

## OTHER INTERNATIONAL DEVELOPMENTS

**10<sup>th</sup> International Wildlife Law Conference**

by Rosemary Rayfuse\*

Operationalisation of the precautionary principle, addressing climate change in international wildlife regimes, the future of marine protected areas, and cetacean conservation regimes were the four themes focused on during the Tenth International Wildlife Law Conference which was held in Granada, Spain, from 6–7 March 2008. Hosted by the Faculty of Law at the University of Granada and co-hosted by Stetson University College of Law Institute for Biodiversity Law and Policy, this was the first time the conference has been held outside the United States. The Conference was attended by over 50 academic, governmental, inter-governmental and non-governmental participants from Europe and the United States, as well as Australia, Canada and South Africa, and by a number of students from the University of Granada and other Spanish institutions.

The Conference was opened by Francisco González Lodeiro, the Rector of the University of Granada and Juan López Martínez, Dean of the Law Faculty, who welcomed delegates to Granada, impressing upon them the relevance of the issues to be discussed for the international community in general, and for Spain in particular. The relevance of the discussions to Spain was highlighted by Teresa Fajardo del Castillo, of the University of Granada, in her presentation on the implementation of the precautionary principle in the EU with specific reference to the conservation of the Iberian Lynx, the most critically endangered cat in the world. Arguing that Spain has failed to introduce precautionary management plans, as required under the EU Habitats Directive, to appropriately protect the habitat of the lynx from encroachment by development and other human activities, she suggested that more aggressive intervention by the European Commission through judicial and other processes may be useful to ensure effective domestic implementation of the Directive. Also on the topic of domestic implementation of EU nature conservation rules, Reinier de Nooij, Radboud University, examined the Dutch experience in incorporating ecological concepts into national legislation implementing the EU Habitats Directive and the Birds Directive, demonstrating that conflicts between the legal and ecological conceptual frameworks for conservation arise as a result of differences in their aims, approaches and terminology and arguing that these differences must be made clear in order to provide a good basis for optimal nature conservation.

Turning to the operationalization of the precautionary principle, Arie Trouwburst, University of Utrecht, exam-

ined its application to the case of seabird bycatch. With approximately 300,000 seabirds being killed in fishing operations each year, he argued for a move away from reactive 'deathbed conservation' measures to a pro-active, precautionary, holistic ecosystem approach. Noting the success of the mitigation measures introduced by the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR) in reducing seabird mortality in regulated fisheries from more than 6,000 birds per year in 1997 to zero in 2007, he argued that the extent of implementation of mitigation measures in other regional fisheries management organizations, particularly in the tuna RFMOs, was still inadequate and that the deathbed scenario still prevailed. He concluded that the failure to introduce relatively simple, straightforward, precautionary, mitigation measures in the case of seabird bycatch serves as a metaphor for the implementation of the precautionary principle in more difficult cases where its application is often posited as anti-science.

Annecoos Wiersema, Ohio State University, addressed head-on the argument that the precautionary approach is dangerous, wasteful and anti-science. Noting that the complexity of natural systems means that science will never be able to provide concrete guidance and that adaptive management under uncertainty will therefore always be necessary, she argued that the precautionary principle, which requires caution in the face of scientific uncertainty, was both part of the science process and a gloss on it. However, because of the inherent limitations of science, it was imperative that science not become the sole driver of action. She argued that the precautionary principle should therefore also be part of an incremental management approach, forming an overarching framework to guide policy-making and value-driven decision-making processes.

Examining the application of the precautionary approach in international fisheries law, David VanderZwaag, Dalhousie University, suggested that although, on paper, the precautionary principle and/or approach might provide a beacon of hope, its implementation is adrift in a sea of confusion and uncertainty over its meaning, scope, interpretation, implications, and managerial requirements. Thus, while acknowledging the need to apply the precautionary approach in international fisheries management, state practice in respect of high seas fisheries, in particular, could best be described as largely illusory at the global and regional levels. He concluded that whether the precautionary approach, together with other principles such as the ecosystem approach, will be able to stem the tide of collapsing fisheries and facilitate recovery of depleted fish stocks remains to be seen.

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Moving on from the focus on the precautionary principle, a number of papers examined aspects of addressing climate change in international wildlife and fisheries management regimes. William Burns, Santa Clara University, examined potential causes of action for climate change impacts under the United Nations Fish Stocks Agreement (FSA). Noting that climate change is altering patterns of distribution and abundance of both straddling and highly migratory fish stocks, he argued that the obligations inherent in implementation of the ecosystem approach mandated by the FSA may give rise to potential causes of action enforceable through the binding dispute resolution processes in the FSA or could, at least, be relied on to implement pressure on parties to pursue effective climate change policies. Paul Boudreaux, Stetson University, suggested the extraterritorial application of national wildlife laws as an approach for addressing climate change issues. Referring to the US legal framework as an example, he argued that the loss of biodiversity anywhere in the

common concern to one of common heritage. Heather MacKay of the Scientific and Technical Review Panel of the Ramsar Convention examined the potential for collaboration between the biodiversity-related conventions with particular reference to the Ramsar-CBD relationship. She suggested that greater horizontal coherence at the convention level and between parties, and greater vertical coherence between the convention regimes and the domestic regimes of parties was needed, as well as greater diagonal coherence in circumstances where the consequences for one community or country depend on the policies and actions of geographically distant communities or countries. She concluded that the current suite of international, national and sectoral public institutions may not be able to deliver horizontal, vertical and diagonal policy coherence for an issue as broad and significant as climate change. By way of example, Rosemary Rayfuse, University of New South Wales, examined the current regime for the protection of Arctic marine biodiversity in areas beyond national jurisdiction, arguing that it may be inadequate to meet the challenges posed by climate change and suggesting that a useful outcome of this International Polar Year (2007–2009) would be the adoption of an Arctic Ocean Regional Oceans Management Organization, modeled on the best aspects of the Antarctic Treaty regime and having plenary jurisdiction over all high seas activities.

The future of marine protected areas (MPAs) was addressed by two speakers, Harm Dottinga, University of Utrecht, examined the current status of and legal challenges to fulfillment of the WSSD aspirational goal of establishment of a representative network of MPAs by 2012 with specific reference to activities in the North-East Atlantic. He concluded that the OSPAR MPA network is growing, but that it remains small, ecologically incoherent and not well managed. No high seas MPAs have yet been proposed, and coordination and resolution of jurisdictional gaps and overlaps between OSPAR and other relevant regimes remains an issue. As an example of relatively positive achievements in marine protection, he suggested that the North-East Atlantic experience, founded on the cooperation of like-minded and similarly interested developed states, was unlikely to be repeated in other areas. Randall Abate, Florida Coastal School of Law, examined the use of MPAs to promote marine mammal protection, focusing, in particular, on the benefit of no-take MPAs as means of protecting both marine mammals and their food sources. Referring to the 'race of arthritic tortoises' he suggested there was a need for increasingly urgent action on the part of the international community to aggressively protect both habitats and migratory routes of marine mammals, building on the pioneering efforts of some states to establish effective MPAs and focusing on stakeholder buy-in to ensure effective monitoring and enforcement.

Existing regimes relating to the conservation of cetaceans were also addressed in a number of papers. Howard Shiffman, New York University, examined the issue of whether Japan's whaling activities meet the criteria of scientific research whaling under the International Convention on the Regulation of Whaling (ICRW) and marine scientific research under the United Nations Convention



The Alhambra of Granada

world might be seen to harm the interests of the US through the possible loss of future ecosystem services, thereby giving rise to a cause of action against US nationals outside the US under the Endangered Species Act or the National Environmental Policy Act.

The need to rethink the conservation agenda of the Convention on Biological Diversity in light of the challenge of climate change was addressed by Deepa Badrinarayana, Chapman Law School, who referred particularly to the plight of the polar bear and its listing as endangered under the US Endangered Species Act. She suggested the need to redefine the concept of conservation and to implement a principle shift in the conception of biodiversity from one of mere

on the Law of the Sea (LOSC). Analyzing the stated aims and actual conduct of Japan's whaling research programs, he concluded that Japan's whaling program violates both the ICRW and the LOSC. Taking the ongoing controversy in the International Whaling Commission (IWC) over Japan's whaling activities, Daniel Owen, Fenner Chambers, examined the possible use of CCAMLR and the Madrid Protocol as alternative avenues for cetacean conservation in the Southern Ocean. Ed Couzens, University of KwaZulu-Natal, discussed the activities of pro- and anti-whaling states within CITES either to support their position or to undermine that of their opponents. He concluded that CITES is becoming an active forum in which to attempt to undermine the IWC and that a greater understanding of the linkage between these two regimes is necessary. Focusing more on small cetaceans, Richard Caddell, Swansea University, examined the EU policy,

adopted in 2004, which requires the use of 'pingers' attached to fishing gear to mitigate cetacean bycatch in EU fisheries. Noting the potentially positive value of the policy, he discussed concerns with the possible use of this equipment as a distinct mitigation tool and fears that it may cause more harm than good in the marine environment, particularly given that pingers were originally recommended as a temporary measure only, to be adopted pending development of more effective mitigation measures. He discussed opposition to pingers within ASCOBANS and ACCOBAMS and concluded that there was a real danger of supplanting the coordinated and holistic approach to bycatch mitigation measures recommended by these two specialist regional agreements with well-intentioned, but inappropriate EC regulation.

Papers from the conference will be published in the *International Journal of Wildlife Law and Policy*. 

## Club of Rome Relocated

The Club of Rome has been searching for a new home for quite some time.<sup>1</sup> Recently, an agreement was reached with the City of Winterthur, Switzerland, where the Club will have an international center for addressing challenges of the future. Made possible by the primary sponsorship of the Ruth and Robert Heuberger Foundation, 1.8 million Swiss francs – the same amount rebuffed by a civil society referendum in Zurich – will be donated over five years.

Co-President of the Club, Eberhard von Koerber acknowledged the location in Winterthur to be an ideal situation. Further impetus for the Club's relocation to Switzerland is its neutrality, central location and the strong involvement of the population in political decision-making.

With room for 60 employees, the headquarters in Apollo House is anticipated to be the nucleus for the Club's new engagement in society. A fundraising goal of 10 million francs to build an endowment has been set to eventually cover the costs of Secretariat activities. A key challenge at the core of the Club's work will be climate change and its influence on the ecosystem, energy demand and natural resources, as well as the influence of globalization. (WEB/ATL)

### Note

<sup>1</sup> See previous Editorials in *Environmental Policy and Law* 37/6 and 38/3. 

## In-memoriam: Charles Caccia

Known as the "environmental conscience" of the Canadian Parliament; Charles Caccia, former Canadian Environment Minister, earned that rubric through decades of leading and fighting sustainable development battles, locally, nationally and globally. Charles was an elected Regional Governor of the International Council of Environmental Law and part of the Advisory Board of this journal.

