

## Weekend Deadlock in Article 8(j)

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Discussions on the agenda item regarding Article 8(j) and Related Provisions began relatively smoothly on the morning of February 12th. However, a deadlock occurred when Malaysia refused to accept the bracketed language of the following two preambular paragraphs under the section: "Development of elements of sui generis systems for the protection of traditional knowledge, innovations and practices" (UNEP/CBD/COP/7/17):

*Recognizing that traditional knowledge is sometimes accessed without the consent of indigenous and local communities and that these communities have a right to grant or refuse such access as well as to determine the level of such access, consistent with Article 8(j) and subject to national [and international] law,*

*Recognizing also that some traditional knowledge has already been accessed without the prior informed consent of indigenous and local communities, and therefore the continued use of such traditional knowledge should, subject to national and [international law], only be granted with the prior informed consent of the relevant indigenous and local communities.*

Malaysia and China stand alone in wanting the removal of the reference to international law with regard to the access to traditional knowledge and consent of Indigenous and local communities. They argue that the content of the paragraphs lies outside the realm of Article 8(j). However, Article 8(j) specifically states that the wider application of traditional knowledge should be conducted "with the approval and involvement of the holders of such knowledge, innovations and practices."

Importantly, the 5th general principle under the Programme of Work on the implementation and related provision of the CBD from Decision V/16 states: "Access to traditional knowledge, innovations and practices of indigenous and local communities should be subject to prior informed consent or prior informed approval from the holders of such knowledge, innovations and practices."

Moreover, this is in contrast to what Malaysia has already agreed to at this COP in the Proposed Programme of Work on Protected Areas, Goal 2.2, where they accepted the wording "consistent with national law and applicable international obligations".

Currently there are out of session negotiations underway between Malaysia, China, the European Union, and Canada amongst others to resolve this outstanding issue.



## Climate Change and Biodiversity

Joy Hyvarinen, Royal Society for the Protection of Birds

In January 2004, the journal *Nature* published the results of a major study, which suggest that climate change will result in ~18 - ~35% of species being committed to extinction by 2050 (*Thomas et al, Extinction Risk from Climate Change*). The dramatic results of the study have drawn worldwide attention.

In the meanwhile, the CBD is addressing climate change implications for biodiversity in terms of improved coordination with other international agreements and the need for case studies, in parallel with discussions about the target to achieve a significant reduction in the current rate of biodiversity loss by the year 2010. The point of the former is unclear (do discussions about climate change in the CBD add enough value to justify the negotiating time spent?), while current discussions of the latter target in a context of accelerating climate change and related acceleration of extinction rates may not have much meaning.

In the study published in *Nature* an international team assessed species extinction risks in sample regions in Europe, Australia, Mexico, Brazil and South Africa, which together cover approximately 20 % of the earth's terrestrial surface. Using mid-range climate change scenarios, the study estimated climate change committing ~24% of all animals and plants to extinction by 2050.

The authors note a number of uncertainties and the need for further research, but emphasise that the consistent conclusions across the different analyses that formed part of study indicate that climate change now constitutes *the* major threat to biodiversity in many, if not most regions of the world. The authors point to interactions among threats, including habitat loss and fragmentation and invasive alien species, as additional dangers.

The study reinforces the extreme urgency of reducing greenhouse gas emissions in order to slow climate change. It also has immediate implications for conservation efforts, including for planning and management of protected areas. Climate change strengthens the need for robust networks of protected areas and reinforces the need to safeguard the integrity of these areas. In addition, better integration of biodiversity in areas outside protected areas will become increasingly important.

## Multinational mining companies threaten Indonesian protected areas

Indonesian protected areas face a crisis as the mining industry aggressively lobbies the national government to overturn its environmental standards to allow 158 companies to mine the nation's protected areas. Indonesia's Forestry Act 41/1999 explicitly bans open pit mining in protected areas, however the government has been the subject of aggressive industry lobbying including threats of multi-billion dollar international arbitration, and a complete withdrawal of investment, if the foreign mining companies are not allowed access to the protected areas.

In Indonesia, the mining industry, without needing to enter protected areas, already has a vast area under leases covering 66,891,496 ha, equivalent to 35 percent of Indonesia's land area. Not satisfied, mining company lobbyists including Australian, Canadian and UK embassy staff have been relentlessly pressuring their Indonesian hosts to open up new protected areas for mining.

One such application is the BHP Billiton project to mine Gag Island, west of Papua, much of which enjoys protected area status. Furthermore, BHP Billiton plans to dump dangerous mine waste into the ocean, employing the controversial Submarine Tailings Disposal technique which is denounced in the new World Bank-sponsored Extractive Industries Review. No less an authority than UNESCO has petitioned the Indonesian government, identifying Gag's World Heritage potential because of its high biodiversity: 505 species of coral, which is an extraordinary 64% of all known coral species in the world, and 1,065 fish species. UNESCO warned the government of "possible environmental impacts of mining operations and related submarine tailing disposal on Gag Island in the Raja Empat Archipelago". Unfazed by such evidence BHP Billiton, a participant in the dialogue with IUCN <sup>1</sup>, refuses to drop the project, despite the resolution to acknowledge World Heritage Sites as "no-go" areas. (Source: Towards better practice in protected areas and Technology Transfer, 2004)

<sup>1</sup> During the World Summit on Sustainable Development held in Johannesburg in 2002, IUCN and the International Council of Mining and Metals (ICMM) agreed to a dialogue on improving the performance of the mining industry in relation to biodiversity conservation and protected areas. ICMM members, Rio Tinto, Newmont, Placer Dome, Freeport-McMoRan Copper & Gold, and BHP Billiton all currently have mine leases in protected areas, including protected forests and national parks and are engaged in lobbying governments to overturn protected areas regulations. At the 5<sup>th</sup> IUCN World Park Congress (2003) many people expressed their opposition to this dialogue and it was recommended among others to reiterate the recommendation 2.82 (Aman, 2000) which calls member States of IUCN to prohibit mining exploration and extraction in category I-IV protected areas and strict controls of those activities in categories V and VI protected areas.

### Got Questions? Ask C.B. Dee

Dear C.B. Dee:

On Friday night during the ABS contact group there were several perplexing events I need help understanding. Firstly, I wonder how, after spending at least an hour discussing item 5, which "Encourages Parties, Governments, international organizations and all relevant stakeholders to provide the ways and means, and to allow for sufficient time to facilitate **effective participation** of indigenous and local communities, in the negotiation and elaboration of an international regime", the Chair (Mr. Francois Pythoud of Switzerland) could actually **refuse the participation** of the indigenous caucus in the Friends of the Chair group he created. Secondly, is it normal for the Chair to be so rude to other delegates? During the meeting, the Chair actually reprimanded the Columbian delegate on her use of English, as if negotiating international law in another language is not hard enough... **A. Baffled Student of the CBD**

Dear ABS:

You have raised important questions. One thing you should know - is that "Full and Complete Participation" does not mean full and complete participation in United Nation meetings, it only means full and complete participation in rituals called "stakeholder consultations". Admittedly some government find it difficult to find the addresses of indigenous people and local communities, but when they do find it, you can be sure the invitation will be "in the mail." . As for the Chair's manners on Friday night: the issue at stake was whether governments would ensure the negotiations process would allow enough time for indigenous peoples to participate. The Chair may have decided to impose the decision on the megadiverse countries, so that they would feel what it is like if your participation is not considered timely.

**Dr. C.B. Dee**

# High Tech farming: security for whom?

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Last week the Malaysian Prime Minister opened the country's first large-scale integrated modern agriculture project. In an area of 3,459 hectares 20 companies related with livestock breeding, aquaculture, vegetable and fruit farming are investing in a massive commercial farming project. The project, located in Air Hitam and Kluang, was based on a master plan drawn up by the Royal Agriculture College in the United Kingdom.

According to the PM: "High technology is not only for the manufacture sector. Very little is said about hi-tech agriculture, which is possible through the use of biotechnology". He goes on to argue that traditional farmers will only enhance their living standards if they change their mindset and accept modern farming methods that promise high yields. He is convinced that to remain competitive with other food-producing countries in the region, Malaysia had no choice but to switch to hi-tech farming, with an emphasis on biotechnology. Perhaps the PM needs to review some excerpts from *Why Sustainable Agriculture?* appearing in the Malaysian *Third World Resurgence* magazine (No 161/162 Jan/Feb 04) and the report *A GM-Free Sustainable World* by The Independent Science Panel (ISP):

## Why Sustainable Agriculture?

### **1. Higher productivity and yields, especially in the Third World**

Some 8.98 million of farmers have adopted sustainable agriculture practices on 28.92 million hectares in Asia, Latin America and Africa. Reliable data from 89 projects show higher productivity and yields: 50-100% increase in yield for rainfed crops, 5-10% for irrigated crops. Long term studies in industrialized countries show yields for organic comparable to conventional agriculture, and sometimes higher.

### **2. Better soils**

Sustainable agriculture practices tend to reduce soil erosion, as well as improve soil physical structure and water-holding capacity. Soil fertility is maintained or increased by various sustainable agriculture practices.

### **3. Reduced pesticides and no increase in pests**

Organic farming prohibits routine pesticides application. Pest control is achievable without pesticides. Other benefits of avoiding pesticides arise from utilizing the complex inter-relationships between species and ecosystems.

### **4. Supporting biodiversity and using diversity**

Sustainable agriculture promotes agricultural biodiversity that is crucial for food security and rural livelihoods. Biodiverse systems are more productive than monocultures.

### **5. Ameliorating climate change by reducing direct and indirect energy use**

Organic agriculture uses energy much more efficiently and greatly reduces CO<sub>2</sub> emissions compared with conventional agriculture, both with respect to direct energy consumption in fuel and oil and indirect consumption in synthetic fertilizers and pesticides. Sustainable agriculture restores organic soil matter content, increasing carbon sequestration below ground, thereby building an important carbon sink.

### **6. Improved food security and benefits to local communities**

A review of sustainable agriculture in developing countries showed that average food production per household increased by 1.71 tones per year (up 73%) for 4.4 million farmers on 3.58 million hectares, bringing food security and health benefits to local communities.

### **7. Better food quality for health**

Organic food is safer, as organic farming prohibits routine pesticide and herbicide use, so harmful chemical residues are rarely found.

## Why GM Free ?

### **1. GM crops failed to deliver promised benefits**

The consistent finding from independent research and on farm surveys since 1999 is that genetically modified (GM) crops have failed to deliver the promised benefits of significantly increasing yields or reducing pesticide use. GM crops have cost the United States (US) an estimated \$ 12 billion in farm subsidies, lost sales and product recalls due to transgenic contamination. Massive failures in insect-resistant Bt cotton of up to 100% were reported in India.

### **2. GM crops posing escalating problems on the farm**

The instability of transgenic lines has plagued the industry from the beginning and this may be responsible for a string of major crop failures. Bt biopesticide traits are simultaneously threatening to create superweeds and Bt-resistant pests.

### **3. Extensive transgenic contamination unavoidable**

Extensive transgenic contamination has occurred in maize landraces growing in remote regions in Mexico despite an official moratorium on GMOs that has been in place since 1998. High levels of contamination have since been found in Canada. Contamination is generally acknowledged yet to be unavoidable, hence can be no co-existence of transgenic and non-transgenic crops.

### **4. GM foods raises serious safety concerns**

There have been very few credible studies on GM food safety. Nevertheless, the available findings already give cause for concern. In the still only systematic investigation on GM food ever carried out in the world "growth factor-like" effects were found in the stomach and small intestine of young rats that were not fully accounted for by the transgenic product, and were hence attributable to the transgenic process or the transgenic construct and may hence be general to all GM food.

### **5. Dangerous gene products are incorporated into crops**

Bt proteins, incorporated into 25% of all transgenic crops worldwide have been found harmful to a range of non-target insects. Some of them are also potent immunogens and allergens.

### **6. Genetic engineering creates super-viruses**

By far the most insidious dangers of genetic engineering are inherent to the process itself which greatly enhances the scope and probability of horizontal gene transfer and recombination, the main route to create viruses and bacteria that causes disease epidemics. Newer techniques such as the DNA shuffling are allowing geneticists to create, in a matter of minutes in the laboratory, millions of recombinant viruses that have never existed in billions of years of evolution.

### **Focus on Pollination: Biodiversity supports Sustainable Agriculture, and vice versa**

The pollination services provided by biodiversity are as important of an agricultural input as fertilizers and pest control. Good pollination coverage may increase yields by up to 40%. Honeybees are often managed for pollination, but they are not the best pollinators- other wild bees, flies, birds and bats are more important for many crops. Monocrops leave no room for pollinators to nest and thrive on-farm; pesticides are as lethal for pollinators as for pests. Smaller, diverse fields with hedgerows and adjacent natural areas, and minimizing agricultural chemicals are measures that are good for pollinators, good for productivity, and good for biodiversity. These measures are receiving a good focus, within the International Pollinators Initiative, coordinated by the United Nations Food and Agriculture Organisation.

# The Precautionary Principle, Made Simple

by Peter T. Saunders, Professor of Applied Mathematics,  
King's College, London.

(The following are excerpts from a talk given at an Independent Science Panel (ISP) briefing at the Greater London Assembly, 19 January, 2004. We thought it might be a good idea to remind delegates what the precautionary principle is about)

The precautionary principle is a principle, not a statute, so there's no canonical statement, but as a definition most people would accept the so-called Wingspread statement:

**When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically. In this context the proponent of an activity, rather than the public, should bear the burden of proof.**

That all sounds reasonable enough, and it is. There have, however, been many attacks on the precautionary principle, many of them, not surprisingly, from people and organisations that stand to lose from it. The most common criticism is that the principle is anti-scientific, whereas, as we can see from the definitions, it is based on science. It doesn't come into play until there is scientific evidence of danger, and it generally requires that more science be carried out to resolve the issue one way or the other.

We're told that it's vacuous because it doesn't lead to definite decisions. It's too weak to bother with because it does nothing that standard risk assessment doesn't do. Others tell us that it is so strong that it would stop all progress in its tracks. We're told it's merely a cover for protectionism, which is a charge laid against all forms of regulation by those who find them inconvenient, and we're told the issues are better dealt with by the courts, when in fact the precautionary principle ought to be applied in the courts – it's not an alternative.

The precautionary principle does not lead directly to decisions because it is not an algorithm for taking decisions. **It's about the burden of proof.** In the criminal court, the defendant does not have to prove he is innocent. It is for the prosecution to prove he is guilty. They do not, of course, have to prove it in the sense of a mathematical theorem. The jury are to convict if they are convinced, not absolutely, which is pretty much impossible, but "beyond reasonable doubt." The judge will instruct them about the burden of proof, but it is still for the jury to weigh up the evidence and decide.

In the same way, applying the precautionary principle puts the onus on the proponent to prove that new technology is safe. But this has to be done beyond reasonable doubt, not in some unattainable absolute sense, and society or its representatives still have to weigh up the evidence and decide. And the burden of proof is on the proponents of new technology for the same reason it is on the prosecution in a criminal court: it's because the consequences of being wrong in one direction are so much greater than in the other.

For example, asbestos was first mined in Canada in 1879. By 1898, Lucy Deane, one of the first Women Inspector of Factories in the UK reported that not only was it hazardous to those who worked with it, but that it was worse than other kinds of dust because the particles are sharp.

In 1917, despite more evidence from the UK and France, and experiments on rats, the Factory Department found there was insufficient evidence to call for action. Yet in the very next year, North American insurance companies were refusing to cover asbestos workers because of the dangers. Over the next 50 years, the evidence accumulated that asbestos is dangerous not only to those in the industry but also to their relatives, to people living close to asbestos factories, and to people in buildings where asbestos is used. Yet it wasn't until 1998, the centenary of Lucy Deane's report, that the UK finally banned its use altogether.

Notice that throughout this whole story, the authorities were applying what we might call the *antiprecautionary principle*. A new product must be considered to be safe unless society can prove that it is not. That's why it took a century to get rid of asbestos, why it has taken so long for there to be effective action against tobacco, and why the World Trade Organisation is backing the Americans' attempts to force BST beef more or less literally down our throats.

Opponents of the precautionary principle often argue that it costs money to apply. So it often does, though they generally over-estimate the amount, chiefly by assuming that there is no substitute. It generally turns out that we can find substitutes if we set our minds to it, as we certainly have with asbestos. Health and safety generally do cost, but not taking those measures will cost us even more. No one will ever know the price we have paid for our refusal to apply the precautionary principle in the case of asbestos. But we can get an indication of the magnitude of the cost from an analysis by the Dutch Ministry of Health and Social Security. They estimated that if asbestos had been banned in the Netherlands in 1965 when the mesothelioma evidence had been widely accepted, instead of in 1993, the country would have saved 34,000 victims and £18 billion in building and compensation costs. That's just for one rather small country and assuming action was taken well after the precautionary principle would have demanded it, but it indicates the vast scale of the problem.

In summary:

- The precautionary principle is not an algorithm for taking decisions, but a statement that the burden of proof lies with the innovator, not the rest of society.
- It requires more sound science, not less, because an innovator must provide solid evidence of safety, not vague assurances.
- It is neither so weak as to be vacuous, nor so strong that it would halt progress. It is not an alternative to legal proceedings; it should be a part of them.
- The cost is often overestimated because alternatives may exist or can be developed if resources are allocated for the purpose, moreover:
- The cost of putting things right afterwards can be orders of magnitude greater.