The Precautionary Principle: Basics

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Approach vs. Principle

- As approach to use certain techniques to address uncertainties, while as principle is legally binding on persons and institutions to apply the techniques
- As approach, precaution is policy consideration in decisions, more flexible than as a principle that must be applied
- For implementation, this can be a superficial distinction

History of Precaution

- German principle of Vorsorge (foresight) in 1970s
- Adopted by the European Union in 1980s
- Rio Declaration of 1992
- United Nations Framework Convention on Climate Change (1992)
- Convention on Biological Diversity (1992)
- Cartagena Protocol on Climate Change (1999)

World Charter for Nature (1982)

Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed.

Bergen Declaration (1990)

In order to achieve sustainable development, policies must be based on the precautionary principle. Environmental measures must anticipate, prevent, and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

1992 Rio Declaration (Principle 15)

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

European Union (1994)

Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the community. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter pays.

Cartagena Protocol (1999)

Lack of scientific certainty due to insufficient relevant scientific information and knowledge regarding the extent of the potential adverse effects of a living modified organism on the conservation and sustainable use of biological diversity in the Party of import, taking also into account risks to human health, shall not prevent that Party from taking a decision, as appropriate, with regard to the import of the living modified organism in question as referred to in paragraph 3 above, in order to avoid or minimize such potential adverse effects.

Developing countries

- **Ecuador:** law on Galapagos Islands, on invasive alien species, and in the procedure for import and export of wild species.
- **Peru:** National Strategy for Biological Diversity (2001) and regulations implementing the Forest and Wildlife Law (2001).
- **Costa Rica:** The precautionary principle is incorporated into the 1998 biodiversity law and Supreme Court
- **Mozambique:** The 1997 environment legislation and 1999 law on forest and wildlife activities
- **South Africa:** Its National Environmental Management Act (1998)

In the Philippines

- National Biosafety Framework, approach
- Climate Change Act of 2009. principle
- Environmental Rule of Court (2010), rule on evidence
- In Environmental Impact Assessment, moving to principle from approach (ongoing)

Rule 20, Section 1

- When there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it.
- The constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt.

Standards (Sec. 2 Rule 20)

In applying the precautionary principle, the following factors, among others, maybe considered:

(1) threats to human life or health;
(2) inequity to present or future generations;
(3) prejudice to the environment without legal consideration of the environmental rights of those affected.

Precaution operationalized

- When an activity raises threats of harm to the environment or human health, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.
- Not just biophysical but socio-economic risks can be included

Rationale

- Anticipation, prevention and mitigation of uncertain risks, for which definitive scientific evidence is not available.
- Operate as enabling action to authorize preventive measures, in circumstances of scientific uncertainty

Shift in burden of proof

- Mechanism to counter regulatory presumption in favor of allowing development/economic activity to proceed when there is a lack of clear evidence about its impacts
- Shifts the burden of proof on those seeking to impose controls, making it is easier to make the case for regulation
- Shifts the balance in decision-making toward "prudent foresight", in favor of monitoring, preventing or mitigating uncertain potential threats

Why controversial?

- Applying precaution frequently implies restrictions on human actions but these restrictions, because of the uncertainty, cannot be fully justified by unambiguous scientific evidence, and yet these restrictions may impose substantial costs
- Costs include those incurred because of delay that might come as a result of the principle's application or the costs of adding mitigation measures

Dilemma

- There is no internationally agreed definition of "scientific uncertainty",
- There are no internationally agreed norms on the meaning of risk.
- But there are universally agreed procedures for assessing risk

Suggested guidelines

- good natural and social science to acknowledge risk as well as reduce uncertainty
- proportionality of measures to reduce risks, thus less restrictive measures
- equity and sustainable development
- transparency
- public awareness and education
- stakeholder participation.

Final word

- The precautionary principle is about good governance.
- It is not limited to the realm of science alone nor even of environmental law and policy;
- Its about how societies, with the diversity of interests within them, make decisions on risks, and who benefits form and bear the costs for them.