

UNITED NATIONS ACTIVITIES

UN / GA

Report on the Proceedings of the Sixty-second Session: Focus on Selected Items

by Elsa Tsioumani*

The sixty-second session of the General Assembly of the United Nations (UN) opened on 18 September 2007, at the UN Headquarters, in New York. Following his election by the 61st session on 24 May 2007, the 62nd session was chaired by Srgjan Kerim of the former Yugoslav Republic of Macedonia.

As identified by its President, the priorities of the session included: climate change, financing for development, achievement of the Millennium Development Goals (MDGs), counter-terrorism and the reform agenda, to renew the management, effectiveness and coherence of the UN.

This report provides an overview of discussions on selected legal and environmental issues addressed by the

Challenge of Climate Change”, aimed at building political momentum before the thirteenth Conference of the Parties to the UN Framework Convention on Climate Change (UNFCCC) and the third Meeting of the Parties to the Kyoto Protocol, to be held in December 2007, in Bali, Indonesia. The meeting gathered high-level officials from approximately 150 countries, including 70 Heads of State and Government. Four sessions were held on adaptation, mitigation, technology and financing.

In his opening address, UN Secretary-General Ban Ki-moon highlighted that national action must be at the centre of humanity’s response to climate change, with industrialised countries taking the lead. However, this will not be enough and climate change also needs to be confronted within a global framework. He outlined the essential parameters of a global framework: enhanced leadership by the industrialised countries on emission reductions; incentives for developing countries to act, but without sacrificing economic growth or poverty reduction, and fully consistent with the principle of common but differentiated responsibilities; significantly increased support for adaptation in developing countries, especially for least developed and small island developing States; strengthened technology development and dissemination; and new approaches to financing, including better use of market-based approaches.

The first thematic plenary on “The challenge of adaptation – from vulnerability to resilience” was facilitated by UN Deputy Secretary-General Asha-Rose Migiro, with Achim Steiner, UNEP Executive Director acting as Rapporteur. The Co-Chairs were Anders Fogh Rasmussen, Prime Minister of Denmark, Owen Arthur, Prime Minister of Barbados, Jan Peter Balkenende, Prime Minister of the Netherlands, and Fakhruddin Ahmed, Chief Adviser of the Non-Party Caretaker Government of Bangladesh. Participants discussed the importance of forging a global alliance to cope with the increasing impacts of climate change and called for rigorous adaptation strategies.

The second thematic plenary on mitigation was facilitated by Gro Harlem Brundtland, Special Envoy of the



Secretary-General Ban Ki-moon (left), Srgjan Kerim (centre), President of the General Assembly and Muhammad Shaaban, Under-Secretary-General for General Assembly Affairs and Conference Management
Courtesy: UN

session up to 16 November 2007, as well as a brief report on the high-level meeting on climate change convened on the initiative and under the chairmanship of the UN Secretary-General Ban Ki-moon on 24 September 2007.¹

High-level Meeting on Climate Change

The high-level meeting on climate change, entitled “The Future in our Hands: Addressing the Leadership

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Secretary-General, with Yvo de Boer, UNFCCC Executive Secretary acting as rapporteur. Michelle Bachelet, President of Chile, and Alfred Gusenbauer, Federal Chancellor of Austria, co-chaired the morning session on the



Anders Fogh Rasmussen (centre), Prime Minister of Denmark, flanked by Deputy Secretary-General Asha-Rose Migiro (left), and Ion Botnaru, Chief of the UN General Assembly Affairs Branch, presides over the High-Level meeting on Climate Change, at UN Headquarters in New York. Courtesy: UN

topic, while Tarja Halonen, President of Finland, and Umaru Musa Yar'Adua, President of Nigeria, co-chaired the afternoon one.

The third thematic plenary, entitled "Innovating a climate-friendly world – the role of technology and its dissemination", was facilitated by Ricardo Lagod Escobar, Special Envoy of the Secretary-General, and Sha Zukang, Under-Secretary-General of the Department of Economic and Social Affairs, served as Rapporteur. The morning and afternoon meetings were co-chaired by Janez Janša, Prime Minister of Slovenia, and José Ramos-Horta, President of Timor-Leste, and Surayud Chulanont, Prime Minister of Thailand, and Prince Albert II of Monaco, respectively.

The fourth thematic plenary on "Financing the response to climate change – investing in tomorrow" was facilitated by Han Seung-soo, Special Envoy of the Secretary-General, and Kemal Dervis, Administrator of the UN Development Programme (UNDP) served as Rapporteur. The morning and afternoon sessions were co-chaired by Jens Stoltenberg, Prime Minister of Norway, and Abdoulaye Wade, President of Senegal, and Jakaya Mrisho Kikwete, President of Tanzania, and Fredrik Reinfeldt, Prime Minister of Sweden, respectively.

In his closing statement, President Susilo Bambang Yudhoyono of Indonesia said that Bali's success hinged on two issues: deciding what action to take between now and the 2012 sunset date of the Kyoto Protocol; and examining what was envisioned after 2012. He called on those planning to attend the Bali meetings to adopt a road map to the post-2012 regime that would make it possible to implement realistic and tangible climate solutions, and stressed that the success of the future climate regime depended on the developing world working in partnership with the developed world.²

Plenary Meetings

General Debate

The Assembly held its annual general debate from 25 September to 3 October. In his address to the Assembly, with the theme "A stronger United Nations for a better world", Secretary-General Ban Ki-moon highlighted his vision of an administration focused on results, and added that he placed a very high priority on implementing the management reforms towards promoting greater transparency, accountability and efficiency. He then underlined the need to end the Darfur tragedy and reignite the Middle East peace process, as well as to achieve the MDGs.

During the general debate, world leaders highlighted their priorities, including ensuring peace and long-term development, achieving the MDGs, addressing climate change, resolving the Palestinian question, fostering interfaith and intercultural dialogue, addressing disarmament and nuclear non-proliferation.

In closing the general debate, Assembly President Srgjan Kerim said that climate change has become the flagship issue of the sixty-second session and called on Member States to deliver in Bali. He also drew attention to highlights of the debate, including: overwhelming support to make quicker progress on the MDGs; the need for further progress on financing for development; condemnation of terrorism; the need for progress on disarmament and non-proliferation; as well as the need for progress on the UN reform and the Security Council reform.³

Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa (Agenda item 64(b))

On 18 October, the Assembly held a joint debate on progress in implementation of the New Partnership for Africa's Development (NEPAD), the causes of conflict and the promotion of durable peace and sustainable development in Africa, and the 2001–2010 Decade to Roll Back Malaria. Before the Assembly were: NEPAD fifth consolidated report on progress in implementation and international support (A/62/203); a report on progress made in implementation of the recommendations contained in the report of the Secretary-General on the causes of conflict and the promotion of durable peace and sustainable development in Africa (A/62/204); and a report on progress made in the 2001–2010:

Erratum

For the attention of our readers:

In Volume 37, Numbers 2–3 is a chart on page 88 titled: "Provisions of the convention alleged or found not to have been complied with". As printed the grey tones in the chart may not be sufficiently recognisable. Therefore, EPL and the author ask you to please look closely for the grey tones in interpreting the chart.

Decade to Roll Back Malaria in Developing Countries, Particularly Africa (A/62/321).

Many African representatives warned the Assembly that, in order to assure economic recovery and development, developed countries needed to live up to their promises to open their markets to African goods and provide adequate resources in a predictable way, so that African governments could make the most of donor assistance. They urged the international community to dismantle trade-distorting subsidies, improve the quality of development assistance and forge creative partnerships.

Election of 18 Members of the Economic and Social Council (Agenda item 112(b))

On 8 November, the Assembly elected 18 members to the UN Economic and Social Council (ECOSOC) to serve for three-year terms beginning 1 January 2008: Brazil, Cameroon, China, Congo, Iceland, Malaysia, Mozambique, Moldova, New Zealand, Niger, Pakistan, Poland, Republic of Korea, Russian Federation, Saint Lucia, Sweden, United Kingdom and Uruguay. The new members were elected as following: four from African States; four from Asian States; three from Eastern European States;



Abdelhamid Gharbi (Tunisia)

Courtesy: UN

three from Latin American and Caribbean States; and four from Western European and Other States.

The 18 outgoing members are: Albania, Brazil, Chad, China, Costa Rica, Democratic Republic of the Congo, Denmark, Guinea, Iceland, India, Lithuania, Mexico, New Zealand, Pakistan, Russian Federation, South Africa, Thailand and the United Kingdom.

Election of 29 Members of the UNEP Governing Council (Agenda item 113(b))

On 15 November, the Assembly elected 29 members to the UNEP Governing Council for four-year terms. Since the number of candidates corresponded with the number of vacancies, and in the absence of any delegation request-

ing a vote, these countries were declared elected: the Bahamas, Bangladesh, Belarus, Benin, Colombia, Congo, Costa Rica, Croatia, Cuba, Fiji, Finland, Guinea, Hungary, India, Iran, Israel, Italy, Kazakhstan, Mali, Mauritius, Mexico, Monaco, the Netherlands, Niger, Saudi Arabia, Somalia, Spain, Tunisia and Tuvalu. They will join the following countries, whose terms continue: Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Belgium, Botswana, Burundi, Canada, Chile, China, Czech Republic, Democratic Republic of the Congo, France, Germany, Haiti, Indonesia, Japan, Kenya, Pakistan, Republic of Korea, Romania, Russian Federation, South Africa, Thailand, Uganda, United States and Uruguay.

First Committee

Under the chairmanship of Paul Badji (Senegal), the First Committee (Disarmament and International Security) began its general debate on 8 October. Discussions focused on several reports, including reports of the Secretary-General: the report of the Conference on Disarmament (not officially issued yet); the report of the Disarmament Commission for 2007 (A/62/42); the report on the Advisory Board on Disarmament Matters (A/62/309); the report on nuclear disarmament (A/62/165); the report on measures taken to prevent terrorists from acquiring weapons of mass destruction (A/62/156); the report on the establishment of a nuclear-weapon-free zone in the region of the Middle East (A/62/95); the report on problems arising from the accumulation of conventional stockpiles in surplus (A/62/166); the report on the relationship between disarmament and development (A/62/112); and the report on transparency and confidence-building measures in outer space activities (A/62/11).

During the Committee's general debate, many Member States welcomed the progress made towards the denuclearisation of the Korean peninsula, but warned that the race to possess nuclear weapons continued unabated, dramatically weakening collective security. Others expressed concern over military spending, suggesting that the funds should be used to further economic development and reach the MDGs rather than increase weapons stockpiles. The Russian representative said that the deployment of a global United States anti-ballistic missile system in the Czech Republic and Poland, as well as the appearance of anti-ballistic missile strike weapons in outer space, would adversely affect the disarmament process. Member States also addressed landmines; the need to rid the Middle East of nuclear weapons and other weapons of mass destruction; the need for a new consensus on international security; and non-implementation and non-compliance with past disarmament resolutions.

Prevention of an Arms Race in Outer Space (Agenda item 96)

On 22 October, the Committee began its debate on the disarmament aspects of outer space. Sri Lanka and Egypt introduced a draft resolution on the prevention of an arms race in outer space (A/C.1/62/L.34), according to which the General Assembly would emphasise the necessity of further measures with appropriate and effective provisions for verification to prevent an arms race in outer space; and would call upon all States, in particular those with major space capabilities, to contribute actively to the objective of the peaceful use of outer space and of the prevention of an arms race in outer space and to refrain from actions contrary to that objective and to the relevant existing treaties in the interest of maintaining international peace and security and promoting international cooperation. The draft further reiterates that the Conference on Disarmament, as the sole multilateral disarmament negotiating forum, has the primary role in the negotiation of a multilateral agreement or agreements, as appropriate, on the prevention of an arms race in outer space in all its aspects; recognises the growing convergence of views on the elaboration of measures designed to strengthen transparency, confidence and security in the peaceful uses of outer space; and urges States conducting activities in outer space, as well as States interested in conducting such activities, to keep the Conference on Disarmament informed of the progress of bilateral and multilateral negotiations on the matter, if any, so as to facilitate its work.

During discussion, the United States representative said that "discussions regarding the merits of treaties to prevent the so-called 'weaponisation' of outer space would be a pointless exercise", adding that long experience had shown the futility of attempting to define what constituted a "space weapon" or to effectively verify any proposed limitation of such weapons. He asserted that the United States would continue to oppose the development of new legal regimes or other restrictions that sought to prohibit or limit access to, or use of, outer space, noting that good faith and goodwill, rather than a treaty, were needed to foster good practices and common understanding. He also expressed his country's opposition to any attempt to create linkages between the pursuit of pragmatic transparency and confidence-building measures and legally binding space arms control constraints and limitations.

On 30 October, the Committee adopted the draft by a recorded vote of 170 in favour to one against (United States) with one abstention (Israel).

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (Agenda item 105)

On 23 October, the representative of Hungary introduced a draft resolution on the Biological Weapons Convention (A/C.1/62/L.37), noting that the text built on past resolutions, but it also incorporated recent developments, in particular, the successful Conference of States Parties. According to the draft, the Assembly would note with satisfaction the increase in the number of States Parties to the Conven-

tion and welcome the successful outcome of the Sixth Review Conference. It would also recall the decision relating to the establishment of the Implementation Support Unit and on information exchange among States Parties.

On 31 October, the draft was adopted as orally amended without a vote.

General and Complete Disarmament (Agenda item 98) *Prohibition of the Dumping of Radioactive Wastes*

On 23 October, Nigeria on behalf of the African group introduced a draft resolution on the issue (A/C.1/62/L.25), noting that dumping of such waste constituted a serious health and environmental hazard. According to the draft, the Assembly would express grave concern regarding any use of nuclear wastes that would constitute radiological warfare and have grave implications for the national security of all States; call upon all States to take appropriate measures with a view to preventing any dumping of nuclear or radioactive wastes that would infringe upon the sovereignty of States; request the Conference on Disarmament to take into account, in the negotiations for a convention on the prohibition of radiological weapons, radioactive wastes as part of the scope of such a convention, as well as to intensify efforts towards an early conclusion of such a convention; take note of resolution CM/Res.1356 (LIV) of 1991, adopted by the Council of Ministers of the Organization of African Unity, on the Bamako Convention on the Ban on the Import of Hazardous Wastes into Africa and on the Control of Their Transboundary Movements within Africa; express the hope that the effective implementation of the International Atomic Energy Agency Code of Practice on the International Transboundary Movement of Radioactive Waste will enhance the protection of all States from the dumping of radioactive wastes on their territories; and appeal to all Member States to become party to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management.

On 30 October, the resolution was approved without a vote.

Observance of Environmental Norms in the Drafting and Implementation of Agreements on Disarmament and Arms Control

On 24 October, Indonesia on behalf of the Non-Aligned Movement introduced a draft resolution on the issue (A/C.1/62/L.14). In the draft, the Assembly would reaffirm that international disarmament forums should take fully into account the relevant environmental norms in negotiating treaties and agreements on disarmament and arms limitation and that all States, through their actions, should contribute fully to ensuring compliance with the aforementioned norms in the implementation of treaties and conventions to which they are parties; call upon States to adopt unilateral, bilateral, regional and multilateral measures so as to contribute to ensuring the application of scientific and technological progress within the framework of international security, disarmament and other related spheres, without detriment to the environment or to its effective contribution to attaining sustainable development;

and invite all Member States to communicate to the Secretary-General information on the measures they have adopted to promote the objectives envisaged in the present resolution.

On 31 October, the Committee approved the draft resolution by a recorded vote of 162 in favour, to one against (United States), with 3 abstentions (France, Israel and UK).

Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction

On 23 October, the representative of Poland introduced a draft resolution on the implementation of the Chemical Weapons Convention (A/C.1/62/L.7). The draft resolution underlined that the Convention and its implementation contributed to enhancing international peace and security, and that its full, universal and effective implementation would contribute further to that goal. It also: reaffirms the obligation of the States Parties to the Convention to destroy chemical weapons and to destroy or convert chemical weapons production facilities within the time limits provided for by the Convention; stresses that the full and effective implementation of all provisions of the Convention, including those on national implementation (article VII) and assistance and protection (article X), constitutes an important contribution to the UN efforts in the global fight against terrorism in all its forms and manifestations; notes that the effective application of the verification system builds confidence in compliance with the Convention by States Parties and stresses the importance of the Organization for the Prohibition of Chemical Weapons in verifying compliance with the provisions of the Convention as well as in promoting the timely and efficient accomplishment of all its objectives; and notes with satisfaction that the High-level Meeting on the Tenth Anniversary of the Entry into Force of the Convention, convened by Poland and the Netherlands on 27 September 2007, provided a special occasion for the international community to remember all victims of chemical weapons and to reaffirm the commitment to multilateralism and to the object and purpose of the Convention.

On 30 October, the Committee adopted the draft without a vote.

Transparency and Confidence-building Measures in Outer Space Activities

On 31 October, the Committee adopted a draft resolution on the issue by a recorded vote of 168 in favour to one against (United States) with one abstention (Israel). According to the draft (A/C.1/62/L.41), the Assembly would take note of the report of the Secretary-General containing concrete proposals from Member States on international outer space transparency and confidence-building measures and invite all Member States to continue to submit to the Secretary-General concrete proposals on international outer space transparency and confidence-building measures in the interest of maintaining international peace and security and promoting international cooperation and the prevention of an arms race in outer space.

Implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction

On 31 October, the Committee adopted by a recorded vote of 154 in favour to none against, with 18 abstentions, a draft resolution on the issue (A/C.1/62/L.39). According to the draft, the Assembly would stress the importance of the full and effective implementation of, and compliance with, the Convention, including through the continued implementation of the Nairobi Action Plan 2005–2009. It would renew its call upon all States and other relevant parties to work together to promote, support and advance the care, rehabilitation and social and economic reintegration of mine victims, mine risk education programmes and the removal and destruction of anti-personnel mines placed or stockpiled throughout the world.

Convention on the Prohibition of the Use of Nuclear Weapons

On 30 October, by a recorded vote of 115 in favour to 50 against, with 11 abstentions, the First Committee approved a draft resolution on a convention on the prohibition of the use of nuclear weapons (A/C.1/62/L.23) by which the Assembly would reiterate its request to the Conference on Disarmament to commence negotiations in order to reach agreement on an international convention prohibiting the use or threat of use of nuclear weapons under any circumstances; and request the Conference to report to it on the results of those negotiations.

Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to Have Indiscriminate Effects

On 30 October, the representative of Sweden introduced a draft resolution on the Convention on Certain Conventional Weapons (A/C.1/62/L.32), according to which, the Assembly would: call upon all States that have not yet done so to take all measures to become parties, as soon as possible, to the Convention and the Protocols thereto; and welcome the adoption by the Third Review Conference of a Plan of Action to promote universality of the Convention and its annexed Protocols, and its decision to establish a Compliance Mechanism and a sponsorship programme.

On 31 October, the Committee adopted the draft without a vote.

Second Committee

Under the chairmanship of Kirsti Lintonen (Finland), the Second Committee (Economic and Financial) adopted its work programme on 20 September and began its general debate on 8 October. Chair Lintonen stressed the body's primary concern is to ensure that the international community takes appropriate steps towards equitable, sustainable development in all countries, and particularly achieving the MDGs and other internationally agreed development targets. Deputy Secretary-General Asha-Rose Migiro said that global poverty remained a pressing issue affecting millions of people, adding that poverty's grip

was tight and structurally rooted, particularly in Africa, while sharp social and economic disparities in the global economy persisted. She expressed hers and the Secretary-General's commitment to promoting the development agenda through a multilateral approach. The Committee then heard a keynote address by Edmund Phelps, 2006 Nobel Prize recipient in Economic Science.

During the general debate, Member States highlighted, *inter alia*: the need for debt cancellation, reform of the international financial architecture and policies to foster socio-economic progress in developing countries; and the need for urgent attention to global warming.

Sustainable Development (Agenda item 54)

On 29 October, the Second Committee initiated its debate on sustainable development.

The item included consideration of:

- implementation of Agenda 21;
- the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development;
- the follow-up to and implementation of the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States;
- the International Strategy for Disaster Reduction;
- the protection of global climate for present and future generations of mankind;
- the implementation of the UN Convention to Combat Desertification (UNCCD);
- the Convention on Biological Diversity (CBD);
- the report of the 24th session of the UNEP Governing Council;
- sustainable mountain development; and
- the promotion of new and renewable sources of energy.

The Committee had before it the following reports: the report of the Secretary-General on oil slicks on the Lebanese shores (A/62/343); a note on the non-legally binding instrument on all types of forests (A/C.2/62/L.5); the Secretary-General's report on the implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development (A/62/262); the report of the Secretary-General on the International Year of Planet Earth (A/62/376), beginning on January 2008; the Secretary-General's report on follow-up to and implementation of the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States (A/62/279); a note of the Secretary-General transmitting the report of the Joint Inspection Unit, titled Towards a United Nations humanitarian assistance programme for disaster response and reduction: lessons learned from the Indian Ocean tsunami disaster (A/61/699-E/2007/8 and Add.1); a report of the Secretary-General on Implementation of the International Strategy for Disaster Reduction (A/62/320); a report of the Secretary-General on the Global Survey of Early Warning Systems (A/62/340); a report of the Secretary-Gen-

eral on products harmful to health and the environment (A/62/78-E/2007/62); a note by the Secretary-General on implementation of UN environmental conventions (A/62/276), which transmits reports submitted by the secretariats of the UNFCCC, the UNCCD and the CBD; a report of the Secretary-General on sustainable mountain development (A/62/292); a report of the Secretary-General on the promotion of new and renewable sources of energy (A/62/208); a note on the 10-year strategic plan and framework to enhance the implementation of the UNCCD (2008–2018) (A/C.2/62/7); and the report of the UNEP Governing Council (A/62/25).

Several speakers stressed that climate change had devastated the lives of millions, and natural disasters had set back development efforts. They identified an urgent need for the international community to support developing countries by providing them with the tools to cope with and overcome not only the global warming effects ravaging their lands, but also to bolster their economies and environmental protection measures, in order to build a truly sustainable future. Some pointed to the Hyogo Framework for Action and the work under the International Strategy for Disaster Reduction as tools that could translate words into action.

On 5 November, the representative from Switzerland introduced a draft resolution on sustainable mountain development (A/C.2/62/L.18). According to the draft, the Assembly would: recognise the global importance of mountains as the source of most of the Earth's fresh water, as repositories of rich biological diversity and other natural resources, including timber and minerals, as popular destinations for recreation and tourism and as areas of important cultural diversity, knowledge and heritage, all of which generate substantial positive economic externalities; recognise that mountains provide early indications of global climate change; note with concern that mountain region populations are frequently among the poorest of a given country and that there remain key challenges to achieving sustainable mountain development, eradicating poverty in mountain regions and protecting mountain ecosystems; encourage governments to give higher priority to mountain issues; note the importance of sustainable agriculture in mountain regions; encourage the scientific community, national governments and intergovernmental organisations to collaborate with mountain communities to jointly study and address the negative effects of global climate change on mountain environments and biological diversity; encourage the further establishment of committees or similar multi-stakeholder institutional arrangements and mechanisms at the national and regional levels to enhance intersectoral coordination and collaboration for sustainable development in mountain regions; encourage the increased involvement of local authorities, as well as relevant stakeholders, including civil society and the private sector, in the development and implementation of programmes and activities related to sustainable development in mountains; and encourage governments and intergovernmental organisations to integrate gender dimensions into their mountain development activities, programmes and projects. It would stress that indigenous

cultures, traditions and knowledge, including in the field of medicine, are to be fully considered, respected and promoted in development policy and planning in mountain regions, and underline the importance of promoting the full participation and involvement of mountain communities in decisions that affect them and of integrating indigenous knowledge, heritage and values in all development initiatives; invite financial support to sustainable development programmes in mountain regions; note with satisfaction the adoption by the Conference of the Parties to the CBD of a programme of work on mountain biological diversity; and recognise that mountain ranges are usu-



Kirsti Lintonen (Finland)

Courtesy: UN

ally shared among several countries, and in this context encourage transboundary cooperation approaches, where the States concerned agree, to the sustainable development of mountain ranges and information-sharing in this regard.

On 6 November, the representative from Pakistan, on behalf of the Group of 77 and China, introduced the draft resolutions on the oil slick on Lebanese shores (A/C.2/62/L.21), the International Strategy for Disaster Reduction (A/C.2/62/L.20), Implementation of the UN Convention to Combat Desertification (A/C.2/62/L.17) and promotion of new and renewable sources of energy (A/C.2/62/L.19).

According to the draft on the UNCCD, the Assembly would express its concern that the eighth session of the Conference of the Parties did not agree on the budget for the biennium 2008–2009 and invite the Conference of the Parties at its first extraordinary session to be convened in New York on 26 November 2007 to adopt the proposed budget; urge the international community, in particular developed countries, to provide financial and technical support to the secretariat and affected countries parties to strengthen national, regional and international efforts to fully implement the convention; urge the Council of the Global Environment Facility (GEF) to allocate adequate financial resources to the focal area on land degradation in the fifth replenishment of the GEF Trust Fund; and request the Secretary-General to make provision for the sessions of the Conference of the Parties and its subsidiary

bodies in his proposal for the programme budget for the biennium 2008–2009.

According to the draft on new and renewable energy sources, the Assembly would emphasise the need to improve access to reliable, affordable, economically viable, socially acceptable and environmentally sound energy for sustainable development; emphasise the need to intensify research and development in support of energy for sustainable development; call upon governments, as well as relevant regional and international organisations and other relevant stakeholders, to combine, as appropriate, the increased use of renewable energy resources, more efficient use of energy, greater reliance on advanced energy technologies, including advanced and cleaner fossil fuel technologies, and the sustainable use of traditional energy resources, which could meet the growing need for energy services in the longer term to achieve sustainable development; encourage national and regional initiatives on new and renewable energies; and recognise the needs of Africa in the area of new and renewable energy.

According to the draft on the International Strategy for Disaster Reduction, the Assembly would: recognise the importance of integrating measures to adapt to climate change into actions to reduce the risks from natural disaster; recognise that each State has the primary responsibility for its own sustainable development and for taking effective measures to reduce disaster risk, including for the protection of people on its territory, infrastructure and other national assets from the impact of disasters, and stress the importance of international cooperation and partnerships to support those national efforts; call upon the international community to support the development and strengthening of institutions, mechanisms and capacities at all levels, in particular at the community level, that can systematically contribute to building resilience to hazards; encourage Member States to ensure that early warning systems are integrated into their national disaster risk reduction strategies and plans; and stress the need to foster better understanding and knowledge of the causes of disasters.

According to the draft on the oil slick on Lebanese shores, the Assembly would request the Government of Israel to take all necessary actions towards assuming responsibility for prompt and adequate compensation and accountability to the Government of Lebanon and other affected countries for the costs of repairing the environmental damage caused by the destruction, including the restoration of the marine environment; call for the mobilisation of international technical and financial assistance through donor support for the creation of an eastern Mediterranean oil spill restoration fund to support the integrated environmentally sound management, from clean-up to safe disposal of oily waste, of this environmental catastrophe resulting from the Israeli Air Force attack on the oil storage tanks at El-Jiyeh electric power plant; recognise the multi-dimensionality of the adverse impact of the oil slick, and request the establishment of a UN task force combining all relevant organisations and entities of the United Nations system and affiliated bodies to supplement the efforts of the Secretary-General and assist him in submitting to the General Assembly at its sixty-third session an

integrated report on the implementation of the present resolution.

Third Committee

Under the chairmanship of Raymond Wolfe (Jamaica), the Third Committee (Social, Humanitarian and Cultural) began its work on 8 October.

Indigenous Issues (Agenda item 67)

On 22 October, the Committee began its discussion on indigenous issues, including the Second International Decade of the World's Indigenous People. Presenting the findings of his recent studies, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples Rodolfo Stavenhagen stressed that extractive activities, large commercial plantations and non-sustainable consumption patterns have led to widespread pollution and environmental degradation, dramatically affecting indigenous peoples and leading to their forced displacements. He further pointed to the direct consequences of global warming suffered by various Arctic peoples and to the criminalisation of the social organisations of indigenous peoples defending their rights. During the ensuing discussion, many delegates mentioned the landmark status of the Declaration on the Rights of Indigenous Peoples adopted in September 2007 by the sixty-first session of the General Assembly, in enumerating the rights of that marginalised population, and reiterated their hopes that countries would work faithfully towards its implementation.

Fourth Committee

Chaired by Abdalmahmood Abdalhaleem Mohamad (Sudan), the Fourth Committee (Special Political and Decolonization) began its work on 4 October 2007.

International Cooperation in the Peaceful Uses of Outer Space (Agenda item 31)

On 24 October, the Fourth Committee initiated its general debate on international cooperation in the peaceful uses of outer space. The Committee had before it the report of the Committee on the Peaceful Uses of Outer Space (A/62/20), which summarises the outcome of its fiftieth session, held in June 2007, in Vienna. A panel discussion on space solutions for climate change focused on how space systems contributed to monitoring climate change, understanding its mechanisms and possibly mitigating its consequences. During the ensuing discussion, Member States called for equal access to space-based technologies and warned against a possible arms race in outer space. They commended the UN Office for Outer Space Affairs for progress made on the recently inaugurated UN Platform for Space-based information for Disaster Management and Emergency Response (SPIDER), but suggested that efforts were still needed to coordinate its work and regulate emerging uses of space.

Effects of Atomic Radiation (Agenda item 30)

On 29 October, the Committee began consideration of the effects of atomic radiation on the basis of a report of

the UN Scientific Committee on the Effects of Atomic Radiation (A/62/46). The Committee also had before it a draft resolution on the issue (A/C.4/62/L.5), which it approved without a vote as orally amended. According to the resolution, the Assembly would commend the Scientific Committee for its valuable contribution to wider knowledge and understanding of the levels, effects and risks of ionising radiation, and for fulfilling its original mandate with scientific authority and independence of judgement; request the Scientific Committee to continue its work; invite Member States, UN organisations and non-governmental organisations concerned to provide further relevant data about doses, effects and risks from various sources of radiation, which would greatly help in the preparation of future reports of the Scientific Committee to the General Assembly; request UNEP to continue providing support for the effective conduct of the work of the Scientific Committee and for the dissemination of its findings to the General Assembly, the scientific community and the public; appeal to the Secretary-General to take appropriate administrative measures so that the secretariat can adequately service the Scientific Committee in a predictable and sustainable manner; urge UNEP to review and strengthen the present funding of the Scientific Committee and to continue to seek out and consider temporary funding mechanisms to complement existing ones, and, in that context, take note of the establishment by the UNEP Executive Director of a general trust fund to receive and manage voluntary contributions to support the work of the Scientific Committee; welcome the fact that Belarus, Finland, Pakistan, the Republic of Korea, Spain and Ukraine informed the President of the General Assembly of their desire to become members of the Scientific Committee, and invite each of those six Member States to designate one scientist to attend, as observers, the fifty-sixth session of the Committee; and request the Secretary-General to submit a comprehensive and consolidated report to the General Assembly at its sixty-third session, to be prepared in consultation with the Scientific Committee as appropriate, addressing the financial and administrative implications of increased Committee membership, staffing of the professional secretariat and methods to ensure sufficient, assured and predictable funding.

Assistance in Mine Action (Agenda item 29)

On 6 November, the Committee began consideration of the item, on the basis of the Secretary-General's report on assistance in mine action (A/62/307). On 13 November, the Committee approved a draft resolution (A/C.4/62/L.6) as orally amended. According to the draft, the Assembly would call in particular for the continuation of the efforts of States, with the assistance of the UN and relevant organisations involved in mine action, as appropriate, to foster the establishment and development of national mine-action capacities in countries in which mines and explosive remnants of war constitute a serious threat to the safety, health and lives of the local civilian population or an impediment to social and economic development efforts at the national and local levels; and urges all States, in particular those that have the capacity to do so,

as well as the UN system and relevant organisations and institutions involved in mine action, as appropriate, to provide: (a) assistance to countries affected by mines and explosive remnants of war for the establishment and development of national mine-action capacities; (b) support for national programmes, to reduce the risks posed by landmines and explosive remnants of war, taking into consideration the differing impacts on women, men, girls and boys; (c) reliable, predictable and timely contributions for mine-action activities; (d) necessary information and technical, financial and material assistance to locate, remove, destroy and otherwise render ineffective minefields, mines and explosive remnants of war, in accordance with international law, as soon as possible; and (e) technological assistance. It would encourage efforts to conduct all mine-action activities in accordance with the International Mine Action Standards; and encourage affected States to proactively mainstream mine-action and victim-assistance requirements into their development plans and processes.

Sixth Committee

Chaired by Alexei Tulbure (Moldova), the Sixth Committee (Legal) initiated its work on 8 October, by adopting its programme of work and then proceeding to considering its first agenda item, administration of justice at the UN.

Administration of Justice at the UN (Agenda item 137)

Addressing the legal aspects of the issue, the Sixth Committee had before it a report by the Secretary-General (A/62/294), which set out the essential elements of the legal framework for the new justice system, including detail on the nomination and terms of reference of the Ombudsman, the nomination and selection of judges, draft elements of the statutes of the UN Dispute Tribunal and UN Appeals Tribunal, and disciplinary procedures, management evaluation and legal assistance for staff, as well as the financial implications of the new justice system. The Committee also addressed a report on the outcome of the work of the Joint Appeals Board in 2005–2006 (A/62/179). Many representatives said the issue was of high concern, and welcomed the implementation deadline of January 2009. A working group, under the chairmanship of Ganeson Sivagurunathan (Malaysia), was created to address the issue.

On 26 October, Working Group Chair Sivagurunathan reported to the Committee on progress achieved, including on transitional measures, access to the new system, legal assistance for staff, the relationship between the informal and formal systems of justice, the qualifications, selection and terms of reference of the Ombudsman, the mediation mechanism, and qualification of judges and their nomination, election and removal.

Report of the Special Committee on the Charter of the UN and on the Strengthening of the Role of the Organization (Agenda item 85)

On 16 October, the Committee took up the report of the Special Committee on the Charter and on the Strengthening

of the Role of the Organization, including consideration of the Repertory of Practice of UN Organs and the Repertoire of the Practice of the Security Council (A/62/33). Also before it was the Secretary-General's report on implementation of Charter provisions related to assisting third States affected by application of sanctions (A/62/206 and Corr.1) and the Secretary-General's report on the repertory of practice of UN organs and the repertoire of the practice of the Security Council (A/62/124 and Corr.1), as well as a working paper submitted by the Russian Federation (A/C.6/62/L.6).

The working paper submitted by the Russian Federation addressed basic conditions and standard criteria for imposing UN sanctions, including: general issues; unintended side effects; and implementation. The Russian representative asked for a working group to be established to consider the paper before submission to the General Assembly, but the ensuing debate led to a recommendation that it be considered in an informal meeting.

On 12 November, the Committee addressed a draft resolution on the report of the Special Committee on the Charter (A/C.6/62/L.11), according to which, the Assembly would reiterate its call for voluntary contributions to the trust fund for the updating of the *Repertoire of the Practice of the Security Council* and the trust fund for eliminating the backlog in the *Repertory of Practice of United Nations Organs*, and the sponsoring of associate experts to assist in the updates. It would reiterate the responsibility of the Secretary-General for the quality of the publications, and would request him to report during the Assembly's next session on that matter and on implementation of Charter provisions related to assistance to third States affected by the application of sanctions.

Consideration of Prevention of Transboundary Harm from Hazardous Activities and Allocation of Loss in the Case of Such Harm (Agenda item 84)

On 23 October, the Committee took up questions related to transboundary harm. Consideration of the issue stemmed from the Assembly's action last year in commending to governments a set of draft principles on "prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm", which was part of the work of the International Law Commission. The Sixth Committee was thus to consider the matter in the context of responses from governments.

Introducing the topic, Committee Chair Tulbure recalled the two aspects of the item, prevention and liability and noted the Assembly was to decide what form the articles on prevention and the principles on liability should take.

Responsibility of States for Internationally Wrongful Acts (Agenda item 78)

On 23 October, the Committee addressed State responsibility, in conjunction with issues related to transboundary harm, as above. The Committee had before it a report of the Secretary-General (A/62/62 and Corr.1/Add.1), which is a compilation of decisions of international courts, tribunals and other bodies referring to articles on the sub-

ject adopted by the International Law Commission at its fifty-third session in 2001, as well as another report of the Secretary-General (A/62/63 and Add.1), containing more responses from governments.

Many representatives stressed the articles elaborated by the International Law Commission were one of its greatest achievements. Some noted there was no need to adopt a convention since the articles were already in use in courts and other bodies, while others thought a convention would be useful in clarifying the concepts and outstanding issues.

On 12 November, the Committee addressed a resolution on the issue (A/C.6/62/L.20), according to which the Assembly would commend the articles on the matter without prejudice to the question of their future adoption or other appropriate action. It would request the Secretary-General to invite governments to submit comments and to update the compilation of legal decisions referring to the articles, and to submit the material well in advance of the Assembly's sixty-fifth session.

The Rule of Law at the National and International Levels (Agenda item 86)

On 25 October, the Sixth Committee began consideration of its agenda item on the rule of law, on the basis of a report by the Secretary-General containing comments and information received from governments (A/61/121 and Add.1), and the Secretary-General's interim report on the rule of law (A/62/261). Deputy Secretary-General Asha-Rose Migiros gave an informal briefing on the newly established Rule of Law Unit, noting that promoting the rule of law at the national and international levels was at the heart of the UN mission.

In the ensuing debate, delegates called for defining the scope of the rule of law at the national and international levels. It was noted that the new Rule of Law Unit must be empowered to help countries emerging from conflict situations build confidence in legal systems even as past abuses were redressed.

Report of the International Law Commission on the work of its 59th session (Agenda item 82)

On 29 October, the Sixth Committee began a week-long debate on the report of the fifty-ninth session of the International Law Commission (2 May–8 June and 9 July–10 August 2007). Sixth Committee Chair Tulbure expressed appreciation for the outstanding contribution that the International Law Commission (ILC) continued to make to the progressive development of international law and its codification, and noted that consideration of the Commission's report at each regular session of the General Assembly constituted a high point in the Sixth Committee's work.

During its fifty-ninth session, the ILC examined the following topics: reservation to treaties, resulting in adoption of nine draft guidelines, together with commentaries, devoted to the validity of reservations; expulsion of aliens, including the categories of individuals and the types of measures and situations to be covered, definition of some key terms, the question of the expulsion of nation-

als, rules limiting a State's right to expel certain categories of aliens and collective expulsion; effects of armed conflicts on treaties; responsibility of international organisations, resulting in the adoption of 15 draft articles, together with commentaries; the obligation to extradite or prosecute; protection of persons in the event of disasters; and immunity of State officials from foreign criminal jurisdiction. The ILC also established a working group on shared natural resources to address three issues: the substance of the draft articles on the law of transboundary aquifers adopted on first reading, the final form that the draft articles should take, and issues involved in the consideration of oil and gas.

The ILC report was introduced by its Chair Ian Brownlie, who underscored that feedback from the Sixth Committee was central in the effective codification and progressive development of international law.

The ILC report was examined in two parts. Firstly, discussions focused on expulsions, effects of armed conflicts on treaties, and responsibility of international organisations. On expulsions, many representatives referred to the need for balancing the sovereign right of States with the international norms on human rights. Others highlighted the particular situation of refugees, asylum-seekers and stateless persons. With regard to the effects of armed conflicts on treaties, a number of speakers called for including non-international conflicts in the definition of "armed conflict" without distinguishing between types of internal armed conflicts based on intensity. Other delegates called for using the term "outbreak of hostilities" rather than "armed conflict" as more representative of current reality. On responsibility of international organisations, many stressed a general approach should be adopted towards drafting a legal instrument, given their diversity and the differences in their nature, structure and objectives.

The second part addressed reservations to treaties, shared natural resources and the obligation to extradite or prosecute. The ILC Chair stressed the urgent need for an international legal framework for reasonable and equitable management of water resources to avoid a water crisis that would affect hundreds of millions of people. A number of representatives brought up the issue of whether and how the ILC should study the issue of oil and gas in light of its earlier work on transboundary shared aquifers, while others pointed to issues of environmental harm.

On 2 November, Judge Rosalyn Higgins, the President of the International Court of Justice, gave her annual address to the Sixth Committee. Referring to a resolution adopted earlier this year by the General Assembly concerning compensation of judges, she drew attention to the need for equality in salary between the Court judges; and the need for assistance in marshalling, collating and checking evidence.

Notes

- 1 For further information, see: <http://www.un.org/ga/>.
- 2 For further information on the high-level meeting on climate change, see: <http://www.un.org/climatechange/2007highlevel/index.shtml>.
- 3 For further information on the General Debate, see: <http://www.un.org/webcast/ga/62/>.



CBD / COP-9

Progress in Preparations

– Re-orientation on Key Legal and Policy Issues –

by Soledad Aguilar, Elsa Tsioumani and Tomme Young*

Between July and October, a number of CBD-related meetings took place. These meetings are generally the last in which national governments and regional groupings have time to react and/or develop positions prior to the Convention's ninth Conference of the Parties (COP), which will be held in 12–30 May 2008, in Bonn, Germany.¹ This article provides brief summaries, focusing on key outcomes and observable trends and developments in three such meetings:

- The twelfth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA-12), held in Paris from 2–6 July 2007;
- The second meeting of the *Ad Hoc* Open-ended Working Group on Review of Implementation (WGRI-2), held in Paris from 9–13 July 2007; and
- The fifth meeting of the *Ad Hoc* Open-ended Working Group on Access and Benefit Sharing (WGABS-5), held in Montréal from 8–12 October 2007.

Two subsequent meetings of policy and law import will be reported in future issues of EPL – the Fifth meeting of the *Ad Hoc* Open-ended Working Group on Article 8(j) and Related Provisions (WG8J-5), and the Fourth meeting of the *Ad Hoc* Open-ended Working Group of Legal and Technical Experts on Liability and Redress in the context of the Protocol.

SBSTTA-12

SBSTTA, which functions under a general mandate to provide the COP with timely advice relating to the implementation of the Convention, provides a very useful barometer of the general direction of international consensus on conservation and other “green” environmental issues. In SBSTTA-12,² while continuing to make progress on development and promotion of the broad application of multiple-use system tools such as the ecosystem approach, delegates turned their attention primarily toward coordination with other key sectoral developments at the international level, focusing attention and intense discus-

sion on “biodiversity and climate change” and biofuel production. Their work also presaged the efforts of WGRI-2 relating to the procedural and practical aspects of SBSTTA's operations. Although productive, the meeting was not without controversy, and ultimately SBSTTA-12's recommendations on “biodiversity and climate change” and biofuels were forwarded to the COP with bracketed text. The Body adopted eight recommendations to be forwarded to COP-9, including four described below, addressing procedure, the ecosystem approach, climate change, and biofuels.

Procedure for Emerging Issues

One key indicator of the trend toward greater and more efficient inter-MEA cooperation is found in SBSTTA-12's discussion of its procedure for addressing new and emerging issues. One part of this debate was the question of whether, in order to be considered, an issue must always relate to either conservation or sustainable use (the first two objectives of the CBD), or might also be considered if it relates only to the third, namely fair and equitable benefit sharing. Specifically, SBSTTA's specific functions and its *modus operandi*, as set out in CBD-COP Decision VIII/10, mandate the Body to identify new and emerging issues relating to the conservation and sustainable use of biodiversity. Given the high level of attention received by the benefit-sharing objective, however, the delegates recognised the need to further clarify how it responds to this mandate. Ultimately, the Body then called on the Executive Secretary to seek the views of Parties on the suggested elements of this procedure, for consideration by SBSTTA-13. Its recommendation annexed a *Suggested procedure for the identification of emerging issues, the conditions for their inclusion in the agenda of relevant meetings, and the mandate to respond to new and emerging issues relating to the conservation and sustainable use of biodiversity*, as a starting point for this work.

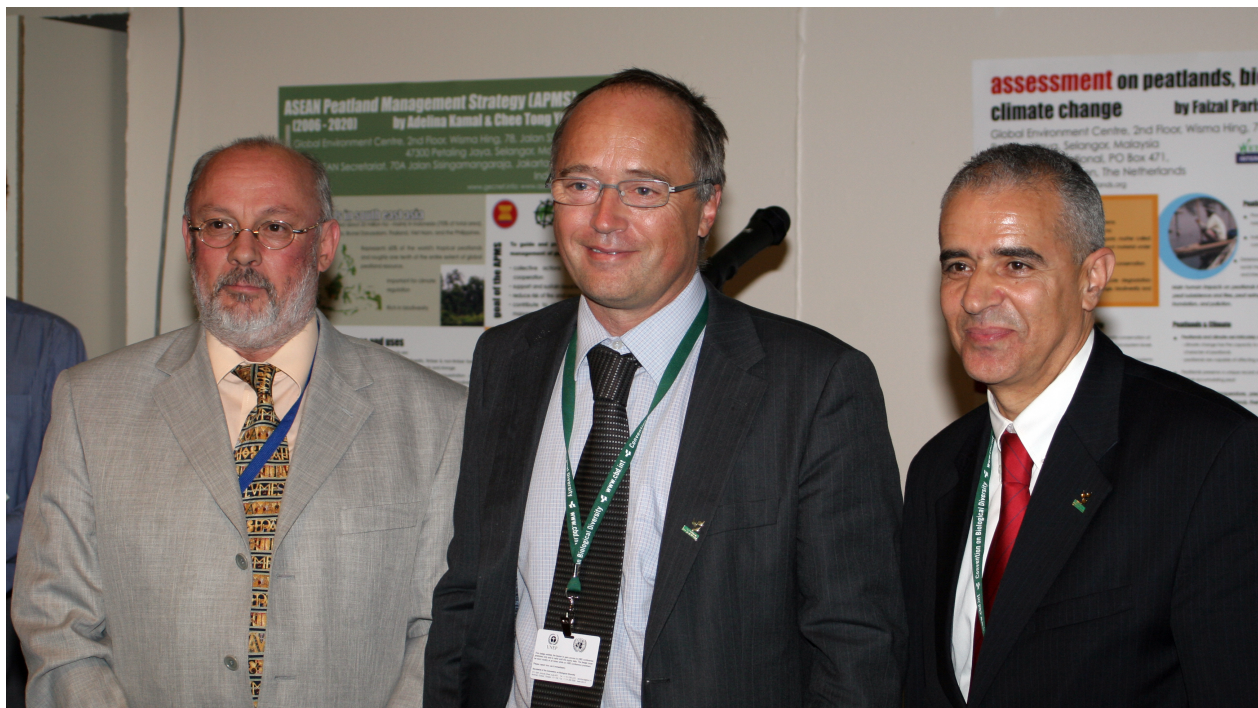
Application of the Ecosystem Approach

The ecosystem approach was described by COP-5 as “a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way. Thus, the application of the ecosystem approach will help to reach a balance of the three objectives of the Convention: conservation; sustainable use; and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources”.³ The ecosystem approach is a milestone of the Convention, where it is considered to be the primary framework for action.

* This article merges three originally separate reports. Soledad Aguilar (LLM) specialises in multilateral environmental negotiations and has participated in CBD and related conventions' meetings first as a delegate for Argentina and, currently, as a team leader for IISD's Earth Negotiations Bulletin. She reported on WGRI-2. Elsa Tsioumani, a Researcher at the Democritus University of Thrace; and lawyer in Thessaloniki, Greece, reported on SBSTTA-12. They are both frequent contributors to EPL. Tomme Young (reporting on WGABS-5 and merging the articles) is the Managing Editor of EPL, and has been an active participant in CBD processes on ABS, genetic resources, invasive species, incentives, liability and compliance for many years, in various legal positions. Ms Young assumes all responsibility for any errors or misstatements, as these certainly arose from her integration of the three articles rather than from any oversight by the other two authors.

In COP-7 the Parties agreed to prioritise its implementation, and designated it as one of the themes for in-depth review in SBSTTA-12. Ultimately, the Body's recommendation is that, subject to funding and availability of technical capacity, CBD Parties (and through them those under their jurisdiction) should be called to (i) strengthen

ing capacity to understand, interpret and apply the ecosystem approach as another potential contribution to the Source Book. Finally, the Recommendation suggested that COP communicate these findings to the Commission on Sustainable Development and the UN General Assembly, as one pathway to promoting more coordinated actions.



Walter Erdelen, UNESCO Assistant Director-General for Natural Sciences (left), SBSTTA Chair Christian Prip, Denmark (centre) and Ahmed Djoghlaif, CBD Executive Secretary (right)
Courtesy: IISD

the promotion of the ecosystem approach in ongoing communication, education and public-awareness activities; (ii) further promote the use of the ecosystem approach in all sectors and enhance inter-sectoral cooperation; (iii) promote the establishment of concrete national and/or regional initiatives and pilot projects; (iv) implement further capacity-building initiatives; (v) continue submitting case studies and lessons learned and provide further technical input to the CBD ecosystem approach Source Book; (vi) further facilitate the full and effective participation of indigenous and local communities in the development of tools and mechanisms for the application of the ecosystem approach; and (vii) strengthen and promote its use more widely and effectively as a useful tool for the formulation of national biodiversity strategies and action plans. The Recommendation noted the potential relationship between the ecosystem approach and achievement of the Millennium Development Goals. It recommended that the COP invite the FAO, UNESCO and the Ramsar Convention to further their activities in relation to the ecosystem approach. The recommendation stressed the value of the Secretariat's Source Book as a tool for informing Parties on ways to use the ecosystem approach more widely and effectively in their formulation of national biodiversity strategies and action plans. It also suggested inviting relevant organisations to provide their perspectives on build-

Biodiversity and Climate Change

SBSTTA-12's discussion on "biodiversity and climate change" responded to a direct request of COP-8 seeking guidance on the further integration of climate-change impact and response activities into the programmes of work of the CBD. These discussions were marked by heated debates.

The two major areas of contention were (i) mutually supportive activities among Conventions, particularly the CBD's relationship to the UN Framework Convention on Climate Change, and (ii) references to reduced deforestation and mitigation activities. In the closing plenary, Australia followed a now familiar pattern of stepping back from prior discussions, requesting that all references to the impact of climate-change response activities in the recommendation be bracketed. It further extended the period of work necessary before the final decision in another familiar way, by calling on the Executive Secretary to develop proposals for mutually supportive activities for consideration at SBSTTA-13.

Apart from this, SBSTTA's recommendation on this issue includes a list of issues which should, in future, form the basis of its advice on climate-change impacts and response activities on biodiversity. Primarily, this list includes (i) indications or predictions of climate-change impacts and impacts of climate-change response activi-

ties on relevant ecosystems; (ii) the most vulnerable components of biodiversity; (iii) the risks and consequences for ecosystem services and human well-being; (iv) monitoring of threats and likely impacts of climate change and response activities on biodiversity; (v) appropriate monitoring and evaluation techniques, related technology transfer and capacity-building initiatives within the work programmes; (vi) critical knowledge needed to support implementation; and (vii) the ecosystem-approach principles and guidance and the precautionary approach. SBSTTA also recommended that COP-9 encourage Parties to enhance their integration of climate-change considerations into national activities in implementation of the CBD. Obviously, one of the most direct ways to achieve this would be integration of climate-change concerns into their national biodiversity strategies and action plans. Finally, the Body noted the need to enhance scientific tools, methodologies and knowledge to respond to climate-change impacts as well as to integrate biodiversity considerations into climate-change response activities.

Potential Impacts of Biofuel Production on Biodiversity

Under its mandate to address new and emerging issues, the SBSTTA Bureau decided that SBSTTA-12 should consider the interlinkages between biodiversity and liquid biofuel production. Opening discussions revealed a number of controversies, particularly between producers of biofuels and those wishing to ensure their sustainable production and consumption. The adopted recommendation contains bracketed language with regard to outstanding matters. It refers to the need for an international scientific conference on the issue, a request to the Executive Secretary to bring the issue to the attention of the CBD Working Group on Article 8(j), and related provisions.

In preparation for COP-9, SBSTTA-12 called for Parties to provide relevant information on the impacts on biodiversity throughout the full life cycle of the production and use of biofuels, and how these are being addressed. It requested the Executive Secretary, in collaboration with relevant organisations, to compile additional relevant information on such impacts; identify options for consideration of this emerging issue in the programmes of work of the Convention, including the programme of work on agricultural biodiversity and the expanded programme of work on forest biodiversity; synthesise all this information and submit it for analysis and consideration at COP-9. Other issues called to COP-9's attention include the wide range of systems and conditions under which biofuels are produced; the potential of biofuel production and use to have both beneficial and adverse effects on biodiversity and human well-being; and the gaps in knowledge associated with the impact of biofuel production and use on biodiversity.

WGRI-2

The development of a strategic approach to the work of the CBD has been a relatively recent process, with the first Strategic Plan⁴ adopted in 2002, ten years after the

CBD opened for signature. Its original impetus presaged a critical provision in the Plan of Implementation from the "Rio plus 10" meeting (World Summit for Sustainable Development or WSSD) in its goal of implementing the Convention more effectively. It has proceeded from the assumption that a constantly evolving CBD is essential in order to

*achieve by 2010 a significant reduction of the current rate of biodiversity loss at the global, regional and national level as a contribution to poverty alleviation and to the benefit of all life on earth.*⁵

Further to this original mandate, a working group was created to improve the processes for evaluation, reporting and review of implementation of the CBD and its Strategic Plan, which met for the first time in Montreal in 2005.⁶ In July 2007, the WGRI held its second meeting, tasked with, *inter alia*, undertaking an in-depth review of:

- National biodiversity strategies and action plans (NBSAPs) and the integration of biodiversity concerns into relevant sectors as an effective framework for the implementation of the objectives of the Convention;
- Improvements in parties' financial, human, scientific, technical, and technological capacity to implement the Convention; and
- The availability of financial resources, and options for resource mobilisation including innovative financial mechanisms.

In addition to direct attention to these issues, the Group also considered the possible impact on the CBD of the One UN programme, an initiative of the UN General Assembly to unify all UN development efforts under one head at the national level to improve its effectiveness.⁷ The WGRI took note of this programme as an opportunity for countries with regard to all three basic issues of the WGRI's mandate, and encouraged those participating in the One UN pilot programme to "give due consideration to integrating biodiversity issues" identified in their NBSAPs.

Implementation of National Biodiversity Strategies and Action Plans

WGRI-2 reflected the CBD's growing sensitivity to another issue that is developing a high profile internationally: national implementation and compliance. It addressed this issue through an evaluation of a very important mechanism of the CBD – the NBSAP – looking at NBSAP implementation to date,⁸ and proposing new guidance for NBSAP development, implementation and evaluation.⁹ In general, the NBSAP appears to be a highly successful mechanism, developed and adopted in 147 countries, many of which benefited from NBSAP funding from the Global Environment Facility (GEF). NBSAPs are the tool by which countries are able to grind the vast array of CBD policy guidance (at present 1800 decisions), and blend it into concrete national strategies and action plans to enhance implementation on the ground.

On the ground, however, the impact of NBSAPs is necessarily indirect as they are supposed to influence

policy processes in other sectors (*e.g.*, development, agriculture and energy policies) that affect biodiversity conservation and sustainable use. Putting too much emphasis on the development of NBSAPs without enabling their use and measuring their impact may ultimately squander scarce CBD/conservation resources.

The WGRI, in wrestling with this problem, considered proposals to adopt indicators for measuring NBSAPs and for outcome-oriented reporting. Opinions were divided. While many countries continued to be very enthusiastic in their support of the recent trend that favours development of “measurable indicators” for national performance of every kind of commitment in all environmental policy forums, others would not agree on any set of global indicators, considering that national implementation should be outside of any other country’s scrutiny. Ultimately, the WGRI chose not to find a new formulation, but simply to call on parties “as appropriate, to establish national, or where applicable, sub-national targets to support the implementation of NBSAPs...” The recommendation emphasises information sharing and national assessments but makes no provision for specific indicators of progress to be shared across-the-board and allow comparable results on efforts to achieve the 2010 target.¹⁰ The long-heard theme of “mainstreaming of NBSAPs into national development strategies” continued to be well supported, including with a reference to integration with strategies for achieving the Millennium Development Goals.¹¹

Capacity Building and Technology Transfer

The WGRI’s discussion of Goal 2 of the Strategic Plan (improvements in financial, human, scientific, technical, and technological capacity to implement the Convention) focused on: priority areas for capacity building, access to and transfer of technology, and technology cooperation. Discussions followed traditional lines between two entrenched positions: developing countries seeking a firm link between the Convention’s implementation and rates of technology transfer and support coming from the richer nations; and developed countries that see technology transfer as an independent objective but not as a prerequisite for implementation. In WGRI-2, new restatements of these issues were made. For example, as most indicators of progress towards the 2010 target would naturally address implementation by developing countries who host the vast majority of biodiversity resources, Brazil proposed developing indicators for technology transfer in order to show a parallelism between technology transfer and improvements in implementation within developing countries.

The WGRI’s final recommendation on this topic identifies areas for the continuation of efforts towards improving capacity building, technology transfer and coopera-

tion, identifying main tasks for parties and the CBD Executive Secretary. It underscores the importance of capacity building and technology transfer as a vehicle for more effective implementation of the Convention at the national level.¹²

Financial Resources

Regarding financial matters, the WGRI focused on means of financial support for parties’ achievement of the objectives of the Convention, looking closely at the availability of financial resources; options for resource mobilisation; a strategy for resource mobilisation; and op-



Courtesy: IISD

portunities for streamlining the guidance provided to the GEF.¹³ Much of the discussion centred on whether there is a need for a draft strategy for resource mobilisation, and who should prepare it. Ultimately the task was assigned to the Executive Secretary, with the request that it be completed and submitted in time for consideration at COP-9.

The always-controversial discussion of the manner in which the CBD meets its Article 21 obligation to provide guidance to the GEF was facilitated by the participation in the meeting of GEF CEO Monique Barbut. Although not ignoring the impacts of the GEF’s new resource allocation framework (RAF), which was canvassed heavily in COP-8, Barbut focused on the fact that the GEF is shifting towards outcome-oriented finance and shorter project cycles. Reflecting their general acceptance of this shift, the Group’s recommendations regarding resource mobilisation focused on the need for the CBD to improve the timeliness and effectiveness of its guidance to the GEF, by aligning with the GEF’s four-year replenishment cycles. Presumably in conjunction with the draft strategy for resource mobilisation, the Executive Secretary has also been tasked to prepare the elements for a four-year framework and recommendations to formulate and consolidate guidance to the GEF. The Secretariat will also organise a dialogue session between parties and M. Barbut prior to COP-9. ➔

WGABS-5

In October, a suite of three meetings focused more intensively on substance rather than procedure. The first of these, WGABS-5 represents a major milestone in the long process of formal development of an “international regime on access and benefit sharing” – another specific objective identified in the WSSD Plan of Implementation, but also a much longer-lived goal of the CBD, which has acknowledged generally that there has been little or no progress toward real achievement of the “third objective” of the Convention (“equitable sharing of the benefits arising out of the utilization of genetic resources”¹⁴) or real implementation of the framework enunciated in Article 15.

A Procedural and Strategic “Handle” on the Negotiations

This fifth meeting of the Working Group was particularly notable, as it was the first time the Group has been chaired by Co-Chairs Fernando Casas and Timothy Hodges, appointed by COP-8 to provide and implement a consistent working strategy over multiple meetings, to enable the Group to complete its assignment. Emphasising this new multi-meeting approach, the Co-Chairs unveiled a longer-term plan of operations, identifying a tiered list of objectives for each meeting. Under that strategy, this first meeting was focused on getting a clearer handle on the positions and issues of each delegation, leaving the actual adoption of a recommendation or other document for the COP to be done in the next meeting on the basis of the more systematic development of information from WGABS-5. Although it may seem simple and logical, this approach reflects a sea change, when compared to the previous meetings, in which discussions indiscriminately mixed the identification of issues and new concerns with the “final” drafting/negotiation of instruments and other text that a large number of delegations had specifically stated their unwillingness to discuss. In this meeting, in fact, the Co-Chairs specifically asked delegations to focus on giving a clear indication of their own ideas and concerns, rather than arguing particular points in other delegates’ interventions.

Trends and Ideas Helping Move the Negotiations toward Consensus Development

In light of the approach taken at this meeting, the most interesting aspects of WGABS-5 were the new issues and concepts that were presented. While these ideas and the general discussions did not evidence any emerging consensus, they have begun to draw out ideas and concepts that might be used to help forge a multi-sided consensus – a basis for developing a “win-win” solution, in ABS. In this case, however, it is increasingly necessary to look for a “win-win-win-win” solution, given that there are at least four main “sides” of the negotiation – (i) developed countries; (ii) less- and least-developed countries; (iii) “civil society” (NGOs, local and indigenous communities) or “providers” of genetic resources; (iv) the “users” of genetic resources – not to mention other participants in the CBD who are increasingly concerned about how

the ABS issue will affect the Convention’s progress on its other two objectives.

Among the new trends and issues, one of the most readily obvious was the increased focus on user measures and remedies. The Group displayed a growing recognition that the ABS system’s weak performance to date bears a close relationship to the fact that the user is not generally subject to any legal obligation (user measures) under ABS once the genetic resources have been removed from the original country, unless that user has signed a contract with that original country. Even where a contract exists, many practical factors prevent contract enforcement, arising from the fact that the user’s operations are normally on private property, necessitating that the providing country, community or entity must find both funds and legal capacity to bring an action enabling it to obtain information and conduct inspections to generate evidence as to whether it has a claim or not.

Apart from this, the two most important new additions to the discussions were both put forward by the European Union, through the Portuguese Presidency, speaking on their behalf. The most important of these was the suggestion that there is a need to develop an agreed definition of “misappropriation of genetic resources”, and that this agreed definition would enable countries to enact laws that specifically prohibit the use of misappropriated genetic resources, no matter where such resources originated or who undertook the misappropriation. This proposal, although potentially suggesting a very difficult legal and political negotiation, constituted the first formal effort to surmount the major obstacle that has prevented countries from adopting “user measures” – the lack of inter-governmental agreement on a single legally applicable definition of genetic resources, or legal agreement among countries as to what actions constitute misappropriation. Given that the ABS mechanism is addressed solely to trans-border transactions, it seems essential that all countries have a legally precise understanding of these concepts, if they are to regulate them.¹⁵

Second, the EU put forward in a more cohesive form, the possibility that the international negotiations could produce two standard documents – (i) standard “minimum legislation”, to be used in countries which do not have laws governing their grant of “access” or legal rights to utilise genetic resources, and (ii) standard contracts to help streamline the contractual part of the ABS process. Because of the call for parties to focus on their own concerns rather than arguing points raised by others, there was relatively little discussion of these points, during the Working Group’s deliberations. The sovereignty principles that would appear to form the most immediate base of opposition to them were noted; however, direct wrangling on these points was prevented by the format of the meeting.

Another important development was the Group’s general response to the work on “Certificates of source, origin or legal provenance of genetic resources” which had been undertaken through an expert panel earlier in the year. Although a highly contentious discussion in earlier meetings, the certificates issue was hardly raised in

WGABS-5. In general, the Group appeared to accept conclusions of the expert panel – that a certificate tool could be useful, but that the issue needed to wait and could be revisited after key elements of the overall ABS regime had been better developed. No serious intervention was offered suggesting further work on certificates at present.

Results and Reports

Ultimately, after almost four days of uncharacteristically calm and non-contentious presentation (leading one delegate to ask if the real WGABS had been kidnapped and replaced by imposters), controversy returned to the floor, as the Co-Chairs unveiled their non-binding summary of the issues raised in WGABS-5. At issue was the fact that the summary had characterised issues by whether they were matters of general agreement (dubbed “areas of convergence”) or not (the latter being described as “options, possible tools, and concepts for clarification”). Delegates complained that the Co-Chairs’ rules (limiting each delegations’ intervention to their own points and issues) had intentionally suppressed opposition to new points. Hence, those who had followed the rules found that their silence was interpreted as “agreement”, while those that had disobeyed the rules were in effect able to banish other delegations’ concerns to the list of unagreed issues. Participants noted that in at least two earlier meetings of the WGABS, a document had been accepted into the report of the meeting over serious objectives, based on assurances of the chair that the document was not binding on the process – *i.e.*, not to be considered binding on later discussions. Then, in subsequent meetings, that same document was strongly put forward by some parties who claimed that it had been adopted earlier and should not be challenged. Through the years, this tactic has been used at various times by both the developed and non-developed countries.

For this reason, although created solely to “reflect work in progress” as a basis for development of further concrete concepts and suggestions in the very short run up to the WGABS-6 (21–25 January 2008), the compilation was not ultimately finalised or made generally available. A very generic “report of the meeting”, which specified the content of only a few of the hundreds of substantive interventions in the meeting, is the only official document produced.

Conclusions

As the CBD matures, it is increasingly facing challenges from both within and outside of the environmental and conservation sectors asking what benefit and results it provides. In a very real sense, the three meetings described above demonstrate both the achievements and the lack of achievement of the Convention. To the enormous challenge of building consensus among 189 Parties and at least one non-party of significant influence, the CBD has self-imposed the task of broad inclusion of “indigenous groups and communities embodying traditional lifestyles” within its deliberations. It can function only where all Parties are in sufficient agreement that no single party is willing to raise a formal objection. And it

is forced to grapple with issues such as “access and benefit sharing” that are, on the one hand, vague and ambiguous and on the other, reckoned by a large contingent of the Parties to be extremely important. Its central position as a mediating force, creating tools and instruments for multi-instrument, multi-country, multi-region, multi-sector implementation of shared objectives regarding biodiversity is in some ways groundbreaking and difficult. Clearly, it perseveres both in recognising the importance of its objectives, and in seeking to find ways that they can be achieved through coordination with and recognition of the importance of the objectives and needs of other sectors.

It is not surprising, perhaps, that the breadth of the CBD’s recent intersessional work emphasises a small number of common factors – promoting implementation through key tools such as NBSAPs and the ecosystem approach; identifying key constraints such as financing and the need for clarification of key principles (such as ABS); enabling a better working process through coordination tools and constant redevelopment of the methods by which the COP and its subsidiary bodies work; and promoting collaborative progress through increased and more concrete cooperation with bodies such as the GEF, UN Convention on Climate Change, CSD and the private sector.

Notes

- 1 A few key meetings will happen later, including SBSTTA-13 (18–22 February 2008) and WGABS-6 (21–25 January 2008), however experience has indicated that meetings held in the last 3–4 months prior to the COP generally result in recommendations, upon which the COP will “take note”, but be less likely to take any final decision.
- 2 The meeting’s recommendations, in an advance unedited version, are available at: www.cbd.int/doc/meetings/sbstta/sbstta-12/official/sbstta-12-xx-en.pdf.
- 3 CBD-COP Decision V/6.
- 4 CBD Decision VI/26 (Strategic Plan of the CBD).
- 5 The target was included in the CBD’s Strategic Plan and subsequently endorsed in paragraph 44 of the WSSD Plan of Implementation. It was also proposed as a new target under Goal 7 (“Ensure environmental sustainability”) of the Millennium Development Goals.
- 6 CBD Decision VII/30 (Strategic Plan: future evaluation of progress), paragraph 23.
- 7 The international Task Force addressing these concepts is discussed in EPL 37/4, at page 274.
- 8 CBD, 2007, Documents UNEP/CBD/WG-RI/2/2 (Status of Implementation of Goals 2 and 3 of the Strategic Plan); and UNEP/CBD/WG-RI/2/2 Add.1 (Synthesis and Analysis of Obstacles to Implementation of NBSAPs); as well as Information Documents UNEP/CBD/WG-RI/2/INF/2, 7 and 9.
- 9 CBD, 2007, Document UNEP/CBD/WG-RI/2/3 (Guidance for NBSAPs).
- 10 The WGRI’s recommendations to implement and revise NBSAPs were consolidated under four sub-headings: (i) meeting the three objectives of the Convention; (ii) components of biodiversity strategies and action plans; (iii) support processes; and (iv) monitoring and review. An advance version of the WGRI-2 outcome document is available at: <http://www.cbd.int/doc/meeting.aspx?mtg=WGRI-02&tab=0>.
- 11 The Recommendation on integration of NBSAPs mentioned, *inter alia*: “national strategies and plans related to poverty eradication, Millennium Development Goals, sustainable development, climate change and desertification, through action-driven policies and with broad participation in NBSAP formulation.”
- 12 WGRI Final Outcome document (link in footnote 10).
- 13 CBD, 2007, Documents UNEP/CBD/WG-RI/2/4 (Options for Resource Mobilization), and UNEP/CBD/WG-RI/2/5 (Opportunities for Streamlining Guidance to the GEF), as well as Information Documents INF/4, 5 and 8.
- 14 CBD Article 1.
- 15 See Tvedt and Young, 2007, *Beyond Access: Exploring Implementation of the Fair and Equitable Sharing Commitment in the CBD*, IUCN Environmental Law Centre.



Montreal Protocol / MOP-19

Adjustments: A Double Hit for Ozone and Climate

by Joanna Depledge*

Introduction

The year 2007, designated International Year of Ozone, marked the 20th anniversary of the Montreal Protocol on Substances That Deplete the Ozone Layer. Convening once again in Montreal, the Protocol's Parties ensured that the anniversary was not merely ceremonial. In addition to celebrating the treaty's well-known achievements, the 19th Meeting of the Parties (MOP-19) adopted the landmark *Montreal Adjustments*, which significantly tighten the phase-out schedule on hydrochlorofluorocarbons (HCFCs) for all Parties, especially developing countries. HCFCs were not the only item on MOP-19's agenda, and delegates also took decisions on many other issues, such as critical-use exemptions for methyl bromide and illegal trade. The focus of the meeting, however, was very much on what became the Montreal Adjustments, and with good reason.

The HCFC Challenge

HCFCs remain one of the Montreal Protocol's major outstanding challenges, and accelerating their phase-out schedule was the logical next step for the ozone regime. Nonetheless, action had been slow in coming. Introduced as transitional substances to replace chlorofluorocarbons (CFCs), whose ozone-depleting potential (ODP) is greater, HCFCs famously generated their own set of problems. Not only do they still damage the ozone layer, but they also have global warming potential (GWP), meaning that they contribute to climate change (although less so than the CFCs they replaced). Moreover, the production of HCFC-22, the most widespread of the HCFC family, also generates hydrofluorocarbon (HFC)-23, a potent global warming gas, as an unwanted byproduct. The 1992 Copenhagen Amendment introduced controls on HCFC *consumption* for developed countries. The Parties took action in 1995 (Vienna Adjustments) and 1999 (Beijing Amendment and Adjustments) to tighten these controls, extend commitments also to *production*, and introduce (more lenient) targets for developing countries. HCFC controls kicked in, for developed countries, with a consumption freeze in 1996, followed by interim steps leading to a 99.5% cut in 2020 and total phase out by 2030. Production, however, was subject only to a freeze in 1994. For developing countries, controls stretched out worryingly far into the future. A freeze in production and consumption was not required until 2016, with a 2040 phase-out date only for consumption, without any interim steps.

This all made perfect sense when the controls were originally adopted. HCFCs, especially their production, could not be restricted too tightly or too soon, as they were

needed to replace CFCs in many areas, and CFC targets for developing countries only came on line in 2005. The Multilateral Fund, which covers the cost of developing country conversion away from ozone-depleting substances (ODS), itself funded some conversions to HCFCs but, in line with the Montreal Protocol,¹ insisted that HCFCs should only be introduced where they represented the best available environmental alternative. HCFCs, however, spread faster than had been hoped, notably in developing countries. A survey by the UN Development Programme of nine developing countries predicted more than a doubling in HCFC-22 and HCFC-141b consumption between 2005 and 2015 (albeit with variations between countries).² Another bilateral study sponsored by Germany found that China was now the world's largest consumer and producer of HCFCs, with their use likely to increase unabated for the next ten years.³

After adoption of the Beijing Amendment/Adjustments in 1999, the EU tried repeatedly to tighten the HCFC reduction schedule further and, in particular, to introduce interim cuts for developing countries. Its proposals, however, were deemed premature and accorded short shrift. In 2001, the EU put its efforts in the formal negotiating arena on hold when Parties refused even to mandate a study on the challenges of HCFC use in developing countries. In recent years, developing countries have been busy with their CFC targets, the political attention of developed countries has been focussed on controversial exemptions for methyl bromide use, and a general "amendment fatigue" has pervaded the regime. The possibility of adjusting the HCFC schedule was not even on the formal agenda at the last Meeting of the Parties in New Delhi in 2006. What changed in a year?

Negotiation theorists speak of "ripe moments" in negotiations, and MOP-19 was a case in point. Mounting scientific evidence, an unusually auspicious political climate, and the celebratory "hook" of the 20th anniversary all ensured that, this time, conditions were ripe for a deal. This was no miracle, however. Although, as the *Earth Negotiations Bulletin*⁴ commented, events appeared to move surprisingly fast, the ripening of the Montreal Adjustments was a long time in coming, involving tireless efforts behind the scenes on the part of many delegations and experts.

Mounting Scientific Evidence

One of the hallmarks of the Montreal Protocol, which once again came to the fore on HCFCs, is the deep respect it accords to science and technical analysis. The work of the three Assessment Panels – on Technology and Economics (TEAP), Environmental Effects, and Science (SAP) – informs (but does not dictate) almost every decision, and ex-

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perts are continuously consulted during the negotiation process. In its 2006 report, the SAP warned that high estimates for future HCFC production would delay the predicted recovery of the ozone layer.⁵ Concurrently, accelerating the HCFC phase out was the option that would make the greatest contribution to advancing the ozone layer's recovery. This obviously touched a raw nerve among ozone delegates; the SAP's continuous postponement of the predicted recovery date of the ozone layer remains an awkward *caveat* to the ozone regime's claims of success.

The impact of HCFCs on *climate change*, as well as ozone depletion, became an increasingly important ingredient in the scientific and technical debate. The linkages

between the ozone and climate change regimes, resulting from both HCFCs and HFCs (which are used as ODS substitutes), have long been recognised. These linkages were thrown into focus with the adoption of HFC controls under the Kyoto Protocol in 1997. In response, Parties to both regimes commissioned the TEAP and Intergovernmental Panel on Climate Change (IPCC) to prepare a joint Special Report on the interconnections between ozone and climate protection.⁶ This Special Report predicted a doubling of HCFC emissions between 2002 and 2015. Its publication, in 2005, triggered a follow-up programme of work by the TEAP, in which the Panel was asked to analyse trends in HCFC use and the feasibility of reducing

Comparison of the Montreal Protocol and United States Phaseout Schedules

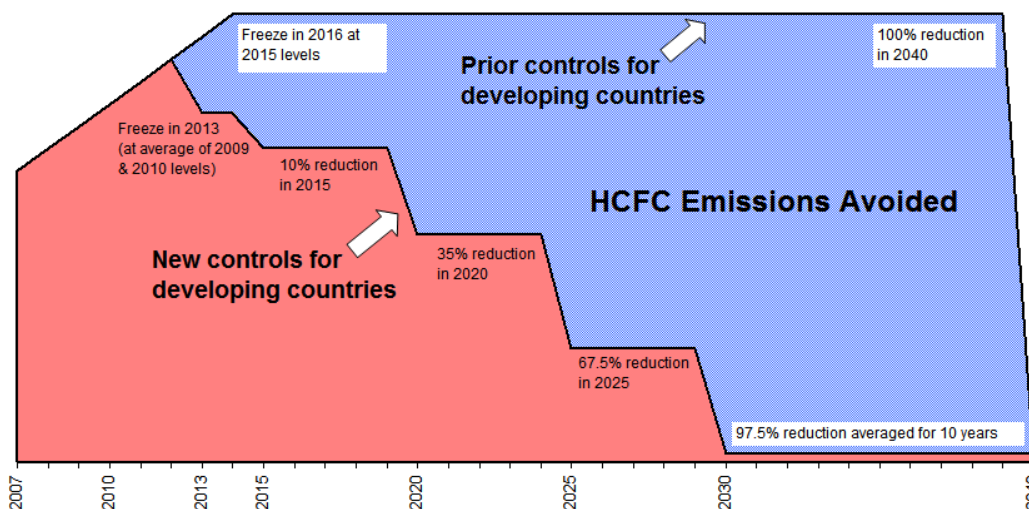
Montreal Protocol		United States	
Year to be Implemented	% Reduction in Consumption and Production ¹ , Using the Cap as a Baseline	Year to be Implemented	Implementation of HCFC Phaseout through Clean Air Act Regulations
2004	35.0%	2003	No production and no importing of HCFC-141b
2010	75.0%	2010	No production and no importing of HCFC-142b and HCFC-22, except for use in equipment manufactured before 1/1/2010 (so no production or importing for NEW equipment that uses these refrigerants)
2015 ²	90.0%	2015	No production and no importing of any HCFCs, except for use as refrigerants in equipment manufactured before 1/1/2020
2020	99.5% ³	2020	No production and no importing of HCFC-142b and HCFC-22
2030	100.0%	2030	No production and no importing of any HCFCs

¹ Adjustments to the HCFC phaseout schedule agreed at the 19th Meeting of the Parties to the Montreal Protocol, September 2007. More details about the September 2007 adjustments to the Montreal Protocol are available here (PDF) (4 pp, 38K, About PDF).

² The Parties agreed to address the possibilities or need for essential use exemptions, no later than 2015.

³ The Parties agreed to review in 2015 the need for the 0.5 per cent production or import for servicing during the period 2020–2030.

New Stronger Montreal Protocol Controls Reduce Developing Country HCFC Emissions about 58 Percent



Courtesy: US EPA

emissions. The TEAP found that HCFC use was increasing rapidly in developing countries, but confirmed that an early phase out was “technically and economically feasible”.⁷ Avoiding the use of HCFCs now would, in the long term, be cheaper than cutting them later. The TEAP’s conclusions were important; one of the main arguments of developing countries against accelerating HCFC cuts had been concern over the lack of affordable alternatives.

Just as the spotlight was turning to HCFCs, another dimension to the technical debate on climate/ozone interconnections burst onto the scene, this time concerning the clean development mechanism (CDM) under the Kyoto Protocol. Delegates to both the climate change and ozone regimes voiced alarm at proposed CDM projects that would grant emission credits in return for the destruction of HFCs generated as an unwanted side-effect of HCFC production. There were fears that granting such credits could create a perverse incentive to increase HCFC production, because of the value of the credits earned. The TEAP was asked to also examine this issue, and found there were no easy solutions to the problem.

Other scientific work was influential in cementing the emerging links between the ozone and climate regimes, which created an additional incentive to cut HCFC emissions. A paper⁸ published by the Dutch scientist Guus Velders and his colleagues (all of whom have been involved in the Assessment Panels) demonstrated that the global warming already avoided by the Montreal Protocol was 5–6 times greater than that envisaged by the Kyoto Protocol in its first commitment period. They also noted that the benefits of accelerating the HCFC phase out would be “significant” compared with the climate benefits of the Kyoto Protocol. This paper provides a good example of how scientific research can emerge at a particularly opportune moment and be seized upon by a political current of opinion. Suddenly, the Montreal Protocol was being portrayed by some not only as a successful ozone agreement, but also as the most effective treaty in the fight against climate change! (The *caveat* that most of the climate benefits of the Montreal Protocol have already been achieved, and their relative importance will decrease over time, did not receive similar political attention).

Auspicious Politics

In large global negotiations, it is often the unseen efforts of small, informal groups that make the most difference. Following the EU’s lack of success in advancing its HCFC proposals in the formal arena, debates apparently moved behind the scenes. July 2006 saw the launch of the so-called “Stockholm Group”, an informal gathering of key ozone delegates and experts formed to discuss how best to advance the regime. Although there are no public records of its meetings, the Group Chair has reported to the Multilateral Fund’s Executive Committee on the Group’s work. In the report presented to the Executive Committee in March 2007, the Stockholm Group Chair strongly recommended the acceleration of the HCFC phase-out schedule.⁹ There is no doubt that the informal exchanges within the Stockholm Group made a significant contribution to breaching the political impasse that had prevented previous action on HCFCs. It

cannot be a coincidence that, following the Stockholm Group’s third meeting in The Hague in February 2007 (where, incidentally, the Velders paper was presented), a total of six proposals to strengthen the HCFC schedules were submitted to the Ozone Secretariat. Two of these, from Mauritius and the Federated States of Micronesia, came from small island developing states particularly concerned about the climate impacts of HCFCs. The others were put forward by Argentina and Brazil (Argentina has long drawn attention to the CDM issue); Iceland, Switzerland and Norway; Mauritania; and the USA.

Other political conditions were also ripe for successful negotiations on HCFCs at MOP-19. For a start, the controversy surrounding exemptions for methyl bromide use, which had dominated negotiations at recent MOPs (see EPL, Vol. 35, No. 4/5; and Vol. 36, No. 1), had now largely calmed down. Indeed, at MOP-19, agreement on exemptions was reached relatively easily, and with a significant drop in the exemptions requested and granted relative to the previous year. This freed up political space for delegates to turn to another difficult issue. In a less obvious development, the Multilateral Fund was able to report at MOP-19 that China had now phased out its entire consumption and production of CFCs ahead of the 2010 deadline (except for a small amount for metered-dose inhalers used to treat asthma). This momentous step no doubt enabled China, which had, unsurprisingly, been reluctant to strengthen HCFC controls, to look more favourably upon the issue.

The Multilateral Fund also reported that other developing countries had made good progress in cutting down on CFCs, and were on track to meet their targets ahead of the deadline. These achievements would certainly have boosted developing country confidence that they could now tackle HCFCs effectively, and would receive financial help in doing so. Notwithstanding the complexities discussed below, bringing forward targets for cutting HCFC emissions would almost automatically open up a whole new stream of funding for developing countries from the Multilateral Fund. The Stockholm Group estimated that the phase-out costs for HCFCs would amount to US\$0.5 to 1.5 billion, approximately three rounds of Multilateral Fund replenishments at current levels.¹⁰ These costs are not huge in terms of donor country budgets, and were no doubt seen as a small price to pay for the resulting climate and ozone benefits. Funding an accelerated HCFC phase out would also bring a whole new lease of life to the Multilateral Fund, just as its funding of CFC projects in developing countries was beginning to tail off.

Another reluctant country, the USA, also demonstrated a thawing in its attitude to the links between tackling ozone depletion and climate change. At the start of debates on the IPCC/TEAP Special Report, the USA had been loath to accept a blurring of the boundaries between ozone and climate mitigation. The delegation had repeatedly insisted that the ozone regime maintain a narrow circumscription of its role around strictly ozone issues. When the Special Report was being prepared, the USA had even objected to its consideration by the Montreal Protocol’s Open-Ended Working Group (which undertakes preparatory work for the MOP). In the HCFC negotiations at MOP-19, however, the USA was much

more enthusiastic about taking on board the implications for climate change. In its HCFC adjustment proposal, the USA actually states that delegates should consider "... not only the benefits to the stratospheric ozone layer, *but the possible impacts on the climate system as well*"¹¹ (emphasis added). On the positive side, this undoubtedly reflects a greater acceptance by the US Administration of the reality of climate change and the need to (be seen to) do something about it. A less generous interpretation might be that acting through the Montreal Protocol enabled the USA to support international action on climate change, without the loss of face that reversing its opposition to the Kyoto Protocol would entail. The USA was certainly eager to promote the view that an accelerated HCFC phase out would render the Montreal Protocol more effective than current measures under the Kyoto Protocol in cutting greenhouse gas emissions (it may be no coincidence that Dr Velders himself testified to the US Congress in May 2007).¹² Whatever the motivation, the fact is that, at MOP-19, the USA threw its political weight behind accelerated action on HCFCs.

Two further accidents of timing helped to harness these propitious political circumstances. The first, of course, was the Montreal Protocol's 20th anniversary, which promoted the kind of celebratory and conciliatory mood that generates a positive negotiating atmosphere. More concretely, the triennial funding cycle of the Multilateral Fund means that the next replenishment for 2009–2011 will be negotiated in 2008. As discussed below, the securing of funding commitments was key to reaching a deal on HCFCs. In order for the funding of HCFC projects to be properly costed for the next replenishment, agreement had to be reached at MOP-19.

The Negotiations

It was against this favourable background that negotiations began in June 2007 at the 27th meeting of the Open-Ended Working Group. As is customary in the ozone regime, the negotiations took place mostly in a small, closed informal group. The group was chaired by Maas Goote (Netherlands) and Mikheil Tushishvili (Georgia), who prepared a consolidated paper at the close of the session. The informal group met again on the margins of the Multilateral Fund Executive Committee meeting in July, and then again immediately prior to MOP-19. The six formal proposals provided the basis for negotiations. These were complemented by technical analyses submitted by the EU, USA and the Multilateral Fund on their implications, as well as input from the TEAP and other experts. By the start of MOP-19, delegates had a clear negotiating text to work with, along with a Co-Chair's summary of issues that showed emerging agreement. Delegation statements at the start of MOP-19 displayed a widespread consensus surrounding the need for an adjustment and, crucially, for accompanying financial support for developing countries.

Negotiations were not, of course, plain sailing. Several countries, notably China, Japan and the Russian Federation, were more wary of accelerating the HCFC phase out, citing worries about costs and availability of alternatives. Other countries with specific circumstances, such as low-volume consuming countries, wanted to make sure that their concerns were met. Several additional issues had to be thrashed

out. There were proposals from the USA, and Brazil/Argentina, for example, to differentiate between different types of HCFCs, in order to address the "worst first". It was decided, however, to leave decisions on which gases to address first to national governments, and avoid making the process overly prescriptive and complex at the international level. Given that the ultimate phase-out date is still decades away, delegates decided to defer negotiations on essential-use exemptions until 2015 for developed countries, and 2020 for developing countries. (Such exemptions are allowed for other ODS that have otherwise been totally phased-out). This sidestepped a bone of contention, and demonstrates the faith that ozone parties have that their concerns will be acted upon in the future. Exemptions may well become important, given that, in some applications, HCFC use is likely to remain the most environmentally sound option, as it can enable greater energy efficiency.

Financing was the key to unlocking the deal on HCFCs. The Montreal Adjustments state clearly that funding to enable developing country compliance with the new HCFC targets "shall be stable and sufficient to meet all agreed incremental costs".¹³ There was never any doubt that this would be the outcome of the negotiations. Full financing of the ODS phase out in developing countries, through the Multilateral Fund, is at the very heart of the grand bargain that has served the Montreal Protocol so well. For HCFCs, however, the issue was not entirely straightforward. Up to now, the Multilateral Fund has disallowed the funding of "second conversions", that is, the conversion of activities (*e.g.* refrigeration plants) away from HCFCs to an alternative, in cases where it funded an earlier conversion from CFCs to HCFCs. In addition, the Multilateral Fund has also refused funding for any project involving ODS capacity established after 1995. With these two prohibitions in place, it is unlikely that many HCFC conversion projects would have been eligible for funding. The Montreal Adjustments therefore provide for the Multilateral Fund to "make the necessary changes" to remove the restrictions. Given the Multilateral Fund's repeated insistence to past recipients of funding for HCFC conversions that second conversions would not be financed, this represents a remarkable turnaround. Evidently, pragmatism outweighed concerns over moral hazard.

In an additional component, based on a proposal by Kuwait, Parties agreed to commission a short TEAP study on HCFC alternatives in developing countries with specific climatic conditions (*e.g.* high air-conditioning needs) or unique operating conditions, such as mines. Also responding to the Kuwaiti proposals, the EU will hold a workshop in 2008 on HCFC alternatives. These additional elements were important to many countries still nervous about the cost and availability of HCFC substitutes.

The final deal in effect advances the HCFC phase out by ten years for developing countries, while bringing the baseline forward by five years to the average of 2009/2010. While the final developing country phase-out date remains 2040, a 97.5% cut is mandated by 2030. Although the first cut, of 10%, is not required until 2015, there is every likelihood that this interim target, and the others for 2020 (35%) and 2025 (67.5%), will be achieved ahead of schedule. The experience with CFCs suggests that, once firm

targets are in place and reliable funding is committed, emissions can drop remarkably quickly (although some specific sectors can prove more tricky). For developed countries, where HCFC consumption is already on the way out, the Montreal Adjustments extend existing consumption targets also to production, with a strengthening of the 2010 interim target to 75% (from 65%). Cutting back on HCFCs will also have the double benefit, for climate change, of reducing HFC-23 emitted from HCFC production. In addition, it is the most straightforward way of tackling the “perverse incentive” issue surrounding CDM projects under the Kyoto Protocol.

The rules of the Montreal Protocol stipulate that *adjustments* to the treaty – used when existing control schedules are changed – enter into force automatically for all Parties, unless they lodge a formal objection, within six months of their communication to the Parties by the Depositary (the UN Secretary General). This means that the strengthened HCFC reduction schedule should be in force by mid-2008 (at least for those 179 countries that have ratified the Copenhagen Amendment that introduced HCFC controls in the first place).

The Future

All negotiating triumphs have their cautionary footnotes, and the Montreal Adjustments are no exception. As noted above, it was the commitment on full financing that enabled consensus. The precise sums to be allocated to the Multilateral Fund for this purpose, however, were not decided in Montreal, but will be debated as part of the negotiations on the Multilateral Fund’s replenishment for 2009–2011. In effect, this means that the next stage of the HCFC negotiations will take place in 2008. The TEAP will contribute to the debate through its usual assessment of funding needs, and the additional study on specific conditions agreed in Montreal will provide further input. Interestingly, delegates raised the possibility that the replenishment period for the Multilateral Fund could be extended to six years, rather than the traditional three years, which would provide greater predictability and continuity of funding. In response, the TEAP was requested to study the implications of this, and already to report on possible funding needs up to 2014. Donor countries, especially the EU, have made encouraging noises about their readiness to generously fund the HCFC phase out, so there is every reason to hope that the replenishment negotiations will be successful. Nonetheless, the deal cannot be considered fully sealed until a consensus on specific numbers is added to the agreement at Montreal.

The second *caveat*, as environmental NGOs were quick to point out, is that the benefits of the accelerated HCFC phase out are entirely dependent on the alternatives used in their place. If HFCs, for example, are more widely introduced as substitutes (developing countries are not yet subject to the quantified HFC controls under the Kyoto Protocol), then this will simply create yet another new problem. An additional complication is that phasing out HCFCs could mean deteriorating energy efficiency, again with implications for climate change. Yet again, the spotlight will turn to the Multilateral Fund, which must devise financing criteria

for HCFC replacement projects, and the TEAP, which will advise on environmentally superior alternatives. The Montreal Adjustments already require the Multilateral Fund, in preparing funding criteria, to prioritise projects that minimise environmental impacts, including implications for the climate. According to the Velders paper, around 80% of ODS have already been eliminated without introducing other fluorocarbons. Now that even more is known about the climate implications of different chemicals, it is unlikely that Parties would fall once more into the trap of replacing HCFCs with another, only slightly less damaging, alternative. Nevertheless, the TEAP and Multilateral Fund will have their work cut out to ensure this does not happen on any significant scale.

Politically, one of the most interesting aspects of the HCFC negotiations was the strong “spin” that was placed on the climate benefits of an accelerated phase out. The UNEP press release at the close of negotiations was remarkable in headlining the Montreal Adjustments as a “big confidence boost” for “combating *climate change*”¹⁴ (emphasis added). UNEP has long desired a more central role in the climate change arena, and no doubt welcomed the strategic opportunity to promote one of its treaties – and therefore itself – as integral to the fight against climate change. The adoption of the Montreal Adjustments is undoubtedly a rare piece of good news for the climate. The fact is, however, that ozone politics are very different to climate politics, and success in Montreal is unlikely to make much difference to the climate change negotiations. The “spirit of Montreal” will almost certainly peter out before it reaches Bali.¹⁵ Moreover, now that the HCFC control schedule has been tightened (probably to its maximum), there are few additional major gains that can be made for the climate through the Montreal Protocol (aside, of course, from ensuring full compliance). For better or for worse, the international community’s resolve to tackle global warming will continue to be tested under the contentious political conditions of the UN Framework Convention on Climate Change and its Kyoto Protocol, rather than the more cooperative environment of the ozone regime.

Notes

- 1 Article 2F, paragraph 7.
- 2 See UNEP/OzL.Pro./19/INF.8, Submission by the Multilateral Fund Secretariat.
- 3 *Ibid.*
- 4 *Earth Negotiations Bulletin* 19(60).
- 5 Defined as the date when equivalent effective stratospheric chlorine levels return to pre-1980 levels.
- 6 IPCC/TEAP. 2005. *Special Report on Safeguarding the Ozone Layer and the Global Climate System: Issues Related to Hydrofluorocarbons and Perfluorocarbons*.
- 7 See MOP-19 report, UNEP/OzL.Pro.19/7, paragraph 21.
- 8 Velders, G.J.M., Andersen, S.O., Daniel, J.S., Fahey, D.W. and McFarland, M. 2007. “The importance of the Montreal Protocol in protecting climate”. In: *Proceedings of the National Academy of Sciences of the USA* .104(12): 4814–4819.
- 9 UNEP/OzL.Pro./ExCom/51/46, p. 56.
- 10 *Ibid.*
- 11 See US proposal in UNEP/OzL.Pro.19/3, p. 24.
- 12 Committee on Oversight and Government Reform. www.oversight.house.gov/
- 13 MOP-19 report, UNEP/OzL.Pro.19/7, Annex III and decision XIX/6.
- 14 UNEP Press Release. Montreal/Nairobi, 22 September 2007. Available at www.unep.org/ozone.
- 15 The next major meeting of the climate change regime takes place in Bali, Indonesia, in early December 2007.

UNFCCC

Global Environmental Governance

– The Search for Principles not Based on the North-South Divide –

by Mukul Sanwal*

Editor's note: In this Article, Mukul Sanwal responds to and addresses issues and analysis presented in an article by Dr Virak Prum, entitled "Climate Change and the North-South Divide: Between and Within", which was published in *Forum of International Development Studies*, 34 (March 2007) at pages 223–244. That publication provided the following abstract of the Prum article:

The traditional North-South divide has persisted throughout the negotiations on climate change. Divergent state interests made striking a right balance between development and environmental protection an elusive endeavour as negotiators were striving to adopt a global climate regime. Four principles of international environmental law are of particular concern: the principle of common but differentiated responsibilities, the principle of equity, the precautionary principle and the principle of sustainable development. With economic development being the overriding priority in developing countries, the negotiations leading to the Kyoto Protocol tend to prove that principles could be interpreted in different ways to fit particular interests. This study explains the confrontations between the North and the South and argues that climate change has by far strengthened the North-South Divide both between and within. Accordingly, it concludes that there is a need to devise new principles.

Why is it that, despite the multilateral environmental agreements, polarisation along North-South lines continues to adversely affect their implementation? The situation is very different in other forums, for example the World Trade Organisation, where implementation proceeds smoothly and any disputes relate to interpretation of the terms of agreements, and are based on substantive rather than political considerations. The paper by Virak Prum – Climate Change and the North-South Divide: Between and Within – raises important issues related to the role of principles of international environmental law in the implementation of treaties. His argument is that the principles in the United Nations Framework Convention on Climate Change (UNFCCC), adopted in 1997, have been interpreted in divergent ways to fit the economic interests of individual states. The resulting confrontation has actually served to deepen the North-South divide rather than promote a consensus on measures to be taken. Prum makes a strong case for new principles to promote international cooperation in striking a balance between development and environmental protection.

The role of enunciated principles in environmental governance is an under-researched area. Implementation of multilateral environmental agreements is actually affected by 'reservations' in treaties, and not only, as Prum suggests, by the subsequent interpretation of the principles. For example, the principle of common but differentiated responsibilities first gained legal salience in the Rio Declaration on Environment and Development, negotiated in 1992. It was the last principle to be negotiated, and was

included in the text by the Chair, Tommy Koh, only because it was part of an earlier statement by Ministers of Environment of industrialised countries. In this context, the principle was never really negotiated, and so was not accepted by all states, and a reservation was recorded.

Not surprisingly, this principle, as included in Article 3 ("Principles") of the UNFCCC, contains modifications, as adopted in Article 3.1. That article states:

"The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of *equity* and in accordance with their common but differentiated responsibilities and *respective capabilities*. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof" (italics added).

The additions – "equity" and "capabilities" – reflect the perspectives of developing and industrialised countries, respectively. It was argued even during the negotiations that "accordingly" refers to "capabilities" and not to "responsibilities" – which would have implied acceptance of legal liability. It must be remembered that the Rio Declaration never included or accepted any notion of legal liability for transboundary damage.

The other principles in the Climate Change Convention directly address the issues of the Rio Declaration, but reflect compromises that were separately agreed at that time. For example, the UNFCCC contains no reference to the "precautionary principle", only to "precautionary measures" (Article 3.3). Similarly, although Article 3.4 states that, "Parties have a right to, and should promote sustainable development", no express right to develop-

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ment was included in the legal text of the treaty. Despite these compromises, the North-South divide has remained a prominent feature in MEAs, contrary to what one would expect. The differing interpretations of the initial common understanding have become obstacles in achieving a consensus on support to implementation.

At the United Nations Conference on the Human Environment, held in Stockholm in 1972, it was argued that "...the major environmental problems of the developing countries are essentially of a different kind. They are predominantly problems that reflect the poverty and very lack of development of their societies...these are problems no less than those of industrial pollution". These concerns shaped the three key elements of the conceptual framework of global environment governance – (i) treating the environment as a separate policy issue; (ii) recognising a distinction between global and local environmental problems; and (iii) identifying multilateral environmental agreements as the defining feature of global environmental governance.

The current paradigm is losing its relevance because of changes in the global political economy. As a society goes through the processes of industrialisation, public attitudes (including rules, rights and willingness to pay) shift regarding environmental protection. The evolution of global environmental governance in the current century is leading to a new paradigm that moves away from legal restrictions, and conference diplomacy. The challenge of supporting countries in formulating a long-term vision for environmentally sustainable global growth is to strengthen national institutions with new knowledge, as the basis for dealing with global environmental problems.

In this context, implementation also requires moving beyond traditional forms of cooperation between nation-states, to promoting the development of global networks of state and non-state actors, particularly the private sector. The strategic framework should develop new tools – knowledge management – and instruments – involvement of the private sector, regional thematic partnerships and south-south cooperation as well as operational focus – for an approach that provides a differentiated response to different categories of countries.

The multilateral system will, therefore, need to play a catalytic role at three levels. First, analytical work to inform the policy dialogue – the economic impact of ecosystem services on human well-being. Second, dissemination of good practices to support implementation – institutional strategies for improved natural resource man-

agement, market-based instruments and information on technologies for environment-related infrastructure. Third, new programmes will be needed at the regional and global levels in partnership with the private sector and civil society. An example is the Expert Group on Climate Change and Sustainable Development, catalysed by the United Nations to recommend innovative approaches for mitigation and adaptation to climate change for consideration by the United Nations Commission on Sustainable Development.

The current impasse over how to achieve sustainable development is largely the product of the way the agenda has been framed in global efforts to link environment and development. The adoption of an issue-based approach, with social and economic dimensions treated as ancillary to the environmental problem, led to reliance on multilateral environmental agreements to promote international cooperation. As a result of refining and deepening the understanding of the problems, the focus is now on areas of convergence between environment and economics. These areas are very different from the way the agenda has been framed in the past around responsibilities, rights and obligations of States, and the tensions inherent in burden and benefit sharing.

By developing a vision of environmentally sustainable global growth, which includes sustainable use of natural resources, the multilateral system can respond to the concerns of a much larger section of the world's population



International Children's Painting Competition on the Environment 2007: "Climate Change" – a project under the UNEP-Bayer Partnership
Courtesy: UNEP

than the earlier approach of imposing restrictions on the use of natural resources in order to safeguard the interests of future generations. The defining feature of global environmental governance in this century will be interactive clusters of institutions and processes galvanising capital markets and supporting societal action.

UNECE

“Environment for Europe” – Sixth Ministerial Conference: Building Bridges to the Future

by Ariana Broggiato*

The Sixth Ministerial Conference “Environment for Europe”¹ (EfE) took place in Belgrade, from 10 to 12 October 2007, and saw the participation of over 1000 delegates, including Ministers and high-level officials, from 51 UNECE² member States and the European Commission, from international organisations, NGOs and other stakeholders.

The Conference focused on progress since the Fifth Ministerial Conference held in Kiev in 2003 and the future of the EfE process. Among other issues it identified existing challenges and sought better implementation of the existing Multilateral Environmental Agreements (MEAs). The major outcome of the conference was the adoption of the Ministerial Declaration³ proposing reform of the “Environment for Europe” process in order “to strengthen its effectiveness as a mechanism for improving environmental quality and the lives of people across the region”.⁴ It recognised the importance of the EfE process as a unique Pan-European forum for bilateral and multilateral sharing of information and partnerships and for tackling environmental challenges in a region that is very uneven in its economic and social development. Both in the Declaration and in the discussions in the plenary session, emphasis was put on the fact that improving the environment contributes to poverty eradication and security in the region, problems that are already affecting us and not only threatening future generations.

Assessment and Implementation

The first session was dedicated to assessment and implementation and was based on four studies: *Europe’s environment: the fourth assessment*,⁵ a report on the State of the Environment prepared by the European Environmental Agency (EEA); the report *Policies for a better environment: progress in Eastern Europe, Caucasus and Central Asia*⁶ prepared by the Environmental Action Plan (EAP) Task Force; the *First Assessment of the quality of transboundary rivers, lakes and groundwaters in the UNECE* developed under the auspices of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention); and the first round of Environmental Performance Reviews (EPRs) developed in some Pan-European countries under the framework of the UNECE. Challenges highlighted include problems of safe drinking water and sanitation, air pollution and related health problems especially for children,

biodiversity decline, marine over-exploitation, unsustainable consumption and production patterns, climate change impacts and energy consumption. The Conference expressed the need to improve monitoring systems, especially in the countries of Eastern Europe, Caucasus and Central Asia (EECCA), and South Eastern Europe (SEE). These should be compatible across the UNECE region. Many speakers reported on examples of modernising monitoring networks at the national level, using internationally agreed indicators, and on examples of partnerships in this field, as reflected in UNECE *Recommendations to Governments of EECCA Countries for the Application of Environmental Indicators and the Preparation of Indicator-based Environmental Assessment Reports*⁷ as well as in the *Guidelines for Strengthening Environmental Monitoring and Reporting by Enterprises*.⁸ The Declaration calls for the adoption and full implementation of them by all States.

The Ministerial Declaration⁹ calls on the European Environmental Agency (EEA) to consider preparing the fifth assessment report for the next EfE Ministerial Conference and calls upon the Countries that will be covered by the report to cooperate fully. During the conference a proposal was made by the delegate from Kazakhstan, to complete the assessment one year before the next conference, in order that countries may have time to study it and identify the necessary measures to be taken, in response to the shortcomings highlighted in the assessment. The Ministers and Heads of delegation invited Countries reviewed by the UNECE EPR programme to adopt and fully implement the recommendations specifically addressed to them in the review, “in accordance with their national needs and priorities”,¹⁰ and invited UNECE to report to the next EfE Conference on the results of the second round of its Environmental Performance Reviews. Finally the Ministers and the Heads of delegation invited, through the Declaration, the Conference of the Parties to the Water Convention to prepare the second assessment of transboundary waters for the next EfE Ministerial Conference.

The conference recognised that the UNECE multilateral environmental agreements¹¹ have been drivers of actions to address environmental problems and environmental disparities in the region. Participants acknowledged that significant efforts and progress have been made in implementation and in introducing adequate legislative frameworks. These agreements have been recognised as important for the synergies they create and for facilitating the exchange of best practices among European Union (EU) Members and EECCA and SEE countries, in order to bring

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the latter States closer to internationally recognised environmental standards. Therefore they are seen as a valuable model for other regions facing similar transboundary problems and, some of the speakers even proposed to open them for signature to non UNECE Members. Notwithstanding these positive findings, the Declaration¹² recognises that the main challenges remain ratification and implementation: many speakers reported uneven implement-



The Sava Centre in Belgrade

Courtesy: UNECE

tation, ratification problems and the need for strengthening legislation,¹³ and called for speeding up the ratification process of the Conventions and the Protocols. The Ministers and Heads of delegation recalled the Kiev *Guidelines for Strengthening Compliance with and Implementation of Multilateral Environmental Agreements in the ECE region*¹⁴ and urged further application of these by all governments; moreover, they invited UNECE countries that are not parties to those international instruments to consider ratifying them, and those countries that are parties to them to make additional efforts to improve their effectiveness, coherence and integration with other sectors.

Education for Sustainable Development (ESD)

The Belgrade Conference was the first EFe Conference in which Education Ministers also attended to consider the implementation of the *Education for Sustainable Development Strategy*, in the framework of the United Nations Decade of Education on Sustainable Development. The fulfilment of phase I of the *Strategy* in the EECCA and SEE countries was seen as well under way, especially as far as the establishment of the necessary policies and institutional structures was concerned. Much of this item focused on collaboration between UNECE and the United Nations Educational, Scientific and Cultural Organization (UNESCO). It also stressed the role of education in raising awareness and in creating the basis for informed choices in favour of sustainable development, and considering the *Strategy* “as a prerequisite and framework for capacity building initiatives and multistakeholder partnerships in the region”,¹⁵ to be further promoted in years to come.¹⁶ The Ministers noted a weak point in this

area, however – the lack of use of sources of indigenous and other local knowledge.

Biodiversity

Considering biodiversity and the World Summit on Sustainable Development goal to halt biodiversity loss by 2010, the conference roundtable dedicated to this issue recognised the successes achieved concerning protected areas, ecological networks and invasive alien species, and underlined the challenges still to be addressed mainly concerning climate change, forests, agriculture, the marine environment and the integration of biodiversity concerns into productive sectors. The Pan-European instruments were noted as the primary tools in this area, particularly the *Pan-European Biological and Landscape Diversity Strategy*¹⁷ (PEBLDS) and the Pan-European Ecological Network (PEEN), and the related identification of High Nature Value Farmland and of the 26 biodiversity indicators.

Noting that the 2010 target will be difficult to attain without considerable additional efforts and new measures, the Conference strongly emphasised two pragmatic perspectives – the value of maintaining ecosystems so that they are sufficiently robust and coherent to be able to mitigate the effects of climate change; and the economic value of biodiversity as a national resource. Regarding the latter, Bruno Oberle, State Secretary of the Federal Office for the Environment in Switzerland, illustrated the “not very romantic” economic approach to biodiversity through which people should see not only the costs of biodiversity protection, but also the benefits of the valuable services it provides to the economy. New and creative ways to conserve biological diversity should be promoted, such as incentives, new forms of financing and payments for ecosystem services. The Ministers emphasised the multi-stakeholder approach¹⁸ and integration of biodiversity protection into economic strategy and into horizontal and sectorial policies. Synergies with the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity have been encouraged, with the aim of involving all layers of society through raising public awareness and education.

Capacity Building and Partnerships

During the discussion on capacity building and partnerships the delegates noted considerable progress in the involvement of institutions, the private sector and civil society in environmental enforcement.¹⁹ In this area too, implementation remains the main problem, particularly in priority areas for action:

- water (including both rural and urban water supply and sanitation as well as integrated water resources management);
- the reduction of the rate of loss of biodiversity;
- climate-change policies and the need to integrate them with policies on the environment;
- sustainable development; and
- energy.

The implementation gap that exists especially in the EECCA countries is due to insufficient financial means, human resources and institutional capacity, to the lack of strong incentives in the region,²⁰ and especially to the fact that in the region there was no equivalent to EU accession as a driving force for environmental improvement, while the SEE countries have the common goal of EU membership and are therefore making efforts to harmonise their legislation with the *acquis communautaire*. The importance of donors in building capacity was strongly underlined, recognising that the European Commission is the largest donor in the EECCA countries.

Speakers noted a general agreement that there is no trade-off between economic growth and environmental protection: "improving environmental performance and strengthening international competitiveness are not *per se* conflicting policy objectives".²¹ Since environmental remediation, even if possible, is extremely costly (compared to prevention and environmental compliance costs) and environmentally friendly technologies increase the efficiency of resource use, the environment needs to be integrated into the economic discourse. Quoting the words of the Minister of the Environment of Finland, Kimmo Tiilikainen:²² "Economic growth and environmental improvement can be achieved at the same time, that is called sustainable development". Emphasising that environment integration can improve market competitiveness, Secretary Oberle (Switzerland) noted that the "environment is made up of natural resources and we are lacking them, and the ones that do not care for the environment and the natural resources will be soon thrown out of the market". Improving the environment should be seen not as a cost, but as an investment. The fact that "the goal of international competitiveness of domestic industry is not in contradiction with the objective of achieving sustainable development and of decoupling national economic growth from environmental pressure"²³ is an important recognition considering the socio-economic transition that many SEE and EECCA countries are facing.

Finally, the need for innovative economic instruments and private sector engagement has been recognised by the Ministers and Heads of delegation in the Declaration, with special mention of payments for ecosystem services and the promotion of financial investments.

The Future of the Process: Reform

The last session of the Belgrade Conference was dedicated to considering the way forward for the "Environment for Europe" process. There was general agreement in recognising the importance of the EfE as a framework for bilateral and multilateral cooperation in the UNECE region, and as a multi-stakeholder platform for broad environmental cooperation. The delegates supported reforming the EfE process in order to strengthen its effectiveness, and in the Declaration²⁴ the Ministers and Heads of delegation agreed on the focuses of the reform: monitoring the performance of the process; attracting the broader interest of all stakeholders; expanding the use of partnerships; improving regional environmental cooperation; leveraging external contributions of expertise and re-

sources; allocating financial resources effectively; and future secretariat arrangements. They invited the UNECE Committee on Environmental Policy to develop by the end of 2008 a plan for the reform, in consultation with all the EfE partners, for official endorsement during the new UNECE session in spring 2009.

During the discussion, criticism was expressed by the European ECO-Forum²⁵ representatives: they conveyed their wish that the reform is not used as an argument against the implementation of already agreed programmes, and their disappointment over the lack of new tangible initiatives regarding sustainable production and consumption, biodiversity and water, and finally they called for a stronger political will to bring the process to the next stage of commitment.

At the end of the conference, after official endorsement of the Ministerial Declaration, the Ministers and Heads of delegation accepted Kazakhstan's offer to host the next EfE Conference in 2011, and renewed their gratitude to the Government of Serbia for organising the Belgrade Conference and to the Serbian people for their warm hospitality.

Reform of the EfE: A Way Forward or a Standstill?

To assess the upcoming direction of the reform of the "Environment for Europe" process just agreed at the Belgrade Conference, it is necessary to look at the outcomes of the meeting and to evaluate if these can be considered a strong starting point for an ambitious reform of the system. The main achievement was, without a doubt, the harmonious atmosphere of good cooperation among the delegates and considering that, as underlined by the Executive Director of UNEP, cooperation is a pre-condition to tackling environmental problems, this success was plain for all to see. Notwithstanding this precious outcome, the tone of the adopted Declaration is quite mild and some aspects could have received stronger support and consideration.

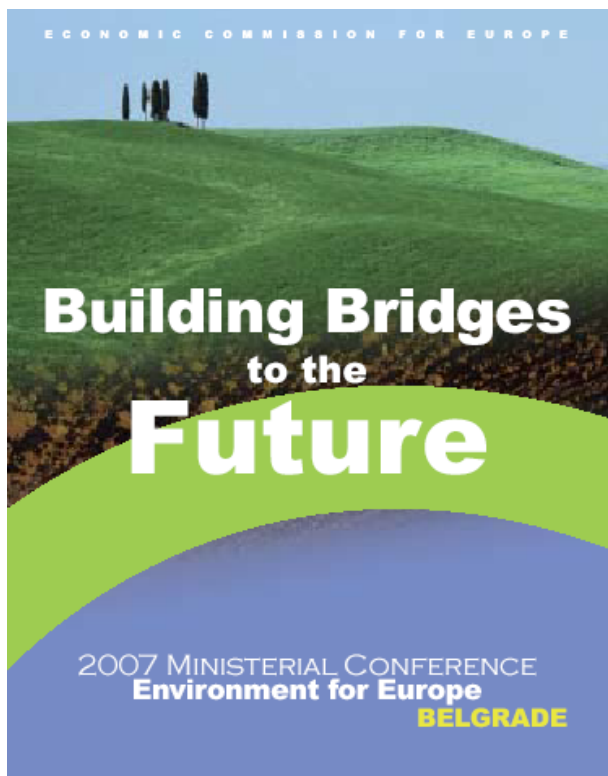
The Conference clearly showed the diversity of environmental realities among EU countries, harmonised by the *acquis communautaire*, the SEE countries, some of which have recently acceded to the EU and some wish to, and the EECCA countries, that are facing a difficult economic and social transition. The latter expressed their appreciation for the financial assistance programmes, and for the exchange of experiences and best practices with EU countries, and conveyed their wish to attract more donor involvement in future projects. Their priorities are still the need for safe drinking water and sustainable energy consumption, and the positive sign is that the Ministerial Declaration clearly underlined these two aspects, but, as the ECO-Forum remarked, no new legally binding initiative has been established in these two fields, not even where they relate to biodiversity conservation.

Biodiversity concerns were discussed in a particularly fervent way during the roundtable, maybe because of the strong environmentalist attitude that is always behind biodiversity conservation, therefore the introduction of the economic approach to biodiversity protection may prove

to be more effective since people, especially in the countries facing harsh economic difficulties, need to see the benefits and not only the costs of saving biodiversity. Moreover, the underlined link between biodiversity conservation and measures to combat climate change is a good example of intersectoral integration. Climate change²⁶ was a central issue throughout the conference and should be considered an opportunity for speeding up environmental protection.

One of the key points on which the conference should have concentrated its commitment is the fact that environmental protection needs to be integrated into economic discourse in order to improve market competitiveness because, especially for SEE and EECCA countries, the economic benefits of environmental measures should be perceived as greater than the social costs of supporting them, otherwise there will be even less political support for these measures. Therefore, effective initiatives should be promoted for environmentally friendly technologies, economic incentives for energy saving and for involving all layers of society in preventive actions.

After attending this conference that mainly focused on assessing improvements and underlining challenges still to come, it is clear that a strong political will is needed to



Courtesy: UNECE

take effective action: the lack of it can be seen in the mild commitments included in the Ministerial Declaration and in the vague description of the objectives of the forthcoming reform. Reforming such a wide and uneven system is an ambitious goal that itself requires strong political will, therefore the author asks: wouldn't it be better to save this

political will for effective action rather than expend it on a reform of the system?

Notes

1 The "Environment for Europe" process, initiated in 1991, is a unique partnership of the member States within the UNECE region, organisations of the United Nations system represented in the region, other intergovernmental organisations, regional environment centres, non-governmental organisations and other major groups. The United Nations Economic Commission for Europe, which has been closely associated with "Environment for Europe" since the beginning, serves as secretariat to the process.

2 United Nations Economic Commission for Europe, one of five regional commissions of the United Nations, was established in 1947 to encourage economic cooperation among its 56 member States. Under its framework, five Multilateral Environmental Agreements (MEAs) have been negotiated, all of which are now in force: Convention on Long-range Transboundary Air Pollution, Convention on Environmental Impact Assessment in a Transboundary Context, Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Convention on the Transboundary Effects of Industrial Accidents, and Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

3 See Ministerial Declaration, ECE/BELGRADE.CONF/2007/L.1, paras 17, 20, 21. Negotiated and submitted for approval by the Ad Hoc Working Group of Senior Officials.

4 Ministerial Declaration, ECE/BELGRADE.CONF/2007/L.1, para. 38.

5 ECE/BELGRADE.CONF/2007/10.

6 ECE/BELGRADE.CONF/2007/16.

7 ECE/BELGRADE.CONF/2007/11/Add.1.

8 ECE/BELGRADE.CONF/2007/11/Add.2.

9 Ministerial Declaration, ECE/BELGRADE.CONF/2007/L.1, para. 7.

10 *Ibidem*, para. 6.

11 See *Implementation of UNECE multilateral environmental agreements* ECE/BELGRADE.CONF/2007/12.

12 Ministerial Declaration, ECE/BELGRADE.CONF/2007/L.1, para. 8.

13 And especially the need to develop adequate legislation before the ratification of an international agreement, in order for the national system to be already prepared for its implementation (having established the necessary structures and bodies), as it is stressed in the document *Implementation of UNECE multilateral environmental agreements*.

14 Kiev Guidelines, endorsed at the Kiev Ministerial Conference E/E in 2003.

15 Ministerial Declaration, ECE/BELGRADE.CONF/2007/L.1, para. 12.

16 Statement on Education for Sustainable Development, ECE/BELGRADE.CONF/2007/4/Add.1.

17 Endorsed in 1995 at the Third Ministerial Conference "Environment for Europe" in Sofia, and reconfirmed by successive E/E Conferences.

18 With the involvement of regional and local authorities, youth, the private sector and business.

19 This discussion was based on (i) the report *Policies for a better environment: progress in Eastern Europe, Caucasus and Central Asia*, prepared by the Organisation for Economic Co-operation and Development (OECD) under the auspices of the Environmental Action Programme Task Force (ECE/BELGRADE.CONF/2007/19); (ii) the Belgrade Initiative *Enhancing regional cooperation of interested South-Eastern European countries in the field of climate change* which aims at developing the Climate Change Framework Action Plan and at establishing a subregional virtual climate change-related centre in Belgrade for climate research and observation, education, public awareness raising and capacity building; and (iii) the Environment and Security Initiative to ease tensions between the UNECE countries for what concerns transboundary watercourses; and many examples of multi-stakeholder partnerships, such as the Global Mountain Partnership and some public-private partnerships in the field of drinking water supply and energy efficiency.

20 Many speakers underlined that prices of water, energy and other resources are still very low, therefore there is in the region an overexploitation of these resources and no incentive to save them.

21 Chair's Summary, ECE/BELGRADE.CONF/2007/9, para. 52.

22 During the discussion on State of the Environment and Monitoring and Assessment, in the session dedicated to Assessment and Implementation.

23 Ministerial Declaration, ECE/BELGRADE.CONF/2007/L.1, para. 26.

24 Ministerial Declaration, ECE/BELGRADE.CONF/2007/L.1, para. 38.

25 The European ECO-Forum is a network of more than 200 Environmental Citizens' Organisations (ECOs) throughout Europe, sharing a common interest in Pan-European cooperation for a better environment.

26 As an interesting coincidence, at the end of the conference, the Chair announced that the Nobel Peace Prize had been awarded to the Intergovernmental Panel on Climate Change and the ex Vice-President of the United States, Al Gore, for their input into increasing and spreading knowledge about man-made climate change and the subsequent actions that are needed.

