

## **Ramsar rebuttal on importance of the Wise Use principle**

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Sir,

The Journal of Environmental Law published, in Volume 12, No 1 (2000), a paper entitled "Wise use of wetlands under the Ramsar Convention: a challenge for meaningful implementation of international law", by David Farrier and Linda Tucker.

I was very interested in its content, but I found that while the analysis of the Convention is correct in many aspects, in many others it portrays quite an erroneous, or at least ill informed, view of the work of the treaty at present.

Consequently, and in view of the fact that the authors use the application of the Convention in Australia to illustrate their analysis, I have asked an Australian expert and former Deputy Secretary General of the Convention, Dr. Bill Phillips, to prepare a review of the above-mentioned paper.

The review has been posted in our Web site, so that readers of your Journal, and in particular government officials, could benefit from our own informed analysis of the current situation within the Convention in the area of "wise use" and its implementation on the ground. The review can be accessed at <http://ramsar.org/caxref:5093>.

Yours sincerely,

**Delmar Blasco**  
**Secretary General**

cc: Environmental Law Centre, Bonn, Germany

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## A review of the paper:

"Wise use of wetlands under the Ramsar Convention: A challenge for meaningful implementation of international law", by David Farrier and Linda Tucker, Journal of Environmental Law, Vol 12, No. 1, Oxford University Press, 2000.

– by Bill Phillips \*

This recently published paper examines the evolution and various aspects of the Wise Use principle under the Ramsar Convention, and uses Australia as a case study to draw the conclusion "*that in an Australian domestic context ratification of the Biodiversity Convention has rendered the Ramsar Convention largely redundant.*"

This provocative statement comes in the final section of the paper and is drawn from the argument which runs throughout the entire text, that the Ramsar Convention is segmented in its approach and therefore "*inherently limited*", whereas, the authors argue, the Convention on Biological Diversity is not.

Before considering the basis for the claim that the Ramsar Convention is segmented in its approach, it is important to point out that through no fault of the authors, their paper suffers from not having the benefit of more recent developments, especially those accruing from Ramsar's 7<sup>th</sup> Conference of Parties. It also pre-dates some key recent happenings in Australia. I wonder if they would draw different conclusions today given these more recent events. I will highlight some of these below.

As indicated above, the paper repeatedly states that the Ramsar Convention has a segmented approach. The fundamental premise for this argument is seen to be the text of Article 3.1 of the Convention adopted in 1971: "*The Contracting Parties shall formulate and implement their planning so as to promote the conservation of the wetlands included in the List [of Wetlands of International Importance], and as far as possible the wise use of wetlands in their territory.*"

The authors contend that, when Article 3.1 distinguishes between "*the conservation of the wetlands included in the List*" and "*the wise use of wetlands in their territory*", it represents a different expectation or obligation in each case. The authors also contend that Ramsar's preoccupation with managing wetlands rather than "*the broader catchments of which they are an intimate part*", and the emphasis upon waterfowl, "*has exacerbated the segmentation*". This would seem to suggest that the authors' concerns about Ramsar's "*segmented approach*" would be allayed by the evolution of thinking within the Convention

(which they themselves document) which now sees Parties to the Convention openly, and increasingly, insisting that the wise use provisions of the Convention apply to all wetlands regardless of whether or not they are Ramsar sites.

But instead they draw the curious conclusion that "*Wise use is marching out of the wetlands into the catchment and is also threatening to undermine the icon status of listed wetlands by subjecting them to the same management imperatives as unlisted wetlands.*" They go on to say that "*These imperatives clearly contemplate a more intensive level of human use than the limited recreational uses traditionally tolerated in protected areas.*" Thus it is difficult to know what it is they are actually arguing for – is it to retain a global system of icon sites that are 'preserved', or is it to see the Ramsar Convention move away from what they describe as a segmented approach and to promote wise use more broadly, including within Ramsar sites ?

Let's take each of the above points in turn and examine them more closely. First, the text of Article 3.1. I suspect that thirty years ago those drafting the final text did see a distinction between the icon Ramsar sites and the broader wise use of wetlands. That was where the current thinking was at that time. Environmentalists now have a well-established system of usage categories for protected areas as set out by the World Conservation Union (IUCN), which are used widely around the world. These range from strict protection for highly fragile areas through to multiple use regimes. In most of the developing world, and especially in Africa in my experience, the term 'protected area' means an area where sustainable use is practiced. It is only in developed countries like Australia that the people can afford the luxury of 'preserving' areas strictly. Today we also have the concept of Biosphere Reserves under UNESCO's Man and the Biosphere Programme, which recognizes that zonation to regulate uses in and around 'protected areas' is a more realistic model than the old preservationist view. Ramsar has moved along this same evolutionary pathway and at its 7<sup>th</sup> Conference of Parties declared that "*the act of designating (listing) under the Convention a wetland as internationally important is an appropriate first step along a conservation and sustainable use pathway, the endpoint of which is achieving the long-term wise (sustainable) use of the site*" (Annex to Resolution VII.11).

Second, there is the contention that Ramsar is segmented because of its apparent preoccupation with managing wetlands rather than "*the broader catchments of which they are an intimate part*". Again, there can be little doubt that in 1971 those adopting the final text considered management at the site level the appropriate concept to promote. Now, thirty years later we have seen the folly of trying to manage wetlands as 'islands' in the landscape, and if we were negotiating the text of the Convention today it would look very different.

As the authors acknowledge, there has been recognition by the Ramsar Convention along the path from 1971 to today that wetlands have to be managed as integrated parts of land and water systems. We shouldn't ignore the fact, however, that Article 5 of the Convention relating to international cooperation does recognize this very issue of a whole systems approach when it states "*the Contracting Parties shall consult with each other about implementing obligations arising from the Convention especially in the case of a wetland extending over the territories of more than one Contracting Party or where a water system is shared by Contracting Parties.*" Note also here that the authors claim in the Introduction to their paper that the Ramsar Convention has "*two essential rungs*", Ramsar sites and wise use. Not so, I'm afraid, as the Parties adopted *Guidelines for international cooperation under the Ramsar Convention* at the 7<sup>th</sup> Conference and in so doing strongly declared that this was the Convention's third main pillar.

The shift in Ramsar's thinking to promote more whole-systems management approaches is most strongly reflected in the adoption at Ramsar's 7<sup>th</sup> Conference of *Guidelines for integrating wetland conservation and wise use into river basin management* (Resolution VII.18). The Convention's Scientific and Technical Review Panel is also at present developing similar guidelines in relation to wetlands and integrated coastal zone management that will be adopted at the 8<sup>th</sup> Conference in 2002.

I turn now to Ramsar's putative preoccupation with waterfowl. Again, no one disputes that in 1971 one of the driving forces for the Convention was to secure protection for the important habitats of waterfowl. The official title of the Convention still carries the "*especially as waterfowl habitat*" tag, although the Convention today is commonly referred to as simply the 'Convention on Wetlands'. This shortening comes not from laziness; rather, it is a very strong signal that the Convention now recognizes wetlands for ALL of their functions, values and benefits. Waterfowl habitat is considered to be one of those functions, but those who have been watching the growth of the List of Wetlands of International Importance will have seen the Convention urging Parties to designate under-represented wetland types such as corals, seagrass communities, peatlands, intertidal zones, and others. In fact, it is interesting to examine the breakdown of sites globally (as of 1 February 2001) against the criteria which qualified them as Wetlands of International Importance. It reads like this:

Total number of Ramsar sites = 1050

Criterion 1 – representative, rare or unique wetland type – 849 sites

Criterion 2 – conservation of vulnerable, threatened, endangered species – 660 sites

Criterion 3 - conservation of species/populations within a bioregion – 768 sites

Criterion 4 – support for species at critical stage of life cycle – 499 sites

Criterion 5 – support for 20,000 of more waterbirds – 418 sites

Criterion 6 – support for 1% or more of the population of a species of waterbird – 476 sites

Criterion 7 – conservation of fish species – 77 sites

Criterion 8 – important habitats for fish species – 114 sites

Note – these add up to more than the total number of sites because most sites qualify under more than one criteria.

These numbers speak for themselves, as does the decision by the Convention to adopt the fish criteria (7 and 8 above) at the 6<sup>th</sup> Conference in 1996 in Australia (!!). Perhaps more significant is the fact that at the 7<sup>th</sup> Conference of Parties, Resolution VII.11 adopted the *Strategic framework and guidelines for the future development of the List of Wetlands of International Importance*. This provides carefully crafted guidance to assist Parties to ensure that they have "coherent and comprehensive" national networks of Ramsar sites. The adopted 'Vision for the Ramsar List' embodies the mood of the Convention in this area today – which is clearly not a preoccupation with waterfowl habitats. The Vision reads "To develop and maintain an international network of wetlands which are important for the conservation of global biological diversity and for sustaining human life through the ecological and hydrological functions they perform."

The paper also goes to great pains to examine and interpret the definitions of "wise use" and "ecological character" – although in the latter case the one discussed has been superseded by the definition adopted at the 7<sup>th</sup> Conference in 1999. The analysis of these terms is very detailed and gets hung up on defining terms within the respective definitions. For example, what is meant by "maintenance of natural properties", naturalness, and "impairment or imbalance in any of those processes and functions", etc.? All of this seems designed to show that the definition of wise use is basically flawed because "maintaining the 'natural properties of ecosystems' is fundamentally at odds with the broad thrust behind the idea of wise use." The authors conclude that the notion of seeking to maintain the natural properties of a wetland means the Convention is seeking to have Parties manage for "naturalness", and that in today's world this is unrealistic due to human impacts. I think they've missed the point, and certainly confused the terms "maintenance of natural properties" and "naturalness". Let's remind ourselves of Ramsar's definitions of wise use, sustainable utilization, and natural properties (adopted by the 4<sup>th</sup> Conference of the Parties, 1987):

*"The wise use of wetlands is their sustainable utilization for the benefits of humankind in a way compatible with the maintenance of the natural properties of the ecosystem."*

Sustainable utilization is defined as "human use of a wetland so that it may yield the greatest continuous benefit to present generations while maintaining its potential to meet

*the needs and aspirations of future generations.*" Natural properties of the ecosystem are defined as *"those physical, biological or chemical components, such as soil, water, plants, animals and nutrients, and the interactions between them"*.

These definitions do not, in my view, obligate any Party to manage its wetlands for "naturalness". They recognize that for a large percentage of the world's population wetlands are significant, if not vital, providers of food and water, which also generate income to assist the alleviation of poverty. These definitions say - be wise, don't over-utilize these resources, so that they will be here in the future, continuing to provide the important functions, services and benefits that they yield today. These functions, services and benefits are a product of the natural properties of the ecosystem.

I turn now to the situation in Australia, which the paper reviews in some detail before drawing the conclusion cited at the outset of this review, as well as the conclusion that *"Wise use' as an objective for wetland management across the landscape has received little attention in Australia"*.

I would not disagree that in Australia there has been a preoccupation with Ramsar site designations, and a tendency on the part of Governments, both federal and state/territory, to look little beyond this as a measure of meeting their obligations under the Convention. But there are exceptions, and also signs of change, as I will explain.

As the authors point out, the *Wetlands Policy of the Commonwealth Government of Australia* adopted in 1997 takes account of more than simply the obligation to designate sites. Australia's state and territory governments are also putting in place a suite of wetland policies and strategies. At last count these were in effect in Western Australia, the Northern Territory, Queensland, New South Wales, and Victoria. Tasmania has a draft strategy, South Australia is preparing a draft, and that leaves only the Australian Capital Territory still to take action. The authors criticize a number of these policies and strategies for omitting significant reference to Ramsar, and to wise use in particular. Again, this is true for the older of these but most certainly not the case for the most recent, that of Tasmania. Examination of these policies and strategies shows an interesting trend in our changing perceptions of the Ramsar Convention in Australia. Tasmania's is clearly the new benchmark, and it is to be hoped that that of South Australia, coming soon, will build upon it again. The authors have also overlooked the *Floodplain Wetlands Management Strategy* of the Murray-Darling Basin Commission, adopted in 1998 under the Natural Resources Management Strategy of that body. This multi-jurisdictional strategy provides an important management framework for about 1/6<sup>th</sup> of the Australian land mass and has the wise use principle strongly built into it.

But there are also other actions being taken in Australia which warrant recognition in this context. Under the Ramsar 'pillar' of international cooperation, the Federal Government has been sponsoring for several years now the non-governmental organization Wetlands International (an official international partner of the Ramsar Convention) to promote the application of the wise use principle among the Pacific Island countries. It has also been a major force behind the development of the East-Asian Australasian flyway initiative to protect migratory waterbirds and their habitats. A major part of this project is about training the local populations living around the critical wetlands of east Asia (both north and south) about using their wetlands sustainably.

The authors have also failed to reflect the significant growth in community participation in wetlands management, restoration and rehabilitation which has occurred in Australia, most notably over the past five years. Courtesy of the Federal Government's Natural Heritage Trust in particular, tens of millions of dollars have been invested in caring for wetlands during this period. While Ramsar cannot take all the credit for this, the investment in community-led wetland management was reinforced in the *Wetlands Policy of the Commonwealth Government of Australia*, which is a clear statement of intention to meet the full obligations of the Ramsar Convention.

It is also notable that in the year 2000 five farming families surrounding the Gwydir wetland in central western New South Wales joined together to request the Government to designate the significant areas of their properties as a Wetland of International Importance. In addition, one private landholder near the existing Macquarie Marshes Ramsar site has also had his part of the wetland system included within the site. There are strong signals that within the next three years they will be joined by several other private landholders in other parts of the country – some of them big business interests – to seek Ramsar listing for their wetlands. This is happening because of Ramsar's wise use principle.

Finally then, coming back to the statement that "*in an Australian domestic context ratification of the Biodiversity Convention has rendered the Ramsar Convention largely redundant.*" As I have indicated above, this conclusion is predicated on the conclusion of the authors that the Ramsar Convention has a segmented approach. I have already considered this contention, and dispute it for the reasons given above.

The authors also justify their conclusions by noting that the Convention on Biological Diversity (CBD) has been crafted in a way which seeks to keep pace with the modern thinking of conservation biologists who now oppose a focus on 'special areas' and 'special species'. Having attended two of CBD's Conferences of the Parties and two meetings of its subsidiary scientific and technical body – I beg to differ. Segmentation (if that's what it is!)

is alive and well in CBD, as evidenced by the ecosystem theme approach it takes – marine and coastal, inland waters, drylands, forests, mountains, etc. And while it may be convenient to read the text of CBD to convince oneself that it is taking a more integrated approach, the practice remains that biodiversity conservation practitioners are continuing to focus on special species and special places. Of course, there is a well-founded logic to this also – give priority to those species and places which are most threatened.

The authors also make mention of the Joint Work Plan between CBD and the Ramsar Convention. It is a shame that at the time they wrote, the first of these Plans was not yet in place. At present the second Joint Work Plan between the conventions is in effect – and is widely applauded as the model for inter-convention cooperation. At the heart of this cooperation is a recognition that Ramsar is a more specialized convention, with many years' experience of building consensus, understanding, and support. It is also a convention which, because of its strong roots in the NGO sector, has enjoyed, and continues to enjoy, very strong support from four global NGOs (BirdLife International, IUCN–the World Conservation Union, WWF, and Wetlands International) plus thousands more at the regional and national levels. No other convention has this distinct advantage. The CBD-Ramsar Joint Work Plan is also a recognition that the global biodiversity conservation agenda needs as many tools as possible all working together if we are see results.

To conclude, I fear the authors have fallen into the trap of basing their paper too much upon theory and not enough upon reality. As stated several times herein, Ramsar's 7<sup>th</sup> Conference was indeed a landmark in terms of policy evolution and the adoption of practical 'tools' for implementation. Witness as evidence of this the Ramsar Wise Use 'toolkit' released in January 2000 with its nine volumes covering policy development, legal and institutional reforms, integration of wetlands into river basin management, community and stakeholder empowerment, communication, education and public awareness, site management, strategic development of the Ramsar List of Wetlands of International Importance, and international cooperation.

I would also refer the authors to the Ramsar "Report Cards" on progress by Parties in their implementation of the Convention, as summarized from the National Reports submitted by Governments for the 7<sup>th</sup> Meeting of the Conference of the Parties in the Report of the Secretary General and the seven 'regional reviews of implementation'. These show strong progress against many primary indicators and, yes, some weaknesses to be given greater attention in the future. Importantly, however, these reports demonstrate how Ramsar is making a difference on the ground where it matters. The picture painted by the paper under review here is thankfully much different from what is really happening in the field. Ramsar

is not a convention bogged down in international legal argument and definitions – it is a practical, hands-on action-based convention. Significantly now, it has joined forces with CBD and both efforts are stronger for its having done so.



Dr. **Bill Phillips** is an Australian expert who first started working on the challenge of implementing the Ramsar Convention at the national level in Australia in 1989. He was a member of the Convention's Wise Use Working Group, represented Australia on the Ramsar Standing Committee for several years, attended four meetings of the Conference of the Parties, and occupied the position of Deputy Secretary General of the Convention from 1997-2000. While in the latter position he was responsible for developing and negotiating the first and second Joint Work Plans between the Ramsar Convention and the Convention on Biological Diversity, and after returning to Australia in early 2000, was head of the Australian delegation to CBD's 4<sup>th</sup> Meeting of the Conference of the Parties (Nairobi, Kenya, May 2000). He now operates as a freelance consultant - Mainstream Environmental Consulting Pty Ltd - and can be contacted at [bill.phillips@bigpond.com](mailto:bill.phillips@bigpond.com) .

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**Note: For readers seeking to compensate for the deficiencies of the Farrier-Tucker article reviewed above, a superior study of the Ramsar Convention in the context of international law appeared in the *Netherlands International Law Review* (1995), by M. J. Bowman, and is [reprinted elsewhere on this Web site](#).**