alcalde Jose Elosegui, 275, 1ª Planta, 20015 Donostia San Sebastian. Gipuzkoa, Spain, tel. and fax: (34 943) 278888; e-mail: ciacaciv@sarenet.es ; Internet: www.greenchannel.com/iceac |

Towards Implementation of the Biosafety Protocol

Introduction

Modern biotechnology – and in particular genetic modification techniques – is a new and expanding field capable of providing tremendous benefits in both developed and developing countries. There are, however, concerns that the living modified organisms (LMOs) produced by biotechnology may pose a threat to biological diversity and human health. These concerns, together with the fact that there were no legally binding international agreements covering the transboundary movement of LMOs, prompted the Conference of the Parties to the CBD at its second meeting to initiate a process to develop a protocol on biosafety (COP decision II/5). After three and a half years of painstaking negotiations, the Cartagena Protocol on Biosafety was adopted in Montreal on 29 January 2000.

(For an account of the negotiations of this Protocol, see Aarti Gupta, Framing 'biosafety' in an international context: the Biosafety Protocol negotiations, ENRP Discussion Paper E-99-10 (Harvard, MA: Kennedy School of Government, Harvard University, 1999); Robert Falkner, "Regulating biotech trade: the Cartagena Protocol on Biosafety" *International Affairs* 76, 2 (2000) 299-313).

As with other technologies, the useful applications of biotechnology could be outweighed by adverse environmental impacts unless measures are taken to ensure its safety. Past experience has shown that, often, no such action is taken until after the damage has occurred. The sins of the past and increased environmental awareness have led to a growing acceptance of the "precautionary approach", as enshrined in the Principle 15 of the Rio Declara-

tion on Environment and Development. For the first time in an operative part of a binding international legal instrument, the Cartagena Protocol reflects this approach, in its fourth preambular paragraph and in Articles 1, 10(6) & 11(8).

Implementation & Compliance

The Protocol will be judged to have been successful only if each State fulfils its obligations by translating international law into national legislation, regulation and institutions. For States to effectively implement and comply with their international obligations there needs to be

both intent and capacity. Assuming that the intent is there, implementation can occur only if the State concerned has (i) the necessary human and financial resources allocated to the process, (ii) access to information about applicable rules to allow for participation

by civil society and industry, (iii) incentives and inducement such as special funds, and (iv) technical assistance and training directed at national capacity-building. Capacity-building has proved to be one of the most important of the tools that are increasingly being included in international instruments to improve their implementation and effectiveness. Rather than focusing on enforcement and dispute settlement, the Cartagena Protocol, like other international legal instruments adopted in the last few years, uses clauses that provide for consensus-building and enabling mechanisms, particularly in support of developing countries, as a means of ensuring compliance with international obligations and commitments.

The Protocol also pushes further the frontiers of international environmental law, further elaborates and crystallises the principle of the precau-

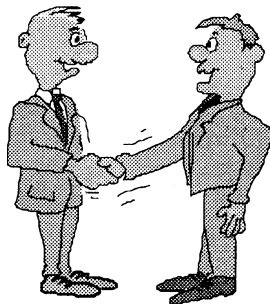
tionary approach in general international law. The Parties must now flesh out articles that are crucial to the effective implementation and functioning of the protocol. For example, an advance informed agreement procedure can be effective only if there are in place an effective information-exchange procedure and an effective Biosafety Clearing-house mechanism. Closely related and equally important are the articles on risk assessment and risk management. It is articles such as these that Parties must concentrate on strengthening. Above all, Parties must also put in place mechanisms that establish and strengthen capacity-building in developing countries.

Capacity building for risk assessment and management should ensure implementation of national biosafety guidelines and create national awareness of risks associated with biotechnology. Developing countries must also be able to assess and manage risks when living modified organisms are imported and used in the country. By ensuring safety and strengthening appropriate policies, facilities and training in various relevant fields, the development, transfer and application of biotechnology are enhanced.

In order to actively participate in the process, developing countries must acquire: a well trained human resource base, an information-gathering and dissemination structure, institutional and infrastructural capacities, and financial resources to facilitate implementation. Absence any one of these facets could result in restricted development and application of biotechnology.

Future Work Plan

As decided at the extraordinary meeting for the adoption of the protocol, preparations for the first meeting of the Parties to the Protocol will be undertaken by an open-ended *ad hoc* Intergovernmental Committee



for the Cartagena Protocol (ICCP). It is anticipated that the first meeting of the ICCP will be held in France in December 2000. The proposed work plan for ICCP will cover, first, issues that the Protocol stipulates must be considered by the first meeting of the Parties to the Protocol (MOP-1). These issues include: Article 10 (Decision procedure), Article 20 (Information-sharing and the Biosafety Clearing-house), Article 27 (Liability and redress), Article 31 (Secretariat) and Article 34 (Compliance). Second, in order to plan for the effective implementation of the Protocol, MOP-1 will also have to address other provisions, particularly those that relate to activities that are central to the operation of the Protocol and would promote the ratification of the Protocol by preparing all the mechanisms required for its effective operation and by clarifying some of the pivotal requirements for its implementation, such as those falling under: Article 18 (Handling, transport, packaging and identification), Article 22 (Capacity-building), Article 28 (Guidance to the financial mechanism), Article 29 (Conference of the

Parties serving as the meeting of the Parties to this Protocol), and Article 33 (Monitoring and reporting). (See the note by the Executive Secretary on the proposed work plan for the Intergovernmental Committee for the Cartagena Protocol On Biosafety (UNEP/CBD/COP/5/6/Add.1), prepared for the fifth meeting of the Conference of the Parties to the Convention).

Biotechnology is an area where the private sector, in particular, can contribute to the development and/or strengthening of human resources and institutional capacities in biosafety for the purpose of the effective implementation of the Protocol in developing country Parties. Biotechnology is an incoming tide – it is a fact that we cannot shy away from nor deny its existence. Biotechnology is here and it is here to stay, and the possibilities are immense. The technology is advancing at such a rapid rate that, inevitably, there are bound to be broad health, social, economic and environmental consequences.

Deepened understanding of all living organisms at the molecular level continues to bestow health, agricultural, environmental, and economic benefits upon humankind. These associated benefits make it imperative to rise to the challenge operationalizing the Protocol. To be effective, the Protocol will require the international community, governments, industry, academic institutions and other non governmental organizations, to come together and not only exchange, but also to share experiences and expertise in both developed and developing countries.

The views expressed in this article are those of the author in his personal capacity and do not necessarily reflect those of the Secretariat.

– Thomas Yongo
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Ex-COP Chair Juan Mayr at the formal signing of the Protocol in Nairobi.



CITES COP-11

The Eleventh Conference of the Parties to CITES met in Nairobi from 10 to 20 March, 2000. Out of this meeting came quite a number of important decisions, both consensus and contested, with important implications. To a large extent, however, these matters were overshadowed by the controversies over elephants and the ivory trade, which received the bulk of international press attention. Although the elephant/ivory issue is clearly of interest, the more important lessons of CITES COP 11 may be found in a number of other critical trends.

Listing Criteria

One lesson can be found in the rejections of various proposals to allow resumption of trade in products of grey and minke whales and the hawksbill turtle. To some, these decisions indicate that CITES decisions are unscientific and emotional. Many others, however, see them as a demonstration that the CITES COP acts on the basis of numerous factors, many of which are unquantifiable. CITES listing criteria include more than a strict counting of species – factors based on precaution, the impact that trade in one species may have on other species, and other specific concerns, are critical to the CITES process. Thus, for example, many countries voted to reject the whale and hawksbill proposals on the basis of lack of sufficient programs for scientific monitoring (or the near consensus that proposed programs were not practical, not scientifically valid, or not in place) rather than on categorical opposition to trade in these species.

Emphasis on Trade

The “trade” aspect of CITES was more obvious in COP-11 than in the past. Claims that there is no market (or only a very limited one) for a species were frequently raised in opposition to listing proposals. Moreover, a significant number of proposals specifically related to measures to

improving the “trade-ability” of species, and others focused on creating new control/monitoring methods as a means of avoiding “up-listing” of a currently traded species (thereby making trade in that species illegal.) Many decry this commercial focus, but a strong argument exists that “sustainable development” may ultimately be the primary mechanism by which endangered species will escape extinction. With Appendix II (a list of species for which controlled trade is permitted) CITES ensures that trade is conducted circumspectly, and that a species' value in trade may increase incentives to ensure that a species survives. In this respect, Appendix II may be just as important as Appendix I (prohibiting



commercial trade in seriously endangered species, and thus eliminating the legal market for these products) to the overall effectiveness of CITES.

“Open-access Resources”

Wildlife species that are outside the jurisdiction of any state (i.e., species found in “international waters”) were the subject of many proposals, including requests to downlist certain minke whale populations, and proposals to list basking sharks and other shark species on Appendix I. Strong, and sometimes categorical, opposition to CITES controls on such species came from countries with large fishing fleets. This discussion raised numerous questions regarding the relationship among a variety of international legal instruments, IGOs and processes (UNCLOS, FAO, IWC, the trade agreements, etc.)

“Synergy”

Several serious discussions and recommendations sought the development of programs to enhance the complementarity among various conventions and intergovernmental processes.

The role of other bodies and fora was argued in detail in the context of the whale and shark proposals. It should be noted, however, that some “fishing nations”, while arguing uniformly against retaining the current role of the IWC with regard to whale-related commodities, argued strenuously in favor of turning over the management of trade in basking shark and other shark species to FAO’s voluntary program. Both issues will be taken up again in meetings of the IWC and FAO later in the year.

CITES relationship to other conventions arose again in regard to the relationship between CITES and the CBD. In discussion of a proposal to exempt “diagnostic samples” from CITES permit requirements, many parties expressed concern that this proposal would create a loophole under which “genetic resources could be taken for commercial research (under the label “samples”) without permits or other government oversight. This question will be investigated during the intersessional period by a working group, whose mandate includes a direct requirement of co-ordination with the CBD Secretariat.

Conclusion

The most significant aspect of COP-11 may legitimately turn out to be the Great Elephant Compromise – certainly the collective work of the African regional delegations in addressing this issue was commendable and momentous – however the Meeting’s more general legal impact on international and domestic conservation activities, including the trends described above, might also be reckoned to be of vital importance.

–TRY

Persistent Organic Pollutants

From 20 to 25 March 2000, IUCN participated in the fourth round of negotiations on a global treaty on persistent organic pollutants (POPs), held in Bonn, Germany. A final negotiating session is planned for Durban, South Africa this December, and the agreement is expected to be presented for adoption in May 2001.

The most significant developments during POPs INC-4 include:

- Consideration of new proposals, building on the GEF, to ensure access to funding;
- Retention of the stated goal of ultimate elimination of production and use of all ten of the "intentionally produced POPs" that are identified in the mandate;
- General support for proposals to

eliminate DDT its production and use, tempered by relevant public health exemptions;

- Agreement on general provisions for continuing minimization of unwanted by-products (dioxins and furans.) Further negotiations will focus on a proposed Annex, which addresses additional points, and would apply to certain intentionally formed by-products (hexachlorobenzene and PCBs) as well.
- Agreement regarding proposals for the establishment of scientific criteria for identifying additional POPs for the future.

Among the issues on which agreement has not been reached, perhaps the most significant is the precautionary principle, and the manner in

which it will be reflected in the convention.

As a contribution to a better understanding of the issues related to POPs, the ELC has been organising a "Virtual Law Panel" on this topic in conjunction with International Pollution Elimination Network (IPEN) During the meeting, the ELC also presented a demonstration of the global law information system on Internet (ECOLEX). In addition, following an invitation to the ELC, the Chair of the Law Commission is attending a Workshop on Chemicals Legislation sponsored by the UNEP Chemicals Unit, 22-24 May in Novgorod, Russia -- an aim of this workshop is to prepare for implementation of the POPs Convention.

– AOI, CDL

DID YOU KNOW...

... that

- ◆ The ELC houses one of the world's largest collections of national and international legal instruments as well as literature on Environmental Law and Policy.
- ◆ Our Environmental Law Information System contains bibliographic references of more than 67 000 books/articles/gray literature, soft law documents and bibliographic references of more than 50,000 national, supranational and international legal instruments obtained over the last 30 years. Full text of these documents is available in the ELC libraries.
- ◆ Currently, information concerning a large part of our collection is available on-line at www.ecolex.org under a joint project of IUCN and UNEP. ECOLEX provides bibliographic information on soft law, literature, national legislation, EU legislation, and international agreements. In addition, via ECOLEX you can access the UNEP collection to obtain the full text of selected international agreements and national legal instruments.
- ◆ Our library staff will be happy to provide you with information related to your individual request. Please contact us for more detailed information, including the costs involved.
- ◆ Literature requests: e-mail: azimmermann@elc.iucn.org
fax: ++49.228.2692-280
- ◆ Legislation requests: e-mail: alukacs@elc.iucn.org
fax: ++49.228.2692-270

– ALU, AZI

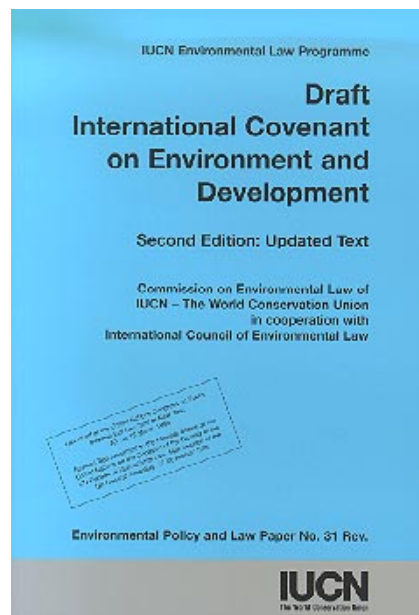
Updated *Draft International Covenant on Environment and Development* released

Ever since the adoption of the World Charter for Nature by the United Nations General Assembly in 1982, the IUCN Commission on Environmental Law has explored the idea of developing a hard law instrument that would integrate existing principles on environment and development from existing international declarations and binding agreements. A CEL Working Group was established to begin drafting such a document, holding its first meeting in Bonn, in November, 1989. The Working Group was encouraged by subsequent developments, when the 1992 United Nations Conference on Environment and Development and the resulting action plan entitled "Agenda 21" further promoted the idea that international environmental law is to play a guiding role in integrating environment and sustainable development. and sought to incorporate these ideas. There followed a long series of meetings of the Working Group, and the formation of a smaller drafting committee. A final document, by now entitled the *Draft International Covenant on Environment and Development*, was agreed upon in 1994. The IUCN Commission on Environmental Law in co-operation with the International Council of Environmental Law (ICEL) presented the Draft Covenant to the Member States of the United Nations at the UN Congress on Public International Law held at New York, 13-17 March 1995.

Since then, the call for an integrated international legal framework on environment and development has been growing. The drafters of the Draft Covenant have also noted with great satisfaction that it has been increasingly used by legislators as well as by the environment ministries in many States as a checklist to ensure that national environmental legislation covers all widely accepted principles.

With the recent increase of new international and regional legal instruments in this field, the Commission and the Council felt it was necessary to undertake a review of the text of the draft Covenant and to incorporate these new developments. To this end, a small group of public international law experts was formed and met under the Chairmanship of Ambassador Ramón Pririz-Ballon in New York, 20-22 May 1999. In addition, through special consultations with the drafters of the *Earth Charter*, the team sought to ensure consistency of principles between the two texts. Particular thanks also go out to CEL Member Dinah Shelton who as the group's rapporteur collected all proposals and decisions and amended and edited the commentary which accompanies the printed version of the Draft Covenant.

Recently, on the occasion of the closing of the UN Decade of International Law, the IUCN Commission on Environmental Law in co-operation with the International Council of Environmental Law (ICEL), presented the updated text of the *Draft International Covenant on Environment and Development* to the Member States of



the United Nations. The resulting publication (*IUCN Environmental Policy and Law Paper No. 31 Rev.*) is now being distributed to all Ministries of Justice and Ministries in charge of environmental affairs.

For more information on how to order a copy of the updated Draft Covenant, please contact the IUCN Publication Services Unit, 219 Huntington Road, Cambridge, CB3 0DL, UK.

– MAB

Editor's Note

In keeping with ELC tradition, editorial responsibilities for the Newsletter are annually re-assigned, on a revolving basis, among the professionals at the Centre. I am happy to have been tapped for this year, for two reasons: (1) it presents an opportunity for interaction with many friends (old and new) in the field of international environmental law, including those with whom the ELC does not have

other ongoing projects or activities, and (2) the demands of this position are rendered so light as to be nearly non-existent by the efficiency and excellent work of our many contributors.

I encourage readers of this publication to submit suggestions (criticisms), ideas for future articles, and other comments.

– TRY

New Parties to Major International Environmental Treaties

Ratification Status received as of April 2000*

Convention concerning the Protection of the World Cultural and Natural Heritage, 16.11.1972:

Israel - 06.10.1999
Namibia - 06.04.2000

Total number of Parties: 159

Convention on Biological Diversity, 05.06.1992:

United Arab Emirates - 10.02.2000

Total number of Parties: 177

Convention on the Conservation of Migratory Species of Wild Animals, 23.06.1979:

Greece - 01.10.1999
FYR Macedonia - 01.11.1999
Bulgaria - 01.11.1999
Mongolia - 01.11.1999
Ukraine - 01.11.1999
Democratic Republic of Congo - 01.01.2000

Total number of Parties: 66

International Convention for the Protection of New Varieties of Plants (consolidated version), 19.03.1991:

Australia - 20.12.1999

Total number of Parties: 13

Convention on International Trade in Endangered Species of Wild Fauna and Flora, 03.03.1973:

Ukraine - 30.12.1999
Iceland - 03.01.2000
Kazakhstan - 20.01.2000
Slovenia - 24.01.2000
Croatia - 14.03.2000

Total number of Parties: 151

Convention on Long-Range Transboundary Air Pollution, 13.11.1979:

Estonia - 07.03.2000

Total number of Parties: 46

Protocol to the Convention on Long-Range Transboundary Air Pollution concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes, 19.11.1991:

Slovakia - 15.12.1999
Estonia - 07.03.2000

Total number of Parties: 19

Protocol to the Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants, 24.06.1998:

Canada - 18.12.1998
Norway - 16.12.1999
Sweden - 19.01.2000

Total number of Parties: 3

Protocol to the Convention on Long-Range Transboundary Air Pollution on Heavy Metals, 24.06.1998:

Canada - 18.12.1998
Norway - 16.12.1999
Sweden - 19.01.2000

Total number of Parties: 3

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 10.09.1998:

El Salvador - 08.09.1999
Slovenia - 17.11.1999
Oman - 31.01.2000

Total number of Parties: 3

– RAN

* Dates shown are dates of deposit of instruments of consent to be bound

Regional

West Asia/North Africa

IUCN Environmental Law Centre and the IUCN West/Central Asia and North Africa Programme (WESCANNA) recently finalized a Memorandum of Understanding under which they will hold two regional workshops on environmental law and will initiate the development of an environmental law programme for the region.

Within this framework, the Third IUCN Regional Conservation Forum met in Tunis, **Tunisia** from 8 to 11 April 2000. The main objective of the Tunis RCF was to provide a platform for members, commissions and partners to discuss issues related to the environment in the region, thus beginning the process of elaborating a regional strategic plan and programme priorities. Membership issues and collaboration with partners in activities in this region were also discussed. The priority programme areas for WESCANNA, discussed and approved by the Forum, were biodiversity; desertification; water; marine/coastal zone; social and economic policy; protected areas and environmental law.

The Faculty of Law of the University of **Kuwait**, in connection with IUCN Environmental Law Programme, has made significant progress toward the establishment of the Arab Centre for Environmental Law (ARCEL). One of the main objectives of this centre will be the promotion and development of environmental law in the Arab region as well as the building of capacity. A conference on "Environmental Law in the Arab World" will be held at the Faculty of Law, University of Kuwait, from 30 September to 2 October 2000.

East Africa

Preparations continue for the organisation of a regional meeting in East Africa within the BMZ 98 – Regionalisation Project on 13-14 June. At this meeting, IUCN Re-

gional Office for Eastern Africa (EARO), the Commission on Environmental Law (CEL) and the Environmental Law Centre (ELC) will discuss the most relevant environmental legal issues for the region. Also within the framework of the above-mentioned project, an Internal Agreement between IUCN Environmental Law Programme (ELP) and EARO for the cooperation in the design and development of an environmental law programme in Eastern Africa is being discussed.

Southern Africa

The first year interim report and the draft workplan for the second year of the project to develop a Forestry Sector Protocol to the Treaty of the **Southern Africa Development Community (SADC)** has been submitted to the EU. On 2-4 May, the ELC participated in the 19th Meeting of the SADC Technical Committee for Forestry in Lesotho. At this meeting, SADC-FSTCU, SADC Member States and IUCN reviewed progress in the development of the Protocol, and discussed the workplan for year two. It was agreed the draft Protocol and Commentary would be submitted to SADC Member States for review by the end of September. The Regional Workshop to discuss and revise the draft Protocol would be held in Pretoria, South Africa in November. The final draft Protocol would be submitted to SADC-FSTCU in February 2001 for presentation at the SADC Summit in summer 2001. IUCN and SADC also discussed the development of a Phase II project proposal, aimed at assisting Member States in the development of national strategies and review of national legislation to implement of the draft protocol.

Asia

The Regional Environmental Law Programme, Asia (RELPA) held the first of a planned series of Pro-

gramme organizational meetings during the Asia Regional Conservation Forum in Delhi, **India** from 22 to 25 March 2000. RELPA convened a meeting which brought together RELPA staff (based in Karachi), IUCN staff lawyers from Country Offices throughout the region, CEL members, representatives of environmental law NGOs which are members of IUCN, as well as the East Asia Regional Vice-chair of CEL, the head of an IUCN Country Office, a representative of the ELC, and the Director of the Asia Region.

The meeting focused on preliminary strategizing for RELPA, with the objective of designing the programme to meet the particular needs of the region, and to maximize the potential for input from all constituents: IUCN members, CEL members, and partners. As a result of these discussions, an initial conceptual framework and strategy will be developed which will be workshopped in the region.

The ELP and SSEA-RLP will be participating in a project of the **Bangladesh** Country Office, for the development of Bangladesh's environmental law regime. Toward this end, the ELC provided initial funding for an assessment project, which was completed in March 2000. At that point, the BCO convened a meeting of government officials, academics, IUCN member organizations, and IUCN country (and ELC) staff to develop a strategy for moving forward with the process of collaborative development of framework environmental legislation.

Multi-Regional Activities

The ELP is in the final stages of completion of a project evaluating public participation in collaborative development of forest laws in three countries (**Malawi, Mexico, and Nepal**) utilizing a true IUCN combination of resources – two CEL members (as well

Looking Ahead: The Millennium Assembly

Seeking to “identify the challenges that it will face in the future, and to engage in an imaginative exercise to enhance and strengthen a unique institution,” the UN General Assembly has designated its 55th session to be the “Millennium Assembly.” On 6 September, 2000, in conjunction with this event, the GA will convene a “Millennium Summit”. In addition to the regular work of the GA, the Millennium Assembly and Summit will focus on several particular initiatives and the development of a new and “animating vision” for the UN entering a new era.

Within this objective, the Secretary-General has issued his Millennium Report, addressing four key agendas for the UN in the new century – “Freedom from Want” (the development agenda); “Freedom from Fear” (the security agenda); “A Sustainable Future” (the environmental agenda); and “Renewing the United Nations.” Several aspects of this report and its recommendations are of particular interest to the IUCN and to the Environmental Law Programme.

- ✓ Within the security agenda, particular attention is focused on the “rule of law” and the growing role

...Regional

as a team of reviewers from CEL), an IUCN member organization, regional office staff members, and ELC Legal Officers – this project provides some useful insights into an understudied aspect of the legal component of forest resource development and community forestry.

The results of the study will be available in coming months. The ELC is exploring various options for continuing the project into a second phase.

– AOI, NWI, TRY

of international law and international legal instruments. To promote and strengthen international law, the Millennium Summit will provide special facilities for heads of state wishing to add their signatures to any treaty of which the Secretary-General is the depository.

A number of conventions, including many in the environmental arena, have languished due to inattention, in some cases never having entered into force. The summit will offer Member States the opportunity to reassess their choices, and take stock of their commitment to international law.

- ✓ Within the environmental agenda, States are urged to “adopt a new ethic of stewardship,” and to reflect this commitment in four concrete steps: Adoption and ratification of the Kyoto Protocol to the UNFCCC, integration of “green accounting” concepts into their national accounts; provision of fi-

nancial and participatory support for the Millennium Ecosystem Assessment, and preparation to take “meaningful actions... at the ten-year follow-up to the Earth Summit”.

- ✓ Within the development agenda, many poverty, health and education/capacity issues are recognized to relate directly to environmental matters. One which is cited specifically is the fact that currently twenty percent of the world’s population do not have access to safe drinking water.
- ✓ New initiatives being addressed include the creation of a volunteer corps, a “health interNetwork” and a disaster response initiative.

In preparation for this event, the GA has also convened a companion event – the “Millennium Forum” – held this May, at which civil society organizations have been able to make contributions.

– TRY



ELP VISIT THE HOMEPAGE

contains:

- ◆ ELP Newsletter
 - in English
 - in Spanish
- ◆ List of new ELP publications, including some full-text
- ◆ Calendar of major international meetings
- ◆ Proceedings of ELP workshop on alien species

<http://www.iucn.org/themes/law/>

Staff News

At present, two interns are working at the ELC:

Mr. Witold Tymowski, from McGill University in Montreal, Canada, will be spending more than two months at the ELC. He will be primarily working on a legal analysis of the Ramsar Convention, and on issues related to the Kyoto Protocol.

Mr. Robert Weisberg, from Vermont Law School in Vermont, USA, also plans to stay two months at the ELC. He is working at the 12th Meeting of the UNFCCC Subsidiary Bodies, giving special attention to compliance issues.

IUCN's Environmental Law Programme is carried out jointly by the Commission on Environmental Law (CEL) and the Environmental Law Centre (ELC), an outposted unit of IUCN headquarters located in Bonn, Germany. CEL is a network of more than 650 international and environmental law specialists in 120 countries. The ELC administers all Law Programme activities, develops and manages projects, and serves as the Secretariat for CEL.

The IUCN Environmental Law Programme's Newsletter welcomes short articles and news items on international, regional,

and national developments in environmental law. Contributions should be no longer than 300-500 words and may be submitted in English, French or Spanish. All contributions will be proofread and, if necessary edited. The ELP welcomes the opportunity to present a variety of viewpoints in these pages. In doing so, however, inevitably some of the views expressed will not be those of IUCN, the ELP or the Environmental Law Centre. Please send material to: Newsletter Editor, IUCN Environmental Law Centre, Godesberger Allee 108-112, 53175 Bonn, Germany; tel: (49-228) 2692-231; fax: (49-228) 2692-250; e-mail: secretariat@elc.iucn.org.

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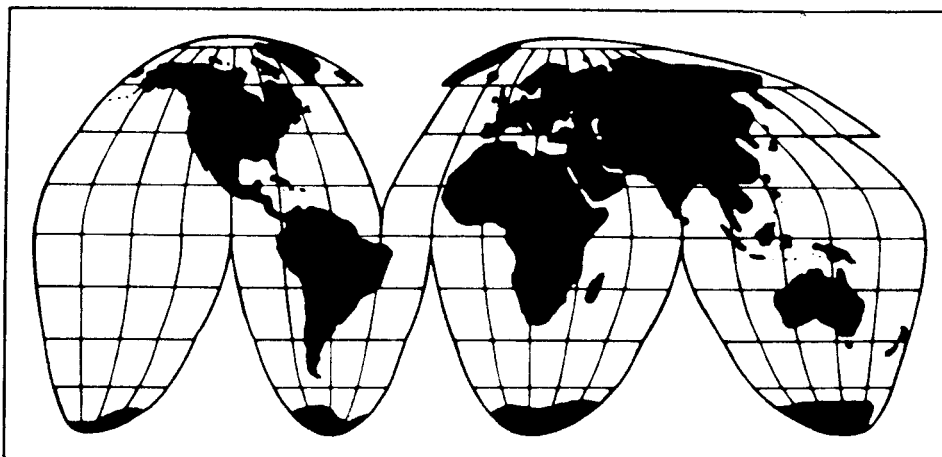
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