

## **Human Rights Roundtable**

### **Why the Human Rights and Environmental Movements Must Be Allies Not Adversaries**

**Speakers: Michael Meacher MP and David Wolfe**

**Chair: Professor Conor Gearty**

[Inaudible – difficulty with microphone] My name is Conor Gearty, I'm the Director of the Centre for the Study of Human Rights, I am also chairing tonight and I am also speaking tonight because I did a PhD in Environmental Law and it has never been used [laughter], never even published, I couldn't find it today, I couldn't find it when I was doing some research for my speech, I've lost it! But I do remember what it was about and I am going to use some of this for the first time ever, it's probably submitted to the RAE for all I know but I'll come at the very end with a few very, very, as had already been indicated, trivial remarks. The star billing to address this issue is shared by our two guests and Michael here, Michael Meacher, was educated at New College Oxford but much more importantly at the London School of Economics and he tells me that he was briefly teaching here, is that right, it was actually here Michael before he was elected to Parliament and that was some time ago, so he's been in Parliament for some time but very, very importantly for our purposes he was Minister of State for the Environment from May 1997, the election of the Labour Government, right through to very recently, June 2003 and those of us who've followed the environmental issues over the last 8 or 9 years in this country have known the extent to which Michael Meacher has made such a dramatic contribution in that area, so we are very interested to hear what Michael has to say on the subject and he is going to be followed by David Wolfe. I have to declare David is a colleague of mine at Matrix Chambers, he has an expertise in environmental law, so he is going to speak about the environment from the perspective of the activist practitioner. We have at Matrix Chambers a blurb which puts in bold type what solicitors say about barristers and what they say of David includes things like he is the King of unfortunately education law, not environmental law but he is certainly thought of very highly in environmental law, one of the best advocates I've seen and then somebody else, clearly well practiced in deceit, almost magical. So David has practiced in environmental law and has a strong feel for the subject. So these are our two plus me panel speakers and then we'll have a question and answer session at the end and then we'll have our drinks as usual in the location yet to be disclosed although as frequent visitors to the Centre will know by now where they usually are. Can we start therefore with a round of applause for Michael Meacher. [Applause]

## Michael Meacher

Well I have a very loud voice and I probably don't even need the microphone but can everyone hear including the gallery? Yes.

Well I seem to recall that there is a place where people say what they feel about politicians too, it is not only what solicitors feel about barristers and it is called the media and we read about it every day. I just hope David that they are more complimentary about the barristers in Matrix Chambers than they are about politicians in the media. I also think this is rather unusual to have a chairman who has decided he wants to speak, which of course is his prerogative but who has decided to do it at the end which makes me slightly nervous since I well know in politics that the person who has the last word is in a very strong position and I do indeed stand to be corrected. I must confess that I was a bit taken aback when I was first asked to debate this question of why the environmental and human rights movements should be allies rather than adversaries because I have to say I had always taken the view that they were very close allies and it had never occurred to me actually that they were anything else. Indeed I perhaps would take the view that they are almost two sides of the same coin. However, having said that I can see that there is perhaps one special case and which it may indeed be perceived that there is a conflict and that is if property rights are perceived as falling under the general heading of human rights. Now of course I realise, I am not an environmental lawyer, but I do realise of course that property rights are encapsulated in the Convention on Human Rights, nevertheless of course property rights have to be protected, I mean no one is going to deny that, of course they shouldn't be arbitrarily expropriated or damaged and of course there should be redress, but it is I must say it always seemed to me perverse to regard property rights as an instance of fundamental human rights unless they are actually integral to the basic needs and survival of human beings and I would concede at once that for example a peasant farmer in a developing country who has a subsistence holding and is then arbitrarily deprived of it by companies, whether indigenous or from the West coming in and deciding that they want to put a lake there they want to drive a pipeline through his land and of course that is a breach of his human rights because it takes away his basic subsistence, unless of course he is provided with a satisfactory alternative. So that I think is quite separate, at least in my mind, from the aggressive pursuit of property rights in a capitalist democracy such as ours and in that case, which is perhaps the normal case in the north or the western part of the world, then I would say that that is as relevant to other people's human rights as it is to the environment, in other words you have property rights on the other side to what is in fact a close mesh between the environment and human rights. This was charmingly portrayed to me, some of you may have seen it in a recent article by George Monbiot, thank God for George Monbiot in our society, who wrote an article in *The Guardian*, which I have here called 'They call themselves libertarians, I think that they are anti-social bastards' [laughter]. I'll come on to that in a second, he was referring to those who want to use their car and he, I won't go into this but he says an awful lot about this in the article, why the car is the symbol of exactly all that we are talking about, it is my property

and I want to do with it what I like, I want to do with it at any time I like and in any way I like and at whatever speed I like irrespective of other people's safety or indeed the environment and he quotes a number of examples, for example in the eyes of these people towing away a car albeit it, it may be parked in a place which is quite likely, could well cause an accident to other people, that is an infringement of my rights, or indeed, speed cameras, another of these things that they are particularly keen on, I jest, which they feel very passionate about, is an infringement of human rights, even though of course they clearly save the lives of many others. I'll give them one thing however that they have introduced a word to the English language which was new to me, which is quite evocative, namely the word 'petrosexual' which I think rather well illustrates their particular drive and commitment, symbolised perhaps above all by someone you may know and have seen on television called Jeremy Clarkson and Monbiot quotes him, in February of last year he suggested that speed cameras might be "filled with insulating foam that sets rock hard" and after the London bombings in July he observed that "many commuters are now switching to bicycles, can I offer five handy hints to those setting out on a bike for the first time", I am only going to give you two, "one, do not cruise through red lights because if I'm coming the other way I will run you down for fun, two, do not pull up at junctions in front of a line of traffic because if I'm behind you I will set off at normal speed and you will be crushed under my wheels". Anyway you get the idea, well apart from the absurdities of this extreme case where in fact of course property demands are every bit as hostile to genuine human rights as they are to the environment, I think there is actually a wider argument, but that argument is much more subtle and it is basically around a very fundamental question I think, who owns the environment? Is it nobody, in which case presumably it can be rapaciously exploited and polluted with impunity regardless of the effects which they may have on the lives and the livelihoods of those who depend on forests and waterways, on cultivated land as is the case of course for billions of poor people. That I suppose is a view taken by President Bush and rather too many I think western multinational corporations. Or is it owned by everybody, do we have such a thing as collective human rights in which case how is the environment, environmental protection to be achieved in the absence of world governance, in the absence of having a world environment court, which I would see as matching or preferably overriding the WTO, and in the absence of any recognition of the destruction of human rights generated by unfettered free trade wiping out local markets in developing countries and tipping millions of subsistence farmers into poverty, something that happens most days, weeks, months of every year. Now I think that's a very fundamental question, it is not just an academic or theoretical question, I think it is an incredibly practical one, so what is the answer? Well I think that there has as yet been no convincing answer. I suppose that the Kyoto Protocol, which is now ratified, it is now live, Britain is one the countries which has legal obligations under it, is perhaps the bravest and most comprehensive international intervention yet attempted to protect both the environment and human rights of millions of people, hundreds of millions of people whose livelihoods, indeed their lives, actually depend on protection against the threat of climate change. Indeed, something which some of you may know but plenty of people do not, it is true in the worst outrage since the Second World War, namely the destruction of the twin

towers, 3,000 people approximately died, but every year silently and without any dissemination of the information 150,000 people or more die as a result of the direct consequences of climate change and indeed I always like quoting the Pentagon because it is always such a really good source to have on one's side, it is the Pentagon which says that climate change is now a much greater threat to humanity than international terrorism. But of course the whole problem about Kyoto is that it is flawed, it is flawed in being incomplete. I was one of those who had the task of trying to negotiate with about 150, 170 other countries, and I can tell you that it is quite a task and to a degree it is a remarkable success but the fact is of course the United States hasn't signed up, China hasn't signed up, India hasn't signed up and until they do it is not going to be as effective as it has got to be. Why have they not signed up, because they prefer to put economic growth in advance of both the protection of the environment and the proclamation of human rights of those who may be ruined by worldwide unrestrained industrialisation, something which is absolutely rampant now across the southern part of the world as well as the north or by the reckless over-exploitation of natural resources.

Now that leads on to a ... a wider question still and I am going to conclude with this. Can the assertion of human rights, that is in the sense I am talking about, the dependence of all of us, every single one of us, 6½ billion now on this planet, on one single biosphere, is our habitat and if that habitat is destroyed our survival is very much at risk. But, can the assertion of that collective human rights be used to protect the ecological boundaries of what our earth can tolerate, that I think is the central question. Well I don't know the answer to that although I've probably said much in my political life to try and bring one about but I do think there are two interesting proposals that have recently emerged about how this might be done which I want to put before you. The first is that developing countries should seek legal redress from the other countries that is our country, the industrialised countries causing global warming and now you might say well ok, I see the point but what's the real evidence. Well for example of course we could get far, far more evidence I have no doubt. Australian and Canadian research recently found, and you may remember this, that the trouble drought in the Sahel and in the Ethiopian area of Central Africa in the mid 70s and mid 80s was now almost certainly caused by industrial and power generation pollution, that is the mix of sulphur with ammonium, nitrogen and other chemicals and gases which grossly distorted and altered the weather conditions in Central Africa. Now you might say in terms of that damage and the magnitude of the disaster that occurred then are indeed grounds for redress. Of course there are difficulties and as I say I am not an environmental lawyer but the main one is of course pinning down, pinpointing the specific main causes of the pollution, but I do believe that there should be consideration given to a test case. We should assemble that evidence with a group of international lawyers as to whether the US or the EU could be brought to book because we certainly caused it. Secondly, consider the whole concept of global debt and the 46 most heavily indebted poorest countries, the same poorest countries that we did so well for at Gleneagles, I say that with a little bit of sarcasm but with a certain degree of pride as well, but nothing like enough. They are required to make amends to us, the rich country creditors who lent them

money in the first place over the last three to four decades and no-one challenges that ok, they are very poor, we lent them money and under our economic system if debtors do not repay the whole financial system collapses so they have to repay, we may give them a bit of debt remission but they are expected to repay. Ok, why then on the same principles should we not have a concept of carbon debt and by that I mean the industrialised countries who have become rich, not only on the basis of economic exploitation, a lot of people will have heard that, but also on the basis of what some people call a dirty industrialisation, that is an industrialisation which made us rich but which generated pollution in the atmosphere, in water and across land which is now generating climate change, almost all the scientists in the world agree this, with increasing ferocity and destructiveness of which, and it need not have been like this but it so happens it is like this, the developing countries who are in no sense responsible for this, and they were not the beneficiaries, but they are the ones who are the main victims, more than 90% of the effects of climate change as it happened have been visited on the developing countries, not on those who cause it. We all know about Hurricane Katrina, yeah, Hurricane Katrina did fearful damage but I tell you the only reason you have ever heard of it is because it hit America. If it had hit Bangladesh or Africa you would never have heard about it and up until now that is where it has been. A 1,000 people died in New Orleans, a 100,000 died in Bangladesh in a cyclone about 15 years ago. So why shouldn't there be an assessment, internationally verified, perhaps through the UN, of the cumulative climate change damage inflicted on developing countries with a requirement that the rich northern industrialised countries pay compensation, is that such a totally unreasonable proposition? I don't think it is. Instead of global debt making the poor south pay billions of pounds year after year to the rich north how about carbon debt which actually might reverse that flow of income back towards the south. This is not such an anomalous theory, I have to say that's not, not only not for the lawyers but also for the economists and I speak <<>> the London School of Economics. The idea that economic externalities should be factored into the pricing system is not a new idea, it is an idea which is gaining increasing currency in many ways and I think it is a very defensible and just idea and I therefore conclude that environmental protection and human rights in my view so far from being in conflict actually work in locked steps with each other and I think it is no exaggeration to say that the survival of the human species may well depend on our capacity to ensure the protection of the biosphere from climate change, which is currently destroying it, and we may only be able to do that if we can assert and inform the protection of the biosphere as the most fundamental human rights of us all. Thank you. [Applause]

### **Professor Conor Gearty**

Thank you very much Michael for getting us off to such a good start. David, either here or at the desk, as you wish, David Wolfe.

## David Wolfe

Conor was kind enough to describe me as an activist practitioner, I would rather describe myself as a jobbing environmental lawyer but also something of a campaigner against big business and political interests which often seem to undervalue environmental protection and sometimes I am lucky enough in my professional life to find those two strands coming together.

I am also very much not a human rights lawyer. But I am a lawyer who turns to human rights as a tool to assist in the other areas of work, in this case environmental law.

Before I describe my experience, let me just illustrate a typical environmental case in the world in which I work: It is a judicial review typically of a regulator's decision to grant permission for something potentially harmful or polluting. So that might be a local planning authority or the Environment Agency or a government minister. And it might be a waste disposal site or a nuclear power station or a new port or any such industrial polluting, potentially harmful activity. And the kind of cases I get involved in are the kind of cases where I act for communities or individuals who want to challenge those authorisations. They want to say "that's unlawful" (because that's the vehicle of judicial review), in order to secure their environmental rights. And what's in play: sometimes it is the natural world, flora, fauna, landscape, sometimes it is individual health, safety, risk, all those kinds of factors. But I think even the people who bring the cases about landscape or flora and fauna would say that those are parts of our collective environmental rights.

And in protecting those rights, what we've traditionally done is look to environmental legislation, some of it European, some of it domestic: vast, vast screeds of it – you can go to the environmental law encyclopaedia and it runs to about five volumes. There are incredibly detailed statutes and regulations which protect our environment and a whole raft of environmental decision makers that are suppose to do the same as well.

So, on the face of it there is a lot there: a lot of protections. Just let me give you one example of the kinds of detail of protection that we now have.

Across Europe there is now an Air Pollution Directive which came into force last year which sets very specific thresholds on the levels of what are called PM10s – small dust particles – in the atmosphere. There are numbers which apply across Europe. You can't exceed a particular level of PM10 in any given location on more than 35 days in any one year, or that's a breach of European law. As it happens, that level has been breached quite frequently in London in the last year and not much is being done about it, so immediately we see that the existing statutory environmental protection, even those that are very, very focused, very, very broadly consensual that have been negotiated across Europe with big business interests in mind are not providing us with sufficient protection..

What I then want to do is explore the extent to which human rights instruments, particularly the European Convention as introduced through the Human Rights Act, have been able to plug some of those gaps – to plug any gaps that exist in our existing framework – even though it is so complicated and detailed. Because what I then want to talk about is whether, if they haven't done very well, there is actually scope and need, as in my mind there is, for more fundamental environmental rights. So, rather than doing what we do at the moment and having to imply environmental rights into property rights, or into rights to respect for family life, or whatever it may be, actually having some substantive environmental rights codified into our system. And what I want to do is to mention how some of those issues interplay. And (picking up on what Michael talked about extensively) comment on the way in which big business and commercial interests are over-represented and over-valued in our current legal system and in the environmental protections that exist.

Just let me take an example of how those sort of things hit the news headlines. Even on Monday this week, the lead item on New at Ten was about a change in the government's proposals for dealing with waste: less waste disposal by landfill, more incineration. That is a very classic environmental question, waste disposal and its consequences – lots of “rights” issues flowing from it around pollution, and so on, from waste disposal. And it is big news. And yet there is no movement (and I find this surprising) to turn that big news item, and those sorts of big news issues, into a call for proper environmental rights in our country.

I next want to talk about two very specific examples to illustrate the limited way in which European Convention protection has helped. Because I don't want to say it has made no difference at all. That would be wrong. I want to talk about two examples of how it has made a very limited benefit.

One is in relation to the mobile phone network, the other is in relation to the energy industry – two very disparate industries, big business, huge commercial pressures in play.

Before I do that let me just explain something which is trite to environmental lawyers (and indeed in many other fields of law): What we are talking about here are two sorts of protections: procedural protections and substantive protections.

Of course, the person on the ground who has got the nuclear power station to be built near their house (which is now on our long term horizon) doesn't much care whether what they are seeking to vindicate are procedural rights or substantive rights, they just want it stopped, or at least made as safe as possible. But nevertheless, as lawyers, we have to understand the difference between procedural rights and the substantive rights.

The procedural rights we are talking about here – in environmental law – are rights to information, the right to an assessment, the right to a proper decision maker who

takes into account all those relevant factors and vindicates your rights in the striking of a balance. That's what I mean by procedural rights.

Substantive rights: It's about the threshold, what is the limit of acceptable noise in the area around Heathrow? quite how much dust can you have in the atmosphere? or is this big project a good idea? Substantive rights.

And what I am going to explain to you is how human rights law has made a little bit of difference in extending our environmental procedural rights but almost no difference in extending our environmental substantive rights.

In terms of our environmental procedural rights as they exist in our existing law: There is a whole raft of them. Some of them come from Europe: those of you who study these things might have heard of the Environmental Impact Assessment Directive. It provides a requirement that the developer of a major project has to do an assessment and predictions around the impact of that project; he has to publish that assessment in a very specific kind of document that's made available for the public; the public can look at it, make their comments and the decision maker has to take those into account. A very crisp procedural right, but one that only applies to the very biggest sorts of projects. And even, then the assessment is done by the developer and it often reads more like a piece of advocacy than an act of truly independent assessment; contrast the United States where there is a freestanding industry of environmental assessments which prides itself on its independence. I don't think the equivalent sector here could really hold its head up in the same way and make that claim. So there is a lot of scope, even within a European-wide environmental impact assessment regime, for improving access to that kind of information.

But there are yet further huge barriers to the environmental claimant – whether they be an NGO or individual – vindicating their procedural rights.

Just let me mention a couple of those barriers. The first is the “costs rule” in the High Court. Those of you who know how judicial reviews work know that if you bring a claim and you lose you have to pay – or at least might have to pay – the other side's costs. And it is not unusual for somebody bringing a claim, particularly if they are an NGO (say bringing a claim against a pollution permit) to be told “if you fight us and lose we will bill you £100,000”. Well that is a huge disincentive to vindicating your environmental rights.

Now that the Aarhus Convention is coming into force here we should have a right to (amongst other things) an effective court system at a reasonable cost. But what the government here is saying is “ah well a reasonable cost means the £150 it costs to launch the judicial review”, quietly forgetting the massive disincentive that comes from the £100,000 you might have to pay if you fight and lose. So there is a huge inequality of arms which is still going unaddressed notwithstanding our European Union protections and the Aarhus Convention.

Let me talk about another barrier: If a big business – a developer – applies for planning permission from the local planning authority and they don't get it, they can appeal. What's more they can appeal in what we call a "merits appeal". So they can argue the whole thing again before the Secretary of State, before an Inspector. They get two bites of the cherry. If on the other hand, the planning authority grants the planning permission, local objectors have no equivalent right of appeal. All they can do is argue that the local planning authority acted unlawfully. That's not nearly as powerful as a "third party right of appeal" (which is what it would be called in the jargon) – in other words: the resident's right to go to a tribunal and say that permit shouldn't have been granted, not just that permit was unlawful.

There were attempts in the early days of the Human Rights Act to redress some of those things. So, for example, there were arguments to say that Article 6 – the provision which guarantee a right to an independent tribunal in the determination of your "civil rights" – required the creation of a merits tribunal – a "third party right of appeal". But unfortunately those arguments failed.

So there was a vehicle for filling in the gaps in our existing system, for creating a more balanced environmental protection regime. But unfortunately that vehicle – framed as it is and interpreted as it has been by our judges – hasn't provided the necessary protections.

That's all rather gloomy.

Let me be a little bit more positive and talk about two examples of instances where the Human Rights Act and the European Convention have, or might in the second case, provide us with enhanced protection over and above those which come from our basic statutory framework.

The first concerns a case which was decided last year in a Court of Appeal, the second concerns a case which is in the Court of Appeal tomorrow.

The first one I want to talk about concerns mobile phone masts. Britain is awash with mobile phone masts. We all want mobile phones. We all want good coverage. But what are the consequences?

Ironically a choice that was made by our government very early in the rolling out of the mobile phone networks has made things a lot worse for us: it was decided in the UK rather than all the operators sharing a single network of masts, there should be a "market place". So each of the operating companies had to produce their own network of masts. So Vodafone have to have one for every area, T-Mobile has to have one for every area, Orange has to have one for every area, and so on. So we have five times as many masts as we need and actually lesser coverage than they do in the rest of Europe because in the rest of Europe they have near 100% coverage because the companies share. So we made it worse before we start.

Why does that matter? It matters because there are concerns not just about the landscape impact (which is an environmental issue) but also because of the potential health concerns arising from mobile phone masts. There is a huge controversy about whether mobile phone masts and the emissions from them are harmful to health. Lots of science one way, lots of science the other way. You might well say the scientific jury is completely out. Now the government a few years ago decided to try and put that all to bed by setting up a commission under an eminent scientist called Sir William Stewart who was tasked with investigating the arguments about the science of mobile phone masts and answering this question once and for all. The cynic in me says he was privately expected to come back with a whitewash answer: "don't worry it is all safe". Because of course that's what the industry wanted to hear and that's what government wanted to hear. Except that, alarmingly for all, of us and particularly for big business and government I suspect, he came back and said no such thing. What he said is there is no positive evidence of harm from a mobile phone mast but we can't preclude the possibility and therefore, so he said, we should take a precautionary approach. He manifested that in all sorts of different ways – precautionary meaning lets not commit ourselves to various things until the science is clearer, let's rule out the possibility of harm (because apart from anything else he said the harm might come cumulatively over more years than we've now got experience of). So one of the things he advocated was that, before you place a mobile phone mast anywhere near a school, consult with the school and, if the school objects, don't place the mast within 400 metres (roughly) of the school: a precautionary approach. But when the government received his report they adopted a few bits of it. But when it came to the bits about masts near schools, instead of saying "don't place it near the school", they said consult with the school but then place it there if you want to anyway. So, although you will see a reference to schools in both the Stewart Report and in the government's response to it, the actual response was very different.

Now I think it's no coincidence here that the mobile phone companies are some with the biggest around – Vodafone is one of the biggest companies in Europe an £80 billion company – huge clout within the political marketplace. So immediately we see how their power has been manifested in that process.

It has also been manifested in another way – and this is more directly relevant to the human rights points I am going to make in a second – which is about the process by which the mobile phone companies have to rollout their networks. What I am sure you know is that to build anything, a shed, a conservatory – let alone anything big or industrial – you need planning permission. There is a regime within the planning system which says anything very small – like a shed or a small fence or a velux window in your roof – is deemed to have planning permission. It gets it because it is recognised to be a small and innocuous and an un concerning activity. But for all bigger things, you need to get to the local planning authority – your local council – and "say can I have permission?". You have to provide them with lots of information, they have to consult. There is a process. It is time consuming. It can be expensive.

And the mobile phone industry didn't like it. So they negotiated a special deal which – in effect – applies only the mobile phone companies: a fast track regime through the planning system. You will see where this is going in a second. And, in that fast track regime, all they have to do – rather than apply for planning permission and waiting for the local authority to answer one way or another and then appealing if necessary – all they do is notify the local planning authority and if, after 56 days, the local planning authority hasn't said “stop”, then they are deemed to have planning permission. So it is a special fast track process which the telecommunications industry has negotiated uniquely . I suspect there are lots of industries that would love to have the same thing, but somehow this lot have got an extra way through the process. Of course it relies on the local planning authority doing its bit.

In steps Dr Christine Nunn. Christine Nunn is a GP. She lives in a small village outside Leeds. She suffers from migraine as do the rest of her family. They think it is a hereditary thing. And those migraines are made worse by, amongst other things, using mobile phones; and she thinks they will be worse by having a mobile phone mast in the vicinity of her home. Her bad luck was that she moved to this village precisely to be away from the sorts of urban industrial things which had triggered her migraines in the past only to then discover T-Mobile wanted to put a mobile phone mast effectively at the bottom of her garden in full view of her conservatory. Forget the property value effect, lets talk about the health effect. She believes that that would have an adverse effect on her health. But all that T-Mobile had to do – under the fast track process I've described – is that they wrote to the local planning authority and said “we are proposing to do this”. The local planning authority had 56 days to say “no”. Christine Nunn sought to persuade them to say no, partly in relation to her health concern. She said “this will cause me health problems, please don't let it happen”. They agreed with her but they didn't send the piece of paper back within 56 days – it was 58 days – so T-Mobile (being a “concerned bunch” of people) said “tough”: 58 days is more than 56, we are putting the mast up. Up goes the mast. But Christine Nunn being a sort of feisty individual decided to take this to the High Court. She argued that this was a violation of her Article 6 rights. She said the decision to place this mobile phone mast at the bottom of my garden is a determination of my civil rights (amongst other things my rights to environment and health) and, because nobody has grappled with the merits of it in an substantive way, that's a violation of my Article 6 rights. She goes to the High Court. The High Court laughs at her and says “Article 6, you must be joking – it isn't a civil right”. She goes to the Court of Appeal. The Court of Appeal says “yes, it is a civil right”. Now not only was that a remarkable result because the Court of Appeal and the High Court had ducked the question over several years as to whether Article 6 applies to those kinds of environmental determinations, but here they were deciding that it was indeed a determination of her civil rights. And, also, that there had been no determination by an independent body. The planning authority could have been that body but, because it messed up the notice period, it hadn't given effect to her Article 6 rights. And therefore there had been a violation of her Article 6 rights. A win, to a limited extent. Unfortunately, what the court then went on to say was that “that doesn't mean that T-Mobile's permission is invalid or somehow unlawful”; what it means is that you

get compensation, a damages claim. So Christine Nunn can now claim Human Rights Act damages for the violation of her Article 6 rights caused by Leeds City Council's failure in effect to fill the form in and get it back within 56 days. That hasn't stopped the mobile phone mast, or saved her health. But what it has done is send a chill wind through local authorities. It has provided – through the Human Rights Act, and through Article 6 – a limited, very limited (and that's really my point) bolstering of the existing procedural rights. And what it has done is it has gone a little way to moderate the excesses of the way in which the mobile phone industry has been able to plough its way through all the existing regimes.

That's my first case study.

The second one concerns Article 2 of the European Convention – the protection of life. I need to tell you about a case in the European Court that concerned the environment and Article 2. It was a case in Turkey where people had been squatting on a landfill site and the landfill site wasn't properly regulated and methane built up and the landfill blew up and 26 people were killed. They went – or rather their surviving relatives went – ultimately to the European Court and argued that it was a violation of their Article 2 right to life. And what the European Court said – a couple of years ago now – was that Article 2 was in play. That was first of all interesting because Article 2 – the right to life – was now seen to be in play in relation to environmental issues (with these people now dead). Secondly interesting because the positive obligations under Article 2 were in play. In other words, Article 2 is not just about the States not actively killing you, it is also about the States putting in place positive measures to protect your life against foreseeable risk. And then thirdly explaining an obligation on the State to put in place a proper legislative regime that secures that positive right to protection of life, including therefore processes of assessment, of risk evaluation, and of publication of those risks. So, the ECHR was telling the State to put in place a system of regulation; not saying to the State “this is what it has to look like” but saying “this is the result of it”.

Now focus that then on our existing regime. I've already told you that there is a vast array of regulations, a vast array of law that protects our environmental rights. Perhaps you'd expect the greatest protection of all around risks of life and death. Funnily enough, however, the good citizens of Milford Haven haven't found that to be the case. They've found themselves to be the proposed location two new liquefied natural gas terminals. Let me tell you about liquefied natural gas. Liquefied natural gas comes from underground gas fields all over the world, typically near the sea. So taking it away in a ship seems a good way of transporting it around the world. And (this is where I'm touching back onto what Michael was saying a moment ago) there is then a fantastic Kyoto Protocol wheeze going on here because what you do is you pump the gas up in Norway or bits of Africa or indeed parts of Australia, you pump it up, you compress it and cool it to -160 °C (at which point it becomes a liquid) and you remove from it various pollutants; all of which means that when it is then later on allowed to warm up and turn back into a gas and burn, the CO<sub>2</sub> emissions are very low. Well, that's the CO<sub>2</sub> emissions at the point where you burn it. In the meantime,

you've expended a huge amount of energy, and created a huge amount of CO<sub>2</sub>, in compressing and cooling it and in removing the pollutants from it. But that takes place at the point of production. It is a brilliant wheeze for countries like the UK to import this fantastic source of energy – fantastic in one sense – which gives off low CO<sub>2</sub> emissions because the CO<sub>2</sub> emissions involved are taking place in other countries. A great wheeze. No wonder the UK is so keen on it. In steps Exxon Mobil: one of the world's biggest oil companies which wants to build (them and another company) wants to build a huge LNG terminal in Milford Haven. What happens here is huge container ships, each of which contain 250,000 tonnes of liquefied natural gas – that's a big ship – come across the world. And they come, so the proposals go, into Milford Haven harbour where they park up and they connect by pipes to the shore. The liquefied natural gas is then to be pumped ashore where it will be warmed up, turned back into gas (from the liquid) and go into our gas national grid. In other countries they have realised that this not a very smart thing to do near people so they are building offshore terminals – you build your terminal offshore and then you pipe the gas ashore – so, if there is a problem associated with a ship, it will happen somewhere out to sea. Not in the UK though, because there are huge political and commercial imperative around building in Milford Haven: there was an old oil terminal there, so it is said that it makes great sense to build on the old oil terminal. Also, as it happens, Exxon Mobil own the land already. Also, as it happens, it is very expensive to build offshore terminals. So, big political pressure coming from Whitehall and from the Welsh Assembly Government, huge commercial pressure coming from Exxon Mobil to do this in South Wales, in Milford Haven. The problem is that right bang next to this old oil terminal, and the site of this LNG terminal, 10,000 people live. Let's come back to the raft of environmental protection. There are lots of processes involved: lots of bodies involved in giving permission for this thing to take place, from local planning authorities to the Health and Safety Executive, to the harbour authority. All of them involved in assessing, evaluating, giving consent for this activity to go ahead. And here, in due course they all went ahead and gave permission for it But, and here comes the problem, the Health and Safety Executive had started off their assessment assessing not only the risks of a problem onshore, on the terminal, but also the risks associated with the offshore activities: the risks of bringing a huge pressurised gas canister into Milford Haven, turning it round in a narrow and crowded waterway, connecting up to the jetty and putting the gas off. Lots of scope you might think for things to go wrong in that process with potentially huge consequences. HSE started to do an assessment of those (which are being called the “marine risks”). In the course of that assessment they reached the conclusion that if there was a substantial leak from one of these ships in Milford Haven harbour a four mile wide cloud of ultimately explosive gas could develop. All it would need is a single spark and there would be a four mile wide explosion over Milford Haven, something akin to the size of a small nuclear bomb. But before they'd finished their assessment, in comes the letter, from the ODPM saying “stop this assessment” ... “this is not within your jurisdiction” ... “your jurisdiction stops at the quayside”. So the HSE never concluded their assessment. The planning authority didn't do an assessment because they took the view that this wasn't a matter for them: they took the view it was the harbour authority. But the harbour authority have

a huge commercial interest in this project going ahead (because it gets a fee every time a ship comes into the harbour) so perhaps you might think they are not so likely to say “close this terminal down” or “don't open it in the first place”. And they have also made it very clear that they see their role as controlling the ships in the harbour, not stopping them coming in the first place. There is certainly no suggestion that they might ever say “we've done a risk assessment and this thing shouldn't happen”. So the poor old citizens of Milford Haven have now got this facility being built on their doorstep, there having been no assessment of the risks associated with the marine operation at all; or – at least – there claimed to have been some assessments but they are being withheld from us for reasons of commercial confidentiality. So, not much comfort there in terms of what is actually being done.

So despite our very, very sophisticated – on the face of it – and complicated regimes of environmental protections, the regulators have simply failed to provide an assessment of a very obvious risk with very serious consequences if it materialises.

Bring on Article 2, bring on the Turkish landfill case. Article 2 – as I said – creates an obligation on the State to put in place regimes to assess risk and so on. So the argument in the Court of Appeal tomorrow is about whether Article 2 does indeed do that, and whether indeed there has been a violation in this case of Article 2. All I can say is watch this space. We wait to see what the Court of Appeal does with it.

So those are two examples of where – in procedural terms – the Human Rights Act and the European Convention appear to be providing us with some support. Not as much as we thought it might do in the first instance: we didn't get the third party right to appeal and so on, but at least some protection.

Unfortunately – and I know Conor's going to talk about this in much more detail in a minute – the same hasn't been true in relation to substantive rights. The right that says “that's too noisy” or “that's too polluting” or whatever.

The example of that, the classic example of that (and I think Connor's going to talk about this) is the Hatton case: the “night flights over Heathrow” case where the European Court said “Yes, we know your Article 8 rights – your right to family life, but here your right to sleep peacefully – is in play, but the decision as to whether these flights are too noisy (and therefore unacceptable in terms of the Article 8 rights) is not for the court: that's for the member state; that's for the UK to decide. It's for the UK to decide the balance between your right to sleep and the commercial and other imperatives associated with flights.

So the European Court and the European Convention on the Human Rights Act haven't delivered any real sense on those big substantive rights. There's been no equivalent to the benefits that come in relation procedural rights.

So, overall, we've got something out of this rights-based culture for our environmental protection. Something definitely beneficial. But I think there's a lot more scope for environmental rights.

And I think what we now need to do is to say that the time is right to talk about proper environmental rights in UK; not just to address the sorts of short-falls I'm talking about, but a whole raft of other things. Let's have in a framework which provides an ultimate long-stop against the interests of commerce, big business and the political pressures that flow from that.

Let me just give you a couple of examples of how that's worked in other countries. In the Spanish Constitution there's an environmental right: There's a right to enjoy "*an environment suitable for the development of the person*". The Portuguese Constitution says this: "*Everyone shall have the right to a healthy and ecologically balanced human environment and the duty to defend it*". And, in the South African Constitution, "*Everyone has the right to an environment that's not harmful to their health or well-being*".

In one international court case the judge said this: "*The protection of the environment is likewise a vital part of the contemporary human rights doctrine, it goes without saying that with numerous rights, such as the right to health and the right to life itself.*"

So there's plenty of scope in other countries' constitutions, and in international thinking, to develop proper substantive environmental rights within our system.

And I think now is the time to start having that discussion. We can talk about what the scope of them is, how they're framed. Questions like sustainability could come into play and so on. A very interesting discussion to be had.

I'll finish on this point: I don't know if any of you listen to *The Now Show* on Radio 4 on Saturday lunchtime? It's a comedy programme – a sort of *News Quiz* kind of comedy programme. One of the things they were joking about last Saturday was the possibility of Gordon Brown introducing a Constitution when he becomes Prime Minister. Now if that turned out to be more than a joke that would obviously be an ideal opportunity to start having some of the kinds of conversations that I've been talking about; to start talking about developing proper environmental rights.

I'll leave you with that thought.

[AUDIENCE APPLAUSE]

## Conor Gearty

Thank very much, David. I just want to talk for about five minutes or ten minutes about this title, because I'm going to make it sort of slightly overstated case that actually there is a problem here of practice and of theory between environmental and human rights.

I came to this during that [boring piece] that I talked about, because it involved me reading extensively about the last great period of environmental energy in this country, mid-19<sup>th</sup> century where the horrors of the environmental pollution of the day were being addressed by parliament in legislation like the Nuisance Removals acts, in the River Pollution Prevention Act 1876, Public Health Act 1875, [Alkaline] Inspectorate 1863. Really in the teeth of extreme objection by propertied and powerful entities, who deployed, not so much the language of human rights as the language of property rights with which to defend their interests against strong governmental regulations, and flash forward to something which was before parliament in Michael's first term I think, the what became the Control of Pollution Act 1974, which was a strong bill for its time and which was a response to a great explosion of interest in the environment which had culminated in the Stockholm Conference of 1972 and then again efforts to regulate the environment were being met with what was by now being articulated as human rights concern, judges masquerading as legislators in the Upper House ludicrously deferred to by former members of the House of Commons, rewarded with Upper House status as a consolation at the end of their careers, talking, allegedly knowingly, about this and that right, when what they meant were the rights of the powerful to resist change. That's the first point.

Second point, I wonder sometimes whether I was wrong to move out of environmental stuff and into what I do, because nobody on the platform yet has just taken a second to notice the enormity of what we are confronted with and there is a danger that we let it go slightly by default. You know, the UN intergovernmental panel on climate change, three assessment reports: 1990, 1995, 2001. The one in 2001 was bad enough and goodness knows what the one in 2007 will be like. But there was an initial interim assessment team meeting in Exeter, February last year, nearly a year ago now. People who were there were shocked by the degree of decline in the environment in the short period since 2001. They'd said four years before, for example, the UN people, that the Antarctic ice sheet was secure for maybe they thought 1000 years. Four years later they're saying there's a real possibility that it'll break up, [normal] sea levels rising 16ft – destroy the whole country, cities, not just in the Third World either, the developed world. Secondly, the acidification of the oceans from carbon dioxide actually now threatening the entire food chain. There's concern since then about the slowing down of the Gulf Stream, the melting of Himalayan glaciers, a report from an American think tank just yesterday, reported on BBC News if China and India were to consume as much as resources per capita as Japan in 2030 together they would require a full planet Earth to meet their needs. So if they achieve what Japan does now they use up all we

have, and of course there's the United States still by far the biggest consumer. All three as Michael reminded us, not in the Kyoto [of course].

Now, what does this say about human rights, the first two points? This is the third of my brief points. Firstly, I think David Wolfe is right, it's difficult to make human rights work for environmental rights, I want to explore why that is the case. David's made of course a good point about access to resources. The environmental rights people are usually on the out trying to get in, it's the people who destroy the environment that are in with the resources to keep those out, out. Now, secondly in this point, I don't want to argue about the need for human rights protection for the powerless, that is a given, the ways in which powerless people, Michael referred to it had their lives destroyed by governmental regulations, sometimes in the name of environmental development, sometimes more often, in the name of economic development. It goes without saying that [rights language] should work for them more than it does. I'm concerned about the point drawn from the 19<sup>th</sup> Century, we need radical action and dramatic action to address the environmental challenge. Dramatic action takes on the powerful, it takes on the corporate, it takes on the prosperous individuals. We do not perceive a problem between human rights and environmental protection because we have not yet begun to engage at the level we ought to engage to secure the kind of protection that the environment needs. Were we to do so we might find ourselves affected by the capacity of the powerful to deploy the language of rights and their protection, just a few examples. I'm not now necessarily taking a very dismal view about rights, I'm just serving a warning a route into my fourth point.

Property, well, we can, you know, there is the Jeremy Clarkson kind of point which is well made, the Telegraph had a front page item about how human rights mean you can't tow cars away, it's nonsense, absolute nonsense, of course it is. But what would happen for example if we decided we need to remove all the mobile phone masts? Well, then we'd hit the property rights. What would happen if we decided actually as a preliminary to a wholesale commitment to public transport that we would severely restrict car production and import of cars into this country and that we would renationalise the rail service? Well, we'd hit property entitlement problems then. So I'm saying that it is a measure of our relative blandness that allows us not to detect the contradictions that would emerge. Strong government taking on vested interests in an unequal society can find, if it's not careful language, reasons and rights used against it because corporate entities and business power deploy what language is available to them as a defensive mechanism. Those who might not believe this, think about the extent to which there are procedures which can work very well for people of whom we've heard from David, can be deployed by powerful people to destroy legislation. Progressive legislation on race relations, on sex discrimination snarled up for a while in the hands of a hostile judiciary, we have to be careful. Crimes rooted in absolute liability might run foul of challenges based on burdens of proof and so on.

There's a deeper point about human rights language. It is human rights, it's rooted in our species, is rooted in us, everything about us is about our flourishing, the civil and

political side is about *our* participating in society. The social and economic side is about *our* thriving, we can gloss over it but the reality is it's rooted in a very species-centred approach to this planet. The right to development similar, in other words there's two emphasis; there's an emphasis on the human, but there's also a strong emphasis on the here and now. Now you think about the exceptions to human rights and they give the game away. Michael talked about, and rightly, that fantastically interesting Pentagon Report, never mind the war on terror, they say, look around you. But the human rights framework has mechanisms to accommodate threats rooted in public emergencies, in this and that terrorist atrocity and so on, in what is needed, what is necessary in a democratic society. It has no equivalent language to accommodate dramatic exceptions that might be required for the protection of the globe, for what Michael referred to as the most important human right of all, the protection of the biosphere, the survival of the human species. How could we not be concerned about that and not only because 150,000 people alive today are dying every year because of global warming? Well, the human rights community need to be imaginative about how we integrate into this huge problem and I'm going to suggest a way in which perhaps we can and then I'll identify some practical things and then I'll stop.

Firstly, our subject is about protecting vulnerable...

[END OF SIDE]

... our subject is about giving voice to the voiceless.

Secondly, our reckless destruction of the planet today comes at a cost to those who must try to live here tomorrow. What we've got at the moment is oppression by a transient majority of those alive today, of huge numbers of people as yet unborn who must be given the same chances as we've had to live well. I'm not trying to run away from the human centre focus of human rights, but try and make it work. We need to empathise, not with people who are alive today who are voiceless, but people who will be alive tomorrow who are voiceless, whose life chances we're destroying.

Now you look at the preamble to the Universal Declaration on Human Rights. Where did that come from? "Disregard and contempt for human rights has resulted in 'barbarous acts which have outraged the conscious of mankind'" That's what the preamble says, "barbarous acts which have outraged the conscious of mankind". I would call the wilful destruction of our planet in the pursuit of short-term profit, summarised as the [Chaney] approach to human life, as a barbarous which outrages the conscious of mankind; and then the preamble went on, "It is essential if man is not to be compelled to have recourse as a last resort to rebellion that human rights should be protected by law." Who's going to represent the desires and wishes of those who in decades to come may curse the conduct of this particular generation with the same venom as we now curse those who's barbarous conduct gave rise to our discourse?

Now, the new approach. Well, if we think of ourselves as representers of the unborn, as yet not in the womb – a different form of unborn – you can actually take quite a radical approach to the subject.

Third thing. There is no environmental Bill of Rights, it's seems unbelievable we're not pushing hard at the United Nations for something with the same energy and determination as we have done in other fields, entrenching for future generations, not a guarantee of human enjoyment, but a guarantee of global survival. The UN should be doing an awful lot more, leading on, for example, carbon [deaths]. I think Michael's idea about a world environment court is a fantastic idea, which oversees the application of the environmental Bill of Rights, and which does trump international capitalists. An environmental Bill of Rights, which is devoted to sustainability and which sees our temporary ownership of the world in the form of a trusteeship.

Secondly, more close to home, imaginative lawyers like David. Let's give elements in the environment legal personality. Has it ever struck you as odd that if I fall over and a small part of my finger is damaged I can sue and recover damages from those whose negligence caused it, but if a river is destroyed by a corporate entity it is fined, if it is fined at all, under the criminal system, a somewhat derisory sum of money? Why not have a public official under the model of the persons who are acting as guardians for children and mentally unwell, why not have such persons sue on behalf of the destroyed environment? So that if there is a pollution spill and it can be shown to have been caused by negligence, the river sues, or the trees that have been destroyed sue, through the agency of a trustee and of course then insurance would cover it and we'd pay for it but there'll be proper money flowing back to environmental recovery.

Three, David's touched on this very well and I need say very little other than to explain his reference to Hatton, imaginative use of current rights instruments. By imaginative I might mean legally reckless, legally reckless, the right to respect the privacy in Article 8 of the European Convention has been wonderfully misapplied to cover environmental law, marvellous. Now I have a slight guilt about this fantastic case called Hatton in the United Kingdom, these people can't sleep, because the aeroplanes are in Heathrow during the early morning and late night. They are given their marching orders by a large bunch of European judges, a very small number before that having said that they could sleep and you must close Heathrow down, rather frightened the government and others. I thought that the large court that had let the government off the hook by saying that Article 8 wasn't engaged were right. But actually forget about their sleep and think about air travel and think about the scandalous way in which without considering it we are permitting such a vast extension of air travel and think about maybe deploying the sort of, if you want, kind of slightly tendentious commitment to sleep of persons who have bought houses in the Heathrow area as a means to an end, which is some effort to reduce the extravagant overuse of flights today. So maybe Hatton was to some extent less wrong than I thought.

Fourthly, and finally, apart from a new environmental Bill of Rights, new elements of legal personality for the natural objects around us, imaginative use of current rights instruments, a new invigoration of the political community, which links the environmental and the human rights people, which links them. I have to say we were very anxious to have a number of well known environmental energy [lawyers] here today, but for one reason or another it's not perceived as within their work. Well, I think it's a pity they don't see that, because actually if you look back to the Universal Declaration on Human Rights, this talk about needing this to prevent action against tyranny is a very, very strong human rights language but is also the language of direct action, it's a language of environmental movement, it's the language about forcing things on to centre stage. The human rights movement knows that because the human rights movement was born out of an awareness that we must never again have a situation where politics cannot cope and human rights cannot cope with such oppression.

So I think there's lots of potential conflict between the two if we're not careful, but human rights should ensure that it draws the environmental into a broad coalition, because the lessons from other countries are things like environment which remain isolated from the mainstream of other public interest groups dies a death. They have to form alliances or die and so I really feel <<>> that there's a risk, but that the risk must be overcome.

#### **Question 1 [Name not heard]**

Is the Aarhus Convention a start at combining these two areas?

**Conor Gearty**

Are you directing that at me?

#### **Question 1**

Any of you, any of you.

**Conor Gearty**

Could you explain the first bit of the question?

#### **Question 1**

The Aarhus Convention was...

## Michael Meacher

Yes, I'll take that. The Aarhus Convention is a convention which was signed and agreed by ministers in Europe, what, about three, four years ago, which requires the dissemination of environmental information and enables the facilities for citizens to participate in protecting their environment, within democracies in Western Europe. It is a means of ensuring that more information is made available, for example, if you live in an area where you have a chemical institution, chemical factory, a refinery, say within a few miles away, one of the things you must wonder is quite what effect the discharges have on the waterways or on the lakes which you often find outside refineries or discharges into the atmosphere, how many of those are health undermining and how many of them may even be potentially lethal, one doesn't know. What this Aarhus Convention does is to enable you as a citizen to require the government to provide information to you about the nature of the air and the constituent particles or gases which maybe found in it. The British government had already gone some way in that direction but the Aarhus Convention goes further, it has a wider range than indigenous legislation and I think it is <<>>. The one weakness in my view and Conor I think was touching on this at one point is that people should have the capacity to bring cases. Now as has been said by David, it costs a lot of money, therefore why shouldn't that case be able to be brought by environmental NGOs if you can persuade them to do so, and the cost of it covered by a public interest fund. I think that's the right model, I know about it because I proposed that when I was in government and I have to say that other departments were simply not prepared to agree. That would, of course, enormously increase the capacity of the citizen and of the environmental NGOs to get back at the big industrial and business interests and they weren't going to have that. Because really, central to all of this is governments in all countries, certainly in this country perhaps more than most is very much on the side of industry, of business and whatever they say, the environment is much less high in the political agenda than it ought to be. I think that's a central weakness. But Aarhus was very helpful.

## David Wolfe

Conor talked about rights in relation to future generations and so on, what's called in the jargon "inter-generational equity" or "sustainability". Aarhus is actually very strong on that. Let me just quote you from Article 1 of the Aarhus Convention, it says that the objective of the Convention is to contribute to the protection "*of the right of every person of the present and future generations to live in an environment adequately to its health and well being*". So although it's only about information and so on as Michael says it does have this additional slight nuance flavour that Conor was mentioning.

## **Conor Gearty**

So, my answer is obviously yes.

## **Julia Welshman [Gets quieter and harder to hear as she speaks]**

I campaign for the right of children to use their school grounds against all odds it would seem the ASBO should be now applied to BAA and probably termed the ASBA. We need to stop these large corporations ruining our human habitat, there are very few small spaces left for children that are designated and state funded and maintained and many of them affected by aviation, particularly air pollution and noise, they are unable to be used appropriately and this habitat is being lost. I hope that you won't wait <<>> audience to find this out for your own children and I hope that we will perhaps act when you see <??> the ASBA, right.

## **Conor Gearty**

Well, I think I'll take that as a sort of, as a comment which may or may not provoke remarks.

## **Daniel Nelson – Journalist**

I think you've seriously underrated the gap between the human rights and environmental movements on a number of grounds, I think there's still an enormous gap and I've been a bit involved in trying to get the human rights movement to take on, to try and make change argument and they are absolutely resisting it, both for tactical reasons and for other reasons and they will not use global justice arguments linked with climate change and I think there's a real hostility and it is a barrier and I think haven't quite addressed some of that issue, which is in the headline of the meeting, but not quite in the...

## **Conor Gearty**

Would you like to, I mean from your perspective, elaborate just very briefly on exactly why the human rights movement in your judgement is so anxious not to get involved?

## **Daniel Nelson**

I think some of it is tactical, they think it will complicate an already, what is a fairly straight-forward human rights argument that they feel they can win, whereas climate

change is still contested on various levels so they don't want to muddy their own water and I think there are other reasons too.

### **Conor Gearty**

But maybe members from NGOs involved in the environment here might want to... or in human rights, might want to respond.

### **Michael Meacher**

Can I, I mean I did give two instances of the way in which I think we should do exactly what you're talking about, but I don't think one should also underestimate the difficulties of doing it, because if you go to a court of law you do have to identify the party very clearly who you are holding responsible for the damage that has been done and with a lot of environmental issues that linkage, even though most of us think it is pretty clear, whether it's actually going to stand up to the kind of forensic cross-examination which the big companies will certainly get the best silks in order to protect them and you actually have to prove that connection, it's not they have to disprove it, and actually I think that's pretty difficult. So I think we should do exactly what you're saying but maybe one reason why they're not very willing to do it is, as I say I'm not a lawyer, it's actually very difficult to make these cases stand up in a court of law.

### **Derek Wheeler**

I think the panel very much agrees with each other but I'd like to introduce a note of scepticism. Many of the statements made by Michael Meacher as if they were absolute undisputed facts come I think from, many are from the International Panel on Climate Change to which reference has been made. But they were roundly attacked by the House of Lords Select Committee which is normally an extremely mild body in what it says, they were accused of bias, they were accused of not paying proper attention to cost benefit analysis and they were accused of not paying any attention really to the benefits of global warming as opposed to the disadvantages of it and to take one example from statements made from the panel 150,000 people dying every year because of global warming, there are certainly scientists who think that global warming saves more lives than it costs.

### **Question [Name not heard]**

Don't we need key UN agencies such as the food and agricultural organisation and the World Health Organisation for example to be free from multinational penetration, e.g. Monsanto with genetically modified foods etc., etc., on the one hand; and on the

other I fear we're ignoring the fact that we – well, not ignoring, but there are problems with regard to human rights and environmental movements when you have the World Wildlife organisation in Kenya in the Kalahari where bushmen are forced out of reserves. Shouldn't we be making sure that we stick up for the rights of indigenous people, because through doing that we will also be protecting the environment and not misunderstand the fact that these people have been caring for nature in their way and not get WWF to be in certain ways, being used for, by various governments and various other things.

### **Michael Paulin**

I just wondered if you could say something about whether or not groups like Greenpeace are more likely to be granted a judicial review than individuals who may have sufficient interest in the matter and also it just seems that an environmental Bill of Rights is kind of less so because typically environmental rights are collective rights and it seems that at least within the human rights movement the general view is that human rights are just individualistic or at least described to individuals exclusively and there's this kind of perhaps philosophical tension there.

### **David Wolfe**

I'd just like to answer the first half of your question about judicial review and NGOs. You mentioned Greenpeace as an example. I think the court climate now is actually relatively friendly towards people having, standing to bring these kinds of challenges. So, at least in theory, in many instances Greenpeace (or whoever) has found themselves just as able to bring the challenges as would an individual. The problem, however, is that those bodies – if we're looking at say Human Rights Act framework and the current Human Rights Act – those bodies are most unlikely to be “victims”. So they can get through the door of the court – they have standing – but are not necessarily be able to raise the kind of arguments we've talked about. Obviously, they can raise other arguments.

### **Michael Meacher**

First of all, can I ask Mr Wheeler whether you have any connection with the oil industry.

[ANSWER NOT HEARD – BUT ASSUME "NO"]

Well, that's quite surprising because the views which you express are those commonly expressed by the apologists on behalf of Exxon-Mobil, but you may of course have your own reasons for holding those views and I respect that. On the other hand I do think the balance of credibility is overwhelmingly against what you've

said. The Inter-governmental Panel on Climate Change is made up of 2000-3000 scientists from countries all across the world, there have, as Conor said, been three reports, they've progressively been refining their theory and there are ways of indicating the correctness of that theory, I'll just give, well one example of course is obviously the increasing evidence of greater frequency and ferocity of climate phenomena, exactly what you would expect if climate change is occurring, but more particularly they included sulphate aerosols within the theory in the latest, the third report, and that enables them to make, on the basis of the theory, what they believe on the basis of that theory would have been the temperature over the last 100 years, they can calculate backwards and you can then compare independently with what we actually know the average global temperatures were and we find that there's an almost total fit. So all that I can say is, okay, we don't know everything about climate change, that is perfectly true, but I reckon we know about 98% and that small amount perhaps to do with the effects of volcanism, perhaps to do with solar cycles, there may well be other things which do affect the climate as well as variability in the climate over the ages, that of course is also true, but there are hardly any reputable scientists outside those paid by the oil industry who will actually say that climate change is not happening and I believe those words have actually passed the mouth of President Bush, which is really the final confirmation that there might be something in it.

On the question of the WWF and the Kalahari desert, I don't know about the particulars. I would be amazed if WWF were in anyway involved in removed in bushmen from their habitat and their livelihood, I would be astonished. I'd like to know the circumstances if that were true.

With regard to the food and agricultural organisation I very much agree, it is of course a UN institution and therefore ought to be independent. But there is no doubt the influence of the US is enormous and the capacity of the big US organisations like Monsanto to influence the judgements and the composition of some of those institutions particularly FAO because they're so interested in it, because of genetic modification is very powerful and you're absolutely right, we should demand absolute independence, independence from commercial influence if you're going to get integrity and justice.

### **Gerry Holme(?) – Environment Council**

It took the Second World War to derive the United Nations and the Security Council, what will it take to set in terms of global governance and UN Environment Council?

### **Michael Meacher(?)**

Ten Katrinas all directed at the United States then it'll happen.

## **Conor Gearty**

There was an interesting point just after Katrina whether there would have been another one, do you remember, and I mean it would have been quite interesting.

## **Joseph O'Riley**

I just wanted to very briefly return to this question about the capacity of the two movements to work together, having witnessed at relatively close quarters Amnesty International's attempt to move from its civil and political rights mandate to economic, social and cultural rights, which took a very long time and fraught with great difficulties, I don't hold out much hope for the human rights establishment or for the environmental establishment to lead the sort of convergence that obviously are necessary around these two issues and I suspect that it's probably going to be a kind of third party that brings about the convergence and, you know, cooperation that's necessary. One final thing I would say is that I would have thought that most green political parties would have staked their claim to these issues because they certainly use the language of human rights, social justice and environment, but I suspect, you know, that recent history has proven that they haven't proved very successful and I wonder what the hope is for that because clearly in terms of the analysis that each of the speakers gave around the <<>> of political and industrial influence stopping human rights and environmental protection, we also need political representation that takes up these issues.

## **Conor Gearty**

[CHECKS SPEAKERS DON'T WANT TO SPEAK FURTHER, ANNOUNCES FUTURE SPEAKERS]

[AUDIENCE APPLAUSE]

[END]