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# IUCN

The World Conservation Union

## NEWSLETTER



# Environmental LAW Programme

September-December 1999

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## Sleepless in Seattle

The 3rd Ministerial Conference of the World Trade Organization (WTO) met in Seattle from 30 November until 3 December 1999. This international meeting was unprecedented not only for the high degree of public and media attention it received, but also for the chaos in the conference rooms caused by the divergent views of government delegations. Ultimately, as is well known, the Conference ended in failure: it was not even possible for the delegates to agree on a short Ministerial Declaration, let alone resolve any of the substantive controversies surrounding the future of the world trading system.

A central issue before the Conference was whether or not a new round of trade negotiations should take place, additional to the negotiations already required under various Uruguay Round Agreements (e.g. Agriculture and TRIPS). In general, developed countries were in favour of a new round, while developing countries were opposed, arguing that more should be done to meet existing commitments before beginning new negotiations. This fundamental divide was one of the main reasons for the failure of the Conference and, at present, it is not expected that any agreement on a new round can be reached before at least 2001. Other key reasons

for the failure concerned the controversy over the WTO's involvement in labour issues and the alienation of many developing countries during the Conference itself.

Several issues discussed in Seattle, but not resolved, had an environmental dimension, including:

- whether and to what extent any new Round should include environmental issues (e.g. proposals from the US, Canada, and the EU)
- the possible establishment of a WTO working group on biotechnology (favoured by the US and opposed by EU Members States, but apparently agreed to in Seattle by the European Commission)
- the role of the precautionary principle in trade policy (the EU was in favour of a robust application of this principle)
- whether the discussions on agricultural negotiations should be based on a recognition of the "multifunctionality" of agriculture (the EU was in favour, but the US and others opposed)
- elimination of harmful subsidies in the fisheries sector (the US and others were in favour)
- whether tariffs on forest products should be eliminated (APEC proposed this)

- the protection of indigenous and local knowledge (several Latin American countries made a proposal concerning the TRIPS Agreement).

The failure in Seattle raises several fundamental challenges for the future:

- reforming the WTO process so as to make it more transparent and less dominated by the major powers
- healing the fundamental North-South divide on many key issues, which impinges on substantive progress on environmental issues
- strengthening the international environmental regime, so as to relieve the WTO from having to address issues it is not fully competent to handle.

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## 80th Session of IMO Legal Committee

The 80th Session of IMO Legal Committee took place from in London 11-15 October 1999. As in previous Sessions, the Committee has been considering two issues of environmental concern, liability for pollution from ships' bunkers and wreck removal.

### *Draft Bunker Liability Convention*

Considerable progress has been made in the drafting of the free-standing Bunker Liability Convention, designed to provide strict liability for bunker spills from non-tankers in a framework similar to that under the Civil Liability Convention (CLC) 1969 and 1992. Bunker fuel can be particularly persistent and accounts for a considerable number of spills, so there is a clear need for international action. One of the major outstand-

ing issues is whether claims should all be channelled to the shipowner – as with the CLC. There are great practical advantages to channelling, especially as it makes the obtaining of insurance coverage clearer. However, the oil pollution claims under the CLC are backed up by the International Oil Pollution Compensation (IOPC) Fund, which provides a second tier of liability. The proposed Bunker Convention would be a one-tier Convention and there might be quite low limits of liability. In view of the fact that there will not be a second tier of liability, some states are in favour of allowing claims against a larger category of defendant, including charterers or operators. Most delegations have favoured this latter option. It was agreed, however, that to simplify the direct action and compulsory insurance provisions it

would only be the registered shipowner who would be required to maintain the compulsory insurance.

One related question on which there was disagreement concerned the principle of "responder immunity". Under the CLC, persons such as salvors are exempt from suit, but the equivalent provision had been deliberately left out of the draft Bunker Liability Convention. The intention, presumably, was to widen the category of potential defendants so as to increase the potential for recovery of damages. But recent casualties have shown that salvors and other responders should not be hesitant to take action because of the threat of civil claims or criminal pros-

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## NEW ZEALAND'S REGULATORY CONTROL OF ALIEN INVASIVE SPECIES

The continuing decline of indigenous biodiversity has been identified by the New Zealand Government as the major environmental issue facing the country. A significant factor for this decline is more than 200 years of introduction, both intentional and unintentional, of alien invasive species.

In 1997, the Government established the cabinet portfolio of the Minister of Food, Fibre, Biosecurity and Bor-

der Control to co-ordinate policies and activities that impact upon the introduction of potential alien invasive species. There are two main statutes that address alien invasive species: the Biosecurity Act 1993 and the Hazardous Substances and New Organisms Act 1996 (HSNO). The purpose of the Biosecurity Act is to prevent unintentional introductions of potentially alien invasive species (referred to as unwanted organisms), and to enable New Zealand to exclude or effectively manage alien invasive species already present in the country. The Act has four major components.

tial importers on what measures must be met before goods can be brought into the country and provide criteria to inspectors to assess whether or not the goods should be given biosecurity clearance. Import health standards are developed and enforced by the Ministry of Agriculture and Forestry.

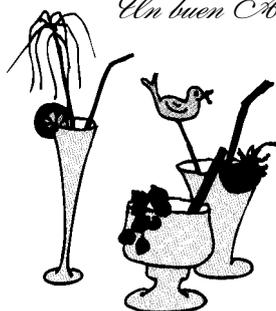
- ✓ Setting standards for imports by way of import health standards. An import health standard specifies the safeguards or conditions that have to be met before goods, which might pose a biosecurity risk, can enter and be released into New Zealand. Standards provide explicit direction to poten-

- ✓ Control of the passage of goods across the border. This is done by requiring all goods to be inspected in approved facilities known as "places of first arrival". Following inspection, the goods may be given biosecurity clearance or sent to a quarantine facility.
- ✓ Post-entry quarantine (an extension of border control).
- ✓ Controlling or eradicating alien invasive species once present in the country. Control and eradication is managed by way of pest

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*A happy New Year*

*Un buen Año Nuevo*



# Commission on Environmental Law

## CHAIRMAN'S LETTER January 2000

*As the year 1999 passed and we look at the year 2000, leading up to the IUCN World Conservation Congress in Amman, Jordan, next October, environmental law has moved into an ever more central role in policy at all levels.*

*In Amman, the IUCN Members will debate a new Programme to govern the Union's work from 2000-2004. For the first time, the Programme integrates the legal dimension into each of the Union's environmental undertakings. We are called upon to cultivate international and national conservation and environmental protection regimes, enhance their implementation, and foster their integration. Such undertakings are crucial to the effectiveness of environmental law, and IUCN will need to call upon Members of IUCN's Commission on Environmental Law to play important roles in implementing the new Union Programme. The IUCN Environmental Law Center and CEL Steering Committee will work this year to match up the expertise of individual CEL Members with priorities in the Programme. Through a matrix management system, we hope to engage actively the experience and expertise of CEL Members in implementing this new Programme once it is adopted.*

*As law becomes a truly central theme in IUCN, IUCN becomes more important in Earth's international institutions. On 17 December 1999, the United Nations General Assembly invited IUCN to cooperate with the UN by granting IUCN Observer Status (UNGA Res. 54/A/195). IUCN's Director General has formally thanked each UN Member State for the confidence that the UN invests in the expertise of IUCN, and pledged that the Union will undertake its Observer Status seriously. CEL Members played critical roles in the negotiations leading up to this UNGA decision, and will be essential to the implementation of Observer Status. Of the over 150 items included each year on the General Assembly's agenda, over 30 are directly relevant to environmental law, and this trend is growing.*

*Illustrative of both the effectiveness of environmental law, and IUCN's work to develop this field, is the successful negotiation of the Biosafety Protocol in Montreal at 6 a.m. on Saturday, 29 January 2000. IUCN Councillor and Colombian Environment Minister Juan Mayr chaired these negotiations under the Convention on Biological Diversity. As the Financial Times reported, the intensive all-night negotiations capped two years of talks, "skillfully brokered by Juan Mayr" (FT, 31 Jan. 2000, p. 4). Mayr reports to CEL that he defended the inclusion of the Precautionary Principle in this Protocol against all assaults. His leadership built upon the world-wide work of CEL Members to promote the Precautionary Principle as a basic element of environmental law. The Financial Times later took note of this CEL work obliquely, when it reported that "The precautionary principle was first recognized in the World Charter for Nature, adopted by the UN General Assembly in 1982." (FT, 3 Feb. 2000, p. 9). Of course, it was a CEL working group that drafted the World Charter for Nature and won the support of UNEP and ultimately the UN Members in securing its adoption.*

*In the early days of environmental law, few of us dreamed that our work would become grist for the daily newspapers, but the fact that it has is a measure of the matured importance of our work. The new millennium will tax our expertise and our wits. I wish us all a Happy Lunar New Year, and welcome it as an auspicious one for our work.*



Nicholas A. Robinson, Chairman, CEL

# The Precautionary Principle: Some Problems with its Implementation

Although humans have modified plants and animals for centuries to suit their own needs, the application of modern biotechnology and genetic manipulation to this process has provoked differing reactions from different sectors of society. These have ranged from optimism to moral outrage. While some have focused on the possible negative health, safety and socio-economic repercussions of biotechnology, others have stressed its potential to feed the burgeoning populations of the developing world with pest-free and nutrient-enriched food.

Consensus on this controversial issue has so far eluded policy makers in the various international fora that are currently considering differing aspects of biotechnology – the Organization for Economic Cooperation and Development, the FAO Commission on Genetic Resources for Food and Agriculture, Codex Alimentarius Commission, the World Trade Organization (WTO) and the Convention on Biological Diversity (CBD).

The lack of consensus in part arises from fundamentally different approaches to assessing the risk of new technologies. The negotiations for a protocol on biosafety under the Convention on Biological Diversity provide an interesting case study in this difference.

These negotiations were due to be concluded in February 1999. However, at the final meeting the governments were unable to resolve their differences and the negotiations were suspended. They were completed in January 2000.

Although there were many unresolved issues, the crucial issue which governments could not agree on was whether or not the precautionary principle could be used as the basis for regulating “commodities” which were the product of biotechnology.

A significant factor in the different perceptions is due to a difference in the governance cultures of the opposing camps. On the one hand, a group of countries known as the Miami Group (comprising the US, Canada, Argentina, Australia, Uruguay and Chile) believed that the precautionary approach would not lead to decisions based on sound science. They are concerned that it would be applied in an arbitrary manner and would lead to distortions of trade. On the other hand, most other governments cannot understand the reluctance of the Miami Group to accept rules which would allow a prudent approach to this new technology, especially given the potential risks associated with the technology.

The type of risk assessment favored by the US is a highly formalized method that is to the greatest possible extent based on quantitative data. This formalized process has evolved in response to the fragmented character of US Government, which requires the constant construction of a formal record at one level or in one branch of government, since any decision is liable to be reviewed at another level or in another branch that functions independently. In particular, decisions based on relatively ambiguous scientific findings are liable to be questioned over and over again, as an issue wanders under public pressure and the play of interests from Congress to the Administration, from there to the courts and to the states, and ultimately back to Congress where the cycle begins anew.

Most other countries do not have such a complex and adversarial system of governance. Moreover, citizens are more willing to accept more paternalistic type of governance and a higher level of government intervention than is the rule in the US. In this type of environment governance and management of risk is allowed

to be responsive to emerging problems and decisions can be taken based on qualitative data. A key manifestation of this more qualitative approach is encapsulated in the precautionary principle.

The significance of including the precautionary principle in a protocol on biosafety extends well beyond the Convention process. Indeed, the proposed protocol itself talks about human health and safety. The issue has been one of the dominant issues in the preparations for the WTO's Millennium Round. Barely a day has passed in the last year where the issue has not appeared in leading newspapers of the world.

Without proper recognition of the validity of the precautionary approach in the context of biosafety, attempts by governments to control biotech-commodities could be challenged by governments whose industries were adversely affected. For example, a dispute involving genetically modified organisms would test the rules of the international trade regime to the limit. Indeed, there are already indications that some states are finding it difficult to accept practical manifestations of the principle. For example, both the EU's or Japan's mandatory labeling schemes for food products containing genetically modified components have been criticized at the WTO's Committee on Technical Barriers to Trade. Exporters have argued that tests have shown that genetically modified crop varieties have no ill effects on human health, and therefore there is no scientific reason for products containing such varieties to be labeled. They have argued that such a requirement could be an arbitrary and non-science-based trade barrier, particularly since only separate production, transport and processing systems for biotech-crops could

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## In Memoriam — A Tribute to Professor Oleg Stepanovich Kolbasov

Prof. Oleg Stepanovich Kolbasov passed away at the end of January, 2000, after a six-month fight with cancer.

Prof. Kolbasov is renowned as the "Father" of Environmental Law in Russia. From his post-graduate legal work in the early 1950s on water resource law, Prof. Kolbasov evolved a career devoted to establishing ecological law throughout the former Soviet Union, and internationally through his work as a Member of the Commission on Environmental Law of IUCN – The World Conservation Union. He established the sector on Ecological Law of the Institute of State & Law of the Academy of Sciences of Russia, and trained the first two generations of environmental legal specialists from the former USSR. Prof. Kolbasov fostered comparative environmental reforms in Italy and taught many of the first environmental law courses in Eastern and Western Europe and the USA.

Later, as the USSR was disbanded, he was called to serve as

Deputy Minister of the Russian Federation's Environment Ministry. There he was instrumental in establishing the regional environmental agreement for the Caspian Sea in 1991, and was a leader of the Russian Delegation to the 1992 UN Conference on Environment & Development in Rio de Janeiro. He also was instrumental in establishing official Russian support for the Aarhus Convention, handling negotiations during his term in the Ministry. For two decades, he served as Russian Co-Chair of bilateral environmental law negotiations under the 1972 USA-USSR Agreement on Cooperation in the Field of Environmental Protection, furthering the design of an international park across the Bering Straits and strengthening Russia's law on environmental impact assessment.

Prof. Kolbasov generously contributed his time to the All Russia Society for the Protection of Nature and to local conservation groups. He was the national Chairman of the Russian Society for Animal Protection, and used his legal skill

and position to defend the strict nature preserve ("zapovednik") system from encroachment. He was instrumental in defining Russia's new system of national parks. He tirelessly traveled to advise local authorities on how to implement and enforce environmental laws, and urged his post-graduate students to do the same.

As the Vice Chair of the IUCN Commission on Environmental Law, in 1998 he established the Centre for Ecological Law Eurasia, as the first centre of excellence in environmental law for Russia. His prolific scholarship has literally defined the scope of contemporary "Ecological Law," both throughout Russia and the now independent Republics of the former USSR. Throughout his career, he has sought to bring the laws of human society, whether in Russia under socialist or today's post-socialist market system, or internationally, into accord with the "laws of nature."

– Nicholas A. Robinson  
Chair, IUCN Commission on  
Environmental Law

## ...80th Session of IMO

ecution. The draft has remained unaltered, but this is a question which can be raised again by IUCN at the diplomatic conference – which might be scheduled for 2001.

### *Wreck Removal Convention*

The draft Wreck Removal Convention (WRC) was designed mainly to provide states with remedies where ships are wrecked outside of territorial waters, e.g. where they may pose a serious hazard to the environment. The draft Convention has had a difficult genesis and its relationship with other instruments has never been entirely clear. In October, the Neth-

erlands presented a new draft of the WRC to the Legal Committee, with some surprising deletions. The proposals suggested removing virtually all of the liability and compulsory insurance provisions from the Convention. That would effectively leave a rump Convention dealing with state rights in international law, e.g. to remove the wreck, but even the reporting requirements had been deleted. These suggestions were obviously intended as a form of compromise to speed the passage of the draft by removing contentious items. Yet the effect of the proposals is to emasculate the draft. Although work will continue, it is not clear at all what will

finally emerge. If the scaled down version is agreed, it will leave all questions of liability and compensation to national law. But there will still be doubts about the extent to which states can create liabilities or require that they be backed by compulsory insurance and direct action.

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# Alien Invasive Species and Polish International Obligations, Environmental Law and Policy

Poland has limited, although in some cases serious, alien invasive species experience. The most written-about alien invasive species are the Sosnovsky hogweed, American mink and raccoon. Sosnovsky hogweed originally comes from the Caucasus, where it reaches a height of up to 4.5 meters in its wild state. It was farmed in the Soviet Union to produce foodstuffs and intentionally introduced into Poland for agriculture, mainly in state-owned farms in the 1950s. It created a severe threat to the unique flora in Tatra and Pieniny Mountain National Parks and its habitat is near the Biebrza River marshland, which is a Ramsar Convention site. American mink is believed to be over-competitive to protected beavers.

The most important acts that are relevant to the introduction of alien invasive species into Poland are the Environment Protection Act of 1980 (as amended), the Nature Protection Act of 1991, and the Forestry Act of September 28, 1991 (as amended). There is currently no legislation that addresses the introduction, control and eradication of alien invasive species in Poland. Introduction into the environment or movement of foreign animals or plants is prohibited by law, subject to exceptions provided by the Ministry of Environment after consultation with the National Nature Protection Council.

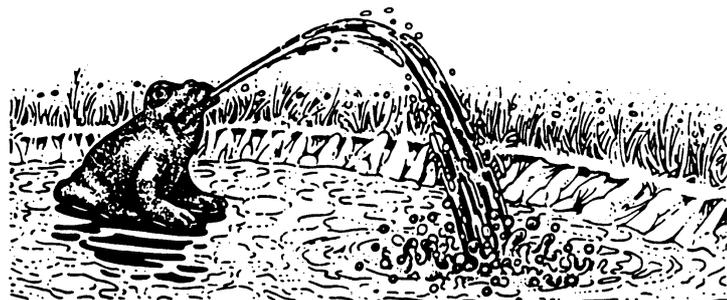
The Environment Protection Act of 1980 (as amended) focuses on sustainable development. The principle of sustainable development is codified in Art. 1 of the act. This principle means that the environment durability limits should not be exceeded and biodiversity should be preserved. Art. 2 (1), 2-3 defines environmental protection as keeping the right balance in the existing ecosystems and the

counteracting and preventing of environmental factors harmful to the environment. It seems clear that this provision includes controls against alien invasive species as part of environmental protection as defined in the act. The Act on Nature Protection of October 16, 1991 includes provisions on nature protection aims, the nature protection obligations of citizens and authorities, nature protection authorities and forms of nature protection. The Act on Nature Protection provides that biodiversity protection and sustainable use of nature are elements of nature protection.

The National Strategy and Management Plan for the Protection and Sustainable Use of Biodiversity states that improving monitoring and updating records of alien invasive species is a priority. Raccoon and American mink are mentioned in the National Strategy directly, along with research on the source and control of their invasion. The deadline to achieve this is 2005. In the National Strategy, raccoon and American mink are considered to be a nuisance to some water birds and tortoises. Foreign species are generally labelled in the National Strategy as flexible and alien invasive species that reduce biodiversity. The Strategy calls for the creation of guidelines on how to decrease the number of the raccoon and American mink by 2005; change of legal provisions

and the way the existing provisions are executed to limit biological invasion, included. That means probably introducing provisions for the introduction, control, eradication of alien invasive species and emergency response plans to alien invasive species problems. Moreover, it calls for adoption of international agreements on transport of species and protection against invasions, regulating ballast waters of ships, as well as control of agriculture, aquaculture and animal farming against invasion of foreign species by 2000. According to the National Strategy, Poland should participate in international agreements drafting on these matters, especially regarding maritime transport on the Baltic Sea and alien invasive species, based on the European Union Code of practice on the introduction and transfer of marine organisms of 1994. Legal protection of species is regulated in the positive lists of protected plants (the Ministry of Environment Act of April 6, 1995 Dz. U. 95.41.214), the list of protected animals (the Ministry of Environment Act of January 6, 1995 Dz. U. 95. 13.61), which list separate species, not taxa. When a problem of invasion of an animal from the legally protected taxon arises, one cannot eradicate it because it is protected by law. Such listing of separate protected species is a more suitable technique.

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# SUCCESS AT THE START OF THE NEW MILLENNIUM!

UNEP Executive Director Klaus Toepfer hailed the adoption of the Cartagena Protocol on Biosafety as a good omen for environmental conservation and sustainable development in the new Millennium. The Protocol was adopted by consensus at dawn in Montreal on 29 January, after a dramatic last night of negotiations in which many Ministers present took part.

As many will recall, the majority of the Protocol provisions had been agreed upon provisionally during the extraordinary session of the CBD COP which took place in February 1999 in Cartagena (Colombia). At the time, however, consensus could not be reached on several important issues, including three considered to be "core": the treatment of the precautionary approach in the text, the rules to be applied to "commodities" – i.e. LMOs intended for direct use as food, feed, or for processing – and the relationship between the Proto-

col and other international agreements, including WTO-related accords.

These three core issues were the main subject of the negotiations during the Montreal meeting, which started with informal consultations and ended with a four-day resumed session of the extraordinary meeting of the COP, with the participation of over 35 Ministers in charge of biosafety issues.

Step-by-step progress in the negotiation of these remaining issues by the groups which had emerged from the Cartagena meeting – Miami, EU, Eastern Europe, Compromise and Like-Minded Groups – gave the meeting on the eve of the last day a sense of achieved success. But when the final plenary session kept being postponed from hour to hour, it became clear that a final confrontation was taking place – its subject: the treatment of identification of

"commodities", i.e. the question of segregation between commodities genetically modified and those which are not. A last minute compromise was reached; such commodities are to be clearly identified as "may contain" LMOs and are not intended for intentional introduction into the environment. The COP of the Protocol will have to work out detailed requirements within two years of entry into force.

These last minute difficulties should, however, not take the limelight from the overall achievement: first and foremost, the adoption of comprehensive internationally binding rules for the intentional transboundary movement of genetically modified organisms for intentional introduction into the environment; in addition, coverage of LMOs for food, feed and processing, acceptance of the precautionary approach not only as a guiding principle, but also as a tool for decision-making decisions by importing states, and the adoption of language which clearly excludes subordination of the Protocol to WTO-related rules.

That this was a difficult text to negotiate will no doubt be remembered by those who know that at the start of the Cartagena meeting, the draft was adorned with over 600 square brackets. This number was reduced to a manageable amount at the end of the Cartagena session, and the remaining thorny issues solved in Montreal.

There is no doubt that this success is a testimony to the political will of the governments which took part in the process. But it is also a tribute to two individuals: Veit Koester (Denmark), and Juan Mayr (Colombia), who have successively shepherded the text to its adoption over the past few years.

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Despite the general ban on an introduction of foreign species into the environment in the Nature Conservation Act of 1991 and biodiversity protection provisions in the Environment Protection Act of 1980 and other acts, there is no definition for alien invasive species, foreign species, alien species, non-indigenous species, or non-native species. There is no reference to eradication of such species, no guidelines for providing for the exceptions to the ban on the introduction of foreign species. There are no provisions regarding the decision on the alien invasive species introduction, either. Moreover, the activities that may contribute to the unintentional introduction are not identified by law. There are no alien invasive species introduction, control and eradication provisions and plans, or emergency plans, or direct fund-

ing sources provided for such activities. There are no sanctions for the introduction of such species directly stated, either. The education and public awareness in this respect is very poor. Nevertheless, the National Strategy and Management Plan for Protection and Sustainable Use of Biodiversity recognizes the problem of foreign species introduction and the need of action plans to manage it, changes in law included. Unfortunately, financial resources allocated in the state budget to achieve aims regarding alien invasive species stated in the National Strategy are very scarce.

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# TRADE AND INVASIVES

A multitude of human-caused introductions of harmful invasive species beyond their native ranges – the zebra mussel, Eurasian watermilfoil, Norway rat, Asian long-horned beetle, green crab, and thousands of others – are right now fundamentally, insidiously and in many cases irreversibly changing our planet's ecosystems. This problem has existed for decades, centuries, even millennia: what is new now? To quote the first line of Christopher Bright's brilliant article in the Fall 1999 issue of *Foreign Policy* about invasives, what's new is: "World trade has become the primary driver of one of the most dangerous and least visible forms of environmental decline."

The trade liberalization agreements of the early 1990s have, as intended, stimulated much greater volume. World imports and exports overall increased by 50% between 1990 and 1997. The amount of merchandise shipped internationally in 1998 weighed over five billion tons, a ten-fold increase over the amount shipped in 1948, just 50 years earlier. That's also roughly a ten-fold increase in nooks, crannies, containers, wooden packing materials, dark ship holds, and other hiding places for alien species.

Human population growth, faster travel, deeper penetration and exploitation of formerly remote areas, climate change, and other global socio-

economic trends in addition to the trade increase are threatening more invasions world-wide. The foreword to the United Nations Environment Program's report on major global trends, *GEO-2000*, understates the problem thus: "The economic and ecological importance of species invasions, an inevitable result of increasing globalisation, also appears to have become more significant" (<http://www.grida.no/geo200/ov-e/>). Legal, institutional, policy, scientific, and technological improvements are not keeping pace with the increased risks. With economic globalisation, the invasives-driven facets of Earth's ecological decline will undoubtedly worsen unless there are sweeping and powerful policy improvements to match the scale of the threats.

Solutions? Ecologist Daniel Simberloff was chosen to sum up a special double issue of the IUCN's magazine *World Conservation* (4/97-1/98) devoted to the problem. In short, he says that to slow the rush to biological homogenisation, policy makers must: a) create a less fragmented institutional response; 2) move to a regulatory approach that allows no new non-native species to be imported unless they have been carefully assessed and shown to be safe; and 3) commit much greater funding to meet the multitude of demands in preventing accidental introductions and controlling existing infestations.

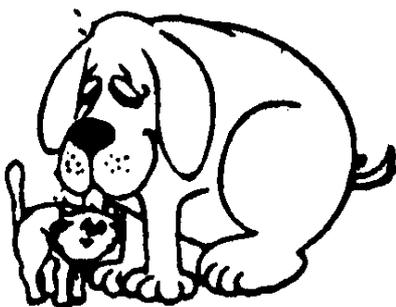
Unfortunately, the Agreement on the Application of Sanitary and Phytosanitary Standards (SPS Agreement) adopted by members of the World Trade Organization (WTO) is contrary to Dr. Simberloff's second principle. Instead of allowing countries to adopt a "guilty until proven innocent" policy as regards species introductions, the SPS Agreement, as interpreted in the European beef hormone, Australian salmon and Japanese fruit cases, requires:

that identifies specific pests associated with that particular import and country of origin; and evaluates the likelihood of entry, establishment, and spread of these pests. It must not merely state the "possibility" of an introduction, nor may the conclusions be "general and vague statements of mere possibility of adverse effects occurring ..." [WTO AB-1998-5 Paras 123 and 129].

- ✓ that a country base its "level of protection" on a detailed risk assessment. However, scientists can rarely predict which species of insect, disease pathogen, aquatic invertebrate, or other "pest" will damage the environment once they enter the country.
- ✓ that a country's "level of protection" for any particular import must be "consistent" with that for some comparable risk – although most countries' environmental protections for various risks differ widely because they were adopted through processes that reflect changing balances between political forces.
- ✓ that the SPS measure impose the least trade restrictions possible while still meeting the country's "level of protection"; countries may not consider such other goals as reducing use of methyl bromide as a fumigant in order to protect the stratospheric ozone layer.
- ✓ although a country may adopt a "provisional" SPS measure when information is not adequate to meet the above requirements, that country must actively seek additional information to justify the measure – even when devoting staff and time to that search may preclude developing regulations to curtail harmful invasions via other "pathways" or "modes" of introduction.

A growing number of scientists are concerned that the SPS Agreement,

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- ✓ that a country base each sanitary or phytosanitary (SPS) measure on a detailed risk assessment

# Regionalisation: Harmonising Global Economic, MEA and Local Sustainability Objectives Through Strategic Regional Processes

As parties to multilateral environmental agreements (MEAs), nation-states continue to adopt mutual obligations to implement measures for sustainable development. These MEAs represent one fusion of what Henry Kissinger identifies as "one of the gravest challenges of the new century: the huge gap between the sophistication of the dominant economic model, called globalization, and the traditional political thinking still based on the nation-state".

The Rio suite of agreements were developed in the context of increased international efforts to promote sustainable and environmentally sound development in all countries. Agenda 21 together with MEAs on Biological Diversity, Climate Change, Desertification, and Statement on Forest Principles reflect the mandate of UNCED to promote economic growth in developing countries as an essential step to addressing problems of environmental degradation.

Measures implementing global sustainability strategies can benefit from being undertaken locally within a strategic regional process. Significant synergies can also result from coordinating and integrating measures undertaken in accordance with complementary MEA obligations. In this context, measures undertaken in pursuit of MEA obligations include efforts by government, NGOs, and civil society.

When seeking to articulate MEA sustainability concerns with free-market conditions, beneficial outcomes of strategic regional approaches include:

- enhanced management accountability in leveraging scarce institutional resources, delivering outcomes, and protecting institu-

tional and community investments;

- conservation, equitable cost and benefit sharing, and sustainable use of natural resources and ecosystem services; and
- continued dialogue and maintenance of constructive engagement for solving issues.

MEA implementation lends itself to synergies attainable from regional strategies, an ecosystem approach, scientific research and coordinated planning as bases for iterative policy development and implementation.

While global discourse and strategy building is apparent, how can this be enhanced by strategic regional processes and local action to conserve and sustainably use ecosystem processes? Polarity of concerns at the global level, such as demonstrated at WTO, allow policy making processes to pull into focus the issues requiring action, formulate strategies, and re-invest energies into the iterative process of developing sustainability law. Strategic regional processes enable constructive engagement to achieve global consensus, focused capacity building toward attaining environmentally sustainable systems, and, importantly, more rapid coordinated and complementary implementation of MEA policy and on ground objectives. Strategic regional processes confirm and recognise that States have common but differentiated responsibilities for the attainment of the objectives of MEAs.

One strategic approach is through regional organisations of States and NGOs. Regional organisations can, in a more co-ordinated manner, compile and synthesise information, as well as analyse existing programmes



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and activities to determine their effectiveness and identify gaps and weaknesses. They are also better able to improve communications to discern national and regional needs and to elaborate developing (including small island developing states) countries needs, to present coordinated global strategic proposals that meet the knowledge, management and sustainability criteria enunciated above. These can then be fed into appropriate bilateral and multilateral channels and the private sector instigating partnerships for success.

These approaches will identify information for the development of a draft framework for capacity-building activities. This information will allow balance in needs for comparability, transparency and practicality and enhancing comparability and focus of measures adopted for MEA implementation. These regional approaches are likely to capture regional ecosystem issues, such as those relating to conservation, sustainable use and equitable benefit sharing of biological diversity recently addressed by Ecuador, Venezuela, Guatemala, etc. in Meso-America.

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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 OF MEETINGS

As of 6 March 2000

- |                     |                               |  |
|---------------------|-------------------------------|--|
| 6-10 March          | New York,<br>USA              | <i>Ad-Hoc</i> Open-Ended Group of Experts on Energy and Sustainable Development<br>Contact: Leticia Silverio, Coordinator, 2 UN Plaza, Room DC2-2202; New York, N.Y. 10017, USA; tel.: (1 212) 963 4670; fax: (1 212) 963 4260; e-mail: silverio@un.org  |
| 8-15 March          | Kathmandu,<br>Nepal           | 5th Session of Working Group III of the Intergovernmental Panel on Climate Change (IPCC)<br>Contact: IPCC Secretariat, World Meteorological Organization, P. O. Box 2300, 7bis Avenue de la Paix, 1211 Geneva 2, Switzerland; tel: (41 22) 730 8284; fax: (41 22) 730 8025/8013; e-mail: IPCC:Sec@gateway.wmo.ch   |
| 12-17 March         | Melbourne,<br>Australia       | 10th World Water Congress of the International Water Resources Association (IWRA)<br>Contact: John Pigram, Chair of the Organizing Committee, 10th World Water Congress, c/o - ICMS Pty Ltd., 84 Queensbridge Street, Southbank, Victoria, Australia 3006, tel: (61 3) 9682-0244; e-mail: worldwater@icms.com.au; Internet: www.icms.com.au/worldwater/  |
| 12-17 March         | Stirling,<br>U.K.             | Seminar on Global Environmental Law: Interpretation, Integration and Implementation<br>Contact: International.Seminars@britcoun.org; Internet: www.britishcouncil.org/networkevents  |
| 16-22 March         | The Hague<br>The Netherlands  | 2nd Water Forum and Ministerial Conference<br>Contact: Ministry of Foreign Affairs, P.O. Box 20061, 2500 EB The Hague, The Netherlands; tel: (31 70) 348 5402; fax: (31 70) 348 6792; e-mail: hans.van.zijst@dml.minbuza.nl  |
| 20-25 March         | Bonn, Germany                 | 4th Session of the Intergovernmental Negotiation Committee for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants (INC-4)<br>Contact: UNEP Chemicals (IRPTC); tel.: (41 22) 979-9111; e-mail: dodgen@unep.ch; Internet: irptc.unep.ch/pops/  |
| 22-25 March         | Delhi, India                  | Asia Regional Conservation Forum<br>Contact: Zakir Hussain, IUCN Regional Coordination Office for South and South-East Asia, P.O. Box 4, Kluong Lunag, AIT, Pathumthani, 12120 Thailand; tel: (66 2) 524-5393; fax: (66 2) 524-5392; e-mail: hussain@ait.ac.th   |
| 23-25 March         | The Hague,<br>The Netherlands | Meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes<br>Contact: Fairouz Nichanova, Regional Expert, CIT, United Nations Economic Commission for Europe (UNECE), 8-14, Avenue de la Paix, 1211 Geneva 10, Switzerland; tel: (41 22) 917-3158; fax: (41 22) 907-0107; e-mail: fairouz.nichanova@unece.org; Internet: www.unece.org/env/water/ |
| 27-31 March         | Seville,<br>Spain             | <i>Ad Hoc</i> Working Group on Article 8(J)<br>Contact: CBD Secretariat, World Trade Center, 393 St. Jacques Street, Suite 300, Montreal, Quebec, Canada H2Y 1N9; tel.: (1 514) 288 2220; fax: (1 514) 288 6588; e-mail: chm@biodiv.org; Internet: www.biodiv.org  |
| 27-28 March         | London,<br>U.K.               | Sustainability in the WTO Millennium Round and Beyond<br>Contact: Georgina Wright, The Royal Institute of International Affairs, Chatham House, 10 St. James's Square, London SW1Y 4LE, United Kingdom; e-mail: gwright@riia.org   |
| 28 Mar.-<br>1 Apr.  | Valencia,<br>Spain            | 3rd International Congress of the European Society for Soil Conservation: Man and Soil at the Third Millennium<br>Contact: Centro de Investigaciones sobre Desertificación - CIDE Apartado Oficial; tel.: (34 96) 126 0126; fax: (34 96) 127 0967; e-mail: sabina.asins@uv.es; Internet: www.uv.es/cide  |
| 2-5 April           | London,<br>U.K.               | Participating in Development: Approaches to Indigenous Knowledge<br>Contact: Jennifer Law, Conference Administrator, School of Oriental & African Studies, Thornhaugh Street, Russell Square, London, WC1H 0XG, United Kingdom; e-mail: J14@soas.ac.uk; Internet: http://lucy.ukc.ac.uk/ASA/asa2000.html   |
| 10-20 April         | Nairobi,<br>Kenya             | 11th Conference to the Parties to CITES<br>Contact: CITES Secretariat; tel: (41 22) 979 9138; fax: (41 22) 979 3417; e-mail: cites@unep.ch; Internet: www.cites.org  |
| 24 April -<br>5 May | New York,<br>USA              | 8th Session of the Commission on Sustainable Development (CSD-8)<br>Contact: Andrey Vasilyev, Division for Sustainable Development, UN Plaza, Room DC2-2220, New York, NY 10017, USA; tel.: (1 212) 963 5949, fax: (1 212) 963 4260; e-mail: vasilyev@un.org; Internet: www.un.org/esa/sustdev/csd.htm   |
| 25-28 April         | Boston,<br>USA                | 11th Global Warming International Conference & Expo<br>Contact: GWXI Conference Registration, SUPCON, P.O. Box 5275, Woodridge, IL 60517-0275, USA, tel: (1 630) 910 1551; fax: (1 630) 910 1561   |

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

## CALENDAR OF MEETINGS

As of 6 March 2000

11-13 May	Metz, France	From the sources of knowledge to the medicines of the future Contact: French Society of Ethnopharmacology, 1 rue des Recollets, 57000 Metz, France; e-mail: sfe-see@wanadoo.fr
15-26 May	Nairobi, Kenya	5th Meeting of the Conference of the Parties to the Convention on Biological Diversity Contact: CBD Secretariat, World Trade Center, 393 St. Jacques Street, Suite 300, Montreal, Quebec, Canada H2Y 1N9; tel: (1 514) 288 2220; fax: (1 514) 288 6588; e-mail: chm@biodiv.org; Internet: www.biodiv.org
16-19 May	Nairobi, Kenya	Medicinal Plants, Traditional Medicine and Local Communities in Africa Contact: Environmental Liaison Centre International (ELCI), P.O. Box 72461, Nairobi, Kenya; or Barbara Gemmill at herren@africaonline.co.ke
June	Kumming, P.R. China	Cultures and Biodiversity Congress 2000 Contact: Therese Grinter, e-mail: xujc97@public.km.yn.cn or cbik@public.km.yn.cn
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
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/
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
11-15 Sept.	Bonn, Germany	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
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
16-27 Oct. (tentative)	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
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
25-27 Nov.	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: zsongon@iies.es or zsongon@teleline.es
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/
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/

# COP 5 - United Nations Framework Convention on Climate Change: Increased Focus on Compliance

From 25 October to 5 November 1999, the fifth Conference of the Parties (COP 5) of the UN Framework Convention on Climate Change (UNFCCC) was convened under the presidency of Mr. Jan Szysko of Poland. It was the first UNFCCC - COP to take place in Bonn, Germany, seat of the UNFCCC Secretariat. Delegates from 166 Parties to the Convention met during these two weeks in a large number of formal and informal meetings, as well as in rather interesting side events.

Overall, the conference has been estimated a success, not only for the Parties themselves, but especially for the global climate policy. This estimation can be based on a clearly perceptible change of mood in many of the delegations, which created a certain momentum for the negotiations. It was partly initiated by the German Chancellor, Gerhard Schroeder, who in his opening speech urged the delegates to put the Kyoto Protocol into force at latest in the year 2002, at the UN Rio+10 Conference. This demand was also taken up by many of the heads of delegations in their statements during the high level segment. Nevertheless, it should not be ignored that the new momentum of the negotiation was mostly due to the urgent problems, undoubtedly deriving from climate change, by which especially developing countries and small island states are affected, e.g. devastating floods, storms, and similar natural phenomena. Yet, it was also encouraging to learn about successful measures taken even by non-Annex I-Parties for the protection of the global climate.

The legal aspect became especially relevant in the negotiations of the Joint Working Group on Compliance (JWG), which strove to settle the baseline of a comprehensive com-

pliance system pursuant to Art. 18 of the Kyoto Protocol. The JWG met six times under the presidency of its two co-Chairs, Mr. Espen Ronneberg and Mr. Harald Dovland, to prepare for the design of a comprehensive compliance system and the consequences of non-compliance. The main points discussed concerned the principal elements of a compliance system, the objectives of the system, the nature of the system, and the principles under which the system should work. The coverage of the system needed consideration, as well as its role in respect to the so-called "Kyoto Mechanisms", e.g. Joint Implementation and Clean Development Mechanisms.

In respect of the institutional and procedural aspects, the following items were discussed:

- eligibility to raise issues, or how a review process is to be triggered,
- structure and function of a com-

pliance body/bodies – standing body or *ad hoc* body,

- rules of procedure of a compliance body,
- the role of other bodies, especially COP/MOP and the Secretariat, in respect to the compliance mechanism.

It was agreed that much work remains to be done. A workshop on matters relating to a compliance system will be convened by the co-Chairs, 1-3 March 2000, to prepare the decisions to be taken by COP 6 in November 2000 in The Hague, Netherlands. The session of the Subsidiary Bodies will take place in Bonn 12-16 June. The co-Chairs expressed their optimism that the spirit of the JWG promised success.

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# EUROPEAN COUNCIL ON ENVIRONMENTAL LAW

## Madeira Declaration on the Sustainable Management of Water adopted by the European Council on Environmental Law, 17th April 1999

### Preamble

#### The European Council on Environmental Law

**Considering** that water is essential to all forms of life,

**Considering** that water is a resource that is becoming scarce and is in danger of being depleted and deteriorating in quality,

**Considering** that water is an environmental, social and economic good that can become a source of conflict between users,

**Considering** the importance of water in biological systems and for human activities,

**Considering** that it is important to promote:

- the recognition and implementation of the right of everyone to have access to drinking water,
- the adjustment of human activities to the availability of water,
- the strengthening of participation by the public,

**Considering** that misuse of water and aquatic ecosystems has to be prevented, controlled and reduced,

**Considering** how national, Community and international legal systems have evolved,

**Taking** account of the fundamental principles of environmental law, as set out in international statements, international treaties – in particular the 1992 Helsinki Convention and the 1997 New York Convention on matters relating to water – and international jurisprudence,

**Brings** to the attention of the public authorities and the institutions concerned the following Declaration:

### Article 1

Water shall be used in a reasonable and equitable way, in a spirit of solidarity and in a manner consistent with the principle of sustainable development.

Water shall be looked upon as a heritage to be shared between all users thereof, the aquatic system and the associated ecosystems. Its management shall take into account the risks of flooding and the risks of drought.

There is a need for a system of integrated management of surface water, groundwater and associated water which respects the environment as a whole, takes account of physical planning and is socially equitable and economically rational.

Management of the ecosystem shall focus on the conservation and protection of the aquatic environment which is affected by fluctuations in the quantity and quality of water.

### Article 2

National, regional and local authorities have the fundamental obligation to prevent water resources deteriorating in quality and being depleted, in particular through the application of the precautionary principle.

National, regional and local authorities shall inventory the water resources at their disposal and systematically collect sufficient information concerning:

- water quantity and quality, bearing in mind the uses to which it is

- to be put,
- non-point pollution and eutrophication,
- deterioration of biodiversity,
- the depletion of the resource (reduction in the level and quality of groundwater, drying up of surface water and wetlands).

On the basis of the information collected, the authorities shall take the appropriate measures to guarantee sustainable management of water resources and, if necessary, corrective measures in order to restore or improve water quality.

### Article 3

The legal rules applying to the ownership, possession and uses of water and water trading shall foster reasonable and equitable use of water and, in particular, prevent wastage and quality deterioration. They shall take account of fluctuations in the quantity and quality of water.

The amount of water made available to users during times of scarcity shall be limited in order to preserve, in any event:

- the supply of water for basic human needs;
- the minimum quantity of water needed to protect biodiversity and ecosystems.

### Article 4

National, regional and local authorities shall ensure planned water management. To this end, they shall encourage research and development in the best available technologies and the implementation thereof, and also public enquiry and impact assess-

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ment procedures aimed at reducing wastage and pollution.

Management of groundwater shall be a matter for close cooperation between the authorities concerned.

**Article 5**

National, regional and local authorities should favour management by catchment area.

Transfers of water between catchment areas shall be in the general interest and in the mutual interest of users who have been duly informed and consulted in good time, taking due account of the nature of the ecosystems of the catchment areas affected.

Countries should cooperate in facilitating water transfers at international level with the object of remedying critical situations.

**Article 6**

The public shall have access to information concerning the general state of water resources. They shall be kept duly and appropriately informed of water management plans and water utilization projects.

Effective participation by the public in planning procedures and decisions concerning water shall be ensured.

Appeal procedures shall be available to interested persons and bodies.

**Article 7**

No person may be deprived of the amount of water needed to meet his basic needs.

**Article 8**

The polluter-pays principle shall be applied to water management.

The implementation of economic instruments can contribute to more rational management of water re-

sources. Therefore, charges may be levied on users in order to regulate water consumption or reduce water pollution by discharges.

**Article 9**

National, regional and local authorities shall ensure that water supply accounting is made public and shows, *inter alia*, the cost by category of user, the various types of subsidy received, free contributions in nature or in kind provided by municipal authorities and transfers between user categories.

**Article 10**

In accordance with the polluter-pays principle and without prejudice to

payment of the charges referred to above, the user shall pay all the economic costs attaching to water use.

Exceptions may be granted in the case of water for basic human needs and for traditional uses of a local nature.

When it is decided to reduce water-related subsidies, there shall be a transition period so as to allow for dispensations justified on social grounds.

*This Declaration is based on national reports drawn up by CEDE members on the basis of a questionnaire by Professor Eckard Rehbinder. A summary of the replies was prepared by Mrs Lina Camacho. Mr Henri Smets was general rapporteur for the Declaration as a whole.*



## ...New Zealand's Regulatory Control

management strategies. The Act provides for both national and regional strategies. Strategies provide direction on control, who is responsible for various activities, and the funding and compensation arrangements for those activities.

Intentional introductions of potentially alien invasive species are governed by HSNO. The Act requires that people who wish to import, develop, field test or release any new organism (which includes genetically modified organisms) that is not lawfully present in New Zealand must obtain an approval from a specially constituted body (the Environmental Risk Management Authority). The Authority, when considering applications for approvals, must "recognise and provide for" two central principles:

- the safeguarding of the life supporting capacity of air, water, soil and ecosystems; and
- the maintenance and enhancement of the capacity of people and communities to provide for

their own economic, social and cultural well-being and for the reasonably foreseeable needs of future generations.

In addition, the Authority must "take into account":

- the sustainability of all native and valued introduced flora and fauna;
- the intrinsic value of ecosystems;
- public health;
- the relationship of Maori and their culture and traditions with their ancestral land, water, sites, waahi tapu (sacred sites), valued flora and fauna, and other taonga (treasures);
- the economic and related benefits to be derived from the use of a particular hazardous substance or new organism;
- New Zealand's international obligations;
- the principles of the Treaty of Waitangi.

The Authority is also required to take into account the need for caution in managing adverse effects where

there is scientific and technical uncertainty about those effects.

HSNO provides for rights of public participation in many types of applications for approval. Approvals may be granted subject to conditions to reduce potential adverse effects, such as an accidental release from a field trial. Both the Biosecurity and HSNO Acts give wide powers to both central and local government agencies to deal with biosecurity emergencies and to recover the costs associated with dealing with such emergencies. Penalties under the HSNO and Biosecurity Acts vary depending on the nature of the offence. The most severe penalties carry a maximum of five years' imprisonment, a fine of up to \$500,000, or both.

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## Montevideo III - International Expert Group Meeting

The first meeting of the international expert group to prepare the components of the "Programme for the Development and Periodic Review of Environmental Law for the first Decade of the 21st Century" (Montevideo Programme III), was held in Washington, DC, 15-18 January 2000. The meeting was convened by UNEP pursuant of the UNEP Governing Council Decision 20/3, which requested UNEP to prepare the new programme for the development of environmental law.

Thirty-eight participants attended the meeting. They included environmental law experts from government

agencies, academic lawyers, convention secretariats, international agencies and non-governmental organisations. All the experts participated in their personal capacity. A background paper, prepared by UNEP, provided reference material for framing and stimulating the discussions.

To elaborate the programme for Montevideo III, the main tasks before the participants were to:

1. assess the latest developments in environmental law and identify existing or emerging issues that need attention;

2. prepare well-argued components that would satisfy the criteria of need and feasibility;
3. look for innovative approaches;
4. specify the role of UNEP in each aspect of the further development of environmental law and environment-related law.

The achievements of Montevideo I and II were reviewed, as well as the new environmental challenges and the needs for the further development of international environmental law.

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## **...The Precautionary Principle**

guarantee that any food product is free of such matter.

Moreover, the Beef Hormone case in the WTO contains some salutary lessons for how the WTO dispute resolution mechanism might understand the application of the precautionary principle in the context of biotech-commodities. In this case, the EU argued that international standards on hormone safety were questionable and that, in the light of the resulting uncertainty, the ban was justified. The WTO's Appellate Body ruled that there was no risk assessment to support the EU's allegation, and therefore the ban violated provisions of the international trade regime (in particular Article 5 of the Sanitary and Phytosanitary Agreement of the WTO). The EU subsequently undertook scientific studies that it hoped would satisfy the risk assessment requirement of the WTO but refused to lift the import embargo until the results of those studies are known. It remains an open question how conclusive a risk assessment must be in order to justify trade restrictions or – in other words – what degree of scientific uncertainty would constitute an acceptable basis for trade measures taken under the precautionary principle.

Thoughtless translation of one approach to risk management into an international context will not resolve problems such those raised by the biosafety protocol. Clearly the rules used to decide on a course of action will affect the substantive outcome of the process. It is important, however, to recognize that differences in the rules used reflect different approaches to a problem. Attempts to harmonize these differences out of existence are liable to be resisted as attacks on a way of doing things rather than a dispute about science.

Moreover, adapting the precautionary principle to the context of international trade raises issues and problems that are common throughout the environmental agenda. There is an underlying assumption that sci-

ence will ultimately provide answers and the state of uncertainty is temporary. In many areas of environmental policy, such certainty will not be available in the foreseeable future.

Ideas that have the potential to overcome the current impasse require drawing together a wide range of expertise. It is critical to recognize that the precautionary principle is difficult to apply without a robust analysis of the economic aspects of its application in particular cases. The appropriate course of action emerges only when scientific uncertainty, social consensus and economic resources are seen together.

What is needed is an effective international organization capable of assessing scientific evidence, understanding its limitations, taking into account the different governance cultures of different countries and providing sensible policy options. To do this is a daunting task and one that will require a great deal of time and effort. Important examples of where this has been achieved in-

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The participants then identified possible components of the Montevideo Programme III. They also discussed ways to ensure that international environmental law fully reflects developments and trends in other branches of law such as international trade, international property rights, human rights, and international finance.

Cross-sectoral issues such as those related to the better integration of environmental law and socio-economic development were also identified. These included urban air pollution, transboundary freshwaters, coral reef protection, soil degradation, deforestation, alien invasive species, energy, transport, solid waste management, emergency preparedness and response, environmental restoration, and environmental security.

clude: the IPPC and climate change, UNEP and persistent organic pollutants and ozone depleting substances. These processes have taken decades to become effective and have taken an enormous amount of time, money and commitment.

In the absence of such an organisation, there exists a unique opportunity for other organisations, such as IUCN or academic institutions, to make a significant contribution to the debate on this matter. Through their ability to bring together experts from various backgrounds they could make a valuable contribution to addressing some of the complex and far reaching problems that is raised by this real life application of the precautionary approach.

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The need for increased co-ordination and co-operation among secretariats of environmental agreements was also highlighted. It was also felt that the role of UNEP should be strengthened in order to improve and enhance the linkages among environmental agreements.

There was a general consensus that Montevideo III should continue to promote the development of legal rules to address new environmental challenges. At the same time, it should also focus on implementation and compliance by States of international and national environmental commitments and regimes. The challenge would be how to strike a balance between these two.

The second meeting of the international experts group will be held in Washington D.C., 8-11 April.

– NWI

# BIOSAFETY IN LATIN AMERICA AND THE CARIBBEAN

At the request of the Economic Commission for Latin America and the Caribbean (ECLAC) and the United Nations Environment Programme Regional Office for Latin America and the Caribbean (UNEP/ROLAC), the Latin American Association on Environmental Law (ALDA) is preparing a study to analyse the political, legal and administrative aspects of biosafety in Latin America and the Caribbean. The study will focus in particular on the problems derived from the security in biotechnology.

Biosafety problems are not new in Latin America and the Caribbean,

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which governs trade among most of the major trading countries (135 countries are now members of the WTO, and China is actively seeking to join), will hinder efforts to prevent harmful introductions. To correct this flaw, 13 environmental and scientific organisations and more than 30 leading ecologists have proposed amendments to the SPS Agreement so that it better allows for a precautionary approach.

For further information on these proposed amendments, please contact Faith Campbell, Ph.D. of the American Lands Alliance at [phytodoer@aol.com](mailto:phytodoer@aol.com)

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especially those dealing with alien species. Efforts to deal with the problems derived from modern biotechnology are rare, unequal and in general insufficient. Due to pressure from industrialised countries and transnational corporations, medium-developed countries have taken action to deal with the problem.

Countries in this region have the largest biodiversity of the planet and are the center of origin of many relevant species. They have important agricultural production and an incipient biotechnological development.

The study is designed to prompt actions required for the political, legal and administrative development of biosafety in the region and stresses the importance of the implementation of the Biosafety Protocol.

Meanwhile, it should be considered that biosafety exceeds the frame of the strict environmental preoccupations that today, more than ever, are associated with ethical, socio-economic and cultural considerations.

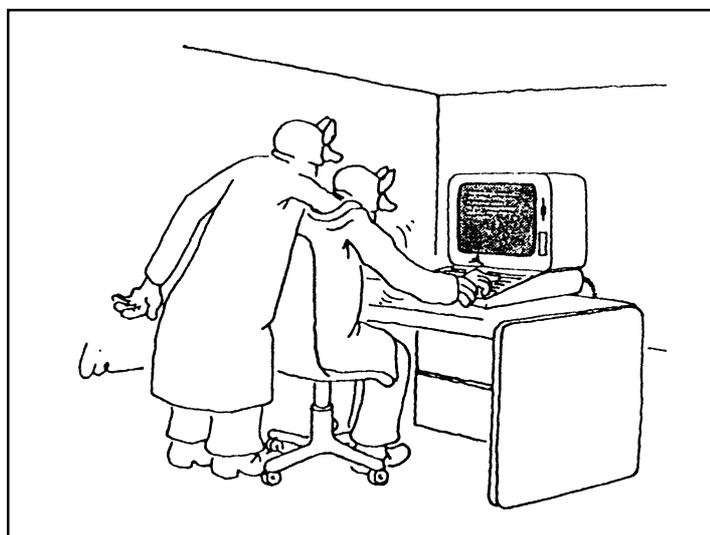
The study also recognises that regional co-operation is necessary to share and better use the limited capacities of the countries. Co-operation is also an appropriate mecha-

nism to fulfil the duty to prevent and control potential negative risks derived from alien species, including those that have been genetically modified.

A first version of the study was submitted to the IV Meeting of the Intersessional Committee from the Forum of Ministers of the Environment of Latin America and the Caribbean, which took place in Lima, Peru, 2 October 1999. A second revised version – which includes the cases of Argentina, Brazil, Chile, Colombia, Costa Rica, Cuba, Mexico and Peru – was discussed during an experts meeting in the ECLAC headquarters in Santiago de Chile 29 and 30 November 1999.

The study is being revised based on the results of the meeting in Chile and a third version is expected to be submitted at the XII Meeting of the Forum of Latin American Ministries for the Environment in Bridgetown, Barbados in February 2000.

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# New Parties to Major International Environmental Treaties

Ratification Status received as of December 1999\*

**United Nations Framework Convention on Climate Change, 09.05.1992:**

Sao Tome and Principe -29.09.1999  
Palau -10.12.1999  
Total number of Parties: 181

**Kyoto Protocol to the United Nations Framework Convention on Climate Change, 11.12.1997:**

Paraguay -27.08.1999  
Guatemala -05.10.1999  
Uzbekistan -12.10.1999  
Nicaragua -18.11.1999  
Bolivia -30.11.1999  
Palau -10.12.1999  
Mongolia -15.12.1999  
Total number of Parties: 22

**International Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, 17.06. 1994:**

Hungary -13.07.1999  
Georgia -23.07.1999  
San Marino -23.07.1999  
Vanuatu -10.08.1999  
Republic of Korea -17.08.1999  
Liechtenstein -29.12.1999  
Total number of Parties: 160

**Convention for the Protection of the Ozone Layer, 22.03.1985:**

Oman -30.06.1999  
Djibouti -30.07.1999  
Armenia -01.10.1999  
Albania -08.10.1999  
Total number of Parties: 173

**Protocol on Substances that Deplete the Ozone Layer, 16.09.1987:**

Djibouti -30.07.1999  
Oman -30.09.1999  
Armenia -01.10.1999  
Albania -08.10.1999  
Total number of Parties: 172

**Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, 29.06.1990:**

Guyana -23.07.1999  
Djibouti -30.07.1999  
Oman -05.08.1999  
Solomon Islands -17.08.1999  
Saint Lucia -24.08.1999  
Syrian Arab Republic -30.11.1999  
Nicaragua -13.12.1999  
Total number of Parties: 138

**Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, 25.11.1992:**

Guyana -23.07.1999  
Djibouti -30.07.1999  
Oman -05.08.1999  
Senegal -12.08.1999  
Solomon Islands -17.08.1999

Saint Lucia -24.08.1999  
Niger -08.10.1999  
Uganda -22.11.1999  
Syrian Arab Republic -30.11.1999  
Nicaragua -13.12.1999  
Total number of Parties: 105

**Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer adopted by the Ninth Meeting of the Parties, 17.09.1997:**

Guyana -23.07.1999  
Hungary -26.07.1999  
Djibouti -30.07.1999  
Senegal -12.08.1999  
Solomon Islands -17.08.1999  
Sri Lanka -20.08.1999  
Saint Lucia -24.08.1999  
Macedonia -31.08.1999  
Niger -08.10.1999  
Uganda -23.11.1999  
Bulgaria -24.11.1999  
Syrian Arab Republic -30.11.1999  
Poland -06.12.1999  
Total number of Parties: 33

**Convention on Biological Diversity, 05.06.1992:**

Sao Tome and Principe -29.09.1999  
Total number of Parties: 176

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

Grenada -30.08.1999  
Total number of Parties: 146

**Protocol to amend the Convention on Wetlands of International Importance especially as Waterfowl Habitat, 03.12.1982:**

El Salvador -22.03.1999  
Total number of Parties: 101

**Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area, 24.11.1996:**

Spain -02.02.1999  
Morocco -31.08.1999  
Total number of Parties: 3

**International Convention for the Protection of New Varieties of Plants as amended on 23.10.1978:**

China -23.03.1999  
Kenya -13.04.1999  
Bolivia -21.04.1999  
Brazil -23.04.1999  
Panama -23.04.1999  
Total number of Parties: 36

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

United States -22.01.1999  
Slovenia -29.06.1999  
Total number of Parties: 12

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

# Regional

## ELP Environmental Law Service

### Africa

The Draft Environmental Law of **Ethiopia** is still under consideration by the Environmental Protection Council (EPC). After EPC has endorsed the draft, it will be referred to the Council of Ministers and then to the Parliament.

Discussions are being held between CEL, ELC and RCOs in South and East Africa to prepare regional planning meetings in 2000. The aims of the meetings are to discuss the implementation of the ELP **Regionalization** project and assist in developing environmental law programmes in each region.

At the request of Forestry Sector Technical Co-ordination Unit (FSTCU) of the **Southern Africa Development Community** (SADC), IUCN is providing technical legal assistance in the preparation of the Forestry Protocol to the SADC Treaty. The draft Outline of the Forestry Protocol was prepared during missions to Malawi (25 September - 10 October 1999) and Bonn (10-11 December 1999). The draft Elements of the Protocol have been prepared based on the Outline.

The country consultations are scheduled to be held from mid-February until mid-March. During the country consultations, the consultants are scheduled to meet with key officials of the governments, public and private sectors, and NGO communities to obtain their comments to the draft Elements and support in the preparation of the Protocol. A Regional Workshop to discuss the development of the Protocol is scheduled to be held in Lesotho in April.

The 10th Steering Committee Meeting of the **UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa** was held at the IUCN Environmental Law Centre in Bonn, 8-9 November. The aim of the meeting was to discuss the status of Phase I of the project, and begin planning of Phase II. This project aims to support the development of environmental law and institutions in selected African countries. In January, a donors meeting was held at UNEP to discuss funding for Phase II of the project.

### East Asia

Preparations continue for the development of regional environmental law programme in **China**. In October, a meeting was held at Wuhan University to develop the blueprint for the IUCN-China programme "Promoting Environmental Law in China" in October. Prof. Wang Xi organised the meeting which was also attended by Vice Chair Koh Kheng Lian and Chinese environmental law experts.

A Memorandum of Understanding was completed between the IUCN Environmental Law Programme and the Research Institute for Environmental Law of Wuhan University, for the collaboration in promoting environmental law in China. The MOU was signed by the Chair and Deputy Chair of IUCN CEL, and the Director

of the IUCN ELP during a signing ceremony in Wuhan, China on 22 November 1999. Under this MOU, the IUCN ELP will co-operate with Wuhan and RIEL to build a network of institutions and experts on environmental law throughout China, focusing on capacity building and training. The activities at Wuhan were attended by Vice Minister of the State Environmental Protection Agency (SEPA), leading environmental law scholars throughout China, and government agencies.

A law training programme for judges was held in Pokhara, **Nepal** on 9-11 December 1999. The training programme was attended by 31 judges and eight resource persons.

### West Asia

CEL has concluded a MOU with the University of **Kuwait** for the development of a Regional Centre of Excellence in Kuwait. The MOU will be further elaborated in early 2000.

The **Yemen** project was completed, with the submission of draft laws on protected areas and on access to genetic resources by two Yemeni consultants.

### Central Asia

A MOU has been finalised between the ELC and the West/Central Asia & North Africa Programme. The objective is to develop a regional environmental law programme in Central Asia. Two workshops are tentatively scheduled to be held in Almaty, **Kazakhstan** in June in co-ordination with the IUCN RCO in Almaty. The workshops will focus on legal aspects of transboundary protected areas and water resources management.

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## ELC Staff News

**Mr. Mauricio Cysne**, Legal Officer, left the ELC in September and has moved to Geneva with his wife Claudia.

The ELC has two new legal officers: **Ms. Tomme Young** (US national) and **Dr. Alejandro Iza** (Argentine national).

**Ms. Young** has worked as an environmental lawyer for almost twenty years, at both the national and international levels. For the past ten years, she has worked as an international consultant focusing on issues such as forestry, biodiversity conservation, coastal zone management, intellectual property and indigenous rights issues. She has worked extensively in Asia, Africa, and Eastern Europe providing legal and policy advice to governments, non-government and private institutions, as well as to local communities and indigenous peoples. She has been an adjunct professor of environmental and international law, has extensive publications and is fluent in Spanish. She began 6 December.

**Dr. Iza**, is finalising a post-doctorate degree at the University of Hamburg on "The Protection of the Environment in Mercosur" using the EC Environmental Policy as a model for other integration processes. He also holds a Doctor of Laws degree from the University of Buenos Aires, where he was also a lecturer and research fellow. Dr. Iza has worked with DGXI, Environment, Nuclear Safety and Civil Protection Division, the European Commission, where he focused on complaints and infringements of EC environmental law. He has published on issues concerning environmental protection and regional integration, focusing especially on Latin America. He has travelled extensively throughout Latin America, Europe and Asia and is fluent in English, German, and Spanish. Dr. Iza began work 12 January.

**Ms. Carola von Conrad**, Principal Assistant, Legislation Library, left the ELC at the end of September. She has been travelling in Asia for several months.

**Mr. Raymond Narine** has replaced Carol von Conrad as Principal Assistant, Legislation Library. He has a Ph.D. in chemistry and formerly worked as a programmer for Marks and Spencer in London.

**Mr. Robert Ondhowe** worked for two months at the ELC as a volunteer. Mr. Ondhowe, from Kenya, has a Masters in Applied Environmental Science.

**Ms. Marie-Luise Philippsen** is the new Personal Assistant to the Director of the ELC. She was formerly a translator at the Embassy of Cyprus.

**Ms. Jil Self**, Administrative Assistant, has joined the Secretariat team at the ELC. She will also work on the ELP Web site and the new POPs list serve.

**Ms. Alexandra Zimmermann** has joined the ELC staff as Documentation Officer, Literature Library. She has worked as Documentation Officer for the Bonn daily newspaper "General-Anzeiger".

We wish them all the best of luck! Viel spass!

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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 580 international and environmental law specialists in over 111 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. 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](mailto:secretariat@elc.iucn.org).

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