

Energy Moves to Centre Stage

Energy has recently emerged at the forefront of sustainable development discussions. The United Nations Development Programme's World Energy Assessment (2000) linked energy and most of the ills of modern society, in both developed and developing countries. The World Summit on Sustainable Development (WSSD) selected energy as one of its five major agenda issues, devising the Johannesburg Plan of Implementation that emphasises the role of energy in eradicating poverty. The same plan calls for energy policies and regulatory frameworks to create the right conditions for "socially acceptable and environmentally sound energy services and resources."

Energy law, as an integral component of environmental law and an overall sustainable development strategy, is a relatively new concept. The IUCN Commission on Environmental Law (CEL) Climate and Energy Specialist Group has been spearheading research efforts on energy law and policy as it relates to sustainable development, and promoting its importance.

The seminal IUCN publication on "Energy for Sustainable Development," edited by Professors Bradbrook and Ottinger, was released early in 2003 and was described by Joke Waller-Hunter, Executive Director of the UN Framework Convention on Climate Change, as an "extremely insightful handbook" that "squarely addresses the nexus among development, energy security and climate change." 2003 also saw IUCN CEL and UNEP agree to collaborate with each other to develop a Handbook for Legal Draftsmen on "Legislation for the Environmentally Sound Management of Energy Resources," to be published by UNEP in 2004.

Energy was the theme of the First Colloquium of the IUCN Academy of Environmental Law, which was hosted by the Shanghai Jiao Tong University, China. This event featured leading experts from across the globe who addressed the institu-



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tional, legal and policy challenges facing the world in improving access to reliable and affordable energy services, and included a detailed national and regional focus. Of particular interest was the session on the energy needs of China and how it is taking steps to meet those needs in a sustainable manner. The Annals of the Colloquium will be published by Cambridge University Press in 2004.

In 2003 the IUCN Environmental Law Programme (ELP) agreed to partner with the Renewable Energy and International Law Project (REILP), with a particular goal of making a major contribution to the International Conference for Renewable

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...Energy Moves

Energies, to be hosted by the German Government in Bonn in June 2004. This partnership will involve the collaborative efforts of the IUCN CEL Climate and Energy Specialist Group and the IUCN Environmental Law Centre, Bonn. IUCN will also be collaborating with many other institutions in relation to this important international conference, including the UN Foundation.

In early 2005, IUCN will partner with GLOBE (Global Legislators for a Balanced Environment) International and the United Nations Department of Economic and Social Affairs (UNDESA) and others to hold a meeting of legislators from Southern Africa to specifically address the importance of energy legislation, in the context of the Johannesburg Plan of Implementation and the Millennium Development Goals. This is expected to lead to a series of meetings in other regions around the world.

The efforts of IUCN ELP and its many partners is making a valuable contribution towards giving meaning to the Johannesburg Plan of Implementation objective of working together at all levels to take actions to "improve access to reliable, affordable, economically viable, socially acceptable and environmentally sound energy services and resources."

Other Recent Developments

Since our last Newsletter there have been many exciting developments in the ELP. The most significant was clearly the launch of the IUCN Academy of Environmental Law at the Shanghai Jiao Tong University, along with the decision to hold the Second Colloquium on "Land Use and Environmental Law" at the University of Nairobi in October 2004. UN Secretary General Kofi Annan had the following to say on the launch:

"Agenda 21 recommended strengthening the law for environment and development, and called on universities in particular to cooperate in building capacity in the realm of environmental law. That call was repeated last year in the Plan of Implementation adopted at the World Summit on Sustainable Development in Johannesburg...I would like to congratulate all academic leaders assembled at Shanghai Jiao Tong University for their role in making possible the launch of the IUCN Academy of Environmental Law. IUCN's Commission on Environmental Law has rendered an important service in implementing Agenda 21's recommendations..."

Other significant activities for the programme have included the re-launch of ECOLEX at the UN Food and Agriculture Organization General Conference last December (a joint initiative of FAO, IUCN and UNEP), our contribution to the Vth IUCN World Parks Congress, in particular to the governance stream, the release of groundbreaking publications on biosafety and international environmental governance, and the recognition

by CEL of several new "centres of excellence," including the Mandela Institute at the University of Witwatersrand, South Africa for its excellence in water law.

Such a substantial depth and breadth of activities demonstrate the tangible benefits of our increased emphasis on working together as one integrated Programme.

The 3rd IUCN World Conservation Congress

The next IUCN World Conservation Congress will be held in Bangkok, Thailand from 17 to 25 November and an invitation to attend this major event has been ex-



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tended to CEL members by the IUCN President and Director General. The CEL Steering Committee will meet on 15th November and will hold a session on the 16th to review progress made over this intersessional period to which you are all invited.

The Chair of CEL, Professor Nicholas Robinson, has set aside "IUCN Commissions Day" on 17th November as "Judiciary Day," to draw wide attention to the crucial role of the judiciary in addressing environment, human rights and poverty issues and the need for States to support judicial capacity building programmes, independence and integrity. The CEL Judiciary Specialist Group, Chaired by Justice Paul Stein AM, met in February to commence planning for this event and to consider its contribution to the North American Regional Judges Conference on Environmental Law scheduled for December 2004 in New York.

Thank you

We have received many positive comments from CEL members and others on the new format and content of our annual Newsletter, for which we thank you. We also invite your further comments. Our sincere thanks go to everyone who has contributed to this edition, and in particular to our Editor, Managing Editor, Typesetter, L'IV Com Sarl and IUCN PSU Cambridge.

We look forward to seeing you all in Bangkok in November and to having the opportunity to share the spirit of genuine partnership and collaboration that underpins our Programme and the work of the Union more generally.

John Scanlon

Head, IUCN Environmental Law Programme

BRINGING BIODIVERSITY CONCERNS INTO THE RENEWABLES DEBATE

Introduction

Energy and biodiversity are key elements for sustainable development. They are also closely related. Virtually all of the factors leading to the loss of biodiversity are intimately linked to the development and use of energy by people. Yet, our understanding of such relationships remains very incomplete.

Many impacts are direct and very obvious. Examples include pollution at an oil drilling site, or damage from radiation after a nuclear accident. Indirect impacts are less visible, but at least as important. Key indirect impacts include:

- The convenient availability of energy enables humans to significantly over-exploit biodiversity; for example, the rapid expansion of road systems, enabled by cheap energy to provide transport, opens up even the most remote areas to various kinds of biodiversity exploitation, ranging from logging to hunting.
- The spread of invasive species, perhaps the second most important driver of biodiversity loss: energy is key for the vectors through which these species move around the globe, namely increased (and increasingly fast) transport, and connectivity.
- Climate change: the effects of climate change on biodiversity may only slowly become visible, but they are likely to be severe. A recent study in *Nature* calculated that between 15 and 37% of species in certain areas may go extinct by 2050, depending on the extent of climate change. Changes in climate that affect species composition and diversity are likely to profoundly alter the functioning of the biosphere and



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change the flow of benefits to humans from such functioning. (Thomas, C.D. *et al.* 2004. Extinction risk from climate change. *Nature* 427:145 – 148)

The role of energy and biodiversity in sustainable development has been internationally recognized, but the relationship between them perhaps less so. The Millen-

nium Development Goals do not explicitly mention energy or biodiversity. But energy indicators have been included for measuring the process in achieving Goal 7 (Ensure environmental sustainability).

The Johannesburg Plan of Implementation has made the relationship between energy and biodiversity more explicit. On the one hand it calls for the achievement by 2010 of “a significant reduction in the current rate of loss of biological diversity,” a target the conservation community has embraced. It also emphasises the first Millennium Development Goal (Eradicate extreme poverty and hunger) and its target of halving the proportion of people in poverty by 2015. Importantly, it stresses the importance of energy in achieving this goal, calling for improved access to “reliable and affordable energy services for sustainable development.” It recognises the importance, among other approaches, of the increased use of renewables, and calls for a substantial increase of the global share of renewable energy sources.

The world is thus faced with an increasing demand for energy, and with the need to protect biodiversity. A recent report from the European Commission, *World energy, technology and climate policy outlook 2030 – WETO* (2003), projects an increase of 1.8% per year in the world energy consumption up to 2030, or a total increase of 70% between 2000 and 2030.

Pollution and other risks associated with fossil fuels and other conventional energy sources have fuelled the study and development of renewable energy sources. Increasing the share of renewable energy in the world’s energy mix is a key strategy. Such sources have less negative impacts on the environment, but their impact on biodiversity has received inadequate attention. The need to move towards an energy system based on renewables is broadly accepted, but it is also important to avoid or limit biodiversity losses along the way. Renewables can only realize their full environmental benefit potential if they avoid or limit negative effects on biodiversity.

Some key questions for the conservation community are therefore the following: What is the relationship between human uses of energy, and the conservation of biodiversity? This first question has been addressed to some extent in the context of conventional energy sources such as oil, gas, coal, or nuclear energy, but less so in the context of renewables. What are the practical challenges we face to provide everyone with adequate and affordable access to energy, while conserving the planet’s biodiversity?

These questions have been framed only recently, and answers are just starting to be developed.

Renewables, a special case?

We tend to accept that renewable energy sources are less damaging to biodiversity than conventional fuel sources. Indeed, they often contribute little or nothing to climate change, and cause very little pollution. But this does not mean they are entirely free of negative impact on biodiversity.

Important regional differences must be taken into account regarding renewables in the “developed” and the



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“developing” world. OECD countries are the biggest users of hydropower, wind energy and “new” renewables (e.g. solar). Biomass is more important in many developing countries.

This is important if we think of biodiversity and priority areas for conservation, since the impact upon biodiversity of the different energy sources is different. The impact of dams for generating power is mixed, “new” renewables are definitely the “cleanest” and the most direct negative impact may well be from the harvesting of biomass material from the wild.

A few examples may illustrate these points, and point to the need for further research on all renewables.

Hydropower

Generating power through the building of dams has been a common source of “renewable” energy. The enthusiasm for large dams has waned, especially since the work of the World Commission on Dams summarised 100 years of experience with dams in terms of their costs and benefits, such as:

- the loss of forests and wildlife habitat, the loss of

species populations, and the degradation of upstream catchment areas due to inundation of the reservoir area;

- emissions of greenhouse gases from reservoirs due to the rotting of vegetation and carbon inflows from the catchment;
- the loss of aquatic biodiversity, upstream and downstream fisheries, and the services of downstream floodplains, wetlands, and riverine estuarine and adjacent marine ecosystems.

This has led to the distinction between large and small dams for hydropower, and the development of guidance and best practices for prospective new developments.

Wind power

Wind power is regarded as generally clean. But there may be biodiversity effects from the construction process of wind turbines. The location of turbines is a key point, and cases of bird mortality have been documented where wind farms were located on migration routes. Increasingly, people also object to wind turbines as a source of visual pollution in the landscape, or because of noise pollution.

Biomass

Burning biomass fuel was the main external form of energy for humans for thousands of years. Biomass currently provides more than 10% of the world’s energy, including about a third of energy requirements in developing countries. The most common form of biomass is solid fuel in the form of wood, charcoal, forestry and crop residues, and agro-industrial and municipal wastes. Biomass can also yield liquid fuels such as ethanol, methanol, and vegetable oils, as well as biogas formed by anaerobic respiration of biomass digesters.

Biomass often has as an opportunity cost that the land used for generating biomass energy is also needed to grow food crops or meet other human needs. Also, intensively managing a plantation for biomass may require additional inputs of fossil fuel for machinery, fertilizers, and pesticides, thereby potentially leading to negative impacts on biodiversity. Worse, the replacement of natural forests by monoculture biomass forests may increase soil erosion and water runoff, as well as a loss of biodiversity.

These negative effects can be avoided if biodiversity objectives are incorporated into the design of a biomass project, or if harvesting from the wild is done sustainably.

Conclusion

Development and conservation are faced with the reality of increased energy demands, while energy has a significant impact on biodiversity. The conservation community can and should play a key role in helping to fulfil the international mandate to sustainably use the former and conserve the latter. How can the necessary capacity be built to respond to these challenges?

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This short note has argued that – while perhaps less severe than for conventional energy sources – renewables may also have negative impacts on biodiversity. Policy-making should be put on a firmer factual basis. The conservation community can play an important role in bringing biodiversity concerns into the debate, be it on conventional or renewable energy sources, on indirect or direct impacts.

Pathways for action by all stakeholders include the following:

- Ensuring that all energy development projects, including renewables, are preceded by detailed environmental impact assessments that thoroughly address potential impacts on climate change, but also on biodiversity.
- Incorporating climate change considerations into biodiversity strategies and action plans, and building biodiversity concerns into planned responses to climate change.

- Ensuring that strategies to mitigate climate change, such as carbon sequestration measures, are consistent with biodiversity conservation objectives.
- Supporting a greatly increased research effort on linkages among all sources of energy, biodiversity, and climate change.
- Ensuring that development of renewables takes into account equitable distribution of benefits, and helps the world's poorest.

The extent of humanity's dependence on energy is probably only matched by its long-term dependence on biodiversity. An early assessment of the impact of renewable energy sources on biodiversity, and the development of strategies to limit such impacts, are key to enable the world to meet increasing energy needs, while conserving its biggest long-term resource, biodiversity.

Achim Steiner
Director General, IUCN

The Imperative of Energy for Sustainable Development

During the last century, the use of fossil fuel resources – oil, natural gas, and coal – dominated world primary energy. Furthermore, demand for energy services continues to increase with growing economies and population size. Regional differences in per capita energy use (commercial *and* non-commercial) are extreme.

The linkages between energy systems and economic growth are apparent and well understood. However, the relationship between energy systems on one hand and social development, health, and the environment on the other has attracted much less attention until recently.

Despite increasing recognition of the importance of energy services in meeting development goals, improving access to safe, reliable and affordable energy services for the global population are not itself recognized as a goal of the international community. Without access to modern forms of energy it will be virtually impossible to reach any of the Millennium Development Goals. Energy thus becomes an entry point to achieving broader societal objectives.

Access to affordable, safe and reliable energy services is increasingly being recognized as critical to social development and poverty alleviation. Energy was for the first time acknowledged as a key part of the global political agenda in the process leading up to the World Summit for Sustainable Development held in Johannesburg, South Africa in 2002. Energy, as outlined in the UN Secretary General Kofi Annan's WEHAB (water, energy, health, agriculture and biodiversity) agenda, was finally recognized as a necessary factor for sustainable

development. By the end of the meeting, an international appeal for improved access to energy, the sustainable use of biomass for energy, cleaner use of fossil fuels, reduced market distortions, and a substantial increase in the share of renewable energy "with a sense of urgency," had been launched. In addition, 39 new partnerships on energy were formed.

Reliance upon major oil imports raises questions about security of supply, and leads to severe consequences for economic and social development if disruptions of supply would occur. The security of supply is already a major and growing concern of most governments. Additionally, a large number of developing countries spend their severely limited foreign exchange on energy imports that could be reduced with higher utilisation of domestic energy and more efficient use of energy.

Awareness and understanding of the environmental consequences of past and present energy systems is also becoming more relevant and systematic. Energy use contributes to indoor and urban air pollution, acidification and global warming. The consequences of greenhouse gas emissions from fossil fuel use on global warming are particularly worrisome, and are of growing international concern. Achieving the required reductions in global greenhouse gas emission while expanding economies now based on the use of fossil fuels is one of the major challenges facing the energy system.

The linkages between energy systems and economic development, social equity and environmental protection indicate that a change in present energy system

development is required if sustainable development pathways are to be realized. The magnitude of the change required is not small and the ultimate challenge will be finding ways forward that address all the issues simultaneously.

Information on the available supply of fossil fuel resources indicates that there will not be a resource con-



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straint driven change of the world energy system for a long time to come. Thus, fossil fuel resource depletion will provide little incentive to change the current system. Accordingly, public policies will have to address the issues of the future energy system and put in place incentives in the market place that make market actors select options that not only provide profits but also support public objectives.

In the pursuit of sustainable energy system pathways, three main strategies are identified. On the energy supply side, these include the exploration and adoption of more renewable energy sources such as biomass, wind, solar, hydro and geothermal. Renewable energy flows on Earth are thousands times the current global energy use. The second strategy on the energy supply side involves the exploration and adoption of advanced energy technologies, including advanced fossil fuel technologies, with near-zero emissions of greenhouse gases, and nuclear technologies if the issues associated with such technologies (including cost, reactor safety, radioactive waste containment, and linkages to nuclear weapons proliferation) can be resolved (See the *World Energy Assessment* for more details). On the energy demand side of the equation, strategies for improved energy efficiency at the point of end-use in buildings, electric appliances, vehicles and production processes must also be pursued to tap the very large economic (including an accounting for external health and environmental costs) potential for more efficient use of energy, thereby reducing needs for more supply.

A clear conclusion of scenario work done thus far is that an energy future that is compatible with sustainable development will not happen on its own. The creation of appropriate and effective policies is a prerequisite to the type of change required to bring about a sustainable energy future.

Policy matters!

As nations, regions and cities struggle to transfer the calls for action made at the WSSD into policies, they will inevitably face many challenges. Sectoral approaches will be unlikely to deliver complete solutions, thereby requiring more integrated approaches. Emphasis on innovative system designs and guided investments is needed. Energy must be thought of as an instrument for sustainable development, rather than a separate entity driving GDP growth. Thinking and discussions around these issues over the years has already led to the identification of a number of policy areas that must be incorporated in addressing these challenges. These areas include, but are not limited to the following:

- ◆ make markets work better, including mobilizing investments and improving energy efficiency
 - remove subsidies to conventional energy forms, globally now on the order of \$250 billion per year,
 - reflect external costs in the prices, rules and regulations in the marketplace,
- ◆ address the innovation chain, from research and development, demonstration projects, investments to buy-down costs of new technologies, and wide dissemination, to develop and bring more sustainable technologies to use,
- ◆ reform the power sector to enhance access to electricity, supply security, and environmental protection,
- ◆ build capacity to support policy and institution building, education and training, and transfer of technology,
- ◆ increase public awareness and participation.

(See T.B. Johansson and J. Goldemberg, *Energy for Sustainable Development – A Policy Agenda*, 2002 (UNDP), available at <http://www.undp.org/seed/eap/html/publications/2002/2002a.htm>.)

The challenges of transforming the energy systems of the world to support sustainable development are very large indeed. The good news is that resources and technologies exist that can meet these challenges. However, it will take a concerted effort to formulate and implement the necessary policies at the national and international levels to make sufficient use of them.

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Professor Johansson's paper was based upon his keynote address given at IUCN Academy of Environment Law's 1st Colloquium: The Law of Energy for Sustainable Development, held in Shanghai, China, from November 4 to 6, 2003. For a more comprehensive treatment of the subject, please refer to "The Law of Energy for Sustainable Development," Volume 1 of the IUCN Academy of Environmental Law Research Studies 2003, Edited by *Adrian Bradbrook*, Adelaide University, *Rosemary Lyster*, Sydney University, *Richard Ottinger*, Pace University, and *Wang Xi*, Shanghai Jiao Tong University to be published by the Cambridge University Press in November 2004.

Challenges for China's Energy Strategy

Chinese energy strategy must begin with analyzing the country's current and future demand for energy. For the next 20 years, China is looking at a GDP growth rate of 7.2% per annum or higher. The focus remains on industrialization, with increased urbanization and employment. In meeting the energy challenge, several scenarios are available for China. The goal will be to keep energy elasticity at 0.5 for the next 20 years through energy conservation, a high quality energy mix, strict environmental policy, and uncompromising enforcement.



Shanghai Tower, Shanghai

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There needs to be significant change in the energy mix, with an increase the share of hydro, nuclear, and wind resources. However, there also are constraints on the increased use of alternative energies. The expanded use of energy efficiency measures has a great potential for lowering energy requirements, improving energy and economic security and reducing environmental degradation.

While there is great potential for improvement of energy efficiency in China, market forces alone will not be sufficient for achieving energy efficiency goals. Consensus, policy intervention and promotion, and modification of China's current Energy Conservation Law are also required. China must improve its energy standards and enforcement and promote more technology research and development. The government needs to apply economic leverage measures to the market to encourage the adoption of energy efficiency measures.

China needs to explore sustainable models of consumption. It is not realistic for China to copy current consumption models of developed countries. China faces the challenges of all developing countries: population increase, resource depletion, and environmental problems. China's problems also are a challenge for the rest of the world.

Zhou Dadi

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Dr Zhou's article was based upon a presentation given at IUCN Academy of Environment Law's 1st Colloquium: The Law of Energy for Sustainable Development, held in Shanghai, China, from November 4 to 6, 2003. For a more comprehensive treatment of the subject, please refer to "The Law of Energy for Sustainable Development," Volume 1 of the IUCN Academy of Environmental Law Research Studies 2003, Edited by *Adrian Bradbrook*, Adelaide University, *Rosemary Lyster*, Sydney University, *Richard Ottinger*, Pace University, and *Wang Xi*, Shanghai Jiao Tong University to be published by the Cambridge University Press in November 2004.

Energy Development and Utilisation in Africa

In Africa, as in many parts of the developing world, the lack of clean and reasonably priced energy is a significant impediment to sustainable development and a principal contributor to a host of environmental and social problems, particularly health problems ("Facts and Figures," available at www.uneptie.org/energy/REED-Media-kit/docs/energy-facts.pdf).

While approximately 40% of the world's peoples lack modern energy services, in Africa the number exceeds 80%. In fact, the vast majority of Africans rely on wood, dung and other biomass fuels for cooking and heating and use such fuels in polluting and inefficient ways. Moreover, these energy sources are equally under threat from overuse, creating additional environmental chal-

lenges. In percentage terms, it is estimated that at least eight out of every 10 Africans have no access to electricity.

There is, however, abundant energy resource wealth in Africa, most particularly petroleum as a source of commercial energy. However, energy resources are unevenly distributed (I.L. Worika, *Environmental Law & Policy of Petroleum Development: Strategies and Mechanisms for Sustainable Management in Africa*, Anpez Centre for Environment & Development, (Port Harcourt, 2002) at 2).

If Africa is to be transformed from a predominantly rural to an industrial economy, it must adopt sustainable energy policies almost as a matter of necessity. The preponderance of existing literature places a disproportionate level of emphasis on the economic and social aspects of sustainable energy for Africa, while legal aspects have been largely neglected. The main focus of this paper is sub-Saharan West Africa, using Nigeria and Ghana as case studies.

On a national level, Nigeria has no national energy policy. What it has is a *National Policy on the Environment* which articulates a national environmental policy on energy generally and more specifically in relation to oil and gas resources, but which does not specifically provide for renewable energies. A Nigerian National Energy Policy similar to the *White Paper on the Energy Policy of the Republic of South Africa* of December 1998 is urgently needed. Such a policy document should restate the Nigerian Government's commitment to "the promotion of access to affordable and sustainable energy services for small businesses, disadvantaged households, small farms, schools, clinics, in our rural areas and a wide range of other community establishments."

Ghana is, perhaps, much more advanced in its articulation of a national energy policy. Ghana's *Energy Sector Development Program* (ESDP) could be said to be the equivalent of the *White Paper on the Energy Policy of the Republic of South Africa*, as it sets out the various factors that shape Ghana's energy sector policies, a framework for meeting its energy sector goals and the programmes currently being implemented by the Ministry of Mines and Energy in all energy sectors, including renewable energy, power, petroleum as well as energy efficiency and conservation. What is particularly impressive about the *ESDP* is its identification of short, medium and long-term objectives for future development of Ghana's renewable energy resources. What is urgently needed now in Ghana is the formulation of new energy laws or the amendment of existing energy laws with a view to be consistent with, and complementary to, Ghana's policy goals in relation to sustainable energy.

More generally, other African States and Nigeria in particular should consider following Ghana's lead and the

approach taken by Republic of South Africa in establishing national energy policies to ensure that national energy resources are sufficiently tapped and developed for the benefit of their respective nations and African peoples generally. In this way, energy production, transmission and distribution can lead to a manifest improvement in the living standards of African citizens.

Such a national energy policy should first, identify the context, objectives and priorities of a national sustainable energy policy in the short, medium and long-term; second, identify and analyse demand and supply sectors as well as interrelated issue; and third, preserve an appropriate balance between energy demand and supply as well as a balance between the use of natural energy resources and environmental considerations.

In their respective national energy policies, African States must establish a clear distinction between their primary role in formulating policies and regulating the energy sector and their secondary role as facilitators in the supply of energy services. Moreover, such energy policies must go further to set out a framework for sustainable energy regulation which is stable, consistent, transparent and non-discriminatory, while at the same time strengthens institutional capacities to implement and enforce this regulatory regime. The rationale for such an energy policy is obvious. Governments all over the world are retreating from direct involvement in, and domination of, economic environments and instead, performing a more specialised role, that of an efficient regulator. This does not mean that the State does not operate in the market at all. Rather, a system of regulation developed and enforced by the State must necessarily be in place to ensure the proper and efficient functioning of markets, as well as to appropriately address broader social concerns such as consumer interests, environmental protection and the need for sustainable energy.

Generally speaking, laws should reflect policy concerns, as no legislation can or should be made in vacuum. The presence of a multiplicity of fragmentary energy laws in most African countries, which laws are not based on any particular overarching energy policy may be one of the reasons why regulatory institutions are currently unable to effectively implement such laws and why sustainable energy development has continued to elude Africa.

A plethora of energy laws on the licensing, operations, and fiscal regimes of, energy investments across Africa exists throughout the continent. Over-centralisation of regulatory authority over energy resources in Africa generally, and Nigeria in particular, has tended to result in the inequitable distribution of revenues derived from the exploitation of energy resources, usually in favour of those majority groups which control the federal or central government.

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The vast majority of existing legislation governing the energy sectors in both Ghana and Nigeria is skewed in favour of the hydrocarbon and electricity sub-sectors: both these sub-sectors are areas in which government and private investors believe they can quickly, clearly and easily amortise their respective investments, while driving the respective countries towards rapid industrialisation. Notwithstanding this overarching trend, in practice the specific laws that apply to various energy sub-sectors, for instance the electricity sub-sector, have operated as major obstacles to the wider use of distributed resources for grid-power.

Renewable energy is not granted any legislative prominence in Ghana or Nigeria and this situation is replicated in other African countries. The absence of authoritative legal instruments establishing a framework for managing the various forms of renewable energy, regulating the rights and obligations of both host country and private investors, and imposing legally enforceable standards and obligations demonstrates the low prioritisation of sustainable energy issues in most African countries.

Ghana and Nigeria could follow Kenya's lead in the development of geothermal resources: such development in Kenya is guided by legislated environmental controls contained in the *Geothermal Resources Act*, the *Water Act*, the *Wildlife Act* and the *Forest Act*.

A profusion of legal texts, legislation and subsidiary instruments vests in certain government departments and special agencies (that are more or less independent of government) the responsibilities of licensing, operating (sometimes in various types of partnerships), supervising, implementing and monitoring energy investments and also, the responsibility of enforcing compliance with the regulations and rules governing energy investments. This is the case in both Ghana and Nigeria, as it is in almost every other energy producing and consuming country in Africa and beyond, irrespective of the stage of economic development in the particular country, although the degree of government control, intervention or involvement varies from one country to the other.

However, a multiplicity of public sector energy regulatory institutions is not synonymous with effective or coordinated regulation of the energy sector. It may actually imply that the energy sector is being heavily over-regulated with little or no co-ordination between the various institutions (A. Dias, "The Oil and Gas Industry in a Tangled Web of Environmental Regulation: Spider or Fly?" in Z. Gao, ed., *Environmental Regulation of Oil and Gas*, Kluwer International Publishers, (London,

1998) at 59-89). Accordingly, if government institutions and agencies are to have a positive impact on energy investment in Africa, a complete overhaul of existing regulatory institutions will be required, in order to provide for a cleaner, more stable, more transparent and more efficient regulatory framework for the energy sector.

The importance of a Pan-Africa energy policy and domestic energy policies which are consistent with this cannot be overemphasised. Several plausible reasons can be offered to explain the current absence of a continental policy framework on sustainable energy in Africa, one of which is that it is only very recently that connections between energy and sustainable development have been emphasised globally.

The regional and sub-regional agreements currently in place were never intended to govern sustainable energy needs. The provisions of these agreements are

too general and broad to be of any real significance. A Pan-African policy instrument that focuses attention on sustainable energy and environmental aspects of such energy projects could set guidelines, prescribe standards and provide an overall framework for the sustainable management of Africa's vast energy resources, while using existing institutions at continental, sub-regional and national levels for the effective implementation of policy goals.



Olli Varis

At a continental level, there is no multilateral investment treaty between African countries, similar to Europe's *Energy Charter Treaty (ECT)* or the *North American Free Trade Agreement (NAFTA)*, with a focus on trade and energy investment in Africa. The reasons for the absence of such a treaty are varied and include the paucity of highly skilled indigenous human, institutional and legal capacity in science and technology areas which are relevant for sustainable energy development in Africa. Accordingly, African countries are bound to look outwards to Europe and America and also Asia (Japan and China) to source the much needed technical expertise to exploit its energy resources.

However, together with technical assistance partnerships and the co-operation of sustainable energy companies from more economically advanced nations (MEANs), a cooperative approach by African countries to the development, distribution, transmission and consumption of energy resources on the continent would, in the final analysis, provide far greater benefits to their respective national economies and peoples. Such co-operation and the resulting benefits can hardly be achieved in the absence of broadly consistent bilateral agreements or a multilateral sustainable energy charter

treaty between participating African countries. The uneven distribution of energy resources across Africa, the gross under-development of Africa's commercial energy resources, the land-locked position of many African countries and the consequent difficulty of importing commercial energy on an affordable basis, the widespread poverty in Africa, the poor development of commercial energy infrastructure, and the paucity of highly skilled technical expertise on the continent, all combine in varying degrees to make a cooperative approach towards the harnessing of resources for sustainable energy development in Africa the preferred option.

Promoting sustainable energy production and consumption patterns in Africa, a region that still grapples with satisfying the most basic human needs, is a daunting task for which there are no easy answers. Africa possesses enormous as well as diverse non-renewable and renewable energy resources. But these resources are under-exploited for a variety of reasons, depending in part on the country and sub-region that is the subject of analysis. The challenges and opportunities which Africa's energy environment offers cannot be seized without a correlative paradigm shift towards a more specific and adequate legal and regulatory framework supported and implemented by effective institutional mechanisms.

In the final analysis, African countries must address the regulatory and legal constraints that have militated against investment in the energy sector generally, while

specifically promoting increased investment in non-biomass renewable energy development. African legal systems must provide clear rules for all stakeholders in emerging energy markets, clearly define the responsibilities and obligations of new private energy companies, and strike a principled balance between protecting business and investor interests on the one hand, and the general public and consumers on the other. Furthermore, governments must provide tax incentives to financiers of energy efficient projects as well as importers and manufacturers of energy efficient and renewable energy equipment.

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The views expressed in this paper are personal to the author and should not be attributed as the official views or positions of the institutions with which he is affiliated.

For a more comprehensive treatment of the subject, please refer to "The Law of Energy for Sustainable Development," Volume 1 of the IUCN Academy of Environmental Law Research Studies 2003, Edited by *Adrian Bradbrook*, Adelaide University, *Rosemary Lyster*, Sydney University, *Richard Ottinger*, Pace University, and *Wang Xi*, Shanghai Jiao Tong University to be published by the Cambridge University Press in November 2004.

Legal Measures to Promote Renewable and Energy Efficiency Resources

Introduction

There are a host of economic, social and legal barriers that account for the failure of renewable and energy efficiency resources to reach their potential. Legislation can remove these barriers, get the price signals right, and provide various measures for the promotion of these resources.

The article provides an overview of renewable energy and efficiency resource options from the standpoint of the legal mechanisms that can be used to promote them. With an adequate framework of legislative and executive measures to promote efficiency and renewable measures, they can be competitive and can make a significant contribution to sustainable development.

Energy efficiency and renewable energy

Energy efficiency measures almost always result in savings to the producer, the consumer and society. They are usually inexpensive compared to new power construction and are capable of being financed out of the savings achieved. For developing countries, the initial

installation of energy efficient products and processes enables them to leapfrog into the use of superior technologies. They thus avoid the experience of most developed countries in having to convert inefficient products or processes to efficient ones and invest in expensive pollution reduction measures, incurring a double cost.

Renewable energy resources hold great promise for meeting the energy and development needs of countries throughout the world, but in particular for developing countries, where in many areas a commitment has not been made to fossil fuel dominance. The cost can be paid for in part by the savings from efficiency measures.

Legal mechanisms for renewable energy and energy efficiency implementation

Many mechanisms have been successfully used around the world for realizing renewable energy and energy

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efficiency solutions by both the public and private sectors and in both developed and developing countries and their municipalities. These include education, economic and market mechanisms, government programmes, utility regulatory requirements and programmes, standards and government-encouraged voluntary programmes. These measures are by no means mutually exclusive, and in many cases more than one mechanism has been applied.

Education and training

Education is vital to inform the public, energy decision-makers, NGOs and the private sector about the available renewable energy options, their application and their costs and benefits. Such knowledge is also essential to build the political support necessary for enactment of appropriate legislative measures to promote energy efficiency and renewable resource use.

Effective educational measures should include training of government officials in all departments and of architects, engineers, developers, building managers as well as the general public.

Assessment and adaptation to local needs

No aspect of renewable energy and energy efficiency promotion is more important than assessment of local needs, adaptation of projects to meet those needs and inclusion for local communities in design of projects. Clean energy can be an important instrument of advancing economic and social development in communities, but only if the projects are knowledgeably designed and carefully planned with full local input and cooperation. Thus, governments promoting renewable energy projects should institute absolute requirements to assess local needs and obtain participation by local communities in the design of projects.

Environmental impact assessments/statements

One of the most effective measures for requiring that the environmental consequences of projects are disclosed to the public is the environment impact assessment or statement. More than 175 countries have enacted their own environmental impact legislation and assessments have been required in a number of international environmental treaties. Multilateral financial institutions also require such assessments under their administrative procedures.

Market mechanisms

Among market measures, legislation to repeal and remove subsidies from production and use of fossil fuels is the most direct legal measure to promote clean energy. Revenues saved from subsidy removal can be used to promote clean energy alternatives internally. The political difficulties of eliminating subsidies and the transition problems for local economies in fossil-producing countries cannot be minimized. Nevertheless, countries such as Brazil, China, the Czech Republic, India, the Netherlands, Poland, the United Kingdom and Russia

have reduced or eliminated fossil fuel subsidies successfully.

A legislative or regulatory requirement for consideration of externality costs (the cost to society of early deaths, health care and environmental damage) can materially promote clean energy use. No accurate assessment can



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Shanghai Lights

be made of the comparative costs of clean energy without the inclusion of externality costs.

In many developing countries there are high duties on import of equipment, including equipment required for renewable energy (M. Philips and B. Browne, *Accelerating PV Markets in Developing Countries*, available at <http://repp.org/articles/pv/7/7/html>). Such duties must be eliminated if renewable energy use is to be promoted. Many restrictions also exist on investment of foreign capital that need to be removed to create a climate encouraging investment.

Standards and regulations

Taxing pollutants or polluting fuels can be an effective way of promoting energy and emission reductions in the market places (WEC, 1994, http://www.worldenergy.org/wec-geis/publications/open.plx?file=archives/tech_papers/other_tech_papers/WECco2rpt97app.htm). Pollution taxes are politically difficult since inevitably some energy-intensive industries and jobs are affected. However, if the pollution taxes are offset by reductions in other business taxes, they can produce a net economic benefit (S. Bernlow *et al.*, *Carbon Taxes with Tax Reduction in New York State*, Tellus Institute (Boston, Massachusetts, February 1997)).

While long-term subsidization of a fuel, technology or product distorts the market and is therefore theoretically undesirable, temporary subsidies and tax exemptions to bring new technologies into the marketplace can be effective, useful, and often essential to accelerate their market acceptance. Also, when fossil fuel subsidies persist, non-fossil fuel subsidies are justifiable to level the playing field for them.

Standards for pollution and for building, appliance and vehicle efficiency can be very effective in promoting re-

newable and efficiency measures. Politically, standards can ordinarily be set only when technological and economic feasibility have been demonstrated and often where businesses affected can be persuaded to agree to the level of control. They therefore generally represent minimum rather than maximum feasible achievements. Regular updating of standards is thus required. Standards must also be set with care as to their applicability.

Many developing countries have yet to adopt building codes. However, as these countries begin to raise their standard of living, building electricity use will increase. Adopting such standards now will help to reduce the growth of energy consumption in the future.

Legislative standards for appliance efficiency are particularly needed because most appliances are bought, not by bill payers, but by landlords, home builders and public housing authorities which have no economic interest in saving energy in selecting them. While incentives and appliance labeling for energy efficiency can be helpful in exceeding standards, only standards can assure that at least the most inefficient models will be removed from the market (A. Lovins and L. Lovins, *Making Sense and Making Money*, Rocky Mountain Institute (13 November 1997), at 16).

Government procurement of renewable energy and energy efficiency

All governments are major energy users. Legislation or regulation to require purchase by federal, state and municipal governments of clean energy products and processes can do much to promote renewable and efficiency measures. Government procurement of green products also creates tremendous "market pull." By harnessing the purchasing power of government agencies, policy makers can help bring down their prices and set an example of the feasibility of their use for the private sector. Governments can also aggregate procurements to make production of energy superior equipment economic for manufacturers.

Technology transfer and research and development

With the advent of increased global commercial competition and increasing privatization around the world, corporations have significantly decreased their long-term

research and development expenditures. If the benefits of new technology are to be achieved, government will have to conduct the requisite R & D themselves or legislate the funding of R & D efforts; they could also mandate that a percentage of sales be devoted by private entities to R & D or enter into partnerships with private companies to develop technologies that will reduce energy use and resultant pollution.

For the developing countries, technology transfer is a critical factor in enabling them to take advantage of energy efficiency and renewable technologies used in industrialized countries. Technical assistance and education of key energy players is essential to success.

Disclosure

Market studies and polls consistently show that consumers want clean energy resources. In competitive retail markets, a requirement for utilities to disclose their emission and their sources of their power generation enables consumers to make informed decisions about the environmental consequences of their choice among suppliers.

Conclusion

A wide variety of legislative and voluntary programmes have been undertaken to ameliorate pollution emissions in electric utility and vehicle sectors through cost-effective measures. The legal and financial mechanisms for doing so are wide and varied. It is possible to meet the world's energy, development and environmental needs. This achievement can be done on the basis of long-term profitability. Indeed, energy savings are so compelling that they should be undertaken just to save money. But achieving these goals will take determined action and political will among all the governments and international institutions of the world.

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Fred Zalzman

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Pace University, New York

To read the full paper from which this article is taken, please refer to "Energy Law and Sustainable Development," IUCN Environmental Policy and Law Paper No. 47, available at www.iucn.org/themes/law.

The Renewable Energy and International Environmental Law Project

The Renewable Energy and International Environmental Law Project (REILP) stems from an International Energy Agency spring 2002 initiative. It has been created specifically to identify and explore the impact of the existing international law regime on the development

of the renewable energy market. Specifically the project will work with business to identify "on the ground" barriers to the clean energy market that arise from international law.

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The Project is being implemented in conjunction with Baker & McKenzie's Global Clean Energy & Climate Change Practice, with the UK Foreign Office initiative, the Renewable Energy and Energy Efficiency Partnership (REEEP), and with Yale's Center for Environmental Law and Policy. The research phase of the project began in February. A network of committed partners, whose work and goals dovetail with that of both the REEEP and the REILP has been established. Project participants include the Victoria, Australian government, the United Nations Environment Programme, the NAFTA Commission on Environmental Cooperation, IUCN – The World Conservation Union, as well as industry partners, and members of the European Commission. The project is being advised by the UN Secretariat, the US Department of Energy, the US Environmental Protection Agency, and the Natural Resources Defense Council, among others.

The project hopes over the next few years to provide valuable insight into the way in which the renewables market interacts with law on the international plane. Many of the existing multilateral treaties were negotiated and drafted when "new" renewable energy was only in its infancy, and many unwittingly present barriers, or creating a "chilling effect" on the development of the market.

Historically, renewable energy has been governed under the same regulatory frameworks as fossil-based electricity. However, with recent developments and the increasing emphasis on the renewable energy market the Project is examining how other legal regimes impact upon this market, often unintentionally. The trend is towards more and more international agreements and thus this is a good time to examine the place of renewable energy in international law.

The REILP will concern itself specifically with so-called "new" renewables: photovoltaic solar; thermal solar; wind; bioenergy; small hydro; geothermal; and marine/tidal energy.

Several potential barriers to the renewable energy market have been identified in existing multilateral conventions. As one example, some multilateral agreements on biodiversity protection may paradoxically hamper the development of renewables. It is ironic that pro-environmental regimes should be at cross purposes with



renewable energy as in fact, their ultimate goals are the same.

The major questions to be examined by the Project are:

- What international laws cover renewables? How do current international law regimes sustain or impede or otherwise impact renewable energy or renewable energy markets?
- What barriers do current international law regimes create? Which ones are appropriate and balanced and which ones are unforeseen and unwitting?
- How can these barriers be managed or removed? The Project will acknowledge the need for "trade-offs" or balancing objectives within acceptable levels.
- Is management or removal of barriers sufficient to promote renewables? Or do we need stand-alone international law to promote uptake beyond the rate at which it is already occurring?

Once the relevant impacts of international law on renewable energy have been identified, the Project will work to devise remediation or implementation strategies for these effects. The findings will also be presented to key policy makers in government and industry so as to raise the awareness of the position of renewable energy in international law. A final report will be created.

For more information on the REILP, contact Leslie Parker, Managing Director, at LeslieParker@reilp.org.

The Launch of the IUCN Academy of Environmental Law

On 4 November 2003, the IUCN Academy of Environmental Law, a new scholarly network of environmental law faculties and professors, was launched in Shanghai, China. The IUCN Academy's formal inauguration coincided with the first annual Colloquium on "The Law of Energy for Sustainable Development" which was hosted by the Shanghai Jiao Tong University. This event featured leading experts from across the globe who addressed the institutional, legal and policy challenges facing the world in improving access to reliable and afford-

able energy services, and included a detailed national and regional focus.

The Academy, a network and forum for universities from all over the world that is dedicated to achieving higher standards in environmental legal education and research, is a unique endeavor in the academic world. It is the first worldwide learned society in the field of environmental law, and its establishment marks the first time that law schools, departments and faculties have formed an international academic consortium on this subject.

The launch of the Academy was welcomed by the United Nations Secretary General, Kofi Annan, who commended the IUCN Commission on Environmental Law for both this initiative and its contribution to the implementation of Agenda 21. In his message to the inauguration of the IUCN Academy, Mr Annan stated:

“Agenda 21 recommended strengthening the law for environment and development, and called on universities in particular to cooperate in building capacity in the realm of environmental law. That call was repeated last year in the Plan of Implementation adopted at the World Summit on Sustainable Development in Johannesburg...I would like to congratulate all academic leaders assembled at Shanghai Jiao Tong University for their role in making possible the launch of the IUCN Academy of Environmental Law. IUCN’s Commission on Environmental Law has rendered an important service in implementing Agenda 21’s recommendations...The United Nations looks forward to the teaching and research that the Academy will now undertake. And we welcome the academic contributions that law professors worldwide will make towards our common goal of sustainable development on our one and only planet.”

More than 150 academics representing close to 90 university law faculties from 41 countries participated at the launch of the Academy, as well as its inaugural Colloquium, the first scholarly examination of the energy reforms advocated at the Johannesburg Summit held in 2002. UNDP, UNEP, UNITAR, Pace University and the IUCN Environmental Law Centre (ELC) co-sponsored the Colloquium.

The Academy also established its first series of lectures on Environmental Law, delivered by Professor Alexandre



Prof Nicholas A. Robinson

Kiss of the Robert Schuman University of Strasbourg, France and Director of Research Emeritus of the Centre National de la Recherche Scientifique. Prof Kiss’ three lectures will be published as a book. In the annual colloquia currently planned, a distinguished senior scholar in the field will be invited to deliver these lectures. The Annals of the Academy Colloquia and its body of research will be published by Cambridge University Press, after a publishing agreement which was recently signed between the Academy and the Syndicate of the Press

of the University of Cambridge. The Annals from the first Colloquium will be published in 2004.

Among the principal legal, environmental, economic and policy issues noted by the speakers at the first Colloquium were the following:

- The need to phase out, across-the-board, the current subsidies provided to polluting fuels;
- The role of legal systems in facilitating the more efficient use of traditional fuels and the expansion of the use of renewable fuels;
- Chinese accomplishments in integration of environmental and social concerns in tandem with its efforts to promote economic growth;
- A call for legal measures appropriate to regulate against market abuses in privatized energy system;
- The importance of greater research and development in cleaner utilization of fossil fuels and in development of new clean energy sources such as hydrogen;
- The role of sustainable energy as a prerequisite in order to meet the UN Millennium Development Goal of poverty reduction, together with legal provisions to ensure public participation; and
- The opportunities for promoting energy for sustainable development through local governments.

The Academy’s research and other programmes will be directed by the Academy Collegium, which had its first meeting in Shanghai, right after the Colloquium. The Collegium consists of representatives of each university member of the Academy. The members of the Collegium elect the Bureau of the Collegium, which functions as its executive committee. The Collegium agreed on having wide admission criteria and to hold workshops on capacity building on environmental law in developing countries. Provisional By-Laws for the regulation of the Academy’s affairs and membership were circulated to all universities interested in membership and will be confirmed at the Collegium’s next meeting in 2004, in Nairobi.

Planning for the Second Colloquium commenced in December 2003. The theme for the 2nd Colloquium, to be held in October 2004, will be “Environmental Law and Land Use,” and the event will be hosted by the University of Nairobi. A draft programme will be released by mid year, and a call for papers has already been distributed.

The Academy co-operates with the IUCN Environmental Law Programme and will eventually become an autonomous entity with its own juridical personality. For 2004, IUCN ELC in Bonn will continue to serve as secretariat for the new Academy.

Katerina Sarafidou
CEL Liaison Officer

For more information on the Academy, visit <http://www.iucn.org/themes/law/cel07a.html>.

IUCN Academy of Environmental Law Research Studies 2003

On 8 March 2004, the IUCN Academy of Environmental Law (Academy) signed a publishing agreement with the Syndicate of the Press of the University of Cambridge, to publish the research works of the Academy. Prof Nicholas A. Robinson, Chair of the IUCN Commission of Environmental Law, signed the agreement on behalf of the Academy, with John Berger representing the Cambridge University Press.

The IUCN Academy's first volumes, the "IUCN Academy of Environmental Law Research Studies 2003" is expected to be published in November 2004. It will contain the results of the Academy's pioneering research into the law of energy for sustainable development. These works were peer reviewed and presented at the 1st Colloquium of the Academy at Shanghai Jiao Tong University, in China on 4 to 8 November 2003. The volume will have a companion book, a compilation of sustainable energy laws.

SPECIALIST GROUP ON THE JUDICIARY ON THE MOVE

The Specialist Group (SG) on the Judiciary within the Commission on Environmental Law (CEL) of the IUCN met in February 2004 at Pace University School of Law in White Plains, New York. High on the agenda were discussions as to the preferred composition of the Group and its terms of reference. As to the former, it was agreed that the core committee be comprised of judges and that interested members of the CEL, such as law professors and legal practitioners, be members of an advisory committee to the Group. The focus of the terms of reference should be issues of judicial independence, integrity and capacity building in environmental law. Those attending the meeting agreed that the role of the Group should be as a catalyst and a convenor, rather than as provider. This was seen as the best way to be effective given inevitable resource constraints.

Among the many topics discussed was the planning for the North American Regional Judges Conference on Environmental Law now scheduled for early December 2004 in New York. The symposium will be held at the newly opened New York State Judicial Institute, located at Pace University. This splendid and brilliantly equipped

venue will provide a perfect location for judges from the U.S. State Supreme Courts and Federal Circuits, as well as judges from Canada and Mexico. As a result of meeting with judges of the Appellate Division of the New York State Supreme Court, the programme is being revised to reflect additional issues, such as choice of law problems and ouster provisions in trade agreements, e.g. NAFTA and WTO appellate bodies.

Also planned at the SG meeting were proposals for a "Judiciary Day" on 17 November 2004 during the 3rd IUCN World Conservation Congress (WCC) in Bangkok. The programme is an ambitious one and will include a wide range of speakers, including many judges from around the world. The intention is to draw wide attention to the crucial role of the judiciary in the field of environmental law and the need for national States to support judicial capacity building programmes, judicial independence and integrity. The Group looks forward to a productive year.

*Justice Paul L. Stein AM
Chair, Specialist Group on the Judiciary*

Specialist Group on Enforcement and Compliance

Significant discussions have occurred over the last few months on the agenda for the Specialist Group (SG) on Enforcement and Compliance. I have consulted extensively with a number of individuals and groups about the SG. These discussions produced a general consen-

sus that the principal, though not exclusive initial focus of the Specialist Group should be on the "green" enforcement and compliance issues associated with protected areas, endangered species, forests, marine reserves and other related areas because the International

Network for Environmental Compliance and Enforcement (INECE) focuses on the pollution control or “brown” enforcement agenda and because a great deal of work needs to be done on the “green” enforcement agenda.

My discussions also identified a strong interest in addressing the issue of “protection of protected areas” as a first initiative of the Specialist Group. We will look at the question of enforcement and compliance issues associated with protecting parks and marine reserves, including ways of resolving disputes through mediation that can avoid the need for enforcement. We may also examine the role that privatizing park management may play in enforcement and compliance. INECE has offered to provide time on its agenda at its Marrakesh meeting scheduled for June 2005 for the Specialist Group to conduct a day-long conference on these issues. I urge anyone who has an interest or experience with these issues to contact me so that we can establish a planning committee for the program and identify appropriate speakers.

There is also a strong interest in identifying Specialist Group “leads” from each region to ensure that the Specialist Group work serves the needs of all regions. To that end, I am seeking the names of individuals who would be willing to serve as a regional lead on enforcement in areas other than in North America.

The following are the draft Terms of Reference for the work of the Specialist Group for this year, as well as for the years 2005 to 2006:

Draft Terms of Reference for 2004

1. Work with ELC staff to update and expand the Specialist Group page on the ELP website so that it can be used to post announcements, publications (or links to publications) related to enforcement and compliance, and other related material. The website could include a dialogue capability that would allow Specialist Group members to ask questions of each other and share information.
2. Finalize a membership list for the Specialist Group and identify a Co-Chair for the Group.
3. Identify regional leads for the Specialist Group.
4. Consult with the Specialist Group on the Judiciary and INECE on enforcement issues related to illegal forestry practices in Liberia in connection with the work of the Judiciary SG on reestablishing the rule of law in that country.
5. Solicit from the members examples of best practices in “green” enforcement and compliance including examples of successful dispute resolution techniques. These best practices could be posted on the ELP website.
6. Work with INECE to contribute to its current work on enforcement and compliance indicators by focusing on indicators that are particularly appropriate in assessing the success of enforcement and compliance efforts related to “green” issues. A de-

tailed discussion of the INECE project is available at <http://www.inece.org/indicators/workshop.html>.

7. Establish links with other organizations that work on or are concerned about “green” enforcement issues such as TRAFFIC, Conservation International, the Wildlife Conservation Society, the Nature Conservancy, the International Ranger Federation and other similar organizations. Links have already been established with the World Wildlife Fund, U.S. EPA and INECE.
8. Establish links with other Specialist Groups as appropriate. A link has already been established with the Specialist Group on Water and Wetlands.
9. Work with Professor Rob Fowler, chair-designate of a subcommittee of the Water and Wetlands SG dealing with enforcement and compliance issues including the possibility of assisting the new Australian Environmental Law Enforcement Network.
10. Hold an initial meeting of the Specialist Group for those interested in the issue who will be attending the IUCN World Conservation Forum in Bangkok in November 2004 to discuss the agenda for the Marrakesh training program, issues on “green” enforcement that should be addressed at the 2006 IUCN Academy of Environmental Law Colloquium that will focus on enforcement and compliance, training needs and opportunities and funding.
11. Explore the idea of presenting a workshop based on Linda Malone’s new book – *Defending the Environment: Civil Society Strategies to Enforce Environmental Law* – for the 3rd IUCN World Conservation Congress CEL meeting on November 16.
12. Undertake a “needs assessment” or “gap analysis” related to “green” enforcement.
13. Develop a training program on “Protecting Protected Areas” to be delivered in conjunction with the next INECE worldwide meeting schedule for June 2005 in Marrakesh, Morocco and hold a Specialist Group meeting in conjunction with the training program.
14. Identify potential contributors for the IUCN Academy Colloquium on enforcement and compliance scheduled for October 2006 in New York and to a proposed book on international environmental enforcement and compliance to be produced in connection with the Colloquium.

Proposed Terms of Reference for 2005-2006

15. Consult with Specialist Group members who will participate in the 2005 IUCN Academy of Environmental Law meeting in Auckland/Sydney.
16. Participate in the IUCN Academy of Environmental Law Colloquium scheduled for October 2006 focused on enforcement and compliance issues and hold a meeting of the Specialist Group in conjunction with the Academy Colloquium.

I welcome your comments on the draft as well as on the future direction of the Specialist Group.

Lee Paddock
Chair, Specialist Group on Enforcement and Compliance
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Specialist Group on Indigenous Peoples and Environmental Law

The Specialist Group on Indigenous Peoples and Environmental Law (SG) held its second meeting in Suva, Fiji from April 24 to 27, 2003. At the meeting, the SG discussed a number of governance issues, including the structure of the SG and how it would operate in the future. The SG also identified customary law as a priority item and has initiated various projects in the area.

The SG's program on customary law is consistent with the terms of its mandate which includes among others: (i) articulating and promoting "the recognition of indigenous legal systems, customary law and customary rights;" (ii) studying and promoting "indigenous governance relating to the conservation and sustainable use of biodiversity, indigenous protected areas, land and resources including indigenous co-management, community-based management and other participatory processes incorporating indigenous knowledge and ensuring food security and sustainable livelihoods;" and (iii) researching and analysing "indigenous land use, tenure and traditional resource rights."

Paul Kuruk is preparing a background paper on customary law for the SG. The SG is also working with the distinguished Maori jurist Eddie Durie on adding his manuscript on customary law to the SG's knowledge base. Comparative studies from Africa and the Pacific are also being undertaken focusing on the meaning and use of customary law in relation to the environment and environmental management.

SG members are working on the following specific topics:

- Kent Nnadozie, on the protection of indigenous knowledge in the context of the Convention on Biological Diversity in Africa;
- Masego Madzwamuse, on the customary law of indigenous and marginalized people in Southern Africa relevant to sustainable development;
- Paul Kuruk, on the Organization of African Unity's (OAU) Model Law on Access to Biological Resources;
- Donna Craig, on types, operations and development of ethical protocols with indigenous peoples;
- Clarke Peteru, on traditional knowledge innovations and practices in the Pacific region;
- Tavake Afeaki, on the Via Pacifica project on customary regimes and fresh water in the Pacific region; and
- David Nahwegahbow, on a follow-up to the case study prepared by Royal Commission of Canada on the Algonquins of Barriere Lake.

Donna Craig and Paul Kuruk are also liaising with the IUCN Environmental Law Centre (ELC) through ELC Director John Scanlon and Legal Officer Alejandro Iza for participation of the SG in an FAO-ELC collaborative project on customary law.

In January 2004, the IUCN Environmental Law Programme and the Forestry Stewardship Council (FSC) met in Bonn to discuss areas of mutual interest between the FSC and the IUCN Commission on Environmental Law (CEL). Discussions at the meeting centred around the role the SG could play in providing independent expert advice on policies, systems and procedures regarding local communities and Indigenous Peoples in forest certification. The meeting, which brought together senior representatives of the FSC, CEL and the IUCN ELC concluded with the signing of a Memorandum of Understanding (MOU) between the FSC and the IUCN CEL. Under the MOU, IUCN CEL will provide independent advice to assist FSC in strengthening its policies, systems and guidance to stakeholders, forest management operations, accredited certification bodies and National Initiatives in regard to a number of areas of mutual interest. These include the rights, livelihoods, natural resources and environment of local communities and Indigenous Peoples. In addition, the Specialist Group is authorized in the first instance, to collaborate with FSC in developing guidance on the issue of prior and informed consent and the application of Principles 2 and 3 of the FSC Principles and Criteria regarding forest certification. Both Principles require respect and recognition for the rights of indigenous peoples and customary rights.

The FSC is a non-profit, non-governmental organization founded in 1993 by a diverse group of representatives from environmental institutions, the forest industry, the forestry profession, indigenous people's organizations, community forestry groups and forest product certification organizations from over 25 countries. The FSC was created as an international accrediting organization to ensure public credibility and rigorous standards of forest product labels in the marketplace.

The third meeting of the SC will be held in Quito, Ecuador from July 24 to July 27, 2004. The meeting will elaborate on the scope of the collaboration between the SG and the FSC contemplated under the terms of the MOU.

*Paul Kuruk
CEL Vice Chair for Indigenous Peoples Law*

WATER AND WETLANDS SPECIALIST GROUP

New members and networking

The Group continues to attract new members, and now has 27 members with expertise and interest in all areas of water law.

The group serves a good purpose in networking; a number of members have been linked with other IUCN contacts with similar interests. For instance some members with particular interest in transboundary water governance have been put in touch with one another and with people outside of the Commission.

Members have exchanged some documents of interest including Jennifer Mohamed-Katerere and Pieter van der Zaag's paper "Untying the knot of silence: Making water policy and law responsive to local normative systems" and an article by Richard Paisley on international water law and the equitable sharing of downstream benefits.

Projects

Members have responded most readily to various requests for assistance on specific projects. Members have a broad base of experience in all matters pertaining to water law, and it is hoped that more use will be made of this wealth of information over the coming year.

Customary law

A project jointly funded by FAO and IUCN to undertake four case studies on customary water law drew a good response from a number of members. Funding provision has limited case studies to four at this stage, two of which are being undertaken by Water and Wetlands Group members (Linda Nowlan who will prepare a study on Canada, and Melinda Janki, one on Guyana).

Water regulation reform – drafting in Nicaragua

A recent request from the ELC for an appropriate member or contact has been forwarded to members, and I look forward to a positive response.

China Yellow River law

Ian Hannam, a member from Australia, continues to progress this most important project. Ian will be in China again during April and May working with Prof Wang Xi, another CEL member, on further analysis of the existing Chinese law relevant to river basin management, and then commencing to build the structure for the new Yellow River Basin legislative system. So far Ian's team has examined around 60 individual pieces of legislative and various instruments, looking at their strengths and weaknesses for river basin management. Outcomes of the analysis are being used as part of the guide for the direction of the new law. Other, non-Chinese legislative standards for river basin management will now come into play to help shape an appropriate new system.

Use of internet

It has been suggested by the CEL Steering Committee that better use could be made of the internet by specialist group members. The Water and Wetlands group is keen to use a web-based facility to improve the dissemination of knowledge.

Subgroups

Environmental flows and property rights

The difficult challenge to improve environmental flows continues to develop and mature, and the value that can be added by "water lawyers" in this field is gaining recognition. In Australia, where environmental flows for the River Murray in the Murray-Darling Basin continue to be pursued, the key legal issues emerging are property rights in water, and governance options for management of environmental flows. Many commercial law and broader property law issues interact with the property right issues. Examples are the corporate nature of large water licensees, implications of corporations law on options for recovering water from licensees, complex taxation implications, and water trading and registration and titling systems. A number of Australian group members have been involved in various aspects of this work, and it is expected that the subgroup on water property rights can become active in coming months.

Helsinki Rules revision

The 10th draft of the revised Helsinki Rules on the Uses of the Waters of International Rivers have recently been completed, and forwarded to members for comment by Joe Dellapenna, a member of the group. Joe is a member of the Water Resources Committee of the International Law Institute, and rapporteur for the rules revision. Joe welcomes the comments of members, which will be taken into account as the document progresses towards the final stages. The revised Rules and accompanying explanatory documents are an extraordinarily comprehensive resource, containing all manner of detail about the nature, history, scope and application of laws relating to water.

Water Law Enforcement

Enforcement of "water laws" has been identified within the group as an important issue, and a subcommittee chaired by Professor Rob Fowler has now been formed. The enforcement of water laws has many issues common with environmental enforcement generally, but also matters that are unique to enforcement of laws relating to water. There are a number of issues, including that enforcement options have often not developed in step with the growing monetary and (recognised) environmental value of water. Prosecution is often the only enforcement option, with penalty levels low. Enforcement

continued next page ...

is expected to become an increasingly important aspect of water management as the price and scarcity of water increases and requires some degree of specialisation on the part of investigators and prosecutors.

The subcommittee will liaise with the specialist group on Enforcement and Compliance to identify potential areas of joint endeavour.

Megan Dyson
Chair, Water and Wetlands Specialist Group
dyson@chariot.net.au

Ocean Law and Governance Specialist Group

The CEL Ocean Law and Governance Specialist Group (OLGSG) was established in December 2003. The Group's overall objective is to support biodiversity conservation and sustainable uses of the world's oceans through law and policy initiatives.

The Specialist Group is expected to address ocean law and governance issues primarily at the global and regional levels. Examples of possible global efforts include:

- Supporting and advising IUCN inputs into intergovernmental conferences and meetings relating to oceans governance, including the annual United Nations Informal Consultative Process on Oceans and Law of the Sea (ICP).
- Addressing governance challenges of areas beyond national jurisdiction, including deep seabed mining and high-seas biodiversity.
- Strengthening global agreements/arrangements for sustainable fisheries and the control of seabed activities, shipping and land-based pollution.

Regional initiatives will focus on:

- Strengthening legal and institutional arrangements within existing marine regions.
- Promoting the integration of regional fisheries and marine environmental protection mechanisms.
- Comparing regional experiences and approaches to fisheries management and marine conservation in order to facilitate cross-regional learning and progressive developments in regional cooperation.

The Specialist Group will encourage the establishment of sub-groups in accord with member interests and IUCN priorities. The first sub-group, the Mediterranean Marine Law Specialist Group (MMLSG), involving over 20 legal experts organized under the IUCN Centre for Mediterranean Cooperation, held its first meeting in Malaga, Spain, from 15 to 16 March 2004. The workshop topic was "Towards Improved Governance of the Mediterranean beyond Territorial Seas." Various priorities were identified including the need to harmonize and modernize national marine legislation and the need to strengthen regional compliance and enforcement mechanisms. A workshop report with law and policy recommendations is forthcoming. Further sub-groups for the Black Sea, shipping law, and fisheries management are under discussion.

The OLGSG will seek to coordinate activities with other IUCN ocean-related projects and programs (particularly the Global Marine Programme) and will contribute to the research and educational efforts of the IUCN Academy of Environmental Law. A panel on integrated coastal management is being organized for the 2nd IUCN Academy of Environmental Law Colloquium to be held at the University of Nairobi from 4 to 7 October 2004. Tracking of IMO Conventions and the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) will be undertaken by members at the initial request of the IUCN Environmental Law Centre.

The Specialist Group will also seek to synergize with marine law and policy initiatives of other organizations, such as those of WWF, the International Ocean Institute and the Nippon Foundation (which is in the process of launching an International Ocean Governance Network).

The organizational structure of the OLGSG is expected to evolve. A vice-chair, steering committee and chairs of sub-groups are likely to be designated in the near future.



Malaga Meeting

Over 20 CEL members have expressed interest in the Ocean Law and Governance Specialist Group and new members are welcome. Interested persons are invited to contact lauri.macdougall@dal.ca.

David VanderZwaag
Chair, CEL Ocean Law and Governance
Specialist Group

Climate and Energy Specialist Group

Update on 2003-2004 Activities and Plans

The Climate and Energy Working Group has had, and will have, a very full plate of activities.

The Group played a pivotal role in organizing and participating in the first Colloquium of the new IUCN Academy of Environmental Law at its launching in Shanghai last November. The subject of the Colloquium was "The Law of Energy for Sustainable Development." We were able to attract as speakers and panelists some of the world's leading sustainable energy experts. Six of our members made presentations. CEL members Adrian Bradbrook of Adelaide University, Rosemary Lyster of the University of Sydney Law School, Richard (Dick) Ottinger of Pace University, and Wang Xi of Shanghai Jiao Tong University are editing the papers submitted. Cambridge University Press will publish them.

Our book, *Energy Law and Sustainable Development*, was very handsomely published by IUCN. It has received excellent reviews from people prominent in the field of energy for sustainable development including Susan McDade of UNDP and Professor Jose Goldemberg, editor of the World Energy Assessment and now Secretary of State for the Environment of the State of São Paulo, Brazil. The book was released in Shanghai at the Academy launch.

We have several exciting projects in progress. On behalf of UNEP, Dick Ottinger and Adrian Bradbrook are co-editing a Handbook for Legal Draftsmen on "Legislation for the Environmentally Sound Management of Energy Resources," focusing on energy efficiency and renewable energy. They are seeking co-authors from within and without the Group. The Handbook will outline the principal environmental issues posed for these resources and legislative options for dealing with them with some examples of how legislators in various countries have dealt with these options. It will be distributed by UNEP to governments and international agencies throughout the developing world.

The Group has been asked by the UN Department of Economic and Social Affairs (UNDESA) to assist it in conducting forums for parliamentarians on energy for sustainable development. The first such forum is tentatively planned to be conducted as a pilot in Cape Town, South Africa, primarily for parliamentarians in southern Africa. GLOBE (Global Legislators for a Balanced Environment) International has agreed to be a co-sponsor of the forum. We are also seeking the collaboration of the Interparliamentary Union (IPU) and EnviroLaw Solutions in South Africa, as well as other institutions. We are presently trying to raise about \$100,000 for 25 scholarships of \$2,500 each to cover travel and living costs of members of parliaments from other countries in southern Africa, and the costs of expert presenters.

The Group will participate in the International Conference on Renewable Energies to be hosted by the German government this June in Bonn. Group member Professor Thomas Waelde of Dundee, Scotland co-wrote one of the conference's thematic background papers on international institutional arrangements for promoting renewable energy with IUCN Director General Achim Steiner. Dick Ottinger has been asked to present a paper on "The Legal Framework for Renewable Energy for Sustainable Development" at the Second World Renewable Energy Forum, one of the related events that will take place right before the conference.

Members of the Group will write articles for, and Dick Ottinger and Adrian Bradbrook will edit, a Special Issue on Renewable Energy for publication late in 2004 by the Journal of Energy and Natural Resources under the auspices of its publisher, Thomas Waelde.

Lastly, the Group will prepare a draft resolution on energy for sustainable development for consideration by IUCN members at the 3rd IUCN World Conservation Congress in Bangkok in November of this year.

*Richard L. Ottinger, Chair
and Adrian J. Bradbrook, Vice Chair*

ETHICS SPECIALIST GROUP

The Ethics Specialist Group (ESG) Worldplan for 2003 to 2004 calls for a concentration of energies on understanding the Earth Charter's vision for an alternative future for "people and nature" in our "one and only world" (to paraphrase the theme of the 3rd IUCN World Conservation Congress (WCC 3)) and advancing its adoption as an ethical guide for the program and policies of IUCN.

The stance of the ESG is one of "critical loyalty" to the Earth Charter. We believe the Earth Charter provides the most credible and legitimate vision of global ethics available in this epoch. In particular, its integrated ethical vision – organized around the themes of Respect and Care for the Community of Life; Ecological Integ-

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rity; Social and Economic Justice; Democracy, Nonviolence and Peace – provides an invaluable framework for negotiating the meaning and implications of sustainable development (www.earthcharter.org).

However, we do not understand the Earth Charter to be the “final word” on shared values for a more just, sustainable and peaceful world. We have much to learn from other important documents that seek to express a global vision comparable to the Charter. The ethical and policy implications of the Charter for particular issues and regions have yet to be well specified. The Charter is incomplete in certain areas and this situation needs to be remedied. Importantly, the role of the Earth Charter as an effective catalyst for social transformation is still evolving. In sum, while the Earth Charter is a landmark in the moral history of our species, the greatest work remains to be done!

The ESG has sought to advance understanding and implementation of the principles of the Earth Charter in three ways. First, and most critical for the future of its work in CEL, ELP and IUCN, the ESG has been active in helping to implement resolution 2.96 of the World Conservation Congress at its 2nd session in Amman, Jordan, which called for IUCN members to consider a response to the Earth Charter at the 3rd session of the Congress at to be held in Bangkok.

Brendan Mackey served as a resource person for deliberations on this matter at the June 2003 IUCN Council meeting. The Council voted to recommend that the Bangkok Congress endorse the Earth Charter, promote its use in education, and adopt the Charter as an “ethical guide” to IUCN policy and program. The ESG was charged with the task of drafting an appropriate resolution to this end.

The ESG plans to organize several programs at the Bangkok Congress that will explain the importance and relevance of the Earth Charter. If WCC 3 adopts the Council-supported resolution, a new era of ethical reflection and purpose will be launched in IUCN, and the Union will be advancing the commitment to ethics in sustainable development made by the international community in the Johannesburg Plan of Implementation, article 5bis.

The ESG has also sought to critically assess the capacity of the Earth Charter to reflect the values of diverse cultures and address the pressing environmental and social issues of our age. In June 2003 the ESG held its first face to face meeting in association with members’ participation in the conference on “Global ecological integrity, human rights, and human responsibilities: intersections between international law and public health” organized by Laura Westra and colleagues in Urbino, Italy. Brendan Mackey also led dis-

cussions on the educational philosophy of the Earth Charter at a parallel Urbino conference that brought together participants in the Type II Partnership “Educating for sustainable living with the Earth Charter.” Ron Engel discussed the promise of the Earth Charter to express a new “covenant with Earth” at a meeting of Eastern European and North American philosophers in Hungary in August. In April 2004, the ESG co-sponsored, with the International Development Ethics Association, the Center for Humans and Nature, and the Development Ethics Study Group, a conference organized by Nigel Dower at the University of Aberdeen on “Global ethics, development, environment and the Earth Charter.” Former CEL Chair, Parvez Hassan was a plenary speaker.

In July 2004 ESG members will make presentations on the Earth Charter at a conference on “Global ecological governance for eco-justice and public health” held in association with the meetings of the International Society for Ecological Economics in Montreal, Canada, and at the “International conference on sustainable communities” in Burlington, Vermont. Preliminary meetings have also been held to plan a conference on the “Ethics of Climate Change,” a project led by Don Brown.

Finally, the ESG is collaborating with the Center for Humans and Nature to publish a series of scholarly papers on the Earth Charter. The first publication, edited by Bill Lynn and Ron Engel, a special issue of the journal *Worldviews* devoted to “Global Ethics and the Earth Charter,” will appear in early 2004. (Copies may be purchased from Brill publishers online at www.brill.nl.) A second publication, a special issue of the journal *Ethics, Place, and Environment* devoted to “The Earth Charter and Global Transformation,” will appear in early 2005.

The ESG is experiencing many new opportunities to advance the understanding and practice of the ethical dimensions of environmental law. As a result of Klaus Bosselmann’s participation at the launch of the Academy of International Environmental Law in Shanghai, we hope to contribute to the work of this important new organization, perhaps most especially in the area of conceptual foundations of international law. It is clear that we will need to increase our capacities in the coming triennium. Persons interested in participating in the work of the ESG should contact one of the Co-Chairs. We are eager to recruit additional contributing members, especially from regions of the world outside North America.

*Ron Engel, Co-Chair
jronengel@comcast.net*

*Brendan Mackey, Co-Chair
Brendan.Mackey@anu.edu.au*

Centres of Excellence

At its meetings in 2003, held in the Ukraine from 15 to 17 May and Shanghai from 2 to 4 November, the IUCN Commission on Environmental Law (CEL) Steering Committee agreed to expand CEL's global network of environmental resources to include more regional and thematic "centres of excellence." The Commission recognized eight new centres based in:

- the Ukraine (Ecopravo-Lviv);
- Botswana (University of Botswana);
- Costa Rica (the University of Costa Rica);
- China (Shanghai Jiao Tong University);
- Peru (Pontifical Catholic University of Perú); and
- South Africa (Mandela Institute, University of Witwatersrand, and the University of Natal).

This brings to 13 the total number of centres recognized by IUCN CEL, since APCEL was opened as the first CEL-recognized "centre of excellence" at the National University of Singapore in February 1996.

The objective of the "centres of excellence" is to take measures to establish and enhance environmental law through capacity building and training, and compiling and disseminating knowledge about environmental law. This objective is met through collaboration with the network of governmental and non-governmental IUCN members in their respective countries or regions and the rest of the IUCN ELP. CEL's recognition of "centres of excellence" promotes Agenda 21, which calls upon

"[c]ountries, assisted by international organizations, non-governmental organizations and other sectors . . . to strengthen or establish national or regional centres of excellence in interdisciplinary research, and education in environmental and developmental . . . law" (Par. 36.5(j), Agenda 21).

IUCN CEL also decided to develop a uniform "Charter" for the IUCN CEL recognized "centres of excellence." Amongst other things, the Commission agreed that centres either should be, or take steps to become, IUCN members. A first draft of the Charter was prepared by Prof Alexandre Kiss, President of the European Council for Environmental Law and a longtime CEL member. The draft was distributed and discussed at the Shanghai Steering Committee meeting and will be further consulted on by the CEL Steering Committee members as well as the 13 "centres of excellence" before its final consideration by the Steering Committee at its next meeting in May 2004.

Memoranda of Understanding (MoUs) for future collaboration have been signed between the IUCN CEL and each centre. Last year, after working with the "centres of excellence" to develop new and improved MoUs, the Commission signed MoUs with Ecopravo-Lviv, the Mandela Institute, the Shanghai Jiao Tong University, the University of Natal and the University of Botswana.

Katerina Sarafidou
CEL Liaison Officer

Asia-Pacific Centre for Environmental Law (APCEL)

APCEL members had another robust year of activities. Its members continued to teach environmental law in the Masters in Environmental Management course in the National University of Singapore. The course is a multi-disciplinary programme to provide education in environmental management for senior and mid-level managers in corporations, institutions, and government and non-government organizations. There are also four optional environmental law subjects in the Law Faculty which are taught by APCEL members.

The newly-established Singapore Ministry of Environmental Institute invited APCEL to be a partner in its training programmes. A course on *Understanding Environmental Laws: the Singapore and International Perspectives* was conducted for senior officials in the various government ministries.

APCEL also contributed resource persons to the UNITAR/Kushiro International Wetlands Centre training course on

the *Implementation of Multilateral Agreements Related to Biological Diversity* (15 to 21 March 2003, Kushiro, Japan), the conference on *Energy Security* (22 to 24 March



One of the course participants, Mrs Le Thanh Binh receiving her certificate from Prof Koh Kheng Lian

APCEL

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2003, Oxford University, UK) and the Vth IUCN World Parks Congress (8 to 17 September 2003, Durban, South Africa). It was also represented at the inauguration of the IUCN Academy of Environmental Law cum Colloquium on *Law of Energy for Sustainable Development* held from 4 to 5 November 2003 in Shanghai, China.

APCEL together with the IUCN Regional Biodiversity Forum, the IUCN Regional Environmental Law Programme, Asia and Macquarie University Centre for Environmental Law, organized a *Capacity Building Course for Biodiversity Conservation and Sustainable Utilisation in ASEAN Region* for the ASEAN Regional Centre for Biodiversity Conservation. The course was held from 24 to 28 November 2003 in Singapore. There were 12 participants from ASEAN countries.

Prof Koh Kheng Lian was on the Environment "feedback" committee on the Memorandum of Intent signed between the United States and Singapore under the Singapore-US Free Trade Agreement. Assoc. Prof Lye Lin Heng, a CEL member, was a consultant for EQS (Asia) Pte Ltd and for the Regional Institute of Environmental Technology.

APCEL co-organised a highly successful conference on *Intellectual Property and Biological Resources* from 1 to 3 Dec 2003 with three other Singapore institutions. As a side event, the ribbon launch of the IUCN Academy of International Law was held on 30 November 2003.

Assoc. Prof Simon Tay, another CEL member, gave a course on environmental law in Harvard University during his sabbatical leave.

Assoc. Prof Lye jointly edited the proceedings of the IUCN/IGES/ADB Symposium held at the ADB Institute in Tokyo, Japan, in November 2002 (Lye Lin Heng with Maria Socorro Manguiat, *Towards a "Second Generation" in Environmental Laws in the Asian and Pacific Region: Select Trends*, IUCN (2003)).

The second edition of Craig, Robinson & Koh: *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources* was published in 2003.

Koh Kheng Lian
Director, APCEL

Environmental & Resource Law Institute

The Environmental and Resources Law Institute (ERLI) of Shanghai Jiao Tong University (SJTU) is a leading institute specializing in education, research, and consultation in environmental law in China. Dr Professor Wang Xi, a member of the IUCN Commission on Environmental Law (CEL), is the Director of the Institute.

ERLI offers courses in Chinese Environmental Law, International Environmental Law, Comparative Environmental Law, Environmental Management, Natural Resources Law, Environmental Economics, Ecology and others to undergraduate and graduate students of the Law School of SJTU. ERLI offers a Ph.D. Program on Environmental Law under the Ph.D Program of the School of Management of SJTU. ERLI also offers a Masters Degree Program on Environmental Law co-sponsored by the SJTU School of Agriculture and Biology. In addition, ERLI will offer a special International Environmental Law Training Course co-sponsored by United Nations Institute of Training and Research (UNITAR).

ERLI began publishing an annual resource material entitled "International and Comparative Environmental Law Review" in 2002. Through the book, ERLI introduces academic works of internationally and domestically well-known environmental law scholars and experts to its Chinese-speaking readers.

ERLI has a close working relationship with the Environment and Resources Protection Committee of the Na-

tional People's Congress and the State Environmental Protection Administration as well as their counterparts in Shanghai City. ERLI works closely with the Standing Committee of the People's Congress and the Environmental Protection Bureau of Shanghai City. ERLI takes part in law and regulation drafting work for both central and local governments. One of recent achievements in legislative assistance to the government is the first draft of the Law on Environmental Impact Assessment of the People's Republic of China. The law was promulgated by the National People's Congress in December 2002. Currently, ERLI is working on legislative studies on protecting important ecological zones and urban lakes, amendment of regulations on wastes import and export and greenhouse gas reduction.



ERLI is very active in academic co-operation and exchange with environmental law institutions and experts both at home and abroad. ERLI is a CEL recognized "center of excellence" in environmental law. ERLI works closely with CEL and the Environmental Law Center of IUCN, the IUCN China Program, the Law and Policy Department of UNEP, the Environmental Law Training Program of UNITAR and a number of other well-known environmental law centers of the world.

Wang Xi
Director, ERLI

DR PARVEZ HASSAN

ENVIRONMENTAL LAW CENTRE

The Dr Parvez Hassan Environmental Law Centre ("PHELC") was established at the University of Punjab (the "University") in 2003 because capacity building, through education is Pakistan's foremost challenge in the growing environmental crisis. The lack of enforcement of environmental laws in Pakistan is largely due to untrained judges, lawyers and officers.

Shaikh Ahmad Hassan Library (the "Library") of PHELC has a good variety of books and continues to receive new books and other publications from various international organizations due to the efforts of its donor, Dr Hassan. The Library is playing a pivotal role in disseminating information through articles, academic scholarships and other materials on environmental law.

PHELC offers a one-year post-graduate Diploma in Environmental Law (the "Diploma") with three (3) papers: (1) Environmental Law, Theory and Enforcement; (2) International Environmental Law; and (3) Natural Resources Law. Students enrolled in the Diploma program comprise practicing lawyers, government officers, students and persons working with NGOs and the Environment Protection Department of Punjab ("EPD"). Alumni of PHELC have catalyzed the development of environmental law in Pakistan in the last year by conducting important cases at the Environmental Tribunal, teaching environmental law at various institutions and working with the EPD.

Since environmental law has been included as an elective subject in the third year of the LL.B. degree of the University by the Higher Education Commission, PHELC has also started its classes for the students of the Punjab University Law College. PHELC holds regular classes for the Diploma in Intellectual Property Law, LL.M. and Ph.D. programs, where various guest speakers are invited to lecture.

In April 2003, PHELC organized the national workshop "Environmental Law: Opportunities and Challenges" in collaboration with IUCN and the EPD. The workshop was inaugurated by the Environmental Minister and presided over by the Vice Chancellor of the University. The conclusion of the workshop was that the officers of the EPD be formally trained. Therefore, in October 2003, PHELC, again in collaboration with IUCN and the EPD, organized the capacity building workshop for extensive training of the officers of the EPD from all over Punjab. Consequently, EPD has started issuing notices to polluters; if polluters fail to act on the notices, then the EPD takes them to the Environmental Tribunal. A sub-

stantial number of cases have been filed in the Environmental Tribunal since.

Different departments of the University have conducted various workshops and orientation programs at the PHELC. For instance, in March 2003, the School of Biological Sciences organized an international conference



Mr Justice Saleem Akhtar (to the right) receiving the Lifetime Achievement Award from Mr Syed Babar Ali

at the PHELC. In November 2003, a seminar on Human Rights was conducted at the same venue.

Finally, on 14 March 2004, the Pakistan Environmental Law Association ("PELA") held its First Annual Seminar on Green Justice through Public Interest Litigation at the PHELC. The Seminar was co-sponsored by IUCN-Pakistan, WWF Pakistan and LEAD Pakistan. The highlight of the Seminar was the conferring of the PELA Lifetime Achievement Award on Justice (R) Saleem Akhtar, who has served environmental protection and sustainable development well and has to his credit the monumental judgment of *Shehla Zia vs. WAPDA* delivered by him 10 years ago. This judicial activism has spawned environmental initiatives all over the country. Mr M.C. Mehta, the distinguished guest from India, spoke about his pioneering role in public interest litigation in India. The Seminar has shown how the vision and advocacy of one individual and the innovative interpretation of the Constitution of Pakistan by another – in two different countries – improved the quest for environmental protection in both India and Pakistan. The Seminar was well attended and received wide publicity through the media.

*Jawad Hassan
Hassan & Hassan (Advocates)
Visiting Lecturer of Natural Resources Law, PHELC*

Ecopravo-Lviv Promotes Environmental Law in Ukraine and Regionally

Ecopravo-Lviv (EPL), a public interest environmental law NGO in Ukraine, has recently become an IUCN CEL recognized “center of excellence” in environmental law. EPL is promoting and enforcing environmental law in Ukraine and regionally.

On May 16 to 17, 2003, UNEP, IUCN and Ecopravo-Lviv organized a regional symposium “The Role of the Judiciary in Enforcement and Implementation of Environmental Law: A Regional Needs Assessment.” It was co-hosted by the State Judicial Administration of Ukraine and the Judicial Academy of Ukraine. Fifteen Chief Justices from 11 countries, together with other judges and experts across the globe, met in Lviv, Ukraine.

The Lviv Symposium followed recent global symposia held in Johannesburg and Nairobi, as well as regional symposia for Western Europe. During the Lviv Symposium judges discussed various issues on environmental law implementation and environmental human rights. They identified further capacity building needs and priorities for the courts of the Eastern European, Caucasus and Central Asian (EECCA) region.



Lady Justice

IUCN-ELC/JS

A series of capacity building activities in the region will follow up this event. The Lviv Statement, adopted at the Lviv Symposium, called “on UNEP, IUCN, Ecopravo-Lviv and other organisations to assist in developing and implementing judicial capacity building activities for the EECCA Region in the field of environmental law at the regional and national level based on an assessment of the needs of the judiciary.” (The full text of the Lviv Statement, in Russian and English, can be obtained by clicking on <http://www.iucn.org/themes/law/dev09.html>.)

Currently, EPL is implementing an EU-financed project to promote European environmental law in Ukraine. This will result in two publications on European environmental law (a textbook for students and compendium of EU basic environmental legislation). This aims to encourage the universities in Ukraine to include European environmental law in their Law and International Relations curricula.

Andriy Andrushevych
Executive Director, EPL

Visit the EPL website at <http://www.epl.org.ua>.

LIMA, PERÚ: DIPLOMA PROGRAM ON ENVIRONMENTAL LAW AT PUCP

Last year the Pontifical Catholic University of Peru (*Pontificia Universidad Católica del Perú* or PUCP), founded in 1917, launched its first – and surely to become the most recognised – diploma program on environmental law in Perú. The diploma program was welcomed by its lawyer and legal officer alumni in the environmental field, as well as professionals with legal knowledge. Directed by the PUCP Law School with the academic support of IUCN member and long-time IUCN ELP institutional partner SPDA (*Sociedad Peruana de Derecho Ambiental* or the Peruvian Environmental Law Society) and the ELP, the diploma course benefits from CEL’s strategic policy of fostering a network of “centres of excellence” in environmental law around the world. The AVINA Foundation co-operated with financial assistance through SPDA to enhance PUCP’s international outreach capabilities by means of academic alliances, exchange programs and research projects with other environmental centres and institutions, mainly in the Andean region.

The purpose of the diploma program is to develop and strengthen environmental law studies in Perú, offering a chance to research, discuss and analyse national and international environmental conflicts using an interdisciplinary approach. Visiting professors from Chile, Ar-



PUCP

SPDA

gentina, Brazil and USA share with Peruvian teachers the responsibility of this academic program.

The diploma program includes a great variety of courses with a special focus on environmental damage and responsibility. The courses range from purely legal to interdisciplinary ones, taking into account domestic and international law topics. The teaching techniques applied lead to active methods of learning and research. PUCP's diploma course has a special interest in the discussion of legal cases to apply conflict resolution theory and tools. This will hopefully contribute to a better understanding of the complex nature of environmental problems and the expertise required in addressing them with competence and within a sustainable development perspective.

PUCP Law School is well recognised in Perú and abroad. Most of the best professionals in the country from all legal disciplines come from this school and represent PUCP's contribution to the development of the rule of law.

The first class is composed of 20 students whose admission depended upon their academic and professional background. They are promising young professionals who are highly motivated to conduct research on this field and to contribute to the development of environmental studies in Perú.

PUCP has a strong commitment to the development of environmental law through its Law Faculty and sees its partnership with the ELP and SPDA as an occasion to provide an excellent academic formation for young and promising legal professionals in order to develop and strengthen the discussion on the environmental topics within the public and private sectors. We look forward to begin research projects that could benefit all of us.

Prof Elvira Méndez Chang
Director of Academic Affairs and Coordinator of
the Environmental Law Diploma Program
Law School, PUCP
Emendez@pucp.edu.pe
www.pucp.edu.pe/diplomas/derambiental/

University of Costa Rica Law School Recognized as a CEL Regional “Centre of Excellence”

At the first annual meeting of the IUCN Academy of Environmental Law in Shanghai last November IUCN Commission on Environmental Law (CEL) Chair Nick Robinson and University of Costa Rica Law School Dean and Professor of Environmental Law Rafael Gonzalez Ballar signed a memorandum of understanding recognizing the University of Costa Rica Law School (UCR) as one of the newest CEL “centres of excellence.” CEL Regional Vice Chair for Meso-America, Dr Grethel Aguilar, facilitated the establishment of the new Centre and participated in the signing ceremony in Shanghai.

Under Dean Ballar's direction UCR has been rapidly expanding its environmental law program, both in terms of academic pedagogy and in service to the environmental law community. In 2004 UCR began offering a new Master's in Environmental Law Program (*Maestría*), adding depth to its current post graduate offerings in environmental and agrarian law. In the first semester 26 students enrolled in a variety of courses, including one taught by Dr Aguilar. UCR also began the process of formalizing the region's first in-house environmental law clinic, known in Spanish as the UCR *Consultorio Jurídico Ambiental*. The *Consultorio*, directed by environmental lawyer Shirley Sanchez, enjoys office space on the newly remodeled sixth floor of the law school. In the *Consultorio's* first semester of operation UCR law students worked with *Licenciada* Sanchez on cases involving agrochemical contamination, a threatened

Ramsar site, theft of genetic resources and scenic landscape protection. The *Consultorio* plans to work closely



Thomas T. Ankersen

Consultorio Director Shirley Sanchez with *Consultorio* students and Landscape Architect Maria Christina Gurucharri reviewing maps of a proposed scenic conservation corridor on Costa Rica's Pacific Coast

with the IUCN Regional Office for Meso-America (based in San Jose) on specific projects of regional interest as well as through internships.

UCR has benefited from its unique five year partnership with the University of Florida College of Law (UF) in the United States and the Environmental Law Alliance-Worldwide, supported by the John D. and Katherine T. MacArthur Foundation. Foundation support enables the

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CALENDAR

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Info needed:

The Chair and the ELC would be pleased to hear from CEL members who plan to attend or participate in any of the following meetings.

25-27 May	Rio de Janeiro	Commission on Environmental Law Steering Committee Meeting Contact: Katerina Sarafidou, CEL Liaison Officer, IUCN Environmental Law Centre, Godesberger Allee 108-112, 53175 Bonn, Germany; tel: +49-228-2692-231; fax: +49-228-2692-250; e-mail: katerina.sarafidou@iucn.org
29-31 May	Bonn Germany	2 nd World Renewable Energy Forum Contact: World Council for Renewable Energy / EUROSOLAR; tel: +49-228-362-373; fax: +49-228-361-213; e-mail: info@wcre.org; Internet: http://www.world-council-for-renewable-energy.org/
31 May – 1 June	Barcelona Spain	Water for Life and Security Contact: Barcelona2004 Forum; tel: +34-93-320-9010; e-mail: forum@barcelona2004.org; Internet: http://www.barcelona2004.org/eng/eventos/dialogos/ficha.cfm?IdEvento=155
1-3 June	São Paulo	8 th International Environmental Law Conference: Fauna, Public Policy and Legal Instruments Contact: Professor Antônio Herman V. Benjamin, Instituto O Direito por um Planeta Verde, Rua Felicissimo de Azevedo 1502/302, Auxiliadora, Porto Alegre São Paulo CEP 90540-220, Brazil; tel: +55-31-3104-8737; fax: +55-31-3107-3821
1-4 June	Bonn Germany	International Conference for Renewable Energies Contact: Secretariat of the International Conference for Renewable Energies, Postfach 5180, 65726 Eschborn, Germany; tel: +49-6196-79-44-04; fax: +49-6196-79-44-05; email info@renewables2004.de; Internet: http://www.renewables2004.de/
6-10 June	Green Bay Wisconsin, USA	Sharing Indigenous Wisdom: An International Dialogue on Sustainable Development Contact: College of Menominee Nation/Sustainable Development Institute; tel: +1-715-799-5600; fax: +1-715-799-5951; Internet: http://www.sharingindigenouswisdom.org/default.asp
7-8 June	Hamburg Germany	Conference on Climate Protection as Development Opportunity Contact: Axel Michaelowa, Hamburg Institute's Climate Policy Programme; tel: +49-40-4283-4309 or 49-40-4283-4451; e-mail: a-michaelowa@hwwa.de; Internet: http://www.hwwa.de/climate.htm
7-11 June	New York USA	5 th Meeting of the Open-ended Informal Consultative Process on Oceans and the Law of the Sea Contact: Secretariat; tel: +1-212-963-3962; fax: +1-212-963-2811; e-mail: doalos@un.org; Internet: http://www.un.org/Depts/los/consultative_process/consultative_process.htm
14-18 June	New York USA	14 th Meeting of the States Parties to UNCLOS Contact: DOALOS; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: doalos@un.org; Internet: http://www.un.org/depts/los/meeting_states_parties/meeting_states_parties.htm
16-25 June	Bonn Germany	20 th Sessions of the Subsidiary Bodies to the UNFCCC Contact: UNFCCC Secretariat; tel: +49-228-815-1000; fax: +49-228-815-1999; e-mail: secretariat@unfccc.int; Internet: http://unfccc.int/sessions/sb20/index.html
17-19 June	Washington DC USA	7 th Annual Conference on Global Economic Analysis – Trade, Poverty and the Environment Contact: Judy Connor; tel: +1-765-494-4267; e-mail: connerjr@purdue.edu; Internet: http://www.gtap.org
20-23 June	Durango Mexico	Conference on Food Science and Food Biotechnology in Developing Countries Contact: Instituto Tecnológico de Durango; Internet: http://www.itdposgrado-bioquimica.com.mx/congress2004.htm
24-26 June	Paris, France	Conference on Greenhouse Gas Emissions and Abrupt Climate Change Contact: Michael Obersteiner, International Institute for Applied Systems Analysis (IIASA); tel: +43-2236-8070; fax: +43-2236-71313; e-mail: oberstei@iiasa.ac.at; Internet: http://www.iiasa.ac.at/~oberstei/ff/index.html?sb=1
27-30 June	St. John's Newfoundland & Labrador, Canada	International Conference – Coastal Zone Canada 2004 Contact: Grant A. Gardner, Chair, Coastal Zone Canada 2004 Organizing Committee; tel: +1-709-737-8155; fax: +1-709-737-3316; e-mail: CZC2004@mun.ca; Internet: http://www.czca-azcc.org/
28-30 June	New York USA	Ecosoc High-level Segment: "Resources mobilization and enabling environment for poverty eradication in the context of the implementation of the Programme of Action for the Least Developed Countries for the Decade 2001-2010" Contact: e-mail: esa@un.org; Internet: http://www.un.org/esa/coordination/ecosoc/hl2004/index.htm
28 June – 2 July	Okinawa Japan	10 th International Coral Reef Symposium (ICRS) Contact: Plando Japan Inc.; tel: +81-3-5470-4401; fax: +81-3-5470-4410; e-mail: icrs@plando.co.jp; Internet: http://www.plando.co.jp/icrs2004
5 July – 6 Aug.	Geneva	International Law Commission, 56 th Session Contact: http://www.un.org/law/ilc/
7-9 July	Segovia Spain	Sustainable Tourism 2004 Contact: Gaye McKeogh, Conference Manager, Wessex Institute of Technology; tel: +44-238-029-3223; fax: +44-238-029-2853; e-mail: gmckeogh@wessex.ac.uk; Internet: http://www.wessex.ac.uk/conferences/2004/sustainabletourism04/index.html
19-22 July	Sorrento Italy	56 th Session of the International Whaling Commission Contact: IWC Secretariat; tel: +44-12-2323-3971; fax: +44-12-2323-2876; e-mail: secretariat@iwcoffice.org; Internet: http://www.iwcoffice.org/
19-23 July	New London, CT USA	2004 Tunza International Children's Conference on the Environment Contact: International Children's Conference; tel: +1-860-437-0757; e-mail: info@icc04.org; Internet: http://www.icc04.org/home.html

OF EVENTS

May 2004

Info needed:
Please inform us of important meetings on environmental law and policy that are not reflected in this list.

16-20 Aug.	Stockholm Sweden	2004 Stockholm World Water Week Contact: David Trouba; tel: +46-8-522-139-60; fax: +46-8-522-139-61; e-mail: dave.trouba@siwi.org; Internet: http://www.siwi.org
28 Aug. – 3 Sept.	Mauritius	International Conference for the Ten-Year Review of the Implementation of the Barbados Programme of Action Contact: Diane Quarless, UNDSO, SIDS Unit; tel: +1-212-963-4135; fax: +1-917-367-3391; e-mail: Mauritius2004@sidsnet.org; Internet: http://www.un.org/esa/sustdev/sids/sids.htm
6-10 Sept.	New York USA	UNFF Ad-hoc Expert Group on Consideration of a Legal Framework on all Types of Forests Contact: Elisabeth Barsk-Rundquist, UNFF Secretariat; tel: +1-212-963-3263; fax: +1-917-367-3186; e-mail: barsk-rundquist@un.org; Internet: http://www.un.org/esa/forests
6-10 Sept.	New York USA	United Nations Forum on Forests Ad hoc Expert Group Meeting Contact: UNFF Secretariat; tel: +1-212-963-3160/3401; fax: +1-917-367-3186; E-mail: unff@un.org; Internet: http://www.un.org/esa/forests/
20-24 Sept.	Rome Italy	30 th Session of the FAO Committee on World Food Security Contact: Margarita Flores, Secretary, Committee on World Food Security; e-mail: margarita.flores@fao.org; Internet: http://www.fao.org/unfao/govbodies/wfsfinal_en.htm
27 Sept. – 1 October	Nairobi Kenya	1 st International Ecoagriculture Conference and Practitioners' Fair Contact: Sara J. Scherr, Director, Ecoagriculture Partners; tel: +1-202-223-1313; fax: +1-202-223-3545; e-mail: SScherr@futureharvest.org; Internet: http://www.ecoagriculturepartners.org/pdfs/Updates/EP%20Update%207-03.pdf
27 Sept. – 5 Oct.	Geneva	WIPO, Assemblies of Member States Contact: www.wipo.int/news/en/conferences.html
2-14 Oct.	Bangkok Thailand	The 13 th meeting of the Conference of the Parties to CITES (CITES COP-13) Contact: CITES Secretariat; tel: +41-22-917-8139; fax: +41-22-797-3417; e-mail: cites@unep.ch; Internet: http://www.cites.org
4-10 Oct.	Nairobi Kenya	2 nd Colloquium of the IUCN Academy of Environmental Law on Sustainable Land Use and Environmental Law Contact: Katerina Sarafidou, CEL Liaison Officer, IUCN Environmental Law Centre, Godesberger Allee 108-112, 53175 Bonn, Germany; tel: +49-228-2692-231; fax: +49-228-2692-250; e-mail: katerina.sarafidou@iucn.org
16 Oct.	Worldwide	World Food Day: "Biodiversity for Food Security" Contact: e-mail: World-Food-Day@fao.org; Internet: http://www.fao.org/wfd/index_en.asp
21-29 Oct.	Madingley Hall Cambridge, UK	21 st Century Trust Conference on Global Governance: Scenarios for the Future Contact: tel: +44-20-7323-2099; fax: +44-20-7323-2088; e-mail: trust@21stcenturytrust.org; Internet: http://www.21stcenturytrust.org/2004.html
24 Oct. – 6 Nov.	Nicoya Costa Rica	Workshop and Forum on Global Environmental Change Contact: Inter-American Institute for Global Change Research (IAI); tel: +55-12-3945-6856; fax: +55-12-3941-4410; e-mail: i2004-geci@dir.iai.int; Internet: http://www.institutes.iai.int/2004GECI.htm
15 Nov.	Bangkok	Commission on Environmental Law Steering Committee Meeting Contact: Katerina Sarafidou, CEL Liaison Officer, IUCN Environmental Law Centre, Godesberger Allee 108-112, 53175 Bonn, Germany; tel: +49-228-2692-231; fax: +49-228-2692-250; e-mail: katerina.sarafidou@iucn.org
16 Nov.	Bangkok	Review of Commission Activities Contact: Katerina Sarafidou, CEL Liaison Officer, IUCN Environmental Law Centre, Godesberger Allee 108-112, 53175 Bonn, Germany; tel: +49-228-2692-231; fax: +49-228-2692-250; e-mail: katerina.sarafidou@iucn.org
17-25 Nov.	Bangkok	3 rd IUCN World Conservation Congress: People and Nature, Only One World Contact: Congress Officer, IUCN, Rue Mauverney 28, 1196 Gland, Switzerland, fax: +41-22-999-0020; email: congress@iucn.org
17 Nov.	Bangkok	3 rd IUCN World Conservation Congress: People and Nature, Only One World IUCN Commissions Day, CEL Judiciary Day Contact: Katerina Sarafidou, CEL Liaison Officer, IUCN Environmental Law Centre, Godesberger Allee 108-112, 53175 Bonn, Germany; tel: +49-228-2692-231; fax: +49-228-2692-250; e-mail: katerina.sarafidou@iucn.org
22-26 Nov.	Prague Czech Republic	16 th Meeting of the Parties to the Montreal Protocol Contact: Ozone Secretariat, UNEP; tel: +254-2-62-3850; fax: +254-2-62-3601; e-mail: ozoneinfo@unep.org; Internet: http://www.unep.org/ozone/
6-17 Dec.	Buenos Aires Argentina	10 th Conference of the Parties to the UNFCCC Contact: UNFCCC Secretariat; tel: +49-228-815-1000; fax: +49-228-815-1999; e-mail: secretariat@unfccc.int; Internet: http://www.unfccc.int
1-5 Dec. (tentative)	Dakar Senegal	1 st Global Wash Forum: Implementing the Goals of the WSSD Contact: Forum Manager; tel: +41-22-917-8657; fax: +41-22-917-8084; e-mail: wsscc@who.int; Internet: http://www.wsscc.org/load.cfm?edit_id=332
14-18 Dec.	Yokohama Japan	37 th Session of the International Tropical Timber Council and Associated Sessions of the Committees Contact: International Tropical Timber Organization (ITTO) Secretariat; tel: +81-45-223-1110; fax: +81-45-223-1111; e-mail: ittc@itto.or.jp; Internet: http://www.itto.or.jp

UF/UCR Joint Program in Environmental Law, directed by Dean Ballar and UF Professor and IUCN CEL member Thomas T. Ankersen, and coordinated by *Licenciada Sanchez*, to recruit young environmental professionals from Latin America and the Caribbean. The 2004 Joint Program will include participants from Jamaica, Peru, Ecuador, El Salvador and Panama. In 2004 the Joint Program will have its first European student, a recent Oxford graduate. These international participants join 20 law and graduate students from throughout the United States and from Costa Rica in a cross-cultural classroom setting for a six week program of comparative and international environmental law, including issue based

field trips within Costa Rica. Many of these students also participate in the new environmental law clinic, working with *Licenciada Sanchez* and Prof Ankersen on a variety of projects of interest to Costa Rica and the region.

Thomas T. Ankersen
Legal Skills Professor and Director
University of Florida/University of Costa Rica
Joint Program in Environmental Law and
Conservation Clinic

For more information on the UF/UCR Joint Program go to http://conservation.law.ufl.edu/summer_costarica.

Southern African Centre of Water Law Excellence

Southern Africa's hydrology is characterised by an uneven distribution of water resources. Persistent flood and drought cycles exacerbate the political, social and economic challenges that water poses to each of the region's nation states. In addition, water scarcity or overabundance through mismanagement of water resources, inequitable distribution, pollution of water resources, structural damage to water ecosystems, and substandard or non-existent sanitation all contribute to the magnitude of this challenge to the economic and social development, and ultimately, the eradication of poverty in the region.

The World Summit on Sustainable Development, held in Johannesburg, South Africa in 2002 recognised that:

“poverty eradication, changing consumption and production patterns, and protecting and managing the natural resources base for economic and social development are overarching objectives of, and essential requirements for sustainable development” (The Johannesburg Declaration on Sustainable Development, 4 September 2002).

In relation to water, this recognition is reflected in the Millennium Development Declaration (2000) which includes access to safe drinking water as one of the Millennium Development Goals. The critical role of sustainable water management for poverty eradication is a key outcome of the World Summit for Sustainable Development.

Sustainable and integrated water resources management is a highly complex undertaking. A critical component of achieving its objectives includes the *enhancement of capacity* in the region in order to meaningfully tackle and give effect to the many aspects of sustainable and integrated water resources management. A fundamental component of the *capacity building* and

education required is *training and education in water law*. This is because, in recent years, a number of water law reform initiatives that have been embarked on in Southern Africa (See for example the National Water Act 36 of 1998 (“the National Water Act”); Water Policy for Zambia, (November 1994); the Water Act 54 of 1956; and Chapter 312 of the Laws of Zambia, 1970, as amended). Those reform initiatives have introduced fundamental changes to national laws regulating fresh water resources in the region. Relatively complex pieces of legislation have been developed in the course of these processes. These new statutes have generally been drafted in a manner that is designed to facilitate access to the law by a wide audience – from state officials, water managers, judges and lawyers to the ordinary person who is a water resource user or a potential water resource user.

An urgent need to provide a high standard of training, research and education in the field of water law has been identified in the Southern African region. This has led to the recognition by the IUCN Commission on Environmental Law (CEL) of the first regional “centre of excellence” in water law in Johannesburg, South Africa. By offering teaching and training of a high calibre, in an appropriate teaching environment, the overarching objective is to teach and build capacity amongst Southern African students within the region that they are most familiar with and which they will serve in the future.

The primary objective of this water law programme is to explore Southern Africa's new water law regimes with students in an effort to encourage their active participation in this exciting field of law. Aided by comprehensive reading lists (made up of Southern African, African and comparative materials) the courses aim to build and acknowledge a skills base for water management in Southern Africa. As a CEL recognised “centre of excellence,” students of the Institute will benefit from the ex-

expertise of a number of highly regarded water law experts who will travel to South Africa for lecturing purposes.

Research, study and field-work undertaken in the courses of the water law programme is ideally undertaken in Southern Africa – under the prevailing conditions under which students live and work. It also makes such study more accessible in terms of financial feasibility, alleviating unnecessary burdens placed on students in living and studying in the northern hemisphere.

The Mandela Institute, School of Law, University of the Witwatersrand, Johannesburg, South Africa already offers a similar course at both a Masters (LL.M.) (a Masters by dissertation with compulsory lecture attendance for one semester) and Certificate (a short course mainly

designed for non-lawyers) level. The Mandela Institute has a measurable track record in this field of law and the ability to compliment the high standard of its courses with its access to regional and international experts in the field of integrated water resources management.

The programme will officially be launched at the University of Witwatersrand's School of Law in the latter part of 2004. The establishment of the CEL recognised "centre of excellence" and the Water Law Programme to be undertaken at the School of Law has obtained strong endorsement from South Africa's Minister of Water Affairs and Forestry and the United Nations Food and Agriculture Organization's Legal Office.

*Professor Robyn Stein
University of Witwatersrand School of Law*

New Head of FAO's Development Law Service Appointed

The IUCN ELP warmly congratulates Dr Ali Mekouar on his appointment as Head of FAO's Development Law Service. Ali, a Moroccan citizen, is a long-time CEL member. He has been at FAO since 1988, and was formerly a professor at the Faculty of Law of Casablanca (Morocco). He has an extremely broad range of experience and knowledge, both in terms of subject matter (ranging across the full range of food and environment issues) and geographically (having provided technical assistance in dozens of countries around the globe, as well as lecturing, teaching and participating in expert scientific and technical conferences and forums on five continents). Most recently, Ali was the 2003 recipient of the Elizabeth Haub prize for exceptional achievement in environmental law. He has written many highly respected books, papers, articles and other reports on environmental and natural resources law. Ali is stepping into the shoes of another long-time CEL member, Law-

rence C. Christy, who retired last December after 25 years at FAO.



IUCN-ELC/JS

Dr Ali Mekouar

NICHOLAS A. ROBINSON: A PERSONAL TRIBUTE

I first met Nick Robinson in Perth, Australia, in November 1990 at what was then called the General Assembly of the International Union for Conservation of Nature – IUCN. I had just been elected as the Chair of the IUCN Commission on Environmental Law (CEL) and recognized the enormity of what had happened to me – to move from being Deputy Chair to the legendary and larger-than-life Wolfgang Burhenne to becoming his successor. It was going to be a tough, nay, impossible, act to follow but I had to give the opportunity the best

chance I could. I turned to Wolfgang to guide me about the most important decision that I would make as the Chair. I requested suggestions for my Deputy Chair. The meeting with Nick that late evening at the Burswood Hotel in Perth after my election was a result of this effort.

The initiation of a rich and durable professional and personal association and friendship with Nick that
continued next page ...

evening has been one of the most important events in my life. With Nick's dedicated support, guidance and wisdom, we were able to turn the foundational vision of Wolfgang into making CEL an important and relevant player in the development of environmental law in the six years of our joint leadership from 1990 to 1996.

Whatever good the Commission did in those six years, Nick was in great measure responsible for those successes. He brought his scholarly background and intellectual strengths to help us finalize the IUCN Draft Covenant on Environment and Development in 1995. His knowledge of each subject covered by this broad framework draft treaty on sustainable development contributed to the excellence of the document.

This highly regarded American professor had no First World intellectual arrogance. Instead, he brought great understanding of Third World issues, several of them raised by me, to facilitate the balance that a Chair from Pakistan was seeking from a group that was dominated by the learning and experiences of the developed world. When the Commission turned to capacity building in the developing countries as its major commitment, it was Nick who led the academic and intellectual program of the Asia Pacific Centre of Environmental Law (APCEL) that we established in Singapore.

In a true sense, Nick trained the future leaders of environmental law and policy in the Asia Pacific region. His personal charm and charisma and his ready access have motivated this important fraternity to seek to make a difference on return to their countries in the region. The magic of his touch is such that whenever I return to Lahore from a foreign visit, each of the APCEL alumni in Lahore invariably inquires about news of Nick. This experience is repeated when I travel to any part of the world for an environmental meeting. It was Nick's sense of inclusivity – particularly to seeking participation from the developing countries – that similarly enabled us to increase the membership of Commission from 118 members from 50 countries in 1990 to 319 members from 95 countries in 1996.

For his monumental contribution to the growth and success of the Commission, it was natural that its membership would turn to him to become the Chair in 1996 when I stepped down at what was redesignated starting that year as the World Conservation Congress in Montreal, Canada. It was a measure of his endearment that the

IUCN membership endorsed that choice by a wide margin against the rival candidacy of South Asia's most respected former Chief Justice of India, our friend, Mr P.N. Bhagwati. Montreal witnessed another triumph of Nick. As Chair of the Drafting Committee of the Statutes Review Committee, he had provided pivotal anchor support in the formulation of the revised Statutes and Regulations of IUCN – an effort that was adopted by acclamation.

So when Nick was crowned in 1996 as CEL Chair, there were many expectations in the air. His past performance had led to high hopes. A leader that starts with such optimism in his followers starts with a disadvantage. I had no such disadvantage in 1990 as I was largely

unknown in IUCN and in the membership of the Commission and even small successes were magnified against low expectations. But it reflects Nick's stature in the environmental legal community in particular and the global conservation community generally that, today, as he gets ready to step down as the Chair in the upcoming World Conservation Congress in Bangkok, Thailand, he has surpassed all the high expectations placed in his leadership in 1996. From carrying capacity building from APCEL in Singapore to the Arab Centre of Environmental Law (ARCEL) in Kuwait, to infusing intellectual energies in the several Specialist Groups established by him, to spear-heading the launch of the IUCN Academy of Environmental Law, to facilitating the increase of the membership of the Commission to over 900 (and, by the time of the Congress, over 950) members from 138 countries in 2004, all these decorate the beautiful mosaic of environmental law developed and enriched by him.

We owe much to the trail-blazing initiatives of this giant among us, to his charm and warmth, to his intellectual brilliance, to his indefatigable energy, to his sense of fairness, to his compassion for the challenges before the developing countries and above all to his friendship and sincerity. Environmental law, today, is the richer for the monumental dedication and commitment of Nick Robinson.

Dr Parvez Hassan

President, Pakistan Environmental Law Association (PELA)

Former Chair, IUCN Commission on Environmental Law, 1990–96



Prof Nicholas A. Robinson

IUCN-ELC/JS

TRIBUTE TO DR PARVEZ HASSAN

Dr Parvez Hassan, former Chair of the IUCN Commission on Environmental Law (1990 to 1996) and currently an *ex officio* member of its Steering Committee and a senior partner at Hassan & Hassan (Advocates) based in Lahore, Pakistan, was the honoree for the 7th International Conference on Environmental Law (Water and the Web of Life) held in June 2003 in Sao Paulo, Brazil.

The event provided the opportunity for the international law community to recognize Dr Hassan's significant contribution to the development of environmental law in the Asia-Pacific region and worldwide.

Dr Hassan is well known in Asia for his untiring support and commitment to capacity building in the field of environmental law. It was his vision that convinced the Asian Development Bank eight years ago to provide a significant technical assistance grant to a group of law professors who wished to train others to teach environmental law in the Asia and Pacific region. That grant led to the training of over 60 law professors from 15 countries in the region and the publication in 2002 of the two-volume work, "Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources" which is now on its second printing.

Dr Hassan's involvement in the development of the Draft International Covenant on Environment and Development, along with the enormous contribution he has made to IUCN through his role as IUCN Regional Councilor for West Asia (1984 to 1987), IUCN Legal Advisor (1994 to 1996) and Commission Chair are only some examples of his dedicated work and life-long commitment to promote environmental law and bring it to more people.

He has provided invaluable guidance and leadership to the Asia Pacific Centre for Environmental Law, the IUCN Commission on Environmental Law's first recognized "centre of excellence." Last year he inaugurated the Dr Parvez Hassan Environmental Law Centre at the Punjab University Law College in Lahore, Pakistan, named after him in recognition of his generosity and commitment to law and the environment.



Dr Parvez Hassan

IUCN-ELC/JS

Dr Guillermo Cano, A Pioneer (1913-2003)

Last October 30, 2003, a world-renowned environmental law professor from Argentina and good friend of IUCN passed away in Buenos Aires. A true believer of the role of environmental law in the construction of a sustainable society, his juridical contributions regarding natural resources law and water law have become classics in Latin America. Don Guillermo or Cano, as I normally called him, liked to discuss every new concept with an energy that few people could match. His presence in international forums together with his duties as an Ambassador for Argentina was a must when experts wanted to learn from the Latin American experience.

Dr Cano was an excellent speaker and probably one of the most famous regional representatives of the 1972 generation of international lawyers that participated in the United Nations Conference on the Human Environment held in Stockholm. Born in the Province of Mendoza, Argentina, in 1987 he founded FARN – *Fundación Ambiente y Recursos Naturales* (the Argentinean Foundation for Environment and Natural Resources) – an IUCN member institution that has become well known in the international environmental com-

munity after the leadership of Dr Cano and fellow CEL member Dr Pedro Tarak, his right-hand man at FARN.

His career took him all over the world (e.g., to Japan and Yugoslavia as Ambassador and to Bonn as a CEL and ICEL (International Council of Environmental Law) member). He was a laureate of the Elizabeth Haub Prize and the Mitre Prize for Law and Political Science, a Doctor *Honoris Causa* of the Universidad de Cuyo in Argentina, and the recipient of many other distinctions. He was also President of the International Water Resources Association (Washington), the Inter-American Commission of Environmental Law, and Honorary President of the International Association for Water Law (Rome).

FARN – previously known as SADARN (*Sociedad Argentina para el Derecho y Administración del Ambiente y de los Recursos Naturales* or Argentinean Society for Environmental and Natural Resources Law and Management) – became the leading environmental law

continued next page ...

center of Argentina and part of a group of other similar South American institutions that helped in the design of national and regional legislation. Under his guidance, beginning in 1978, SADARN initiated a series of law reviews (in Spanish) on law, politics and administration called "*Ambiente y Recursos Naturales*" that FARN promptly continued. Dr Cano served as Executive Director of FARN until 1992 when Dr Tarak took his place. Today FARN is headed by Dr Daniel Sabsay who is also a CEL member and a well-respected jurist of Argentina.

Dr Cano was the most senior of the Latin American environmental lawyers who, during the 70s and 80s, contributed to the development and enactment of several pivotal general laws such as the Code of the Environment in Colombia. Dr Cano was the UN Coordinator of the team of consultants that drafted said Code for Colombia.

I remember some long conversations with Don Guillermo, especially one in 1988 when we were flying back to South America from an environmental forum. While I was reading Jeremy Rifkin's book "Algeny" Cano sat down beside me and said: "I like Rifkin's idea of the Chamaleon Cosmology, because indeed we no longer fear a source of knowledge beyond our reach. Knowledge evolves like nature, and cosmology is only a temporal theory." I was surprised and smiled at Don Guillermo

because he was opening the door for a direct dialogue on biotechnology and evolution. I was impressed with his memory and his vision of the future. In those days many environmental goals were associated with the coming 21st century, a landmark of hope to make things happen.

Many of us thought that conservation and sustainable development needed to attempt a profound shift in the

way citizens, businessmen, scientists, politicians and leaders relate to nature, a relationship still infected by a mechanical and materialistic economy. Rifkin's explanation of the coming information era was precise. Alchemy and algeny, two words that represent different cosmologies, were at the bottom of philosophical discussions of the role of law in the building of a sustainable world. In the words of Rifkin alchemy elevated the pyrotechnical arts to a sacred status: man needed to perfect and complete the natural process.

"Algeny" (a word coined by J. Ledergerb) is also an attempt to "help" nature by transforming the essence of a living organism to another state and to design new ones with the intent of "perfecting" their performance. Rifkin says that the final goal of the algenist is to engineer the perfect organism. Nature is seen as a hierarchical order of increasingly efficient living systems: the algenist is the ultimate engineer. Dr Cano feared, like me, that the new scientists could really generate unpredictable damage to the environment and human health because they (and we) are not gods. Fast and direct as he was, Dr Cano loved to talk about the future of humanity and the way we – environmental lawyers – could bring together some of the pieces left aside by a materialistic society.



Dr Guillermo Cano

I never thought I would recall this conversation with Don Guillermo but since that day I have had "Algeny" (the book) near me. Maybe Cano wanted me to share this with the environmental community, an opportunity that the IUCN ELP Newsletter offers us all.

Dr Jorge Caillaux-Zazzali
CEL Regional Vice Chair for South America

For a complete biography of Dr Cano, see:
<http://www.farn.org.ar/homenaje.html>.

The Vth IUCN World Parks Congress: Benefits beyond Boundaries

The Vth IUCN World Parks Congress (Vth WPC) was held in Durban, South Africa from 8 to 17 September 2003. More than 2,700 participants attended the meeting, representing governments and public agencies, international organizations, the private sector, academic and research institutions, nongovernmental organizations and community and indigenous organizations. WPCs are organized by IUCN every 10 years to take stock of the state of protected areas (PAs), appraise

progress and setback, and define the agenda for the next decade. The theme of the Vth WPC was "Benefits beyond Boundaries."

The three main outputs from the Congress were the Durban Accord and Action Plan, consisting of a high-level mission statement for protected areas and an outline of implementation mechanisms, 32 recommendations, endorsed by workshops during the Congress, and

the message to the Convention on Biological Diversity. Other notable products launched or featured at the Congress were the United Nations List and State of the World's Protected Areas, a global report on the world's PAs, a Protected Area Learning Network (PALNet), a web-based knowledge management tool for PA managers and stakeholders, and a Handbook for Managing Protected Areas in the 21st Century, which will collate case studies, models and lessons learned during the Congress and constitute the "User Manual" for the Durban Accord. Outputs focusing on Africa included a recommendation on African PAs and the Durban Consensus on African Protected Areas. These outputs can be downloaded from <http://www.iucn.org/themes/wcpa/wpc2003/>.

Staff of the Environmental Law Centre (ELC) and Commission on Environmental Law (CEL) members, including members of the CEL Steering Committee actively participated in the Opening Plenary and numerous Workshop Sessions of the WPC. CEL and the ELC took the lead in organizing three particular sessions:

- a. A session held during the Governance Workshop on "Globalisation and Decentralisation and the Role of Legal Frameworks." This interactive session focused on the trends and tensions surrounding globalisation and decentralisation and how this manifests itself in the context of protected areas;
- b. A side meeting on "Recent Innovations with Protected Areas Law: A Comparative Analysis" was developed by IUCN ELC in partnership with CEL members Professor Antonio Herman Benjamin and Professor

- Michael Kidd. This session focused on recent innovations in the field of protected areas law; and
- c. A side event to announce the launch of the new South African Water Law Centre of Excellence (see related article by Prof Robyn Stein).

The Chair of the Commission also made a presentation on the African Convention at the Africa Day of the World Parks Congress.

In addition, the IUCN Environmental Law Programme (ELP) made substantive contributions on discussions on international environmental agreements (global and regional), high seas, financial instruments, and mining and protected areas. IUCN ELP also led the Secretariat input into the Governance Workshop Stream. The International Environmental Governance paper prepared by the ELP for the WPC has now been published as IUCN Environmental Policy and Law Paper No. 49, through the generous support of Parks Canada.



IUCN ELC

For the preparation of this article, excerpts have been taken from volume 89, number 9 of *Sustainable Development*, the Summary Report of the Vth IUCN World Parks Congress, published by the International Institute for Sustainable Development. For more information on obtaining copies of "International Environmental Governance," check the back page of this Newsletter or log on to <http://www.iucn.org/themes/law/info04.html>. For more information on the Vth IUCN World Parks Congress, log on to <http://www.iucn.org/themes/wcpa/wpc2003>.

The 3rd IUCN World Conservation Congress

People and Nature – Only One World

From 17 to 25 November 2004, Bangkok, Thailand will host one of the most important gatherings of conservationists and environmentalists from all over the world. The 3rd IUCN World Conservation Congress (3rd WCC) will bring together about 5,000 participants from all over the world, including representatives of the 75 State and close to 1,000 non-State members of IUCN.

The 1st World Conservation Congress was held in Montreal in October 1996. It had been preceded by 19 IUCN General Assemblies, the first one of which saw the birth of IUCN in October 1948. The 2nd World Conservation Congress was held in Amman, Jordan in October 2000.

The 3rd WCC carries the theme "People and Nature – only one world" explained by IUCN President Yolanda

Kakabadse in this way:

"The theme . . . captures the idea of the interdependency of people and nature, and the perspective that neither can be understood nor addressed separately. While acknowledging diversity and difference, it calls on us to recognise the underlying unity of the world we must share." (Yolanda Kakabadse, "One World, One Union, One Congress: Why have an IUCN World Conservation Congress?" in *World Conservation (formerly the IUCN Bulletin)*, No. 3, 2003)



continued next page ...

Each WCC has three principal elements:

1. conducting the business of the Union;
2. assessing the work of the IUCN Commissions; and
3. taking stock of conservation.

Conducting the business of the Union

The Members' Business Assembly will take place from 21 to 25 November 2004. It is at the Assembly that the members will elect a new Chair of the Commission on Environmental Law (CEL), as Prof Nicholas A. Robinson steps down after serving two consecutive terms. Resolutions that will orient IUCN's new Programme and strategies for 2005 to 2008 will also be adopted during this period. Several CEL Specialist Groups are working with IUCN members on draft resolutions for the Congress.

Assessing the work of the IUCN Commissions

Mandates of the six IUCN Commissions will be formally adopted during the Assembly. However, the first day of the Congress, 17 November 2004, has been designated as Commissions Day. On this day, CEL will be focusing on the judiciary. "Judiciary Day" seeks to bring together leading members of the judiciary and public interest lawyers who have been staunch supporters of the role of the judiciary in advancing environmental law. The

present CEL Steering Committee will be sitting for its last session immediately before the WCC, on 15 November 2004. On 16 November 2004 the CEL Steering Committee, Commission Specialist Groups and members will review progress over the past four years.

Taking stock of conservation

Commissions Day will be followed, on 18 to 20 November 2004, by the World Conservation Forum (WCF), which will address relevant conservation concerns that will fall under four broad themes (ecosystem management; health, poverty and conservation; biodiversity loss and species extinction; and markets, business and the environment). Several CEL Specialist Groups and IUCN members active in environmental law have submitted proposals to host sessions during the WCF.

The whole Union is now gearing up for the Congress, a unique opportunity to showcase the work of the IUCN family, and to shape future conservation policies, initiatives and global agreements. We hope to see you in Bangkok!

IUCN ELC

For more information on the WCC, log on to <http://www.iucn.org/congress/index.cfm>.

Developing the IUCN ELP Component Programme Plan

Over the past few years we have witnessed the coming together of the IUCN ELP from all perspectives. It is a period in which the Commission on Environmental Law (CEL) and the Environmental Law Centre (ELC) have worked closely together to deliver an integrated programme. This was most evident through the development of the IUCN ELP Component Programme Plan (for 2005-2008), which was jointly developed by CEL and ELC for the first time in 2003.

At the CEL Steering Committee meeting held in the Carpathian Mountains, Ukraine in May 2003, CEL, its Chair, the Head of the IUCN ELP and Director of the IUCN ELC agreed to establish a joint CEL/ELC team to manage the development of the Component Plan.

IUCN ELC developed a draft plan to facilitate discussion at the first meeting of the Core ELP Programme Planning Team, which was held at the IUCN ELC, Bonn in August 2003. At this August meeting a draft IUCN ELP Component Programme Plan was collectively agreed. This plan was then released for direct consulta-

tion with IUCN non-governmental members with "environmental law" as a principal objective, IUCN CEL members, IUCN Commission Focal Points, and the IUCN Secretariat (Headquarters and Regional and Country Offices). It was also placed on the IUCN ELP website.

Comments received were discussed by the CEL Steering Committee at its November 2003 meeting in Shanghai, China and general feedback was also obtained from the Steering Committee, representatives of IUCN members and CEL members who attended the meeting. The Plan was then revised and distributed for further comment by the CEL Steering Committee, before being finalised and submitted to IUCN Headquarters on 12 December 2003.

Once adopted through the World Conservation Congress, the Plan will guide the work of the ELP from 2005-2008. A copy can be found at: www.iucn.org/themes/law.

John Scanlon

UNCCD COP 6

IUCN, through the Ecosystem Management Programme, organized a session of the Global Biodiversity Forum (GBF) attended by representatives from over 40 countries during the Sixth Session of the Conference of the Parties to the United Nations Convention to Combat Desertification (UNCCD COP 6) in Havana, Cuba.

The objective of the GBF was to provide a platform to advance the debate on sustaining livelihoods of local people through the conservation and sustainable use of drylands and its natural resources. It aimed at providing an inter-regional forum for the exchange of perspectives on the tradeoffs between conservation and development in drylands, with a view to preparing some policy recommendations to ensure livelihood security while maintaining ecological functions and biological diversity, and encouraging donors to reinvest in drylands.

The GBF was structured around three key issues or themes, which were discussed in workshops:

1. Environmental management in drylands from community perspective: issues of gender and traditional knowledge;
2. Managing water resources and wetland habitats in drylands; and
3. Mobilising financial resources to combat desertification.

With regard to the first theme, the workshop urged governments and the UNCCD Secretariat to take major steps to ensure equality between men and women in the implementation of the Convention, particularly at the level of the National Action Plan. As far as traditional knowledge is concerned, it was recommended that the Contracting Parties to the Convention, international organisations, NGOs, local communities, civil society and the private sector give due recognition to the role and rights of indigenous peoples and local communities living in drylands and to the protection and promotion of

traditional and local knowledge, practices and innovation systems in the management of drylands, biodiversity and equitable sharing of the benefits from its use.

The objective of the second workshop was to review water resources and wetlands management practices in drylands, analyse the reasons for their failures and generate advice and policy recommendations to be forwarded to the COP. Specific recommendations were presented in three areas: at the field level, at policy level and regarding the Land Degradation Assessment (LADA) project.

The GBF concluded that the ecosystem approach is especially suited to drylands, where low productivity dic-



Olli Varis

tates extensive use of large areas rather than intensive utilisation of small areas, and that annual and multi-annual variations have to be incorporated in any land use decisions.

The IUCN position statement to the High Level Segment of UNCCD COP 6 was instrumental in the re-wording of Decision 12/COP.6 (Review of activities for the promotion and strengthening of relationships with other relevant conventions and relevant international organizations, institutions and agencies), encouraging Parties to implement integrated, sustainable ecosystem-based activities. This decision provided IUCN with a clear opportunity to further promote the implementation of the ecosystem approach in order to achieve a better balance between conservation and development in the world's drylands. The Environmental Law Programme highlighted the necessity to strengthen existing or adopt new legal frameworks in the areas of water resources, soil degradation and land uses and renewed its intention to contribute as a strategic partner in the implementation of the Convention.

*Alejandro O. Iza
Legal Officer, IUCN ELC*



UNFCCC COP 9: The “Forest” COP

At the ninth session of the Conference of the Parties (COP 9) to the United Nations Framework Convention on Climate Change (UNFCCC), Parties adopted Decision 19/CP.9 (Modalities and procedures for afforestation and reforestation project activities under the clean development mechanism in the first commitment period of the Kyoto Protocol). Below are some highlights of decision 19/CP.9, the accompanying draft decision –/CMP.1, Modalities and procedures for afforestation and reforestation project activities under the clean development mechanism in the first commitment period of the Kyoto Protocol, and the Annex to the draft decision.

Dealing with non-permanence

In the case of carbon emission avoidance projects such as solid waste management projects, carbon emissions, once avoided, are presumed to be permanently avoided, at least as far as that project is concerned. For an afforestation or reforestation (AR) project, carbon may be released again, and so the credits or certified emission reduction (CERs) that are issued for the AR project need to be periodically compared to the certified level of greenhouse gas (GHG) removals.

Decision 19/CP.9 attempts to deal with this challenge by introducing two kinds of CERs for AR project activities. The “temporary CER” or “tCER,” expires at the end of the commitment period following the one during which it was issued (Par. 1(g), Annex). A “long-term CER” or “ICER,” on the other hand, expires at the end of the crediting period of the CDM AR project activity, i.e., a maximum of 20 years which may be renewed at most two times, or 60 years, or a maximum of 30 years (Pars. 1 (h) and 23, Annex).

A tCER, once issued, remains valid until its expiry date, even if the GHG removals that are represented by the tCER are offset by a subsequent reduction in GHG removals from the same project within the same commitment period. This, the Parties decided, is a calculated risk worth taking, since a tCER has a relatively short lifetime (i.e., at most only five years). The existence of the carbon emission reduction that supports an ICER will, on the other hand, be verified at least once every five years (Par. 32, Annex). LCERs need to be replaced when verification indicates that there has been a reversal of net anthropogenic greenhouse gas removals by sinks since the previous certification, and new ICERs will be issued for any additional removals since the last certification period.



Socio-economic and environmental impacts

Concerns regarding the use of alien invasive species and genetically modified organisms (GMOs) were addressed through preambular clauses that “recognize” that host Parties evaluate, in accordance with their national laws, risks associated with the use of potentially invasive alien species and the potential risks associated with the use of GMOs, by AR project activities. Investing Parties are, on the other hand, urged to evaluate, in accordance with national laws, the use of tCERs and/or ICERs generated from AR project activities that make use of potentially invasive alien species and GMOs. Environmental impact and socio-economic impact analyses are required for all AR project activities. If any negative impact is considered significant by the project participants or by the host Party, an environmental impact or socio-economic impact assessment has to be undertaken, in accordance with the procedures required by the host Party. The effectiveness of the analyses and assessment will, therefore, depend on the systems that are in place in the host country.

Small-scale AR

Decision 19/CP.9 defines “small-scale afforestation and reforestation project activities” as “those that are expected to result in net anthropogenic greenhouse gas removals by sinks of less than 8 kilotonnes of CO₂ per year and are developed or implemented by low-income communities and individuals as determined by the host Party” (Par. 1 (i), Annex).

While agreement was reached with regard to the definition, no special rules for small-scale AR project activities were adopted in Milan. The Subsidiary Body for Scientific and Technological Advice (SBSTA) has thus been tasked with recommending two draft decisions to COP 10 on: 1. simplified modalities and procedures for small-scale CDM AR project activities; and 2. measures to facilitate the implementation of small-scale CDM AR project activities.

The challenge will be crafting simplified modalities and procedures, and agreeing on facilitative measures that actually reduce the barriers to the implementation of small-scale AR project activities, which are meant to encourage the participation of low-income individuals and communities.

*Maria Socorro Z. Manguiat
Legal Officer, IUCN ELC*

New International Programme of Work on Technology Transfer and Co-operation

In one of its least noticed but most important decisions, the Seventh Conference of the Parties (COP-7) to the Convention on Biological Diversity (CBD) adopted a groundbreaking “programme of work on technology transfer and technological and scientific cooperation” (CBD Decision VII/29, Transfer of technology and technology cooperation (Articles 16 to 19)). This decision was based in large measure on the lessons developed by the Norway/UN Conference on Technology Transfer and Capacity Building held from 23 to 27 June 2003 in Trondheim, Norway (the Trondheim Conference), in which IUCN participated.

Unlike many of the nearly insoluble problems addressed by the COP in all of its meetings to date, the Technology Transfer programme offers a major opportunity to take action that will have immediate major positive impacts on progress towards achieving the three primary objectives of the Convention: conservation of biological diversity, sustainable use of its components, and equitable sharing of the benefits from use of genetic resources. Its ability to fulfill this promise depends in large measure on the development and implementation of legal tools in developing and developed countries.

In the Chairman’s Report of the Trondheim Conference, the importance of legal development was highlighted by the fact that “the creation of an enabling environment” for technology transfer was one of its three overarching recommendations. Regarding this work, the Chairman noted:

Last, the **enabling environment** is crucial for...successful technology transfer and capacity-building...There are needs to promote and in some cases revise legal frameworks, to foster and strengthen their implementation, and to develop workable law-enforcement (compliance) mechanisms that foster responsible transfer and clarify the rights and responsibilities involved...Other important aspects...include establishing national institutions related to the conservation of biodiversity and sustainable use of biological resources, the development of mechanisms for co-ordination and oversight of biodiversity-related or biodiversity-affecting technology transfer within a country or region, establishing mechanisms and standards for participation of relevant stakeholders, developing appropriate incentives both economic and others (both in the receiving country and in the country of the transferor), and establishing mechanisms for monitoring and evaluating the state of biodiversity. Legislative and institutional developments that may enable technology transfer could also include adequate protections both for those sharing data, and for those using shared

data. There is also a need to facilitate institutional synergies and policy integration, and to analyse and catalyse solutions for national and regional and global conflicts. The need to build the necessary institutional framework exists at various levels for continued work on capacity building was stressed. (Norwegian Directorate for Nature Management (2003), Chairman’s Report, Norway/UN Conference on Technology transfer and capacity building, at 9.)

The CBD Programme of work fully recognises and includes these objectives, and serves as an important international mandate for this work. The ELP has identified technology transfer as an important crosscutting issue in its Strategic Plan.

A Short History of the Concept

In Article 16 of the CBD, each Contracting Party expressly undertakes “to provide and/or facilitate” transfer of “technologies that are relevant to the conservation and sustainable use of biological diversity or [that] make use of genetic resources and do not cause significant damage to the environment.” Where the transfer is from developing countries to those that are less developed, it “shall be provided and/or facilitated under fair and most favourable terms,” which recognise and are consistent with relevant intellectual property rights (IPR). These provisions are supplemented by Article 18, through which the Parties are specifically called upon to “promote international technical and scientific co-operation in the field of conservation and sustainable use of biological diversity” and to utilise and participate in the clearinghouse mechanism for this purpose. The mandate inherent in Articles 16 and 18, however, is much broader than these provisions. The basic obligations of Articles 16 and 18 are linked to key cross-cutting obligations of the Convention, including:

- *Developing country technology*: Articles 16.1, 16.2, 17 and 18.4 clearly recognise that technology transfer is a “two-way street” – that the obligation for sharing technology includes southern developing country and traditional/indigenous technologies, and requires that the relevant IPR and other rights be respected (Articles 8j and 10c, and other provisions). This is both an obligation and a means of empowering developing countries, recognising them as partners in the global effort, not solely as recipients of help.
 - *Technical exchange*: Further obligations mandate facilitation of information exchange from all publicly available sources, including sharing “the results of technical, scientific and socio-economic research, as well as information on training and surveying pro
- continued next page ...*

- grammes, specialized knowledge, indigenous and traditional knowledge" (Article 17).
- *Research and training*: Article 12 mandates, *inter alia*, actions to "promote and co-operate in the use of scientific advances in biological diversity research in developing methods for conservation and sustainable use of biological resources."
 - *Incentive measures*: Pursuant to Article 11, all countries must "adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of biological diversity."
 - *Capacity-building, education and awareness*: One of the strongest commitments in the Convention is the commitment to capacity-building. Based on the realisation that it is clearly not sufficient to transfer technology alone, developed countries are required to ensure that an appropriate level of knowledge and experience (capacity) is *sustainably* transferred. They must imbue relevant government agencies, organs of civil society, private sector, and other key groups with a sophisticated understanding sufficient to enable its use and continued innovation, over the life of that technology (Arts. 13 and 18, supported by many other provisions throughout the Convention).
 - *Identification and monitoring of biological diversity*: Article 7's requirement that the Parties identify and monitor components of biodiversity, as well as processes or activities that "are likely to have significant adverse impacts on the conservation or sustainable use of biodiversity" and keep records of the information thereby generated, is arguably the central requirement of the Convention, and the key to National Biodiversity Strategies and Action Plans, which are its primary organising/implementation tool.

It is clear that technology transfer is a key requirement necessary to the achievement of all three of the Convention's objectives, and to completion of all programmes of work, *both present and future*.

The CBD's technology-transfer provisions are, in some ways, the culmination of a long process of development. Although long recognised as a key element of achieving international goals and commitments (from poverty alleviation and health to environmental protection and conservation), technology transfer has not been well understood or promoted as an overall concept. A number of international environmental agreements adopted in the 1970s (the Convention on Long-range Transboundary Air Pollution, the Ozone (Vienna) Convention, etc.) specifically mentioned technology transfer, but do not call address or consider the underlying requirements necessary for development and promotion of such transfers.

In 1987, acting on the basis of two 1985 UNGA Resolutions, UNEP's Governing Council adopted Decision 14/16, which notes "the importance of an international exchange of experience and knowledge concerning the environment" and "the urgent need to undertake prompt national and international action." Its primary recommen-

dations urge governments to identify technology needs, and to address the barriers and opportunities represented by international trade and other aspects of government and commercial action, as tools of technology transfer. Most important, institutions within the UN system were invited "to take account of their respective fields of activity of the promotion of the transfer of environmental technology."

The next step in this process occurred in Rio five years later, when chapter 34 of Agenda 21 specifically considered the issue of technology transfer. For the first time, an international consensus document looked at what technology transfer embodied, broadening the scope of the concept, and stating the need for investigation and work aimed at enabling and promoting technology transfer as an ongoing tool of achieving environmental objectives.

After Rio, many new international documents have been adopted, which include brief statements about the need for technology sharing, or identifying particular types of technology to be shared, with regard to conservation and sustainable use. Most recently, the WSSD recognised this need in Chapter X ("Means of Implementation") of its Plan of Implementation.

Apart from the CBD, however, no such instrument addresses technology transfer in detail, or focuses on the tool itself. It is clear that the CBD can become the central instrument for improving and enabling the better use of technology transfer in addressing all biodiversity conservation and environmental problems, both present and future. Working through nationally-driven activities and development, the Convention can develop tools and concepts to enhance the application of mechanisms of technology transfer, and can collect and disseminate experiences, approaches, problems and solutions.

Direct transfers of technology have been a hallmark of much of the Parties' work under this Convention; however, up to now implementation of Convention's the technology transfer requirements have generally focused only on specific transfers of technology, or identification of specific areas in which technology transfer is needed. The Programme adopted in COP-7 directs the Parties' attention to the *mechanism* of technology transfer.

Legal Components of Technology Transfer

Legislative frameworks (and other legal tools, instruments and advice) are relevant to virtually every CBD subject area. In assistance programmes, they can be either "transfers of legal technology" or legal capacity-building. At base, the relationship of technology transfer to capacity building is very close, but these are not synonymous concepts.

"Technology transfer" happens when the country does not have the relevant know-how or does not have access to the "technology" (defined as "the necessary equipment, developments, ideas, new developments,

key evolving concepts or skills, etc.”). The ELP has been involved in many transfers of legal technology – the development and sharing of cutting-edge legal developments, assistance with national/regional/global “regimes,” and similar activities.

By contrast, “capacity-building” happens where technology is available within the country, but there is not sufficient expertise or experience to utilise it (possibly because the experienced experts have been promoted out of the relevant ministries, etc.). Within the ELP, we have many examples of this kind of work. In some subject areas (for example, pollinators, forests, habitat protection) there is little or no need of technology transfer, because the legal issues are clear to any qualified and specialised expert. However, capacity-building might be needed, to address lack of enough specialised legal experts to cover needed biodiversity-relevant legal work, or the need for access to examples and other countries’ lessons-learned, etc.

In this sense, both types of legal assistance can be considered transfers of particular capacity or technology – no different from any other transfers of science or technology.

Legal Inputs to the Creation of an Enabling Environment

As is very evident in the CBD Programme and Trondheim Report, however, the more important role of law and legal development relates to the creation and improvement of the technology transfer tool itself. This process would appear to require the development, improvement and/or re-focusing of three kinds of legal tools.

Tools to facilitate technology transfer

Even when part of international aid programmes, international, bi-lateral, public-private and other types of transfers of technology utilise a commercial or pseudo-commercial format. As such their success can best be fostered or supported through developments in institutional and commercial law. For example, it will be important to give renewed attention to the terms and conditions for data-sharing. It is essential that both the provider and the user of transferred technology should be protected, and that those protections should recognise the motivations underlying the CBD’s objectives. This would mean reconsideration of the rights and obligations of owners of technology (if they intend to retain control over it) as well as the developers of technology (where it will not be subject to continuing protection). At the same time, special issues arise regarding the application and enforcement of conditions on data transfer, when imposed in the context of CBD-motivated technology transfers. These concerns include more than simply protecting the transferor’s rights. It is essential for users to fully understand such conditions, so that they can make informed decisions about whether and when to accept transfers “with strings attached.”

Another set of tools that must be evaluated are traditional legal relationships, such as partnerships, financing arrangements, donor-recipient relationships, and trusts. These concepts are undergoing a massive and swift evolution in the context of international business as well as assistance programmes. Some of these new developments have produced effective approaches to co-operation; but from others the results have been ill-considered or even involved unscrupulous arrangements. Existing frameworks at all levels must be adjusted to foster and encourage replication of successes, and to protect against negative consequences and abuses.

Intra-governmental co-ordination mechanisms for technology transfer (monitoring of the use of technology, mechanisms for safe escrow/transfer of data, etc.) are also essential. At the national and sub-national levels, this need has long been recognised in all sectors, but the existing effective mechanisms are not always applicable to address the problems of new technology, even within national legal systems. At regional and global levels, beyond these problems, there are additional co-ordination questions, including recognition of sovereign rights regarding key biodiversity principles (and national biodiversity/sustainable-use objectives) and their application to bilateral and international trade and assistance.

Tools for ensuring the sustainability of technology transfer

Legal development may also be valuable in the process of entrenching new technologies and promoting their use. For example, the transfer of technology will be a “one-year wonder,” without mechanisms to ensure that benefits are experienced by those who receive and use the technology, so that they are encouraged to retain it, rather than returning to former practices once the initial transfer programme has ended. In many situations, for example, it will be important to foster systems that enable onward transfers, including by:

- facilitating of local markets in locally adapted “hard” technology; and
- enabling/fostering the creation of co-operatives and eliminating inappropriate obstacles to community-level direct access to markets, resources.

Incentives to encourage non-commercial sharing of data and technology are another important tool, and might also be a way to pass through the governmental commitments and objectives and COP resolutions to private-sector and civil society actors. Examples (both in the provider’s country of origin and in the recipient country) include the development of tax benefits and other “standard” financial incentives; special exceptions in qualification for corporate residence or licensing; non-product-restricted certification; and, “goodwill” and public recognition programmes (awards). Perhaps the most important legal tool, however, will be the development of guarantee or surety systems that ensure technology

recipients at grassroots level of a basic level of return, so that they will feel confident in making changes to reap benefits from the new technology.

Tools for enforcement and implementation

Due to the speed of some technology-transfer programmes, a country's advances in technology can (and often does) exceed the ability of its governing and administrative frameworks to adapt. Adaptation to these major new inputs can change the entire scope of human activity within the country and may require very significant changes in the way governance happens.

The concept of "precaution," for example, is still in a state of evolution. As knowing risk-taking becomes more common, it may not be enough to simply require decision-makers to be "precautionary" in some general way. New proposals are looking at the way that precautionary evaluations can be conducted at various stages throughout technological development and introduction. An ongoing evaluative process ensures both that government can be more pro-active in examining and addressing risks, but also that modern willingness to accept a certain level of risk is not stymied by one-time-evaluation-decides-it-all mechanisms for ensuring that decisions are precautionary.

Another kind of mechanism that is evolving is "soft law." Interim tools such as guidelines, certification systems and voluntary codes can help governments and the regulated entities and industries to live up to their responsibilities to protect people, livelihoods and the environment, even where their overall governing frameworks have not yet fully "caught up" with new demands. The number and types of voluntary tools are constantly evolving at present, however, and there remain many legal obstacles to the use of these tools as interim coverage for governmental legal responsibilities.

Overall, rapid technological growth and evolution may well necessitate a paradigm shift in how governments

regulate commercial scientific activities. Greater involvement by government in scientific/technical development processes may be necessary, for example, a paradigm shift from current regulatory involvement, which occurs primarily at the "product" end (the final stage before permitting). Similarly, the nature of the standards used in permit-related testing and decision-making, the bases for development of different kinds of permits, and the active use of monitoring will all probably change as a result of the rapidity of technological "invasions" in developing countries.

Finally, most difficult from a practical perspective (but also most important) is the need to reconsider the role of scientific oversight in the post-permit regulatory process. It is likely that most countries will need to move away from applicant-supplied scientific expertise/oversight to direct, impartial expertise within the permitting/enforcement agency.

Conclusion: A Call to Action

The ELP is actively developing a programme of proposed responses to the decisions of COP-7 and the Trondheim Conference relating to technology transfer. Through active engagement of partners, including IGOs, NGOs and others, we are developing a consortium for creating the enabling environment to maximise the benefits and motivations for technology transfer in support of conservation, sustainable use, environmental protection, and related concepts of equity and justice.

*Tomme Rosanne Young
Senior Legal Officer, ELC*

For more information, and to find out how you and your organisation can participate, contact the ELC Secretariat, or keep your eye on our website <http://www.iucn.org/themes/law>, where details will be posted soon.

To download a copy of the workshop report, log on to <http://english.dirnat.no/wbch3.exe?ce=18026>. To obtain a written copy of the report, please contact rita.strand@nina.no.

THE WORLD WATER FORUM

The 3rd World Water Forum, which took place in Kyoto, Osaka and Shiga, Japan (16 to 23 March 2003) was a platform for discussing various actions needed to solve the global water challenges and meet the goals set forth at the Millennium Summit of the United Nations (New York, 2000), the International Freshwater Conference (Bonn, 2001), and the World Summit on Sustainable Development - WSSD (Johannesburg, 2002). The key issues addressed by the Forum were safe clean water, capacity building, financing, participation, regional issues and governance.

The inclusion of governance as a separate issue stemmed from the recognition that the so-called water

crisis is a water governance crisis, i.e., many countries lack the effective socio-political and administrative systems that would enable them to adopt an integrated resources management approach, as well as a transparent and participatory process oriented to address not only the human but also the environmental needs relating to water. The Forum's recommendations on governance reinforce the Recommendations for Action of the Bonn Freshwater Conference and the WSSD targets.

With regard to the WSSD Plan of Implementation's 2005 target, the Forum's recommendations stressed the necessity for countries to commit to the preparation of In-

tegrated Water Resources Management Plans, setting out strategies, and including shared waters.

The Forum highlighted the importance of supporting the initiatives of developing countries willing to improve water governance. Particular help should be provided for the implementation of new legal frameworks and for building the administrative capacity to run efficient institutions. The imperative of formulating clear legal and institutional frameworks and avoiding jurisdictional overlaps and conflicts was highlighted, as was the necessity to promote the access to information as a key factor for the establishment of accountable systems, and the reduction of corruption. The decentralisation of the responsibility to provide water services to municipalities, communities, public and private operators was also recommended.

IUCN participated in the panel for the wrap up session on the "Water and Governance" theme convened by the Global Water Partnership. In addition, the IUCN Environmental Law Programme released the "Water Law Series," a series of brief papers aimed at introducing the non-lawyer to the importance of the role of the law in integrated water resource management. The pa-

pers addressed the issues of basin management, devolution of authority, adapting to climate change, trading in water, defining property rights, human rights and water and effective water pollution legislation.

Water ecosystems attracted attention during the Forum. IUCN convened a panel to discuss the importance of environmental flow, the relationship of environmental flows to integrated water resources management, and review the (then) draft Guide on environmental flows.

Notwithstanding the criticisms received due to its timid approach, the Ministerial Declaration addressed both governance and ecosystems issues. It recognised the importance of protecting and using in a sustainable manner the water ecosystems, and urged countries to review and establish new appropriate legal frameworks for the protection and sustainable use of water resources.

Alejandro O. Iza
Legal Officer, IUCN ELC

To download a copy of "Flow: the essentials of environmental flows," log on to <http://www.iucn.org/themes/law/info04.html#Other>.

Access and Benefit-sharing: In Search of an "International Regime"

In the Seventh Ordinary Meeting of the Conference of the Parties (COP 7) to the Convention on Biological Diversity (CBD), negotiators from over 150 countries took the first steps in a new process designed to try to address the ongoing problems of "access and benefit-sharing" (ABS). These efforts are part of a long history of measures, recommendations and programmes.

Since the earliest negotiations, the issues of "access to genetic resources" and "equitable sharing of the benefits arising from the utilisation of genetic resources" have always been among the most contentious in the CBD. Originally conceived as a *quid pro quo* that would encourage developing countries to become Contracting Parties to the Convention, the "ABS" concept has received significant attention, but shown very limited results, over the entire range of the Convention's history.

This lack of progress is almost certainly a function of the difficulty of the issue. The Convention's ABS provisions created a completely new kind of property right (ownership of "genetic resources"), without defining any parameters of that right or giving any guidance on how it would be legally defined, monitored or defended.

Despite large commitments of time, human resources, and donor assistance, and the writing of literally thou-

sands of books, pamphlets and articles by experts in all related fields, the Convention's 11 separate requirements relating to ABS have been largely unfulfilled. At present there appear to be only 17 countries (all developing countries) that have formally adopted measures addressing the "access" element of ABS, and even fewer that have enacted any legal measures required under the Convention relating to benefit-sharing. Considering that there are currently 188 Contracting Parties to the Convention, this record of inattention indicates a serious problem that must be addressed.

In COP 6, the focus of ABS-related work had been the "Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization" – a lengthy set of voluntary guidelines focused primarily on access issues – the responsibility of each country to provide other countries and their nationals with reasonable access to genetic resources within their jurisdiction. In general, the access component of ABS is (incorrectly) thought to be a duty applicable to developing countries; however the Convention does not include such a limitation.

Access is generally thought to be dependent on formal permission from the source country's government (or

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whoever is delegated by law to give such permission), which must meet two standards – it must constitute “prior informed consent” (PIC) to the request for access and use of genetic resources, and it must be based on “materially agreed terms” (MAT). Like all other provisions of the CBD, these requirements are addressed to the national level of government – it is a matter of national governance whether and how PIC and MAT are implemented. However, to date the countries that have adopted access legislation have included provisions for local participation, and have sought to ensure that local approvals, too, meet the standards of PIC and MAT.

The Bonn Guidelines generally focus on providing standards for PIC and MAT. This focus responds to a frequent complaint of businesses that the various processes that countries and sub-national governmental units impose on access have made it too difficult for them to consummate negotiation of access arrangements. Unfortunately, however it ignores the fact that PIC is really synonymous with the general legal concept of informed decision-making, and simply says that an ABS contract is like any other contract – invalid if one party has not been given all of the relevant information. This is, of course, a contractual principle that already exists in the national law of all countries. Similarly, MAT is another way of saying “contractual agreement.” Consequently, unlike a great many primary definitional and operational concepts of ABS, both PIC and MAT, as well as the related issues of public participation (also discussed in the Bonn Guidelines), are well understood and established in virtually all countries around the globe.

Other concepts detailed in the Guidelines also appear to miss a primary point. For example, the long discussion of the “nature of benefits” responds to another frequent business complaint – that source-country governments and communities expect that benefits received in exchange for access or as their “benefit-sharing” will always be money or financial returns. Hence, the Bonn Guidelines identify a number of ways in which the decision to permit access may bring positive influences into the affected region. This approach ignores the fact that “benefit-sharing” under the Convention refers to “sharing the benefits *arising from the utilisation of genetic resources*” and not simply to a recognition of some level of collective or community enhancement that emanates from the presence of a company or its researchers or collectors in the area.

In essence, this approach does not consider the fact that has proven difficult even to adopt national legislation on access. Many rather obvious concerns appear to be preventing national action. These include a broad range of uncertainties relating to the legal concept of ABS, coupled with the lack of any assurance that access agreements will be followed once the researchers and collectors have left the country. The detailed and protective national legal provisions that are the object

of business complaints are typically aimed at addressing one or more of these uncertainties.

The Bonn Guidelines were clearly intended to maximise the ease of access-seeking companies, and the users of genetic resources. They are somewhat lacking, however, in failing to address the responsibility of governments to oversee the action of user entities under their jurisdiction. More importantly, they do not assist countries with the problems of legal and conceptual development, which prevent them from implementing the ABS requirements of the Convention.

It should come as little surprise, then, that following the grudging compromises in the decision adopting the Bonn Guidelines (CBD Decision VI/24), many developing countries were intent upon taking new actions that addressed the bulk of their concerns. Their first opportunity to compel such action arose in Johannesburg, where intense negotiations were carried on regarding ABS, resulting in a provision in the WSSD Plan of Implementation specifically calls on the Parties to: “negotiate, within the framework of the CBD...an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilisation of genetic resources” (Par. 44(o)).

Although the CBD’s processes have attempted to retain the original mandates from Decision VI/24, this question of “negotiating an international regime” clearly predominated in COP 7’s ABS discussions. Since Johannesburg, there have been three primary CBD opportunities to discuss ABS issues – the Meeting on the Multi-year Programme of Work for the CBD (MYPOW), the second Ad-hoc Open-ended Working Group on ABS, and COP 7. In all three of these, negotiations and positioning on the question of an “international regime” have received the majority of attention, and have, to some extent pre-empted or inhibited all other work. The COP 7 negotiations have seen the clearest exposition of positions and a clear indication of the relative commitments of the various aligned groups to those positions.

At COP 7, the ABS deliberations were characterised by a level of intensity not usually present in COP negotiations, and to some extent by an air of mutual suspicion. It quickly appeared, however, that in one sense the entire negotiations turned on two questions that are not answerable by examining the WSSD language: 1. What is an “international regime on benefit sharing”? and 2. How does one “negotiate a regime”?

The disagreement over what the phrase “international regime” means in this context comes down to two positions. A significant group of developing countries appear to be interpreting the term to mean “a new (binding) instrument.” By contrast, the developed countries most active in the negotiations promoted a nearly opposite idea – that the term refers to a framework or COP decision that interprets and clarifies the relationships

among a many existing international and national instruments that are relevant to some aspect of ABS. (This latter approach contrasts strongly to some of the WSSD discussions, in which the phrase "international regime" was substituted for "agreement or protocol" as a means of broadening the scope of what is possible, and specifically included the possibility of creating a new instrument.)

As to the second question, there were three primary positions:

1. Negotiators from developing countries (which are generally providers of genetic resources), believing the current system is not capable of functioning, proposed to commence immediate negotiation of a binding instrument addressing ABS issues.
2. The main developed countries (mostly as users of genetic resources) appear to want to maintain a flexible, "contract-based" approach to ABS, and to wait to see if the Bonn Guidelines can improve implementation.
3. A third overall position was expressed by the various indigenous peoples' organisations represented in the meeting. Moving well beyond their previous positions on ABS, some of these groups stated that they would not support any work on the international ABS regime, unless it also completely addressed and resolved all issues relating to the rights of indigenous peoples and the protection of traditional knowledge under the Convention.

Each of these positions remained relatively firm until the end of the meeting. As a result, the ultimate decision on ABS remains somewhat unsatisfying. In general, with regard to the international regime, it settled for re-constituting the Ad-hoc Open-ended Working Group on ABS (AHWG-ABS) to hold two meetings in the lead up to COP 7. The bulk of the nine contact group sessions and several discussions in Working Group and plenary was focused on the Terms of Reference for the AHWG-ABS, whose task will be to develop a programme for considering and addressing the call for an international regime on ABS. In other words, the COP devoted over 75 hours to negotiating the general workplan of the group that will negotiate the general workplan for the negotiation of the international regime. This unprepossessing beginning suggests that these negotiations are not likely to be completed easily or quickly.

Notably, the Terms of Reference indicate that the AHWG-ABS will be called to consider the possibility of a combined regime addressing the full gamut of Article 8(j) issues (including the entire range of indigenous rights and traditional knowledge issues, not solely the "traditional knowledge associated with genetic resources," as the COP has usually proposed). A decision to combine these and address them in a single negotiation will vastly increase the complexity of the regime negotiations.

Although Decision VII/28 addresses six separate issues (implementation of the Bonn Guidelines, development of alternative approaches, definition of terms, capacity building, and PIC/MAT, as well as the regime) the bulk of the Parties' intersessional action will almost certainly focus on the "regime" negotiations, for several reasons. First and foremost, the decision calls for two intersessional meetings of a fully constituted Ad-hoc Open-ended Working Group on the regime issue. The cost of this suggests that other activities recommended in the Decision VII/28 will not be covered within the limited budget of the Convention. Second, ABS is a relatively complex issue, fully understood by only a small number of persons in each government, who will presumably be primarily focused on preparing for and participating in these meetings. Finally, as with the Biosafety Protocol, many countries are expecting to move their ABS legislative development processes to the "back burner" in the hope that, by the end of the regime negotiations, international processes will either (i) provide answers to the legal questions that have made national ABS generally fail up to now, or (ii) create a single international system that will eliminate the need for major national legislation.

It remains important, however, to promote national and regional ABS action, including especially the development of hard- and soft-law instruments. It is clear in the current negotiations that the Parties are still uncertain about solutions, and unable to discuss the kinds of provisions they believe will address the imponderable problems underlying the current failure of ABS implementation. It is likely that a synthesis of existing legal instruments from around the world will continue to be the only guide to the further development of this difficult concept.

The ELP is actively addressing this need through "The ABS Project" a multi-activity, multi-year project aimed at providing a sound legal basis for the current operation and future negotiations relating to access and benefit-sharing at international, regional, national and sub-national levels. With support from the German Federal Ministry for Economic Co-Operation and Development (BMZ), and working with a variety of partners, including FAO, INE, INRENA, IPGRI, IUCN-ROSA, SADC, SPDA, UC Davis, and UNDP, and with experts from Europe, Africa, Asia, South and Central America, and North America, the project has conducted significant legal studies, held expert workshops and provided expert advisors on four continents in its first year of operation. Current documents, reports and other information, as well as the programme for the coming years of the project may be found online at <http://www.iucn.org/themes/law/abs01.html>. CEL members are encouraged to visit that website, and fill out the application to participate in the project's Advisory Committee.

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International Treaty on Plant Genetic Resources for Food and Agriculture Ready to Enter into Force

On 31 March 2004, 13 countries (nine EU members, as well as Egypt, Czech Republic, Estonia and the EC) ratified or acceded to the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), setting in motion a major step to protect the future food supply and ensure the livelihoods and food security of the next generations.

FAO estimates that throughout human history, around 10,000 species have been used as food and feed, but at present only 150 crops feed most human beings, with only 12 crops providing 80% of the world's food energy. As the breadth of food and feed crops in primary use has narrowed, the remaining plant genetic resources – primary building blocks and progenitors of food varieties and fodder – take on expanding importance, as tools for development of new varieties. At the same time, however, many factors affect the continued vitality of these critical resources. The same stresses that are causing wild species extinctions and the loss of critical habitats every year – including development, pollution, and land conversion – cause extinctions in traditional cultivars as well.

Other strains on PGRFA arise from a very different source. Much of the world's most important genetic material has been preserved by traditional agriculturalists. Commercial varieties, introduced to improve yield, disease-resistance, and resilience have quickly gained a level of acceptance that caused the preservers of traditional varieties to relinquish these important sources, even as their usefulness to modern agricultural development is increasing.

Holders of traditional varieties have also decried the fact that important and valuable new varieties have been created using traditionally developed and preserved genetic material without providing any benefit back to the sources of this material – often not even the use of the new varieties themselves.

It is clear genetic resources will only increase in importance in future. Sources of genetic material are essential to enable agricultural production to adjust to climate change, and to maximise the resilience of the food supply in the face of shortages caused by disease, catastrophe, and decreasing agricultural area. Beyond this, it is not sufficient simply to provide enough caloric intake to keep the expanding human population alive; it is essential to continue to develop a greater number of varieties, to improve diets and health.

For all of these reasons, the States Members of FAO have long been attempting to combat the loss of agricultural diversity, while ensuring that this important genetic material remains available to enable constant improvement in food staples and support to the goal of a world without hunger. Beginning in the 1970s, FAO has promoted international action to address the complex questions surrounding the conservation and sustainability of traditional varieties and agricultural progenitors, their accessibility for the constant improvement of the food supply, sovereign rights of countries, and equitable treatment and fair access for all those whose efforts and traditions have preserved these valuable resources. FAO's work centred around a non-binding "International Undertaking" which clarified the manner in which plant genetic resources could be used fairly for the benefit of all humans, while recognising the equitable interests of their traditional holders and developers.

Then in 1992, the Convention on Biological Diversity (CBD) was adopted as a tool to enable international law and policy to recognise the complexity of ecological interactions. The CBD made two important contributions to the overall issue of PGRFA: it included agricultural varieties within the broad concept of "biological diversity" addressed by its framework, and it specifically noted the need for equity among nations with regard to the sharing of benefits from the use of genetic resources. These provisions created both tools and challenges for the International Undertaking, which was already in the evolutionary process that would eventually lead to its transformation into a binding instrument.

The ITPGRFA represents the answer to that challenge. It clarifies the special role of agricultural genetic resources, arising from both their vital importance to essential issues of food security and nutrition. On the basis of this special role, it creates a unique multilateral system for the provision of access to these key resources, enabling their broad use by agricultural developers and food programmes, while at the same time broadly sharing the benefits (including private sector monetary benefits, as well as new varieties and knowledge) derived from the use of these resources.

The ITPGRFA is perhaps most important as a demonstration of the manner in which the CBD framework can be utilised in the development of modern international laws intended to address complex concerns but remain focused on their broader integration in the international network on law and institutions addressing conserva-

tion and sustainable use of biological resources. Its entry into force is a major turning point for the issues of genetic resources, sustainable development, and synergy among international instruments.

IUCN ELC

NOTE: The IUCN Environmental Law Programme, through its Environmental Policy and Law series, in partnership with

the UN Food and Agriculture Organisation and the International Plant Genetic Resources Institute, is finalising a Guide to this Treaty, written by Gerald Moore and Witold Tymowsky, which will provide assistance to country parties in implementing their obligations under this instrument.

For the text of the ITPGRFA, log on to <http://www.fao.org/ag/magazine/ITPGRRe.pdf>.

New International Convention to Address Marine Invasive Species

On 13 February, 2004, the International Maritime Organization (IMO) adopted a new International Convention for the Control and Management of Ship's Ballast Water and Sediments (the "IMO Ballast Water Convention"). This Convention represents a major first step in controlling one of the major pathways of introduction of alien species into the marine environment, since ballast water transfer serves as a significant mechanism by which aquatic organisms move from ecosystems to which they are adapted, to those in which they can be harmful and invasive. It is estimated that up to four billion (thousand million) tonnes of ballast water are transferred globally each year.

The new Ballast Water Convention focuses on minimizing current risks and side effect to the environment and human health arising from the transfer of species in ships' ballast water and sediments, and beginning the process of eliminating such harmful transfers in the future. Each party will be required to take nine actions to "give full and complete effect" to the Convention's provisions:

1. Require ships under its flag or authority to undertake ballast water management activities ("mechanical, physical, chemical, and biological processes, either singularly or in combination, remove, render harmless, or avoid the uptake or discharge of harmful aquatic organisms and pathogens within Ballast Water and Sediments");
2. Ensure that all vessels within its jurisdiction comply with those requirements, without different treatment of the vessels of non-Parties;
3. Adopt and apply legal prohibitions and appropriate sanctions, applicable to all of the Party's vessels, regardless of where the violation occurs (based upon reports through the IMO);
4. Ensure the existence of adequate sediment reception facilities (the use of which does not cause undue delay) at ports and terminals where ballast water tanks may be emptied, cleaned or repaired;
5. Make full information available to the IMO and to other Parties regarding their legal requirements, and the location and availability of reception facilities;

6. Monitor compliance with ballast water management requirements;
7. Monitor and maintain records concerning the effects of ballast water management activities;
8. Encourage the continued development of standards and methods for ballast water management; and
9. Make scientific and technological developments and monitoring data available to other Parties.

Ballast water discharge required in any emergency (unless caused by the owner/officer's negligence or recklessness) are exempt from these requirements, as are discharges from vessels that operate legally and by permission entirely within a single country's jurisdiction, or which have been given special exemption both by the country whose waters they are in and the country whose flag they operate under. Military and other (non-commercial) government vessels are also exempted. A number of special exemptions may be granted by Parties where ships operate between specific ports, and do not mix ballast water, but these must be registered with the IMO. Parties are called upon to ensure that exempted vessels' operations are consistent with ballast water requirements, "so far as reasonable and practicable." In addition, the Convention leaves open the possibility of further exemptions "based upon Guidelines on risk assessment developed by the organisation.

The basic mechanism of implementation at the level of individual ships is the creation of a "ballast water management plan" for each vessel, including programmes for certification and record keeping, as well as specific ballast water management practices (pumping, treatment, sediment minimization, etc.). The Convention leaves the choice of systems to be used in the discretion of each ship and the government it operates under. It includes a mechanism by which the IMO will develop an approved list of "active substances" that can be used in eliminating organisms prior to ballast water discharge.

Perhaps the most important element of the new Convention is its phased-in performance standards. After long negotiations, the (binding) Annex to the Conven-

tion contains a clear set of measurable performance indicators relating to the size and concentration of viable organisms in the ballast water. Specifically, in a cubic meter (264 gallons) of discharged ballast water: 1. there can be no more than 10 organisms larger than 50 micrometers (0.002 inch) in dimension; 2. there can be up to 10 million organisms (10 per cc) smaller than 50 micrometers; and 3. there can be up to 10,000 microbial "colony forming units," etc. These standards will be fully required as to all ships (including retrofitting of ships currently in service) by 2016, at the latest.

To enable enforcement of these requirements, the Convention provides that national officials may board and inspect other-flag vessels, and where appropriate to take and test ballast water samples. Where harmful conditions or practices are detected, the inspecting authorities are entitled to "take steps to warn, detain or exclude the ship" until conditions that would threaten health or the environment are remedied.

The Convention recognizes regional agreements as a key avenue of practical implementation. As a consequence, it encourages Parties to co-operate in other ways to achieve the Convention's objective including "in a given geographical area to...conclude regional

agreements...for preventing and minimizing the transfer of harmful aquatic organisms and pathogens through ships' Ballast Water." It further imposes a good faith obligation on other Parties to co-operate with such regional agreements, and to develop "harmonized procedures" regarding these regional agreements.

Negotiation of the IMO Ballast Water Convention was difficult and controversial. There remain many complaints about the breadth of exceptions, the length of the phase-in process, the minimal nature of the performance standards, the level of discretion still afforded to ship personnel, and the lack of reference to or encouragement of new technologies. These comments aside, however, the document stands as a major next step in international law, creating a clear roadmap identifying the relationships among sovereign authorities and setting out the issues and concerns that must be addressed in creating and implementing comprehensive national frameworks on this critical component of the control of marine invasive species.

IUCN ELC

The full text of the IMO Ballast Water Convention can be obtained from IMO, by following instructions given at <http://globallast.imo.org/index.asp?page=mepc.htm>.

Fellows, Secondees and Interns

The IUCN Environmental Law Centre (ELC) has continued to attract interns and fellows from around the world and to collaborate with a number of organizations in order to fund research fellows to come to the ELC, enable them to access and conduct research on environmental law and policy and interact with the Centre's environmental law and policy specialists. In 2003 the Centre hosted 12 fellows and interns from 11 countries.

Four InWent fellows joined the Centre last year for a period of three months of research and writing. InWent, the former Carl Duisburg Society, is a non-profit organization dedicated to international advanced training and human resource development which has its headquarters in Cologne, Germany.

Edgar Fernandez from Costa Rica, a graduate student of environmental law at the University of Nantes, France, worked on a paper entitled "Legal Mechanisms for the Protection of the Natural Environment on Private Lands."

Sondes Jemail from Tunisia, a graduate environmental law student from the University of Tunis, Tunisia carried out research and prepared a paper on the Clean Development Mechanism under the Kyoto Protocol.

Ronaldo Gutierrez, a young Philippine lawyer who completed his graduate studies in the U.K., prepared a study

on "Mining in Protected Areas of Australia and the Philippines."

Angela Ruiz Salazar, a Peruvian attorney from the Catholic University of Lima, Perú, presented a paper entitled "Natural Protected Areas and Extractive Indus-



From left to right: Intern Noémi Nemes, and research fellows Ronaldo Gutierrez, Angela Ruiz Salazar, Sondes Jemail (standing) and Edgar Fernández (seated)

tries: Reflections on the Legal System in Perú and Selected South American Countries."

The fellows presented the findings of their research to an international group at the ELC in June 2003.

InWent also sponsored the fellowship of *Zakaria El Brahmi*, a Moroccan national working for the Arab Industrial Development and Mining Organization. Zakaria, who has a diploma in international relations, spent one month at the ELC familiarizing himself with international environmental law, with a focus on treaty law.

In addition, *Nicole Harkin*, a 2nd year environmental law student from Pace University, New York, joined the ELC for five months. Nicole, an American national, received a scholarship from the Fulbright foundation, one of the most prestigious scholarships awarded by the U.S. government, to conduct research on land use law as it relates to U.S. urban sprawl and energy consumption. Her main focus was the German system of dealing with environmental problems through land use controls at the local, state, and federal levels.

The Centre also had the privilege of hosting its first Japanese visiting research fellow, *Rie Watanabe*, a Research Associate at the Institute for Global Environmental Strategies (IGES). IGES, an IUCN member, is an independent, non-profit think tank based in Japan. It was established in 1998 for the purpose of policy research on global environmental issues to achieve sustainable development. Rie obtained her Master of Law and Bachelor of Law degrees from Tokyo University. She stayed at the ELC for six months, conducting climate change-related research for IGES and the ELC. Her activities included a study on legal title to carbon and a comparative study on the drafting and negotiating process of the UNFCCC and other multilateral agreements.

Stephane Levy, a secondee sponsored by the international law firm Pillsbury Winthrop's New York City office joined the ELC for a year as Junior Legal Officer. Stephane, a bilingual (English and French) lawyer from Canada, completed his law studies at McGill University in Montreal, and came to the ELC through the Stimson Pro Bono Fellowship. He contributed to the legal work

of the Centre by working on projects such as Legal Aspects of Carbon and issues relating to biodiversity and access and benefit-sharing.

The ELC also had the pleasure of welcoming four interns who assisted the ELC lawyers by participating in selected projects and activities, including undertaking research, writing and editorial tasks.

Maria Jimenez, a graduate student from Costa Rica spent a period of two and a half months doing legal research to determine how domestic legal systems around the world either allow or ban mining exploration and exploitation within their various categories of protected areas.

Noemi Nemes, a Hungarian MA student in International and European Legal Studies at the University of Utrecht, the Netherlands, spent six months at the ELC and was particularly involved in contributing to a paper called "Water and the Web of Life," which was presented at the 7th International Conference of Environmental Law in Sao Paulo, Brazil. She also assisted in the preparation of last year's Newsletter.

Arturo Brandt, a Chilean attorney carried out research for four months on global climate change and related issues, and gave general support to the ELC staff lawyers.

Rajesh Sehgal, a young lawyer from India joined the Centre for three months and focused on developing a paper on "Access and Benefit Sharing: An analysis of TRIPs and CBD for ABS Implementation and Developing Countries Concerns."

IUCN ELC

For more information on how to become a fellow, intern or secondee at the ELC, log on to <http://www.iucn.org/themes/law/fell01.html>.

ECOLEX World's Largest Environmental Law Database Launched on the Web

A new gateway to information about environmental law is now available on the Internet at www.ecolex.org. The world's largest environmental law database has been developed by combining the legal databases and libraries of IUCN – The World Conservation Union, the Food and Agriculture Organization of the United Nations (FAO) and the United Nations Environment Programme (UNEP).

This is the result of a partnership agreement between IUCN, FAO and UNEP, based on the strength of the

three organizations in the field of environmental law information. Instrumental to the undertaking is the 30 year-old investment of IUCN Environmental Law Programme in information gathering in this field. With the creation of the Environmental Law Information Service in the late 60s, IUCN had initiated a unique capacity building tool. Later on joined by FAO initiatives in the field of resource management and national legislation, and UNEP efforts to provide textual and mapping information on MEAs,

continued next page ...

the partnership has concretized the desire and willingness of the parties to provide a stable service of environmental law information worldwide.

ECOLEX provides online access to some 100,000 legal references and is an essential resource for developing the necessary tools to promote environmental management in the context of sustainable development. The information in the system covers treaties, national legislation, soft law and other non-binding policy and technical guidance documents, law and policy literature, and plans for a database on judicial decisions.

One of the unique aspects of the information coverage is the inclusion of a large number of legal references



IUCN-ELC/JS

from developing country legislation. Currently, over 120 developing countries have provided input to ECOLEX. Ensuring adequate information coverage from developing countries will remain an important goal for the ECOLEX partner organizations.

Equally important is the provision of up to date information on the status of MEAs. Ever since the 1972 Stock-

holm Conference on the Human Environment there has been a rapid growth in the number of Multilateral Environmental Agreements (MEAs). Users of ECOLEX can now examine any one of approximately 450 MEAs and see which States have signed or ratified them. Conversely, it is also possible to see all the MEAs signed or ratified by any one State, or on a specific subject.

Last, but not least, information on law and policy literature related to treaties or national legislation is equally important. Nowadays, a large number of environmental journals are on the market; in any one year an almost countless number of publications on environmental and natural resources conservation appear. To provide a single entry point into this pool of information is one of the purposes of ECOLEX.

The development of ECOLEX has brought together two UN organizations, FAO and UNEP, in a unique partnership with, IUCN – all sharing a common vision to provide better electronic access to information on environmental law to build capacity worldwide. The Partnership is officially listed as a WSSD Type 2 Partnership.

The partners are committed to the further development and enhancement of the ECOLEX gateway in order to respond to the ever-increasing demand for information about environmental law from a wide user base ranging from decision makers, policy advisors and lawyers to NGOs, advocacy groups, students and the general public.

*Françoise Burhenne-Guilmin
Senior Counsel*

For further information on ECOLEX please contact: At IUCN: ALukacs@elc.iucn.org.

To try ECOLEX, log on to <http://www.iucn.org/themes/law/info03.html> or to www.ecolex.org.

New IUCN Legal Counsel Appointed

In August 2004, Mr Giuseppe Zaccagnini joined IUCN as Legal Counsel. Giuseppe worked most recently for the World Intellectual Property Organization in the Office of the Legal Counsel. Prior to that assignment, he acted as Legal Counsel then Senior Legal Counsel with the International Air Transport Association (IATA) from 1998 to 2002. Giuseppe will now be in charge of handling all legal issues arising within IUCN. Based in IUCN Headquarters in Gland, Switzerland, he will report to the Director General and provide legal advice



to IUCN's global Secretariat. More specifically, he will be responsible for advising on dispute settlement and litigation, providing technical advice on issues related to Memoranda of Understanding with host countries and other intergovernmental organizations, and assisting in the negotiation and drafting of contracts. Apart from having attended the New York Law School, Giuseppe also studied at Harvard University and the State University of New York at Binghamton.

Welcome Giuseppe!

Book Donations

Heartfelt thanks from the IUCN Environmental Law Centre for the following donations to the ELC library:

Donors	Book Title
Yukari Takamura	The State of the Environment in Asia 2002/2003
Morne van der Linde	Human Rights in Africa 1999
Stefano Burchi	Readings in African customary water law
Rosi Cooney	The Trade in Wildlife
Jorge Caillaux Zazzali	El Caso Tahuamanu
Gerry Bates	Environmental Law in Australia
Colin T. Reid	Nature Conservation Law
Alexandre Timoshenko	Environmental Negotiator Handbook
Jan Glazewski	Environmental Law in South Africa
Marco A. Olson	Analysis of the Stockholm Convention on Persistent Organic Pollutants
Ali Mekouar	Multilingual thesaurus on land tenure
Bharat H. Desai	Institutionalizing International Environmental Law
Ali Mekouar, Lyle Glowka	Law and modern biotechnology
Lyle Glowka	Towards a Certification System for Bioprospecting Activities
James Gustave Speth	Red Sky at Morning America and the Crisis of the Global Environment
Susan Bass	Legal Tools and Incentives for Private Lands Conservation in Latin America: Building Models for Success
Ralph Wahnschafft	Energy Efficiency Compendium of Energy Conservation Legislation in Countries of the Asia and Pacific Region
Josette Beer-Gabel	Les commissions de pêche et leur droit
Ravi Sharma Aryal	CITES Implementation in Nepal and India – Law, Policy and Practice
Ali Mekouar	Preparing national regulations for water resources management
Sociedad Peruana de Derecho Ambiental (SPDA)	Manual de instrumentos legales para la conservación privada en el Perú
SPDA	The International Treaty Plant Genetic Resources and Decision 391 of the Andean Community of Nations: Peru, the Andean Region and the International Agricultural Research Centers
SPDA	Mejorando la Participación Ciudadana en el Proceso de Evaluación de Impacto Ambiental en Minería
SPDA	Manual de Legislación Ambiental
SPDA	Compendio de Legislación de Áreas Naturales Protegidas

For information on how to order these publications, please visit the ELP website, www.iucn.org/themes/law or contact:

Maaïke Bourgeois
 Assistant Documentation Officer
 Literature Library
 IUCN Environmental Law Centre
 Godesberger Allee 108-112
 D-53175 Bonn, Germany
 Tel.: ++ 49 228 2692 254
 Fax: ++ 49 228 2692 250
 E-mail: Maaïke.Bourgeois@iucn.org

Donations of publications from CEL members and friends of the IUCN Environmental Law Programme are most appreciated and duly acknowledged by being featured on our website and in the Newsletter.

Please help us keep the ELP library one of the best environmental law libraries in the world!



CEL MEMBERS' PORTAL

In 2003, the IUCN Environmental Law Centre (ELC) introduced an exciting new development relating the IUCN Commission on Environmental Law (CEL) directory, the CEL Members' Portal. The CEL Members' Portal is a database of all CEL members' contact and other details and is an initiative aimed at facilitating communication and networking between the CEL members.

Commission membership has grown considerably in the last few years and now embraces more than 900 members from 138 countries covering all regions of the world. The Portal has been created to serve as an invaluable tool to enable the CEL members to network more easily. All necessary information about other CEL members can be found at the click of a mouse. Members can also manage their own data electronically by visiting the Portal ensuring that the most up-to-date information is available on the Portal.

The Portal will be used as the IUCN's "master" copy of CEL members' data and will eventually replace the hard copy of the CEL directory. Although it is accessible by all CEL members (through a personalized username and password for each member), each member determines which of their personal data will be publicly available through the IUCN ELP website. For the first time, the onus is now on the each member to keep their contact

details up-to-date and decide which information about themselves they wish to share. As soon as a member enters the Portal and attempts to view and update his or her personal information, he or she can decide by clicking on a box next to each field which information will be viewable by all people who have access to the Portal, or only by selected ELC staff. Only the information that the members choose to make publicly available shall appear on the printed version of the directory and on the Knowledge Network, a web-based system which is viewable by the IUCN staff, IUCN members as well as members of IUCN's six commissions.

The CEL Members' Portal was received with enthusiasm from the CEL members, a big number of whom have already visited the Portal and have made use of this new tool by entering and updating their personal data.

It can be accessed by visiting the IUCN-ELP website <http://www.iucn.org/themes/law> and clicking on the link "Portals" or by clicking on the Portal homepage <http://www.iucn.org/portal/elc/>.

So next time you don't get news from the ELC, ask yourself this question: When was the last time you updated your information on the Portal?

"The CEL Forum" ***Internet Discussion Group***

The CEL Forum has been the official, electronic mailing list of all the members of the IUCN Commission on Environmental Law (CEL) since August 1999, and is currently managed by Jil Self (Jil.Self@iucn.org) at the IUCN Environmental Law Centre (ELC).

It is a closed mailing list, open only to the members of CEL and ELC staff who assist CEL. CEL members must expressly consent to become a member of CEL Forum, and are not automatically added to the list upon their admission to CEL membership. All messages posted go directly to all members of the list. Its purpose is to provide a platform for e-mail communications and discussions on the activities, policies, programmes and events of the IUCN Environmental Law Programme (ELP).

Appropriate subjects for posting include anything that might be of interest to CEL members. This broad definition might include: news about events, initiatives, policies announcements of upcoming events, meetings, training courses, employment opportunities, funding opportunities, calls for papers, awards, etc.; requests

for information or advice (beyond those that might be better addressed directly to the ELC) and replies to such requests; and opinions on issues under development within the CEL and the broader IUCN Environmental Law Programme.

Messages and replies may be posted in any of the three official languages of IUCN – English, French, and Spanish – and all subscribers are encouraged to keep in mind that the readers of the messages, and in many cases their writers as well, may not have any of those as their maternal language. Therefore, expressions should ideally be kept clear and concise.

The CEL Forum should also serve to raise issues about CEL and the ELP in a constructive and co-operative manner.

Jil Self
Programme Assistant

NEW: attachments up to 200 KB may now be posted to the Forum

ELC Staff News

The New Mother

Alexandra Fante, Documentation Officer in the Literature Library, left the ELC in mid-February to go on a two-year maternity leave period. On 26 March 2004 she gave birth to her first child, a daughter called Hanna Antonia. Both mother and baby are doing fine. Andrea Lesemann has been appointed to replace Alexandra in the meantime. Congratulations, Alexandra!

The New Documentation Officer

Andrea Lesemann started on 15 March 2004 as the IUCN-ELC Documentation Officer in the Literature Library. She replaces Alexandra Fante who is on maternity leave. Andrea has a degree in Information Science from the University of Stuttgart and previously worked for five years as an information specialist in an international consulting firm in Frankfurt, where she was conducting information research, running the company library and working with various databases and web technology. For the last three years she worked in Hamburg in the area of media documentation. A warm welcome!



Jil Self

Environmental Law Centre Staff

Head and Director

John Scanlon
Head, Environmental Law Programme
Director, Environmental Law Centre

Legal Professionals

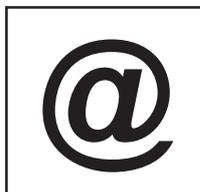
Dr Françoise Burhenne-Guilmin Senior Counsel
Tomme Young Senior Legal Officer
Dr Alejandro Iza Legal Officer
Maria Socorro Manguiat Legal Officer
Katerina Sarafidou CEL Liaison Officer

Library

Anni Lukács Senior Documentation Officer
Andrea Lesemann Documentation Officer
Maaïke Bourgeois Assistant Documentation Officer
Dr Theophile Owona Assistant Documentation Officer

Secretariat

Daniella Montag Office Manager
Jil Self Programme Assistant
Ann DeVoy Project Assistant



IUCN ELC Change of E-mail

Please note that all IUCN Environmental Law Centre staff have new e-mail addresses. All addresses are now: first name.family name@iucn.org
Please change your records accordingly.

Treaty Developments

International Treaty on Plant Genetic Resources for Food and Agriculture, 03.11.2001:

Algeria	13/12/2002
Bangladesh	14/11/2003
Bhutan	02/09/2003
Cambodia	11/06/2002
Canada	10/06/2002
Central African Republic	04/08/2003
Cote d'Ivoire	25/06/2003
Cyprus	15/09/2003
Czech Republic	31/03/2004
Democratic People's Republic of Korea	16/07/2003
Democratic Republic of the Congo	05/06/2003
Denmark	31/03/2004
Egypt	31/03/2004
El Salvador	09/07/2003
Eritrea	10/06/2002
Estonia	31/03/2004
Ethiopia	18/06/2003
European Community	31/03/2004
Finland	31/03/2004
Ghana	28/10/2002
Germany	31/03/2004
Greece	31/03/2004
Guinea	11/06/2002
Honduras	14/01/2004
Hungary	04/03/2004
India	10/06/2002
Ireland	31/03/2004
Jordan	30/05/2002
Kenya	27/05/2003
Kuwait	02/09/2003
Luxembourg	31/03/2004
Malawi	04/07/2002
Malaysia	05/05/2003
Mauritania	11/02/2003
Mauritius	27/03/2003
Myanmar	04/12/2002
Nicaragua	22/11/2002
Pakistan	02/09/2003
Paraguay	03/01/2003
Peru	05/06/2003
Saint Lucia	16/07/2003
Sierra Leone	20/11/2002
Spain	31/03/2004
Sudan	10/06/2002
Sweden	31/03/2004
Syrian Arabic Republic	26/08/2003
United Arab Emirates	16/02/2004

United Kingdom
Uganda

31/03/2004
25/03/2003

Total number of Ratifications/Acceptances/Approvals/Accessions as of 31 March 2004: 49

Date of entry into force is 29 June 2004.



Olli Varis

New Parties to the Kyoto Protocol to the United Nations Framework Convention on Climate Change, 11.12.1997 (from February 2003 – April 2004):

Armenia	25/04/2003
Belize	26/09/2003
Botswana	08/08/2003
Ghana	30/05/2003
Guyana	05/08/2003
Israel	15/03/2004
Kyrgyzstan	13/05/2003
Lao People's Democratic Republic	06/02/2003
Lithuania	03/01/2003
Madagascar	24/09/2003
Marshall Islands	11/08/2003
Myanmar	13/08/2003
Namibia	04/09/2003
Philippines	20/11/2003
Republic of Moldova	22/04/2003
Saint Lucia	20/08/2003
Solomon Islands	13/03/2003
Switzerland	09/07/2003
Ukraine	12/04/2004

Total number of Ratifications/Acceptances/Accession/Approvals as of 30 April 2004: 122

IUCN – The World Conservation Union

IUCN Vision

A just world that values and conserves nature

IUCN Mission

Founded in 1948, The World Conservation Union brings together States, government agencies and a diverse range of non-governmental organizations in a unique world partnership: nearly 1000 members in all, spread across some 140 countries.

As a Union, IUCN seeks to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable. A central Secretariat coordinates the IUCN Programme and serves the Union membership, representing their views on the world stage and providing them with the strategies, services, scientific knowledge and technical support they need to achieve their goals. Through its six Commissions, IUCN draws together over 10,000 expert volunteers in project teams and action groups, focusing in particular on species and biodiversity conservation and the management of habitats and natural resources. The Union has helped many countries to prepare National Conservation Strategies, and demonstrates the application of its knowledge through the field projects it supervises. Operations are increasingly decentralized and are carried forward by an expanding network of regional and country offices, located principally in developing countries.

The World Conservation Union builds on the strengths of its members, networks and partners to enhance their capacity and to support global alliances to safeguard natural resources at local, regional and global levels.

IUCN Environmental Law Centre, Bonn, Germany



IUCN Environmental Law Programme

IUCN Environmental Law Programme Mission

To assist in laying the strongest possible legal foundation for environmental conservation in the context of sustainable development to support international and national efforts

The IUCN Environmental Law Programme (ELP) is an integrated programme of activities developed to achieve the IUCN vision and mission. The Programme is delivered through the collective efforts of the –

- ✓ COMMISSION ON ENVIRONMENTAL LAW – an extensive global volunteer network of close to 950 environmental law specialists in 138 countries,
- ✓ ENVIRONMENTAL LAW CENTRE – a professional international office established in Bonn, Germany in 1970 with 15 highly skilled legal, policy and information specialists, and
- ✓ IUCN LAWYERS based in regional and country offices around the world.

The global network of resources available to the ELP has been expanded through memoranda of understanding with 13 IUCN CEL-recognised “centres of excellence.” Details regarding these centres can be found inside this Newsletter or at www.iucn.org/themes/law/cel06.html.

Visit the IUCN Environmental Law Programme website at:

<http://www.iucn.org/themes/law/>

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In Print

Announcing the following new publications ...

Towards a “Second Generation” in Environmental Laws in the Asian and Pacific Region: Select Trends

Edited by
Lye Lin-Heng with Maria Socorro Z. Manguiat



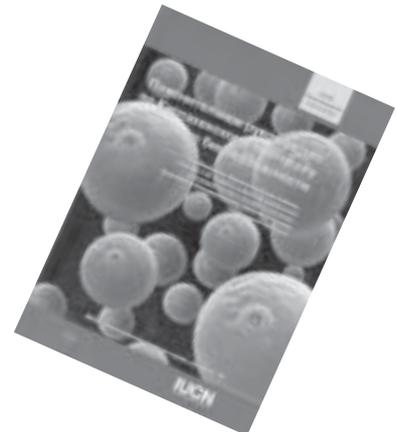
International Environmental Governance: An International Regime for Protected Areas

Edited by
John Scanlon and Françoise Burhenne-Guilmin



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Ruth Mackenzie, Françoise Burhenne-Guilmin, Antonio G.M. La Viña and Jacob D. Werksman in cooperation with Alfonso Ascencio, Julian Kinderlerer, Katharina Kummer and Richard Tapper
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IUCN ELP Website: www.iucn.org/themes/law

Hard copies (and CD-ROMs, where relevant) of the publications described in this section are available from the

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