

## Observations by an Observer

*Christine von Weizsäcker, Ecoropa*

### Old Bells Ringing...

I sat in the Conference Centre in Buenos Aires in 1996 for the negotiations on Art. 8j at COP3. So, a lot of what I heard during the past week rings old bells:

- recognizing the link between 8j and 10c, 17.2 and 18.4 is still discussed and questioned,
- the interrelationship with the (in 1996) ongoing activities of the UN Commission on Human Rights and (in 2007) The Declaration on the Rights of Indigenous Peoples and, in addition, the Convention 169 of the International Labour Organisation is still highly contentious,
- the status of CBD in relationship to the Commission on Sustainable Development, WIPO, World Bank, FAO, UNESCO, WTO is still weak and/or controversial,
- discussions still get easily stuck at the early stage of the "elaboration of concepts of key terms" (which was the mandate for the workshop considering the need for a Working Group on 8j),
- countries still are undecided how they should respond to the fact that "issues related to traditional knowledge go beyond the scope of the Convention,
- and, when in doubt, always go for case studies which have a double effect: increase in knowledge and ...postponement of decisions.

### ***Today's ECO***

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### A Cultural, Political and Diplomatic Leap by Developing Countries

I do remember the difficulties many developing countries had in Buenos Aires to address Art. 8j at all, including the difficulty they had in facing indigenous peoples and local communities in the conference room. In the decision you only find the "need for dialogue", for "consultation" and "sincere appreciation". This was the utter limit of what could be achieved then. Now things have changed, changed dramatically. Some will say it is not yet enough and they are absolutely right. But many developing countries are beginning a brisk walk down the right road.

Developing countries signed the Declaration on the Rights of Indigenous Peoples. Developing Countries are engaged in developing sui-generis systems for traditional knowledge. They accept Free Prior Informed Consent of indigenous peoples and local communities, and that means they accept them as rights-holders. And they see "genetic resources and associated traditional knowledge" and "traditional knowledge and associated genetic resources" as intrinsically linked and want this reflected in the International Regime on Access and Benefit-Sharing. And they are going for a legally-binding regime because the protection of the rights of the poor and powerless cannot depend on voluntary guidelines. They cannot use monetary persuasion; they need the rule of law, locally, nationally and internationally. Developing countries have reached an effective cooperation in the CBD negotiation on these matters; the Africa Group, Like-Minded Group and GRULAG form a very potent team.

Some issues still required clarification: e.g. the certificate of origin/source/legal provenance. Such a certificate is a compliance mechanism that should serve and provide legal protection for providers and users of traditional knowledge and genetic resources. Providers are better served if they are able to trace the origin and source in research projects and patent applications in order to ensure compliance. Another yet unresolved issue: large monocultures of agrofuels. They massively threaten the very existence of indigenous and local communities, including their livelihoods, life-styles, cultures, traditions, languages, knowledge, innovations and practices. They threaten conservation and many studies question their positive contribution to the reduction of greenhouse gas emission. Brazil, a major actor in the alliance of the Like-minded Group of Megadiverse Countries is a key promoter of agrofuels and is still adamant against the inclusion of climate change response activities for consideration at COP9. How will other developing countries position themselves? ...***continued on pg. 4***

# WG8J Moves Forward on Indicators

*Joji Carino and Maurice Malanes – Tebtebba*

One reason to be happy about the fifth meeting of the Working Group 8j of the Convention on Biological Diversity is the decision to move forward on indicators on the status of traditional knowledge, innovations and practices.

The Working Group on Article 8(j) and Related Provisions agreed to recommend that COP9 takes note of the table of indicators proposed by the International Expert Seminar on Indicators Relevant for Indigenous Peoples, the Convention on Biological Diversity and the Millennium Development Goals organized by the IIFB Working Group on Indicators.

Parties, Governments, and relevant organizations are also invited to submit information on experiences and lessons learned in the design and testing of indicators related to the full and effective participation of indigenous and local communities in CBD implementation (CBD Strategic Plan, Goal 4, Target 4.3) and on the status of traditional knowledge, innovations and practices (Targets 9.1 and 9.2 of the 2010 Biodiversity Target).

It would be interesting to see data on

- Number of indigenous and local community representatives participating in official meetings of the Convention, disaggregated by region and country;
- Number of partnerships with and initiatives of indigenous and local

communities in implementation of programs of the Convention at national, regional and international levels; and

- Finances spent to support effective participation of indigenous and local communities in the implementation of the Convention at all levels.

Indigenous Peoples also want qualitative and quantitative information, among others on:

- Status and trends in the practice of traditional occupations;
- Number of governments legally recognizing customary law, institutions and practices;
- Number of Parties with national legislation, policies and measures to recognize land rights and customary sustainable use;
- Status and trends in land-use patterns in the traditional territories of indigenous and local communities;
- Budgets to support indigenous and local communities' plans and strategies for land and resource management, food security and health;
- Demographic trends.

Statistics and information on the status of indigenous peoples is currently lacking in many countries, and even less may be available on traditional knowledge. So big challenges remain in terms of assessing data availability, methodological approaches, and

coordinating organizations to collect such information.

These proposed indicators emerged after a series of preparatory regional and thematic workshops on indicators, culminating in an international expert seminar relevant to indigenous peoples, the CBD and the MDGs, held March 5-9, 2007 in Banaue, Philippines.

The Spanish government's Agencia Española de Cooperación Internacional (AECI), the Royal Ministry of Foreign Affairs of Norway, and the Swedish Biodiversity Programme (SwedBio) funded the initiative on indicators. The International Expert Seminar was also sponsored by the Protected Areas and Wildlife Bureau of the Department of Environment and Natural Resources of the Philippines.

The entire process is a good example of concrete results arising from collaborative efforts between COP, parties, interested organizations and indigenous and local communities.

The downside is that the main progress towards the 2010 Biodiversity Target appears to be the adoption of indicators, rather than the significant reduction of biodiversity loss and traditional knowledge.

But with the adoption of indicators, at least progress can begin to be measured.

## When is a biodiversity impact not one?

*Sandy Gauntlett, Global Forest Coalition*

Sitting in sessions earlier this week regarding the composite report on potential threats to traditional knowledge it would appear that some delegations do not know about past commitments of the Convention. There has been much discussion of the recommendation from the advisory body that the impacts on traditional knowledge of both climate change and climate change mitigation measures be recognized and researched. Many

wanted the reference to climate mitigation measures removed and argued either

(1) That it was not the business of the CBD to interfere with the workings of the climate convention. This is in fact not accurate. By a decision of the COP a Joint liaison Group between the UNFCCC, the UNCCD and the UNCBD was formed in 2001, specifically to increase the liaison work between the three UN bodies to better

address biodiversity impacts that were seen as cross cutting across the mandates of the three bodies.

(2) That the recommendations from the working group should focus on biodiversity impacts as that is the objective of the convention, and thus the reference to climate mitigation measures should be removed. The first part of this argument I totally agree with. It is in fact one of the

# Underlying Causes for Paralysis

Le`a Malia Kanehe

As Europeans entered the eastern part of Turtle Island, the Indigenous nations soon realized that their cultures and lifeways were so different from that of the Europeans, therefore, it was essential that a relationship be established based on mutual respect. The Haudenosaunee proposed a treaty of peace, respect and peaceful co-existence, known as the Kas-wen-tha, or Two Row Wampum Treaty. The Treaty, which was a guarantee that both societies would live side by side, without infringing on the other's sovereignty, is written not on paper but beaded in a belt. The belt was made with two parallel rows of purple wampum on a bed of white beads. The white was meant to symbolize the purity of the agreement. The two separate rows of purple beads, were made to symbolize and encompass the spirits of Haudenosaunee and non-Haudenosaunee people and ancestors. Between the two rows of purple beads, three rows of white beads, were placed. These were made to stand for the friendship, peace and respect between the two nations. It is said, that the two rows of purple beads symbolize two nations of people in separate vessels travelling down the river, parallel from each other. The Indigenous peoples are in their canoes, symbolizing their culture, laws, traditions, customs and other lifeways. The non-Native people are said to be in their own ships, symbolizing their culture, their laws, their traditions, their customs and their lifeways. It is said that, each nation shall stay in their own vessels, and travel the river side by side. Further, it is said, that neither nation will try to steer the vessel of the other, or interfere or impede the travel of the other.(1)

Parties have left Indigenous peoples and local communities wondering what measures they will take to make sure their boat does not ram our canoe. We were operating under the understanding that the tasks that the Working Group would accomplish in its programme of work would be measures to address the underlying cause for the decline of traditional knowledge. However, at this point, it is difficult to see what tangible action and output the Working Group will make at COP9 or any time soon for that matter. What would be the purpose of spending nearly six years of work on the composite report on the status and trends of TK and then scrapping it or hiding it on an obscure website? Furthermore, it is unacceptable that Parties have shown no commitment to adopting an ethical code of conduct; nor a *sui generis* system for the protection of traditional knowledge at the international level, as long as it is complementary to the regime. Parties have also stated no commitment to respect existing *sui generis* systems that protect traditional knowledge, which are part of Indigenous peoples' customary law. Parties have no commitment to developing or carrying out a plan of action for measures to support the retention of traditional knowledge and to address the underlying causes for the decline of traditional knowledge. Parties have made no commitment to commencing on the remaining tasks of the programme of work (7, 10, 12, 15). In fact, some Party proposals have wanted to scrap those tasks all together and suggest the future work of the Working Group on Article 8(j) should be limited to providing "views" on traditional knowledge aspects of an international regime on access and benefit sharing in order to collaborate in the elaboration and negotiation of the proposed ABS regime. To be frank, there is a real danger that the Working Group is on the verge of being swallowed up by the Working Group on ABS. There can be no mistake that this is a tactic by the ship to run our canoe aground.

(1)Information from Degiyagoh Resources, [http://www.degiyagoh.net/guswenta\\_two\\_row.htm](http://www.degiyagoh.net/guswenta_two_row.htm).

## Biodiversity Impacts Continued from pg. 2

objectives of the convention to address biodiversity impacts. The point of disagreement comes with what is considered to be a biodiversity impact.

While there are many potential climate mitigation measures, there is no doubting large scale monocultural commercial plantation production approaches are one of the pre-dominant measures being discussed.

There is also no doubting that there are biodiversity impacts of already existing monocultural plantations, many of which exist in countries with relatively good and government funded environmental impact assessment measures. In New Zealand (as an example of a country with a highly developed programme of

environmental legislation and management) there are acknowledged invasive species and environmental management problems associated with introduced species and large scale monocultural production areas.

The control of wildings associated with large-scale introduced species plantations is becoming an increasing problem for managers of plantation production areas. Now that these plantation production areas are largely under private ownership and management (including tribal) there is no longer the guarantee of quality control in terms of wilding management that existed under a regime managed and owned by the State. Please note this is not a criticism of the rights or wrongs of private ownership of plantation production areas but rather an

acknowledgement of the work done by Government departments that used to manage the State plantations.

Where plantation production areas replace indigenous forests there is a direct loss of indigenous biodiversity. That the loss of forest biodiversity results in a corresponding loss of bird and animal biodiversity is also irrefutable. When the problems associated with plantation production areas are magnified by the potential profit to be made from the agrofuel boom, the potential impact on biodiversity and related traditional knowledge becomes clearer.

The Parties have the responsibility of ensuring that whatever mechanisms are envisioned by other Conventions do not impact on their area of responsibility under the biodiversity Convention.

## **Observations from pg. 1**

Finally, countries that want to speed up the establishment of the Declaration as international customary law could consider, amongst other measures, to use the whole Declaration or at least its Article 31 in the description of their "ordre public" concerning Art. 27 of TRIPs.

### **Courage, Competence and Cooperation of Indigenous Peoples and Local Communities**

Representatives of indigenous peoples from all regions and local communities are here, well prepared, speaking in an experienced ecosystem of diverse voices. After the adoption of the Declaration in September their hopes and impacts are high. The chances for the recognition of their customary law and their rights have increased and also their chances to gain acceptable terms for real and effective participation in all matters affecting their traditional knowledge, innovations and practices. A symbol: the Sub-Working-Groups have indigenous co-chairs who really chair.

Governments, indigenous peoples and local communities alike may want to consider that benefit-sharing does not, by necessity, mean that you get a small percentage of a license fee. There are benefits linked to the process of hundreds of years of observation, analysis, study, application, review, and last but not least, cultural, legal and spiritual embedding of medical and agricultural applications. This is called traditional knowledge and its vast and reliable benefits have been shared within the community. Research and development based on these areas of long-lasting medical and agricultural successes starts from an elevated level. The bounty of "sharing" comes from countries rich in diversity of cultures, peoples and ecosystems. Selling the resources and the knowledge for small licence fees to others now, instead of developing them on your own terms later, may not give the best benefit to the peoples, communities and countries of origin. Holders of traditional knowledge may want to pay particular attention to "benefit-timing" and "benefit-

developing and/or co-developing" in the context of benefit-sharing.

### **The spanner in the works of multilateral environmental agreements: Australia**

In the meantime every negotiator involved in multilateral environmental agreements can tell you how their process was held up by Australia. They may not know, however, that this is not only true for their specific agreement or subject but for all of them. One could shrug one's shoulders and get on with the work at hand if we were not stuck with the consensus rule. The choice may be either to allow Australia to make a cynical farce out of CBD meetings or to revisit the Rules of Procedure on Voting, i.e. 40.1. It is difficult not to get angry. But it helps to think about all the wonderful people of Australia who, at some point, may manage to get a different mandate for the Australian delegation. Will the head of delegation continue to enjoy his task when he has to stop playing the "lonely ranger"?

### **Inactivated by political complexity: Canada and New Zealand**

Canada and New Zealand incessantly point to the specific conditions in their countries and the complexity of the issues involved which hinder them to agree on more than studies and voluntary guidelines. Specificity, diversity and complexity are at the very core of the Convention of Biological Diversity. In the context of conservation – where conditions are also specific, complex and diverse – this does not seem to be such a problem for Canada and New Zealand. Complexity and diversity of cultures and peoples did not seem to hinder them in joining the World Trade Organisation. If the argument is not conclusive, why do these countries delay the process? Do they have to wait for land claims and other court cases to be decided? Are the parts of the administration dealing with the CBD hindered by complexity and complications caused by other ministries?

### **Politely noncommittal: Europe**

The European Community and its Member States always take the trouble to arrive with a carefully prepared consolidated position. They

already have engaged in an intensive and long-lasting bridge-building consultation before arriving at the negotiations. They arrive, in most cases with a luke-warm consensus position in the mood for further bridge-building, but not really for initiating progress in the negotiations. The Europeans also tend to hide behind the broad industrialised-country diplomatic backs of Australia, Canada and New Zealand. We have heard them say during the Biosafety Negotiations: "We have to get the Americans into the boat." Now, they are saying: "We have to get the Australians into the boat." This position is really puzzling: How can you get a person into a boat who hinders the very construction of that boat? Europeans are playing for time. One of their negotiators said: "We are only identifying specific issues for in depth reflection", which is what the workshop discussing the need for a WG on 8j was supposed to do in 1996! Time is playing against the holders of traditional knowledge and associated genetic resources. Documentation increases and appropriation and misappropriation opportunities for users from industrialized countries increase.

### **The Mute Powers: Japan and USA**

Japan will in all probability host COP 10 and the conclusion of the International Regime on Access and Benefit-Sharing. What does Japan's silence mean? Do polite hosts in Japan keep silent? Or does Japan refuse to make its not so very supportive position known widely? The US is a non-party, the powerful non-party that always manages to find a party who will speak for their interests. They certainly do want access and, so far, manage to get access, without bothering with difficult and time-consuming rights issues of knowledge holders. The interplay between scientific innovation and the market forces seems to be central and unquestionable in that country. Whoever tries to interfere with it with a rights-based approach and passes national legislation without the support of an international legally-binding regime will have to pay heavy fines at the WTO for establishing barriers to trade.