IUCN
The World Conservation Union
NEWSLETTER

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Environmental LAW Programme

A Proud History and a Bright Future

Welcome to the new look IUCN Environmental Law Programme Newsletter!

As we go to print we have just hosted a major reception for IUCN Director General, Achim Steiner to celebrate his first visit to the Environmental Law Centre (ELC) in Bonn. Achim's presence was the highlight of an exceptionally successful week for the Environmental Law Programme (ELP) that, in addition to the Reception, included the first Commission on Environmental Law (CEL) Steering Committee meeting for 2002, the launch of two new IUCN publications, the unveiling of a new sign that will promote the IUCN presence in Bonn and the launch of the new ELP website.

Achim Steiner described the early launch of the ELP Website (to coincide with his visit) as being "a good reflection of the new sense of energy and direction that exists in the Programme" and this is a good way to lead into this introduction.

The ELP has a long and proud history, and the achievements of the Programme are famous around the world. A highly successful organization can, however, become the victim of its own success. As will become apparent, we are now embarking on an exciting new era for the ELP, one that captures the energy and enthusiasm that drove its commencement back in 1958, and in so doing we are building a platform for an organization with a proud history and a bright future!

Critical to this has been a focus on strategically planning for the staff of the ELC, and more broadly for the ELP, strengthening relationships within and outside of the IUCN and developing our communications tools, such as this newsletter and the ELP webside.

As a result of a spirit of goodwill and collaboration between all elements of the ELP, and a willingness to work together as a team, we have made substantial progress in rapid time.

If we are able to maintain this momentum we are set for a very bright future indeed. The first CEL Steering Committee meeting for 2002 was held at the ELC. This invigorating and direction-setting meeting saw the Committee engage directly with the Director General and address a series of critical issues to both the IUCN and the international community including the World Summit on Sustainable Development, IUCN United Nations Observer Status, the 2003 World Parks Congress, current World Heritage, wetlands and water issues and the further development of a major ELP capacity building initiative.

IUCN Patron, Queen Noor, with IUCN DG Achim Steiner and John Scanlon at IUCN-Reuters Media Awards, Berlin

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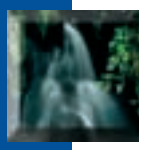

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...A Proud History

The Steering Committee and the staff of the ELC also reviewed a draft ELP Strategic Plan and agreed on a revised draft to go out for broad consultation with the CEL membership, other IUCN Commissions and relevant IUCN staff in Gland, regional and country offices. The draft is available on the ELP website and a hard copy will be sent out by the Secretariat upon request.

Following on from decisions taken at the Steering Committee meeting, we are also delighted to welcome 53 new CEL members from 25 countries and the Arab Regional Centre for Environmental Law (ARCEL) at the Faculty of Law, University of Kuwait, as the newest regional 'centre of excellence'. A full report on the Steering Committee meeting should be posted on the website by the time this newsletter goes to print.

This newsletter has a strong focus on water and wetlands, a major programmatic area for IUCN and one of increasing international concern. It includes stimulating contributions on water management law in Australia and Central Asia, as well as innovative mechanisms for the enforcement of restrictions on navigational vessels through the utilization of hard and soft international law. It also examines the role of the developing concept of "environmental flows" as a component of water management for healthy river systems and examines recent political developments, including a summary of the outcomes of the International Conference on Freshwater, held in Bonn in December 2001.

There is perhaps no other environmental issue that brings together social, economic and environmental considerations, and poverty and security issues, as does

Staff of ELC, Bonn

water. Water also provides an entry point for addressing related biodiversity, climate change and desertification issues. The ELP has recognized the importance of "water and wetlands" as an area of major concern through the ELC designating it as a key thematic area and the CEL establishing the first CEL Water and Wetlands Forum, a network of some of the world's leading water law specialists.

CEL Steering Committee with IUCN Director General, Achim Steiner

In addition, this newsletter gives focused attention to four key issues, which will be the foci of the ELP's work in the WSSD: the Prep Com process; the incorporation of science into environmental governance, public participation in environmental decision-making, and the draft Covenant on the Environment and Development.

Other relevant articles update you concerning UNFCCC-COP-7, new developments relating to the Ramsar Convention, preparations for CBD-COP-6, and recent issues arising under CITES. This newsletter also lives up to its name by providing updates on recent ELP events, including the launch of the new ELP website, the opening of ARCEL, library news, and new publications, as well as our standard features.

Many thanks to everyone for their excellent contributions to this new-look newsletter and particular thanks to our Managing and Text Editors, Typesetter and IUCN PSU, Cambridge. All of us here with the ELP, staff and volunteer alike, hope that you find this newsletter a useful addition to your reading material.

Your feedback is always welcome.

John Scanlon
Head, ELP

For a copy of the discussion draft of the IUCN-ELP Strategic Plan, go to http://iucn.org/themes/law . To receive a copy by fax or mail, please contact the ELC, by e-mail at Secretariat@elc.iucn.org (listing "ELP Strategic Plan" in the subject line); or by mail, telephone or fax at the addresses shown on the inside back cover page of this newsletter.

"Environmental Flows" and International Watercourses

As various water issues and controversies increase in importance and attention, appropriate legal and conceptual tools must be developed to address all aspects of water and wetlands services. To properly address the role of water in ecosystems, it is essential to establish the concept of "environmental flows."

The Concept

Generally, a "flow" is a continuous, uninterrupted, movement in a stream. In water law, "flow" indicates the control of surplus water by storage or diversion, or the release of additional water when downstream availability is insufficient. The basic flow concept starts from two premises – that a watercourse is being utilised; and that it is a subject of shared water resources management. The International Law Association (ILA) Articles on the regulation of water flows (the "Articles") clarify the notion of stream flows by limiting their application to

> continuing measures intended for controlling, moderating, increasing or otherwise modifying the flow of the waters in an international watercourse for any purpose; such measures may include storing, releasing and diverting of water by means such as dams, reservoirs, barrages and canals.

Several international watercourse treaties contain provisions for the regulation of flows. These provisions focus mainly on the role of flow in allowing the production of electricity, protection of commercial fisheries, floatation of logs, protection against flooding or the maintenance of the self-purifying capacity of the waters. None of those treaties has yet addressed the regulation of stream flows for the protection of the chemical, physical and ecological integrity of a river system. In other words, they have addressed human commercial uses of streams, without dealing with the need to sustain the ecological values of the aquatic ecosystems, including their processes and biological diversity.

I. The United Nations Convention on the Law of the Non-navigational Uses of International Watercourses

The UN Treaty on Non-navigable Watercourses, a relatively new entry into the international water regime, offers a basis by which the concept of "environmental flow" can be established. This Convention took an arduous 27 years from the initial GA resolution commissioning a study (Resolution 2669 (XXV) of 8 December 1970), until its adoption. That fact alone may indicate that the remaining work in developing and implementing the Convention will be both difficult and important. The convention is not in force, and will not be, according to its Article 36, until 90 days after the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession. (As of 11 January 2002, only 11 States have ratified. *See,* the treaty table, at page 42.) Pending entry into force, it is typical to consider the Treaty in conjunction with the ILC's Draft Articles on the Law of Non-navigational Uses of International Watercourses.

Neither the Draft Articles nor the Convention contain explicit provisions on environmental flows. However, both instruments include several clear principles for the environmental protection of transboundary watercourses, which are linked to this concept.

The scope of the Convention is the "international watercourse" – *i.e.*, the " system of surface waters and groundwater constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus… parts of which are situated in different States" (Article 2). At the cornerstone of the Convention are the signatories' obligations to:

- Utilise the international watercourse in an equitable and reasonable manner;
- Prevent harm to other riparian States; and
- Protect the international watercourses and their ecosystems.

The concept of "equitable utilisation" implies that a watercourse State has the right to utilise the watercourse within its territory, receiving an equitable share of the uses and benefits of the whole watercourse. Inversely, it has an obligation *vis a vis* other riparian States not to deprive them of their right to equitable utilisation. Article 6 of the Convention refers to the factors relevant to determine equitable and reasonable utilisation.

On the other hand, the obligation of "prevention of harm" is not absolute. The Treaty describes this as a duty to "take all appropriate measures," and sets the threshold for action at the relatively high level of "significant" harm. The determination of significant harm is governed by the circumstances of each particular case.

With regard to flows, the two concepts (equitable utilisation and prevention of harm) may apply in determining whether a party's failure to maintain a minimum flow may be considered incompatible with its obligations under the Convention, and may activate the significant harm clause. This will depend upon the interpretation of these critical provisions of the Convention.

Article 6 lists a series of factors and considerations to be evaluated in determining the scope of the notion of equitable utilisation. These would apply when, for ex-

ample, a downstream State is deprived of stream flow necessary for the maintenance of the fishing industry on which its population depends. However, such a situation would also demonstrate the interplay of the Convention provisions since the duty not to cause significant harm may impose a requirement on the upstream State "to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation" (Article 7.2).

Reception of the Convention's environmental provisions has been tepid, at best. Some authors have argued that the failure to expressly discuss the interaction between the water and other components of the environment weakens the Convention's protection of the watercourses. Others have emphasised the Convention's lack of any provisions on EIA.

In fact, of course, Part IV ("Protection, Preservation and Management") of the Convention represents a compromise between stringent and flexible approaches to environmental rules. This dichotomy is illustrated by the Convention's terminology. It discusses "the preservation of the ecosystems of international watercourses," but does not mention the environment. Its obligation to preserve the ecosystems is not limited by a standard of "significant harm." As a result, these provisions are potentially more potent than more explicit restrictions on the prevention, reduction and control of pollution, because these latter provisions can only apply where there is a possibility of significant harm. Similarly, the Convention's provisions relating to the introduction of alien species into watercourses are clearly precautionary in nature.

Unlike its provisions specifically addressing inland waters, the Convention's terms relating to the marine environment are less broad. They do not protect and preserve the marine environment as such, but mandate only that activities on the international watercourse should not have negative effects on marine areas. Interestingly, the Convention specifically mentions the estuaries, which are not traditionally covered by either the law of international watercourses or the law of the sea.

It is in estuaries, however, the interface zones where freshwaters and the maritime waters meet, that the issue of environmental flows is particularly relevant. An inadequate level of freshwater reaching the estuarine zone might lead to considerable negative effects in the estuarine and coastal zone environment.

Another element of the Convention which may be important to the establishment and application of the environmental flow concept is its provisions on watercourse management. Article 24 stresses the importance of co-operation between the States in the management of a shared watercourse, to ensure sustainable development and rational and optimal utilisation of the watercourse.

Arguably a component of the duty to prevent harm, the Convention's provisions on environmental protection specifically include a duty to protect the watercourse ecosystems. Arguably, this duty will apply wherever an upstream country fails to maintain a minimum flow, resulting in deleterious effects on the chemical, physical or biological integrity of the downstream watercourse environment.

Flow. Article 25 of the Convention deals specifically with the "regulation" of the watercourse flow – *i.e.*, "the use of hydraulic works or any other continuing measure to alter, vary or otherwise control the flow of the waters of an international watercourse." Reflecting existing Agreements provisions on the regulation of flows, it notes a general obligation of co-operation between the riparian States. Special provisions address situations in which watercourse States have agreed to carry out works for the regulation of flows. As the Draft Articles indicate, States have no obligation "to participate in any way, in the regulation works from which they derive no benefit". Rather, States "shall participate on an *equitable basis*" in the construction, maintenance or sharing the costs of the flow regulation works.

Similarly, under Article 26, which refers to the maintenance of installations such as dams or dykes, the Convention states a general duty of the Parties to maintain and protect the installations located within their territories whose deterioration may cause significant harm to other watercourse States. Beyond this, States are specifically obliged to enter into consultation with regard to the safe operation, maintenance and protection of these installations and facilities.

Many of the Convention provisions are far from being perfect. However, its framework character does not affect existing watercourse agreements. Moreover, it contains specific provisions encouraging States to enter into one or more agreements to apply or adjust the provisions of the Convention to the characteristics and uses of a particular watercourse or part thereof. In the context of flows, this is a fundamental provision. However, an important drawback is represented by the fact that the Convention is not yet in force, having less than a third of the necessary ratifications. With this in mind,

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needless to say that a considerable effort will be necessary for the Convention to enter into force.

II. Other Treaties

The Agreement on the Co-operation for the Sustainable Development of the Mekong River Basin (signed in 1995 between Cambodia, Lao PDR, Thailand and Vietnam) offers a very good example of international river treaty practice on flows. This agreement, which institutes the Mekong River Commission, replaces an earlier agreement establishing the Committee for Co-ordination of Investigations of the Lower Mekong Basin of 1957, later known as the Interim Mekong Committee.

The 1995 Agreement is an open treaty (China and Myanmar are located within the Basin but are not Parties to the Agreement), which sets up a framework for co-operation addressing all aspects of the river basin's sustainable development – utilisation, management and resource conservation (Article 1). It focuses on protection of the Basin "from pollution or other harmful effects resulting from any development plans and uses of water and related resources…" (Article 3). According to Article 5 the Parties have to "to utilise the waters… in a reasonable and equitable manner…" considering all the relevant factors and rules indicated in the Treaty (Articles 5 A and 5 B, and Article 26).

In groundbreaking provisions, the Mekong River Treaty explicitly requires minimum stream flows for the protection of the environment. According to Article 6, States will co-operate in maintaining flows "of not less than the acceptable minimum monthly natural flow during each month of the dry season".

The Joint Committee, an initiative and implementation body of the Mekong River Commission, is in charge of adopting the necessary guidelines for the location and levels of the flows, and drafting rules on *(inter alia)*:

- Time frames for the wet and dry seasons;
- Location of hydrological stations;
- Criteria for the determination of the surplus quantities of water during the dry season on the mainstream; and
- A mechanism to oversight inter-basin diversions from the mainstream.

This Committee's decisions must be adopted unanimously, after which they must be separately approved by the Council, consisting of one (Ministerial or Cabinet level) individual appointed from each riparian State.

The Mekong River Agreement is an important co-operation mechanism for the sustainable development of one of the most significant river basins in the world. It builds upon the rules of the UN Convention, on regional and equitable utilisation and the issue of stream flows, providing an interesting model that can be followed by other river basin systems. The fact that it is an open treaty gives margin for the incorporation of China, a desirable goal, since this country shares approximately 21% of the basin and plans important works that might have significant effects in the flow of the river.

III. The World Commission on Dams

In April 1997, representatives of the IUCN and the World Bank met in Gland, Switzerland, to discuss some controversial issues arising out of a World Bank's report on large dams. The parties that attended the meeting (governments, private sector and financial institutions) proposed the establishment of the World Commission on Dams (WCD). The Commission was given two mandates: (i) to review the development effectiveness of large dams and assess the alternatives for water resources and energy, and (ii) to develop international accepted criteria, guidelines and standards, where appropriate, for the planning, design, appraisal, construction, operation, monitoring, and decomissioning of dams.

The WCD began its work in May 1998, undertaking eight case studies of large dams and preparing country reviews for India and China, as well as a briefing paper on Russia and the Newly Independent States. It surveyed one hundred and twenty five large dams, examining physical and hydrological matters, as well as social, economic and environmental issues. In November 2000, the Commission submitted its final report, a comprehensive document entitled "Dams and Development: A New Framework for Decision-making".

The WCD Report identified seven strategic priorities and related policy principles. These priorities and principles have been translated into criteria and guidelines for the decision making process. The strategic priorities are: 1) Gaining public acceptance; 2) Comprehensive options assessment; 3) Addressing existing dams; 4) Sustaining rivers and livelihoods; 5) Recognising entitlements and sharing benefits; 6) Ensuring Compliance, and 7) Sharing rivers for peace, development and security.

With special regard to the subject matter of this paper, the WCD Report adopts a comprehensive definition of environmental flows:

> specific release of water from a dam to ensure the maintenance of downstream aquatic ecosystems and key species. The flows may include seasonal or annual flows and/or regular or irregular pulses to meet ecosystem needs. They may also be linked to livelihood needs of downstream affected people.

Notwithstanding this definition, which relates to the management of flood releases, the WCD Report points out that the notion of environmental flows also includes in-stream flows, or within-bank flows.

Under Strategic Priority 4 (Sustaining Rivers and Livelihoods), the WCD elaborates a set of guidelines for good practice on environmental flow assessment. As indi-

cated by this portion of the report, "environmental flow assessment" must be seen as part of the overall environmental assessment process. It can vary from a simple statement on water depth to a comprehensive description of a flow regime with annual variability of flows in order to maintain complex river ecosystems. The guidance provided by the WCD Report sets out the steps to be followed during this process.

The policy principles under Strategic Priority Nº 4, include another important recommendation connected with flows: the development of national policies for maintaining selected rivers with high ecosystem functions and values in their natural state. National law and policy in a few countries already responds to these needs. For example, legislation on wild and scenic rivers, such as

the United States' Wild and Scenic Rivers Act, directly focuses on the preservation of unique streams or portions thereof, free from dams and other obstructions. Another such strategy is exemplified in "set asides" or protection of specific rivers. These provisions can also support the maintenance of the natural flow of the river and can have beneficial effects on the aquatic, floodplain and coastal ecosystems downstream.

IV. IUCN Response

IUCN reacted rapidly and positively to the WCD Report. The World Conservation Congress, at its 2nd Session in Amman, Jordan (4-11 October 2000) adopted two programme-related resolutions, directly linked to the issues dealt with in this paper.

The first of these is Resolution 2.19, which requests the Director General of IUCN to give to the WCD recommendations high priority, build follow-up activities into the Programme of IUCN, and encourage governments and IUCN members to bring the WCD Report to the attention to the their respective constituencies. This Resolution also requested the IUCN Council to establish a multidisciplinary task force to advise IUCN regarding the WCD Report, and to monitor worldwide response to the WCD recommendations.

The second resolution is the 2.47 entitled Conservation of the Last Wild Rivers of Europe. This resolution seeks to promote the application of the wild and scenic rivers notion to European rivers. It calls upon European countries to incorporate this concept into their water policies, to prepare SEA of the consequences of river-regulation projects, and to initiate programmes for re-naturalisation of river sections.

Following the release of the WCD report, IUCN made further progress in the follow up of the WCD, at the 55th Meeting of the IUCN Council (28-30 October 2001). At that point, IUCN adopted two important statements. In the first, IUCN advocates wide dissemination of the WCD Report and stresses the unique opportunity that it provides to correct many mistakes made in the past "for example by implementing artificial releases and maintaining environmental flows to sustain aquatic ecosystems and resources".

In its second statement, the Council specifically touches upon the manner in which dams are integrated into the IUCN Programme. Relative to flows, it advocates

– the designation of specific rivers as "protected rivers", based on national "set-aside" strategies;
– the establishment of a group of experts to take action on integration of environmental assessments into water resources planning, environmental flow-setting and the establishment of legal frameworks for the conservation of water resources; and
– the development of normative standards and tools for environmental flow maintenance.

V. Conclusions

There is a considerable treaty practice on the maintenance of minimum river flows, in general. Apart from the single example of the regional agreement Mekong River, however, there are no records of similar international treaty practice on "environmental flows." However, the UN Convention has codified clear principles for environmental protection of international watercourses, which are consistent with the different notions of environmental flows explained in this paper. Together with the experience deriving from non-river treaties and national legislation, these instruments can establish the basis for the development of a doctrine on minimum environmental flows.

The WCD Report, good practice guidelines and policy recommendations are to be considered as an important step towards practical implementation of the concept. They need to be promoted, disseminated and expanded. IUCN is in a unique position to play an important role in the practical implementation and further development of this fundamental tool for the protection of the environment, in the context of diminishing water availability and competing water resource options.

– AOI

Synergies Between Freshwater Conservation and the Law of the Sea

The Terrestrial Climatic System consists of five integrated components whose permanent interaction tends to maintain a natural homeostasis. Unfortunately and unwisely, this interaction is typically and unthinkingly disrupted by human beings – a clear demonstration that humanity is properly considered *homo nescens* more often than it can claim the title *homo sapiens*. This opens the speculation about the tightly connected question – the possibility that mankind might be able to exist as a *homo ambiens* – an issue that merits broader treatment within another context.

The five components of the Terrestrial Climate System, mentioned above, are the Atmosphere, the Cryosphere, the Biosphere, the Hydrosphere and the Lithosphere. This article will deal with the close relationship between the last two and will try to show their interconnection – not only the extent to which conservation of the marine environment (part of the Hydrosphere) depends on the land-based sources, but also the extent to which the conservation of freshwater courses (part of the Lithosphere) depends on a safe management of marine activities.

Protection of marine environment from land-based pollution

This interlinkage first appeared in international law in the Convention for the Prevention of Marine Pollution from Land-based Sources (Paris on 4th June 1974, in force as of 6th May 1978.) This Convention can be considered the first binding rule in protecting and preserving specific marine areas from land-based discharges. Later amended by the Protocol of 1986 (in force as of 1st September of 1989), both instruments can be classified into a special category of regional treaties (by virtue of the fact that they are focused only on a specific ocean area – the northeastern Atlantic) that are opened to ratification by all States (since ships from all parts of the world may traverse the ocean area involved.)

Following these innovations, a myriad of regional treaties were developed to protect the marine environment in almost 20 specific areas around the world. The earliest of these, the Oslo Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (1972) is usually quoted as the first source of inspiration of the others. The Oslo and Paris treaties were subsequently replaced by 1992 Convention on the Protection of the Marine Environment of the North East Atlantic (OSPAR), which entered into force in 1998.

Another important legal precedent is Part XII of the UN Convention on Law of the Sea (UNCLOS.) Although the issue of sovereign rights to exploit natural resources was settled in Principle 21 of 1972 Stockholm Declaration, it is articles 192, 193, 194 and 207 of UNCLOS (adopted 10 years later) that clearly establish the obligation of Member States to ensure that land-based activities under their jurisdiction or control will not adversely impact oceans.

On the other hand, Chapter 17 of Agenda 21 can be quoted as the first soft-law rule that paid attention to the same topic, probably inspired by a large study published in 1987 that estimated that almost 37% of marine pollution came from run-off and land-based discharges. Seven years later, a new document was released, raising that index to 80%.

IUCN – the World Conservation Union took its earliest steps to address these issues more than fifteen years ago. In 1985, responding to the great need for conserving marine and coastal resources, IUCN established its first directed Marine Programme. Another very important step was taken in 1991, when the Global Environment Facility (GEF) was launched by UNDP to forge worldwide actions and to finance the necessary tasks to address nature conservation in four critical areas: biodiversity, climate, ozone layer and, the last but not the least, international waters.

Through the Rio follow-up process, a new non-binding document – the Washington Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (GPA) – was created in 1995 by 108 governments and the European Commission. In the GPA, UNEP was tasked to lead the coordination efforts, in recognition of its early focus on these issues. The recent adoption of the Persistent Organic Pesticides (POPs) Convention is a clear example of achievements under the GPA, to date.

In addition to the foregoing, the base of hard and soft-law instruments regarding marine protection from land-based sources, is enhanced by sev-

eral documents within the ambit of Maritime Law. Of these, the International Convention for the Prevention of Pollution of the Sea by Oil of 1954, in force since 1958 and also known as London or OILPOL Convention, is by far the oldest document to partially address these issues. Before that, (e.g., when the first version of SOLAS treaty (Safety of Life at Sea) was adopted in 1948) marine pollution was regarded as little more than a local problem. Since then, the International Maritime Organization (IMO) has been indefatigably working to promote a series of Conventions and Protocols, including in particular the International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (LDC 1972), MARPOL (73/78), SOLAS (1974), the International Convention on Oil Pollution Preparedness Response and Cooperation (OPRC 1990) and the International Convention on the Control of Harmful Anti-fouling Systems (2001, not yet into force.)

The Inverse Process: Protection of Freshwater Courses from Harm Caused by Maritime Activities

More recently a joint work carried out by IMO and GEF has developed a new bundle of non-binding norms to govern the introduction of invasive marine species into new environments through ships' ballast water. They are condensed in IMO Assembly Resolution A.868 (20) – "Guidelines for the control and management of ships' ballast water, to minimise the transfer of harmful aquatic organisms and pathogens" – which replaced earlier, less comprehensive guidelines.

Invasive marine species affect or threaten not only the world's oceans but also the coastal waters, and, as ships navigate upstream in river courses, they can also threaten freshwater conservation. A clear example of such a situation is the European Zebra Mussel (*Dreissena polymorpha*) that has infested over 40% of internal waterways in USA, requiring more than one billion dollars in control measures since 1989. Zebra Mussels are distributed in ballast water, and not only clog the intake pipes of power plants and factories, but also compete with native fish for plankton, thereby affecting their population and as a consequence the diet and economy of those people who depend on them.

12 billion tonnes of ballast water are transported yearly around the world, and it is believed that almost 4500 different species of animals and plants are transported in ballast tanks daily. Although linked problems were first recognized as long ago as 1903, when an Asian phytoplankton alga was discovered in the North Sea, the full extent of the problem was not completely understood until quite recently.

These issues will be of great consequence to South America's two major navigable basins – Amazon river and HIDROVIA – in the coming years. Given the international importance of these two areas, this potential threat is of global significance.

Almost 70% of Argentinean population lives along the HIDROVIA Paraguay-Paraná-Río de la Plata. At least two problems linked with freshwater conservation and maritime activities can be detected in this region. The more recent is connected with ballast water (in fact, a scientific link has been formed between Argentina and Brazil to study the invading mussel *Limnoperna*). The older problem is related to the continuing oil discharges from ships of third States when navigating the Río de la Plata and Paraná rivers, which have been open to free navigation since 1832.

Focusing on the latter, Argentinean authorities must find a way to protect freshwater courses within the HIDROVIA waterway from maritime contamination. This sort of pollution occurs almost continuously, caused by dumping from ships whose States of Registry (or flag States) are not part of the various IMO-endorsed environmental marine treaties mentioned above. Ironically, this category includes ships flying the Paraguayan flag, even though Paraguay is a Member State of HIDROVIA.

Based on principles of *res inter alios acta* and *pacta sunt servanda*, treaties and customary law are only enforceable when States have either (i) expressed their consent to be bound by a treaty, or (ii) silently or expressly acquiesced. As a result of these rules of international law, Argentinean authorities of application are not entitled to utilise relevant marine Conventions to control ships navigating HIDROVIA, if those ships are registered under States that are non-Parties to those agreements.

There remain, however, two other keys that might enable national authorities to control such ships – the Port State Control system, and Part XII of UNCLOS.

Intended to increase effective implementation of existing marine conventions, the Port State Control system is based on the duty of every Contracting Party to allow ships flying their flags to be inspected for compliance when they visit the ports of other Contracting Parties (Port State Control). This practice proliferated as a result of a regional co-operation process, inaugurated in 1982 through the European States' Paris Memorandum of Understanding. Latin America followed this example implementing its own MOU in 1992, signed by 10 countries, included Argentina.

This strategy presents two difficulties:

1) In the Latin American region, under MOU 1992, only two environmental marine treaties are currently a part of the Port State Control process (SOLAS 1974 together with its Protocol of 1978, and MARPOL 73/78.)
2) It is unclear how these provisions can be used to control ships of non-Parties, even though Parties have sometimes applied relevant requirements of the

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environmental maritime conventions to ships of non-Member States visiting their ports, utilising *"no more favourable treatment"* concepts. While this tactic has increased the number of ships complying, it remains unfortunately true that not all non-Contracting Parties are permeable to this pressure.

More comprehensive compliance might be achievable through invocation of Part XII of UNCLOS. The primary reason for this is sheer numbers: As of 12 November 2001, 137 States are parties to UNCLOS. The IMO conventions cannot boast this level of access. Only SOLAS 1974 comes close (with 113 ratifications), followed by Annex I and II of MARPOL 73/78, with 97. The rest of environmental marine IMO treaties have fewer than 70 ratifications each.

The mechanism by which UNCLOS may be invoked for this purpose is as follows: Article 192 of UNCLOS sets up the general "*obligation* to protect and preserve the marine environment." Article 194.2 says "States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to *other States and their environment*," and finally Article 195 express that "States shall act so as *not to transfer*, directly or indirectly, *damage or hazards from one area to another or transform one type of pollution into another*." (Emphasis added, in all three quotations).

Although it is clear that in negotiating UNCLOS these rules were conceived to apply to the protection of salt waters (the "hydrosphere"), the two last quoted articles give sufficient basis for holding that, *mutatis mutandis,* such general obligations can be transferred to freshwater courses (as part of the lithosphere) when navigated by ships governed under international maritime law.

So, by invoking UNCLOS, Argentina would achieve two predictable positive results: (i) it could assert controls on more ships (given the application of UNCLOS to almost 72% of total number of countries in the world) and, (ii) utilising Part 12, it could address the full range of activities that might cause pollution or effect a transfer of damage or hazard to the freshwater course.

The Paraguay situation mentioned above is an excellent case-in-point. Although not a party to any of IMO's marine environmental treaties (despite being member of IMO), Paraguay is a party to UNCLOS. While it may, by not ratifying, avoid environmental controls of the former, the country may not escape the essentially identical environmental requirements that can be imposed on Paraguay flag vessels under the latter.

This legal strategy could be applied to all ships flying flags of convenience (FOCs), as a means of avoiding or minimising the extent to which they will be bound to applicable environmental standards. In the same manner as described above, they could be compelled to comply with those standards.

Conclusions

The Law is, in reality, a single unified whole. It is divided into disciplines or branches only out of the need to facilitate understanding and study by individual human beings. A holistic vision is always necessary, particularly in dealing with environmental issues. This brief synthesis merely outlines an idea – that synergies between the Environmental Law, the Law of the Sea and the Maritime Law are possible, and that their application becomes necessary when States are reluctant to assume the general obligation to preserve and conserve the nature for present and future generations.

Prof. Dr. Griselda D. Capaldo
National Council of Scientific and
Technological Research – CONICET,
Faculty of Law-University of Buenos Aires
Argentina
e-mail: gcapaldo@fder.uba.ar
gdcapaldo@yahoo.com

[Profesora Capaldo is currently based at the ELC, having received a fellowship from the Alexander von Humboldt Foundation for research into issues of freshwater conservation in South America.]

Elizabeth Mann Borgese †

The ELP joins the world in its remembrance of Elizabeth Mann Borgese, the 'grande dame' of the Law of the Sea, and the last daughter of Thomas Mann. Mrs. Borgese died unexpectedly during a visit to Switzerland in February.

A true champion of wise ocean management by all humanity, Mrs. Borgese was a Fellow at the Center for the Study of Democratic Institutions, a founding member of the Club of Rome, and instrumental in the organisation of the annual international "Pacem in Maribus" conference which is still an important event in maritime governance, after 30 years. Most recently affiliated with the International Oceans Institute, and the faculty of Dalhousie University, she was presented with an Honorary IUCN Membership at the 2000 World Conservation Congress in Amman, Jordan.

More than a resolute and efficient champion of the protection of the marine environment, she was also a humorous and sometimes charmingly peculiar woman – who (among other things) taught several of her dogs how to play the piano…. She will be missed by the environmentalists as well as by many friends and admirers throughout the world.

— Françoise Burhenne-Guilmin

Water Problems and Solutions in Central Asia

The level and future development of the countries of Central Asia depends to a considerable extent on availability of water resources. Arid climatic conditions, and the region's economic and social structure contribute to the critical nature of water issues. Irrigated agriculture dominates vast areas, particularly in the principal transboundary river basins of Amu Daria and Syr Daria. In addition, the uneven distribution of mineral energy resources has also been a factor in turning water into a strategic resource that plays a vital role in the life of the countries. In the midst of these disintegrating factors, new developments offer hope for solutions to an extremely difficult array of transboundary water problems.

The various conflicting sources of the region's dependence on water issues became more evident in the wake of geopolitical changes within the region in early 90s, when five former Asian republics of the once unified State – Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan – became independent and began to build up their own independent economic, political and social policy with little regard to common natural condition and mutual interests. At that point, a preexisting scheme of regional water allocation of trans–boundary rivers among the States (based on economic specialisation in the whole region) disintegrated. The structure of demand changed and each country, faced with severe economic and social problems, began to alter its regime of water use. These changes, moreover, occurred under inauspicious conditions including

– lax State environmental control,
– technical degradation of water management constructions, and
– shortage of funding for protection, maintenance and rehabilitation of water bodies.

These factors exacerbated the loss of water, the deterioration of water quality, the rate of exhaustion of water resources, and the continuing increase in water deficit. Other strongly linked issues included increases in land salinization, desertification and other forms of land degradation that undermined the economic capabilities of the countries to address properly the water problems – and that intensified pressure on water. The continuing threat of water deficit aggravates the political situation in the region, creating an atmosphere of mutual distrust among the countries and impeding cooperation.

While these problems exist throughout the region, they first became known in the context of the shrinkage of the Aral Sea, whose basin encompasses most of the territories of Turkmenistan, Kyrgyzstan, Kazakhstan, Iran and Afghanistan, and also the whole territories of Tajikistan and Uzbekistan. The predominant water sources in this region are the basins of the two longest rivers in the Central Asia – the Syr Daria (running 3019 km from its source) and the Amu Daria (2540 km.). The upper stream flow is developed primarily through Tajikistan (with over 43% of the flow) and Kyrgystan (more than 25%.) In addition, upstream flow through Afghanistan and Iran totals about 18%.

Over 90% of the territories of Kyrgyzstan and Tajikistan are mountainous areas, characterised by poor arable land and lack of organic fuel deposits. The resulting reliance on hydro energy production is a strong determinant of the interests and uses of water resources in these countries. By contrast, the downstream countries possess fertile lands in the river basins and sufficient organic fuel deposits, so that they are mostly interested in agricultural water consumption. As a result of these specific natural conditions, in the former Soviet times, a seasonal water use model of "energy in exchange for water" was introduced. Under this model, upstream and downstream republics respectively exchanged irrigation and energy-production regimes on a seasonal basis. To this end, a cascade of water reservoirs and hydropower plants was constructed, which currently includes over 60 water reservoirs and 45 hydropower plants, most of which remain in good condition. The objective of this system was that of the special regime – *i.e.,* water was to be stored during wintertime, and discharged for irrigation purposes in summer.

Energy generated under this model was distributed among all the republics. In compensation for winter storage, the Soviet government guaranteed winter energy supplies to upstream republics. Similarly, the water was allocated among the republics, with each receiving a water limit (quota) for meeting their own economic and social demands.

Following the disintegration of the Soviet Union, each of the Central Asian countries began the work on cooperation on water issues, issuing a series of important political statements. In 1991 ministers of water management of the five countries confirmed their adherence to the principles of common and equal management of transboundary rivers to the benefit of all the countries.

The first interstate agreement "On Co-operation in the Field of Joint Management of Water Resources from Interstate Water Sources" was signed on 18 March 1992. It provides for the setting up of a regional interstate water management body – Interstate Commission for Water Coordination (ICWC) with decision-making powers in relation to water allocation and regulation of water

use. The ICWC consists of the heads of the five basin States' water management bodies, as well as two executive bodies – basin commissions for Amu Daria and Syr Daria, respectively. The basin commissions are responsible for regulating and supervising operation of water reservoirs and dams, with the goal of controlling water use and allocation by the countries. The ICWC is also responsible to ensure that an established share of water be discharged to the Aral Sea.

In 1993, additional regional structures were created to concentrate on Aral Sea protection problems. After several reorganizations, they now exist as an International Fund for the Aral Sea (IFAS) and its Executive Committee.

Despite this auspicious beginning, negative trends soon began to develop in this program of water cooperation. Deterioration of the economic situation, coupled with the transition to market relations, led to a situation in which the interests of the countries diverged, with respect to water use. The former Soviet model of water allocation could not function in this economic climate, without reliable guarantees of implementation of the countries' obligations. As downstream countries began to violate energy supply schedules, upstream countries were compelled to discharge water from Toktogul (the largest reservoir in the Naryn cascade) in wintertime and to increase levels of summer storage for purposes of energy generation. In turn, these unscheduled discharges caused flooding and unproductive loss of water downstream. The condition of reservoirs, dams and other water management constructions began to deteriorate as upstream countries were no longer able to maintain them. Dissatisfied with existing quotas, countries sought to introduce new quotas based on new principles, emerging demands, and changed economic conditions.

In 1994, after a set of meetings of experts of the ICWC countries, the countries agreed on a scheme of "water-to-energy" exchange, according to which Kazakhstan and Uzbekistan would buy electric energy produced by Kyrgyzstan's Naryn Cascade during summer time, when the water was to be discharged for irrigation. In return, Kyrgyzstan would store water in wintertime and was entitled receive an equivalent quantity of organic fuels. Annual protocols were developed to set the operational regime of reservoirs and quotas.

In 1998 countries signed the main Agreement, in the hope that it would ensure stability. Unfortunately, the agreement failed to remedy the situation. As the economic situation worsened, the various countries' interests diverged even more, and the countries continued to violate the agreements. In Kyrgyzstan, once again, lack of winter energy led to discharges causing downstream flooding, and to summertime storage that had a particularly harmful effect on crops in the dry summers of 1999 and 2000.

In the meantime, water quality in the two rivers deteriorated quite drastically due to destructive water use practices, degenerating channels and drainage systems, and uncontrolled irrigation. High mineral content in the soils meant that drainage waters become sources of salinisation and pollution. River water became unsuitable for drinking, for use as communal water supplies, and for other economic purposes, especially in downstream countries.

Despite these problems and divergences, the countries recognise the necessity of co-operation and hope to work out balanced models of water use and water allocation. The 1994 Aral Sea Program provided in its action plan for "the preparation of a regional water strategy, rational water use and protection of water resources in the Aral Sea basin." Efforts to produce such a strategy began in 1995, under a GEF project, however, for various (mostly political) reasons, this project resulted in little or no tangible progress.

A second attempt, however, has been more successful. It has been undertaken under the Special Program on Economics of Central Asia ("SPECA") project, which seeks generally to develop a strategic plan of action for

Delegates from over 100 nations as well as NGOs and others attending the International Conference on Freshwater (see story on page 17)

economic development of the States of the Central Asia for 2002-2006. One of its components will be a preparation of the Strategy for rational and efficient use of water and energy resources in the Central Asia. The project's first workshop on water management and energy issues was held in Bishkek (Kyrgyzstan) in November 2000, which called for the preparation of Diagnostic Reports on water and energy issues. The Diagnostic Report on water will include

– general characteristics of water resources management in the Aral Sea basin,
– problems and contradictions among the countries in relation to water issues, and
– recommendations to address the existing problems and contradictions.

This Report is expected to become a basis for the Strategy for rational and efficient use of water resources. The first draft, prepared by a team of international and national experts, was presented for discussion in June 2001. It was subsequently amended and approved by participants in a third project workshop in December 2001, at which a draft Concept for development of a regional strategy of rational and efficient use of water resources in the Central Asia was also presented and discussed.

The draft Concept consists of an outline of the principle positions on which the development of the Strategy would be based, proposing solutions to the main water contradictions among the countries. It notes that such a strategy must be intergenerational as well as international, establishing the main long-term directions for the development of interstate relations in the field of water use, protection and improvement of water ecosystems (including the Aral Sea) in the region. Once the draft Concept receives national approval from within the region, the next stage will be to merge this work with the results of the Diagnostic report on energy in the preparation of a single "water and energy strategy."

As outlined in the draft Concept, water allocation would be based on each State's right of free access to transboundary water within annually established quotas. The upstream countries' right to regulate flow on a seasonal basis would be controlled by quotas, based upon respective interstate agreements. Upstream States would be entitled to fair compensation from downstream countries which benefit from seasonal regulation. Individual volume of flow would be controlled under a regional quota, established to sustain the hydrological regime of the basin, to prevent further degradation of the Aral Sea, and to ensure protection of biodiversity, estuaries and other valuable natural complexes.

According to the Concept, each State would be obliged to adopt a national water policy that ensures rational and efficient water use within respective national territories, based on principles of water-use economy, and requiring the use of advanced technologies. Adoption of such harmonised policies and water use requirements will facilitate implementation of international agreements on transboundary waters.

Institutionally, basin States would be required to make every effort to establish procedures and (if necessary) basin agencies for regulation of interstate co-operation. As a minimum, the countries would have to agree on procedures for co-ordination, exchange of information, and mutual control. The States would also have the option to create joint enterprises, corporations and consortiums. The countries would share the expenses connected with technical maintenance, reconstruction and rehabilitation of dams, reservoirs and monitoring stations that have a regional importance and are operated in the common interests of the countries.

A unified system for monitoring water quality and water allocation would also be established. This would happen organically, as the States co-operate and share expenses on the construction of new monitoring stations and rehabilitation of existing ones. Countries shall have free access to all data collected by regional monitoring stations.

The draft Concept notes that protection of transboundary waters and basin ecosystems is a common interest, so that basin States would be required to co-operate in the development and fulfilment of measures for the prevention of salinization of adjacent lands, and for the protection of estuaries and high mountain lakes. They would also be called upon to strive toward harmonisation of environmental requirements to combat pollution of shared waters, and to undertake joint measures for protection of the Aral Sea.

To ensure proper implementation of interstate obligations, the countries agree to establish a dispute settlement procedure that is based on international rules and principles. The countries would commit to notifying each other about violations, and would agree to use negotiations and consultations as a primary means for dispute settlement. Only if these efforts are unsuccessful would judicial procedures be applied.

The Concept of the Regional Strategy for rational and efficient use of water resources in the Central Asia makes an important step forward to solution of priority water issues in the region.

Irina Krasnova
Professor of Environmental Law
Russian Academy of State Administration
Office of the President
Russian Federation
e-mail: ikrasnova@mailru.com

Trading in Water Entitlements in the Murray-Darling Basin in Australia – Realising the Potential for Environmental Benefits?

1. Australia and the Murray-Darling Basin

The Australian Federation

The Commonwealth of Australia is a Federation of six States and two Territories. The Murray Darling Basin region covers more than 1,000,000 square kilometres (14%) of Australia, lying across much of five jurisdictions. According to 1992 figures, nearly 1.5 million hectares of land are irrigated from the rivers and tributaries of the Murray-Darling Basin, or 71% of total irrigated crops and pastures in Australia. The River Murray is one of the two major rivers of the Basin and, at 2530 kilometres, is the second longest river in Australia, commencing in the Snowy Mountains of New South Wales and meeting the sea on the southern coast of South Australia.

The Murray-Darling Basin Agreement

The water resources of the Murray and Darling rivers have been the subject of inter-jurisdictional water sharing agreements (ratified by legislation) since about 1915. The current Murray-Darling Basin Agreement was signed by three state Governments and the Commonwealth in 1992. The fourth State, being the uppermost region of the Basin, joined as a party in 1996, and the Australian Capital Territory in 1998.

The current Agreement covers natural resource management within the Basin as well as river regulation. Decisions as to works and measures to be undertaken to fulfil the Agreement are made by a Council of relevant Ministers representing each jurisdiction. Advice is provided to the Council by the Murray-Darling Basin Commission (MDBC), which is serviced by a central office.

2. Trade in rights within States and across the Basin – capping resource availability

In 1997, jurisdictions agreed to 'cap' their allocations for consumptive use from the system, so that, in future, new demand could be supplied only from within existing rights. The Cap formed a Schedule to the Agreement, and is in the process of being implemented by each State.

States are at different stages with the implementation of the Cap. Queensland, for example, is yet to reach full allocation or to redefine existing rights as statutory property rights under new legislation. Victoria and New South Wales are also in the process of defining rights, and coming to terms with a possible over-allocation. South Australia (SA) has fully implemented its Cap, and in fact has made no new allocations from the River Murray since the early 1960s, it having been recognized that the river had reached its limit in terms of taking for consumptive use.

The capping of resource availability in the River Murray has lead to active trade in water rights, both within States and, as a result of water trading rules implemented by the MDBC, between individuals across State borders.

In order to both function effectively and to achieve environmental benefits, or at least avoid environmental harm, however, a water trading market requires more than a cap on resource availability. Other requisites include a cap that reflects the sustainable allocation limit, well-defined property rights in the water entitlement, and appropriate use rules reflective of the environmental effects of the use of water in particular locations.

3. Defining the property right

An essential prerequisite to trading in water rights is the adequate definition of those rights as a form of property separate from the title to land.

All jurisdictions in the Basin have now introduced legislation which will achieve the necessary definition of rights. By way of example, SA's *Water Resources Act 1997* (WRA) was the first to sever the old property connection between land and water, clearly stating that water licences are personal to the holder, and are not linked to land title. Under the WRA "*a licence (including the water allocation of the licence) is personal property vested in the licensee and will pass to another person under Division 3* [which deals with trading of licences] *or…in accordance with any other law for the passing of property*". Consequently, the treatment of licences under the law is in many ways similar to that of real property. (For example, the Minister is required to maintain a register of licences, including endorsements of third party interests in them.) Licences under the WRA are fully transferable, permanently and temporarily, although trade may be restricted by the provisions of a statutory water management plan to ensure that environmental impacts are properly managed.

By contrast with intrastate trade arrangements, *interstate* water trading involves a complex adjustment of rights between States under the Murray Darling Basin Agreement, to reflect the water traded between individuals.

Part of the complexity of interstate trade arises from the different levels of security of licences in each State.

These differences reflect the conservative or speculative water allocation philosophy adopted by the respective States, the extent to which water rights are supported by the availability of large water storages, the location within the catchment and climatic conditions. For example, the SA River Murray supply is highly secure, as SA, being the down-stream State, has the benefit of all major storages and tributaries within the Basin system (and the State has taken conservative approach to water allocation). Other States' water rights are much less secure.

To manage these differences, the interstate trading system presently operates only in a restricted 'pilot' area, and only in respect of each jurisdiction's highest security water rights. Plans are underway to extend interstate trade to a wider variety of water rights, but exchange rates reflecting the different levels of security of supply will first need to be developed.

4. Environmental effects of trade

The extent to which trade has had an overall positive or neutral environmental impact is subject to debate.

Recent reviews on effects of trade

Two recent reviews on water trading in Australia have been carried out: *National Approach to Water Trading* (May 2001) and *Interstate Water Trading: A Two-Year Review* (December 2000).

Both reviews note that generally, trade does cause water to be used for higher value uses, and to move downstream. The *Two Year Review* notes that the pilot interstate trade project allowed 51 trades involving 9.5 GL of water to move across State borders, and that in net volume terms, more than 90% of this water moved to SA. There are a number of reasons for this – SA, the most downstream State, has a climate ideal for permanent, high-value plantings such as olives, citrus, almonds and, more significantly, grapes for the wine industry. SA is also the driest State, has the smallest water allocation for consumptive use and produces the highest value crops per volume of water consumed. The consequent preparedness to pay a higher dollar value for water increases the likelihood that interstate trade will see water move into SA, and is generally reflected in an equal preparedness to invest in infrastructure that will see the water used as frugally as possible.

The *Two Year Review* notes that the environmental flow impact of interstate water trading has probably been positive, although the total volume of trade has been so small that it is difficult to measure. However, the *Review* also notes that "from a salinity perspective and in the long-run, interstate trading can be expected to have a negative impact on river salinity. Most water is being transferred to South Australian land that has not been previously irrigated with the consequence that river salinity can be expected to increase."

Regulating the market to modify environmental impacts

Attempts can be made to force the market to reflect the true costs of water use through trading rules which attempt to internalise environmental costs. These include the use of 'exchange rates', conditions on transfers, and licence conditions relating to place and manner of use.

- Exchange rates

  The MDBC interstate water trading rules incorporate two types of exchange rates, with a third in the process of being developed. The first exchange rate is applied to maintain the integrity of the 'Cap,' in light of its role as a limiting factor in water use. When trading water allocations, care must be taken not to allow actual use to increase. (Further explanation and application of the Cap and its associated exchange rate is complex and not further discussed here.)

  The second exchange rate attempts to make the market reflective of some of the environmental impacts

Courtesy: Murray-Darling Basin Commission

of trade. A reduction in the actual volume of water that can be taken is applied to transfers upstream in recognition of decreasing security of supply (the higher the extraction point, the fewer tributaries and headworks are available to supply the allocation). For example, rights being traded upstream of the junction of the Murray and Darling rivers are reduced by 10% (or attract an exchange rate of 0.9). In theory water traded downstream should therefore result in an increase in the volume that can be taken due to

continued next page ...

increased security. However, to be conservative and offer some environmental benefit, the maximum volume that can be taken is 100% (or the exchange rate has been set at 1.0). As the pilot interstate trading zone increases in geographical extent, allowances will also have to be made for in-river transmission losses or gains as water rights are transferred over large distances.

The proposed new exchange rate is planned to facilitate interstate trade over a greater variety of licence-types by creating the equivalent of a common currency in water rights to accommodate the different definitions of water rights, and varying security levels among States.

- Transfer conditions

  Conditions attaching to transfers to individuals are a matter for State legislation rather than the MDB Agreement. For example, the SA WRA requires licence transfers to be assessed in accordance with the relevant statutory water allocation plan, which sets out environmental water requirements and prescribes allocation and trading rules to protect those environmental needs. The State of Victoria uses trading rules to prohibit trade into high salinity impact zones.

- Use conditions

  States also use a variety of mechanisms to impose conditions on the use of water. In SA, an "irrigation and drainage management plan" is imposed on the traded licence, and sets out a licensee's commitments to the use and management of the water and disposal of drainage reflecting local soil types conditions and proximity to the river.

  So-called 'zero-impact agreements' have also been developed in SA to the extent that a licensee has been required to establish a trust fund to cover the development's future salinity impacts. The agreement recognises the fact that even with best practice irrigation management, the development is still likely to negatively impact on the river in 20 or 30 years. By that time, the trust account will have accumulated sufficient funds to account for impacts, for example by construction of a salt interception scheme.

Trading water outside of the Basin

Real environmental benefits have been realised with the trading of water rights out of the Murray Darling Basin itself. A government-owned pipeline is being used by third parties to transport water from River Murray licences to the Barossa Valley (within SA but outside of the Basin) for irrigating high-value wine-grapes. Using River Murray entitlements in the Barossa Valley maximizes their value without the associated salt loads returning to the River. The high value placed on water by the Barossa Valley growers means interstate water is being bought for this purpose, with additional environmental benefit as downstream environmental flows are increased as the water is removed from the lower reaches of the Murray rather than from NSW or Victoria.

5. Current challenges for 'environmentally effective' trade

The extent to which trade can achieve environmental benefits clearly depends on two elements:

- The extent to which caps on allocations, including the Basin-wide Cap under the Agreement, accurately reflect the sustainable allocation limit for the system for consumptive use. In some circumstances a cap on allocations may need to be reduced through a reduction of consumptive entitlements, which can in fact stimulate trade. This can result in water moving more quickly to higher value uses, and reducing the financial impact of the reduced entitlement. (See *A National Approach to Water Trading*, paragraph 7.4.1.)

- The extent to which salinity impacts of use can be managed. The *Two-Year Review* notes that environmental impacts will be addressed through the new Basin Salinity Management Strategy amongst other initiatives, to ensure that salinity impacts remain within acceptable levels. The *Review* concludes that "if adequate arrangements are put in the place, then the long-run net effect of recent trades could be neutral."

The experiences of the Murray Darling Basin may have application to the many other circumstances where different jurisdictions find themselves looking for effective ways to share and manage the same water resources.

Megan Dyson
Lawyer and Consultant to the Murray Darling Basin Commission (MDBC)
and John Scanlon
MDBC Commissioner 1997-2000
Head, Environmental Law Programme

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The authors gratefully acknowledge the assistance of Mike Smith of the South Australian Department for Water Resources.

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THE INTERNATIONAL CONFERENCE ON FRESHWATER

The International Conference on Freshwater, entitled *Water – A Key to Sustainable Development*, was held in Bonn from 2-7 December, ten years after the 1992 Dublin Conference on Water and the Environment. Intended to be part of a regular review of the United Nations system on freshwater resources, it was organised by the German Government to consider recommendations for action, to be presented to the World Summit on Sustainable Development (WSSD) in Johannesburg, in September 2002.

Attended by over 100 governments, as well as intergovernmental organisations, farmer organizations, business/industry representatives, workers, trade unions, local authorities, indigenous peoples and NGOs, the Bonn Conference was organised in plenary sessions, multi-stakeholders dialogues, and three thematic working group parallel sessions.

The multi-stakeholders dialogue addressed the issues of equitable access and sustainable supply of water for the poor, strategies for sustainable and equitable management of water resources, and integration of gender perspectives. The thematic working groups (on "Governance, Integrated Management and New Partnerships"; "Mobilising Financial Resources"; and "Capacity Development and Technology Transfer") considered cross-cutting issues such as

– water resource protection, water allocation, and transboundary waters;
– domestic public funding, and investment;
– development assistance, education and training, and sharing knowledge; and
– effective institutions and innovative technology for water efficiency.

A closed ministerial session also deliberated on sustainable and equitable use of water resources and mobilization of financial resources for water infrastructure investment.

The conference's most important output is its *Recommendations for Action*, which addresses needs in the areas of governance, financial resources, and capacity-building/knowledge-sharing, including

- governance
  – equitable access to water
  – water infrastructure and services in rural and poor areas
  – gender equity
  – allocation of water among competing demands
  – benefit-sharing
  – participatory sharing of benefits from large projects
  – water management
  – protecting water quality and ecosystems
  – risks of variability and climate change
  – efficiency
  – decentralised management, and
  – combating corruption.
- Mobilising Financial Resources:
  – increasing funding;
  – strengthening public funding capabilities
  – improving economic efficiency and sustainability of investment
  – attracting private investment; and
  – increasing development assistance.
- Capacity-building/Knowledge-sharing
  – sharing water wisdom;
  – information and research management;
  – sharing knowledge and technologies;
  – involving all sectors – governments; local communities; workers and trade unions; NGOs; the private sector and the international community.

Many legal issues arise within these Recommendations. Most of them are not new, however. The value of expressing them in a single document lies in the fact that they might take on a new prominence within the general discourse in the field of water resources management and conservation, increasing awareness of the role of law in the protection and conservation of the water resources. Among these issues, the most relevant to the ELP are:

- The importance of including within water governance systems, mechanisms for protection of ecosystems and other ecological services, and for the preservation or restoration of the ecological integrity of groundwater, rivers, lakes, wetlands, and associated coastal zones;
- The need to link water-resource policies with policies addressing climate change, desertification, biological diversity, wetlands, dams, the marine environment, and sustainable forests;
- The role of law in assuring equitable and sustainable allocation of water for basic human needs as well as flow levels necessary for proper functioning and integrity of ecosystems, recognising the links not only between surface and groundwater, but also between inland and coastal waters;
- The development of institutional and participatory mechanisms at all relevant levels (watersheds, river basins, lakes and aquifers), to ensure that the primary frame of reference for water resources management is appropriate to each resource.

As summarised by Margaret Catley-Carlson, Director of the Global Water Partnership (GWP), the workshop

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IUCN at the Freshwater Conference

IUCN played a major role in many aspects of the Freshwater Conference, from the pre-event Dialogue through every phase of the event itself. A multidisciplinary delegation, led by Ger Bergkamp (IUCN HQ), included Rocio Córdoba (Mesoamerica), Hans Friederich (Asia), Madiodio Niasse (West Africa), Elroy Bos (IUCN-HQ), Ainun Nishat (IUCN-Bangladesh), John Scanlon (IUCN-ELP), Griselda Capaldo (IUCN-ELC), and Alejandro Iza (IUCN-ELC).

The IUCN delegation was particularly active in the Conference's work on ecosystem protection and environmental law. In addition, Ger Bergkamp delivered a speech on improved governance, and IUCN presented a side-event and held other meetings on the Water and Nature Initiative – whose five-year action plan will seek to demonstrate the role of ecosystem-based management and stakeholder participation in solving the water dilemma.

Immediately prior to the Conference, IUCN also participated in a Dialogue on Water, Food and Environment – providing a platform of discussion and understanding of the water allocation dilemma in balancing the needs of food production and those of environmental protection. A consortium of ten different international organisations (including IUCN) was created and given a 5-year mandate to try to develop a consensus on this difficult topic. In connection with this event, IUCN-ELC hosted the IUCN delegation in a meeting of the "dialogue" organisations, and a presentation to several representatives of governmental agencies.

– AOI

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seemed to conclude that five key points are most important to freshwater resources ("the Bonn Keys") –

1. Meeting the water security needs of the poor
2. Decentralising the management of water resources
3. Building new partnerships and coalitions
4. Seeking "harmony with nature and neighbours in co-operative arrangements at the water basin level, including across waters that touch many shores"
5. Strengthening governance arrangements

It is notable, (particularly in "key" number 4) that the participants sought to avoid the terms "transboundary", "shared" or "international" waters. This predilection reflects the difficulties the participants had noted in trying to reach a common level definition of such concepts.

In closing remarks, a Declaration of African Ministers responsible for Water Resources was presented raising interesting points concerning the need to strengthen the policy, legislative and institutional reform for integrated water resources management, to develop institutional co-operation between river basin authorities, port authorities and coastal zone management, and to link freshwater protection efforts with those focused on the coastal and marine environments. That Declaration establishes an African Ministerial Conference on Water, with an aim of institutionalising ministerial level dialogue on water policy. Its first meeting is planned for next March/April in Abuja, Nigeria.

Conclusion

While demonstrating the level of international interest and involvement in water issues, the Freshwater Conference underscored the continuing underestimation of the importance of legal issues in this field. Law reform – introducing new regulatory frameworks or upgrading the existing ones – remains an under-recognised priority for the upcoming years. Law is a fundamental tool for achieving integrated water resources management, guaranteeing a participatory process, tackling issues such as pricing, building partnerships, protecting the environment and – in the end – achieving sustainable development. One of the most remarkable points of the Bonn Freshwater Conference has been the strengthening of a discussion forum which can be a primary vehicle for identification of the legal principles of customary law and the fundamental rules of a future legal regime relating to freshwater resources.

Beyond this, the Conference has clearly shown the two faces of the same coin: on the one hand, it has generated a basis for environment of consensus, which undoubtedly will simplify the task of a future diplomacy (including the eventual adoption of a framework instrument relating to these issues.) On the other hand, it highlighted areas where a dramatic lack of agreement exists, such as the definition and conceptualisation of the idea of "international" and "transboundary" waters.

– AOI

Bridging the Divide Between Ecology and Decision-Making

Among the issues raised at the WSSD (*see* article on page 25), one fundamental question is expected to transect all of the debates: How should environmental science and environmental law interact to best advance sustainable development? Environmental Law has been a principal medium through which governmental systems have integrated the environmental sciences into decision-making. It is therefore important to consider the legal and policy implications of that question, both now and through the 10 years since the Rio Summit.

Despite scientific reports of environmental degradation in most regions of Earth since the Rio de Janeiro "Earth Summit" of 1992, the planet's political and diplomatic leaders have failed to take many of the decisive actions recommended in *Agenda 21*. Perhaps, rather than berating national and international leadership for their "timidity," scientists and lawyers should objectively evaluate the reasons behind States' delay in implementing *Agenda 21*.

The environmental sciences provide descriptions and models of how natural systems function, as well as assessment methodologies for analysing human impacts on on-going systems. One key role of environmental law is to ensure that this scientific analysis serves as the basis for decisions about humans and nature. Procedures such as environmental impact assessment (EIA) seek to integrate scientific evaluation with the decision-makers' essential normative judgment. Where EIA functions efficiently, it can ensure primary consideration of scientific reports, within a framework that considers competing economic and social factors and alternative technologies, to determine how human conduct might be modified to better protect the public health and to restore and maintain the integrity of natural systems.

Politically, there are four stages of "Environmental Awareness," which legal procedures must accommodate:

- Stage 1: "unconscious incompetence" – legal procedures must nurture and sustain scientific research to identify and define problems
- Stage 2: "conscious incompetence" – law must provide reporting mechanisms and indicators for monitoring environmental conditions and concerns, and for educating the public and decision-makers, as society starts to grapple with identified problems
- Stage 3: "conscious competence" – systematic procedures must integrate the scientific knowledge into the decisions society takes to address the problems
- Stage 4: "unconscious competence" – in addition to institutionalizing agreed solutions, legal procedures must be in place to periodically reassess their effectiveness, so that complacency does not set in, allowing the problems to reappear.

Although legal procedures to integrate science with decision-making are essential, there are several reasons why States resist establishing or enhancing them. Quite apart from the multi-disciplinary challenges involved, many appear to doubt whether such procedures are necessary or important. Doubts arise from many sources:

- general distrust of such regulations, or doubt that additional laws are needed;
- a disregard for environmentalism or belief that extreme environmentalism threatens today's life styles and the economic progress that produced contemporary prosperity. Concomitant to this position is a refusal even to examine the value of environmental legal procedures.
- opposition to the reforms of environmental law because it potentially limits the economic advantage of vested holders of interests in natural resources and their extraction.
- Confusion about the process, based on the perception of procedures to link environmental sciences to decision-making as a part of unwanted "command and control" regulation, and the confirmed belief that regulations should be minimal regardless of function.

An illustration of some of these positions is found in the presentation of Bill Holmes, a former member of the California State Board of Forestry, to the Redwood Region Logging Conference in 1991: "In California we continue to plunge toward new ill-fated experiments in socialized timber management. The Hollywood crowd and other people in the US who hate America … have jumped into bed with their environmental friends who welcomed them with open arms. They already had a great deal in common because, although not all left-wing radicals are environmentalists, certainly all environmentalists embrace some form of left-wing radical collectivism. As a result, the greatest threat to you, to me, to our communities, to our state and to our nation is no longer communism, it is not drugs, not AIDS, not crime, not poverty, … but radical environmentalism." (W. Sachs (Ed.) *Global Ecology: A New Arena of Political Conflict* (Fernwood Books, Nova Scotia, Canada 1993), reprint from *Earth Island Journal* (1991, p. 48).)

At the other extreme, committed environmentalists often have little patience for legal procedures, which many of them see as temporizing, excessively moderate, or wholly "bureaucratic." Even traditional and moderate environmental civic organizations rarely include support for such integrative procedural reforms among their leg-

islative or political priorities. The introduction of new techniques appropriate to integrate scientific knowledge into decision-making face both political opposition and disinterest.

Notwithstanding these difficulties, since the 1972 U.N.'s Conference on the Human Environment in Stockholm, the field of environmental law has introduced a range of new systems and techniques to link science and decision-making. Over the past three decades, many States have enacted and streamlined legal processes designed to achieve administrative efficiencies and enhance their application, deserve closer study and wider application. Use of legal methods such as EIA, for introducing scientific knowledge into decision-making, has had a demonstrable impact, moving natural resource use toward more sustainable, less environmentally degrading circumstances. Rather than weakening environmental legal process, attacks on environmental reforms have served to temper the substantive and procedural foundations and framework for this field of law.

Environmental law reforms invariably also are connected to the controversies, which have raged since the origins of this still-youthful legal discipline. When different perceptions of the world and its natural resources conflict, even relatively small questions about use of a natural resource can trigger significant debate. New scientific knowledge challenges the continuing validity and applications of assumptions and institutions, that arose before. The new perceptions confront the inertia and well-entrenched force of societal convictions regarding the previously accepted *status quo*. As American jurist Oliver Wendell Holmes wrote quoting Thomas De Quincey, "Whatever is too original will be hated at first. It must slowly mould a public for itself; and the resistance of the early thoughtless judgments must be overcome by a counter-resistance to itself, in a better audience slowly mustering against the first." (*see* Holmes, O.W., *Ralph Waldo Emerson*, 1898)

There will always be dispute arising from the different perspectives concerning natural resources, so it is predictable and understandable that there is sometimes strong public reluctance to accept the scientific findings regarding Earth's natural systems. In recognition of this fact, the legal system should devote special attention to formulating neutral rules for the full exposition of relevant scientific knowledge and then for a reasoned resolution of those disputes.

UNCED's recommendations regarding science for sustainable development do not expressly propose such procedures, but do implicitly endorse their need. *Agenda 21* notes that, "Often there is a communication gap among scientists, policy makers, and the public at large, whose interests are articulated by both governmental and non-governmental organizations. Better communication is required among scientists, decision makers, and the general public." (§ 35.5) In addition to its recommendations about greater attention to the collection and collation of scientific data (§§ 35.7(d)(1), 35.12(1), 35.17(b)), *Agenda 21* calls for the strengthening and design of "appropriate institutional mechanisms at the highest appropriate local, national, subregional and regional levels and within the UN system for developing a stronger scientific basis for the improvement of environmental and developmental policy formulation." (§ 35.7.) It goes on to recognize that "[t]o effectively integrate environment and development in the policies and practices of each country, it is essential to develop and implement integrated, enforceable and effective laws and regulations that are based upon sound social, ecological, economic and scientific principles. It is equally critical to develop workable programmes to review and enforce compliance with the laws, regulations and standards that are adopted." (§ 8.14.)

It was not *Agenda 21*'s purpose to delineate more precisely what substantive legislation or procedural rules should be adopted. This is the province of each State and its legislature. At this point, 10 years into Agenda 21's life, it seems important that any new recommendations that may be developed should be based on proven models. Hence, as States prepare for the WSSD, it would be most efficient and effective to study and elaborate on techniques already tried, instead of trying to imagine new implementation options.

Since 1992, however, there has been very little such analysis. One important example of empirical research in this area is a study that addresses the effectiveness of international environmental agreements (undertaken under the auspices of International Institute for Applied Systems Analysis (IIASA) in Vienna.) Similar studies are clearly needed with regard to national legislative frameworks on, for example, managing surface water quality, aquifers, migratory species habitat, maintaining ambient air quality, minimizing wastes, and other areas addressed by Environmental Law.

The WSSD is not likely move rapidly toward implementation of these recommendations, for reasons beyond the Conference itself. It is not sufficient to simply note "a lack of political will" and bemoan this situation. Insufficient integration of environmental sciences into decision-making will continue to be a problem, until we have more carefully examined the causes underlying reluctance to implement these prudent measures. Doubtless the reasons explored above offer only a superficial analysis of reasons behind decision-makers' refusal to accept a role for science in their work. These thoughts then, should be taken only as a point of departure. Deeper reflection and study by environmental lawyers and scientists is required.

Prof. Nicholas A. Robinson
Chair, IUCN Commission on Environmental Law

For a further discussion of relevant points, See N.A. Robinson, *"Legal Systems and the Science of Earth's Systems: Evolving Processes for Integrated Decision-making",* 27 Ecology L. Q. (no. 4) 1077 (University of California School of Law, Boalt Hall, 2001).

The Doors to Democracy Are Opened!

On October 30, 2001, in Geneva, Switzerland, children, governmental officials, and representatives of environmental citizens organisations joined forces to push open, symbolically, doors at the Palais des Nations, covered with intimidating signs:

✔ "Secret"
✔ "Access denied"
✔ "NGOs, go away. We are trying to work"

On that day, officials and non-governmental organizations gathered to celebrate the entry into force of the Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters. The symbolic opening of the doors provided a light-hearted note to an occasion of historic significance. In the words of UN Secretary General, Kofi Annan, Europeans and Central Asians have embarked on the world's "most ambitious venture in environmental democracy… a remarkable step forward in the development of international law."

Environmental Democracy

In celebration of this important step in international law, the Secretariat of the UN Economic Commission for Europe (UN ECE) organised the meeting, which was opened by Kaj Barlund, Head of UN ECE Division of Environment and Human Settlements, who conveyed greetings from UN Secretary General Kofi Annan –

> "The Aarhus Convention is the most ambitious venture in environmental democracy undertaken under auspices of United Nations. Its adoption is a remarkable step forward in the development of international law as it relates to participatory democracy and citizens' environmental rights.
> "Its entry into force today, little more than three years after it was adopted, is further evidence of the firm commitment to those principles of the Signatories – including States in Eastern Europe and Central Asia whose role in this process clearly demonstrates that environmental rights are not a luxury reserved for rich countries."

It is particularly notable that the majority of the ratifications have come from Eastern European countries and the Newly Independent States. The Convention was originally conceived in large part as a contribution to democratising the former Communist countries, which have taken up that task with enthusiasm.

Human Rights and Environment around the World

The day's speakers took special note of the linkage between human rights and environmental protection, and of the Convention's world-wide significance. UN High Commissioner of Human Rights Mary Robinson noted that –

> "The Convention is a remarkable achievement not only in terms of protection of the environment, but also in terms of the promotion and protection of human rights, which lie at the heart of the text. As such, Aarhus is a key step in the process of integrating human rights and environmental issues…. Its entry into force is a key signpost for the future of human and the environment in all parts of the world.
>
> "The great value of this Convention lies not only in the promise of protection it affords the people and the environment in Europe, but also in the model it provides for similar action in other nations and regions in the world."

This theme was echoed by Bazo Kovacevic, Minister of Environmental Protection and Physical Planning of Croatia, the host country of the Second Meeting of Signatories, who noted that the Aarhus Convention was an unprecedented international example of the protection of the environment: "The Aarhus Convention will change the environmental world."

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A team of children, goverrnment representatives and NGO representatives, including Svitlana Kravchenko (second from left) combine to open the "doors of democracy"

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.

CALENDAR O

As of 16 M

16-20 March	Alexandria, Egypt	Biotechnology and Sustainable Development – Voices of the South and North Contact: Ismail Serageldin; tel: (203) 487-6024; fax: (203) 487-6001; e-mail: egyptbiotech@bibalex.org; Internet: http://www.egyptbiotech.com/
18-22 March	Monterrey, Mexico	UN International Conference on Financing for Development Contact: Harris Gleckman, Coordinating Secretariat; tel: (1 212) 963-4690; e-mail: gleckman@un.org or Federica Pietracci; tel: (1 212) 963-8497; e-mail: pietracci@un.org; Internet: http://www.un.org/esa/ffd
19-21 March	Algiers, Algeria	Regional and Subregional Preparatory Meetings for Ramsar COP 8: West Africa Contact: Ramsar Convention Bureau, Rue Mauverney 28, CH-1196 Gland, Switzerland; tel: (41 22) 999-0170; fax: (41 22) 999 0169; e-mail: ramsar@ramsar.org; Internet: http://www.ramsar.org/meetings.htm
March/April	Abuja, Nigeria	African Ministerial Conference on Water Contact: Muhammad Abubakar, Federal Ministry of Water Resources, Nigeria; tel: (234 9) 234-2205; e-mail: makabubakar@hotmail.com
25 March – 5 April	New York	3rd Preparatory Session for the 2002 WSSD Contact: Andrey Vasilyev; tel: (1 212) 963-5949; fax: (1 212) 963-4260; e-mail: vasilyev@un.org; Major groups contact: Zehra Aydin-Sipos; tel: (1 212) 963-8811; fax: (1 212) 963-1267; e-mail: aydin@un.org; Internet: http://www.johannesburgsummit.org/
7-12 April	Melbourne, Australia	World Water Congress 2002 Contact: Secretariat, Quitz Event Management; tel: (61 02) 9410-1302; fax: (61 02) 9410-0036; e-mail: quitz@bigpond.net.au; Internet: http://www.enviroaust.net/
8-20 April	Cape Town, South Africa	Symposium on Alternative Ways to Combat Desertification Contact: Odette de Heer Kloots; tel: (27 21) 762-8600; e-mail: desertification@globalconf.co.za; Internet: http://des2002.az.blm.gov/homepage.htm
8-26 April	The Hague, The Netherlands	6th Meeting of the Conference of the Parties to the Convention on Biodiversity (CBD COP 6) 1st Meeting of the Parties to the Cartagena Protocol (MOP-1) Contact: CBD Secretariat, Montreal, Canada: tel.: (1-514) 288-2220; fax: (1-514) 288-6588; e-mail: secretariat@biodiv.org; Internet: http://www.biodiv.org
May	Riyadh, Saudi Arabia	Regional and Subregional Preparatory Meetings for Ramsar COP 8: Middle East Contact: Ramsar Convention Bureau, Rue Mauverney 28, CH-1196 Gland, Switzerland; tel: (41 22) 999-0170; fax: (41 22) 999 0169; e-mail: ramsar@ramsar.org; Internet: http://www.ramsar.org/meetings.htm
6-8 May	Gland, Switzerland	Ramsar Standing Committee subgroup on COP-8 Contact: Ramsar Convention Bureau, Rue Mauverney 28, CH-1196 Gland, Switzerland; tel: (41 22) 999-0170; fax: (41 22) 999 0169; e-mail: ramsar@ramsar.org; Internet: http://www.ramsar.org/meetings.htm
13-24 May	New York, USA	12th Meeting of the States Parties to the UN Convention on the Law of the Sea Contact: UN Division for Ocean Affairs and the Law of the Sea; tel.: (1 212) 963-3968; e-mail: doalos@un.org; Internet: www.un.org/Depts/los/index.htm
14-18 May	Nigeria	Regional and Subregional Preparatory Meetings for Ramsar COP 8: West Africa or Central/ North Africa (provisional) Contact: Ramsar Convention Bureau, Rue Mauverney 28, CH-1196 Gland, Switzerland; tel: (41 22) 999-0170; fax: (41 22) 999 0169; e-mail: ramsar@ramsar.org; Internet: http://www.ramsar.org/meetings.htm
22-24 May	Victoria, British Columbia	4th UNEP International Children's Conference on the Environment Contact: Theodore Oben, Programme Officer, Children, Youth and Sport Programmes, UNEP, Nairobi, Kenya; tel.: (254 2) 623262; e-mail: theodore.oben@unep.org; Internet: http://www.unep.org/children_youth/
27 May – 7 June	Jakarta, Indonesia	4th Preparatory Session for the 2002 WSSD Contact: Andrey Vasilyev, DESA, New York; tel: (1 212) 963-5949; e-mail: vasilyev@un.org; Major groups contact: Zehra Aydin-Sipos; tel: (1 212) 963-8811; e-mail: aydin@un.org; Internet: http://www.johannesburgsummit.org/
3-14 June	Bonn, Germany	Sessions of the Subsidiary Bodies Contact: UNFCCC Secretariat, Haus Carstanjen, Martin-Luther-King-Strasse 8, D-53175 Bonn, Germany; tel: (49 228) 815-1000; fax: (49 228) 815 1999, e-mail: secretariat@unfccc.de; Internet: http://www.unfccc.de
17-21 June	Geneva, Switzerland	6th session of the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants (INC-6) Contact: UNEP Chemicals, J. Willis, tel: (41 22) 917 8183; fax: (41 22) 797 3460; e-mail: jwillis@unep.ch

OF MEETINGS
March 2002

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

July	Ecuador	Regional and Subregional Preparatory Meetings for Ramsar COP 8: Neotropics and North America Contact: Ramsar Convention Bureau, Rue Mauverney 28, CH-1196 Gland, Switzerland; tel: (41 22) 999-0170; fax: (41 22) 999 0169; e-mail: ramsar@ramsar.org; Internet: http://www.ramsar.org/meetings.htm
21-28 July	Montreal, Canada	18th International Congress on Irrigation and Drainage: "Food Production under Conditions of Water Scarcity, Increasing Population and Environmental Pressures" Contact: Jean-Marcel Laferriere; tel: (1 819) 953-4327; fax: (1 819) 994-0251; e-mail: jeanmarc_laferriere@acdi-cida.gc.ca; Internet: http://www.cancid.org
2-23 Aug.	Johannesburg, South Africa	Implementation Conference: Stakeholder Action for our Common Future Contact: Minu Hemmati, UNED Forum; tel: (44 207) 839 7171; e-mail: minush@aol.com; Internet: www.earthsummit2002.org/ic
25-27 Aug.	Tromsö, Norway	Conference of Parliaments of the Arctic Region Contact: The Norwegian Parliament, Oslo, tel.: (47 23) 32 36 01; fax: (47 23) 31 38 62; e-mail: kjell.myhre.jensen@stortinget.no
22-25 Aug.	Durban, South Africa	Envirolaw Conference 2002 Contact: EnviroLaw Solutions; tel: (27 11) 269-7944; fax: (27 11) 269-7899; e-mail: info@envirolawsolutions.com; Internet: http://www.envirolawsolutions.com
26 August - 4 Sept.	Johannesburg, South Africa	World Summit on Sustainable Development Contact: Andrey Vasilyev, DESA; tel: (1 212) 963-5949; e-mail: vasilyev@un.org; Major groups Contact: Zehra Aydin-Sipos; tel: (1 212) 963-8811; e-mail: aydin@un.org; Internet: http://www.johannesburgsummit.org/
18-24 Sept.	Bonn, Germany	7th Conference of the Parties to the Convention on Migratory Species (CMS COP-7) Contact: CMS Secretariat, Bonn, Germany; tel: (49 228) 815-2401/2; e-mail: cms@unep.de; Internet: http://www.wcmc.org.uk/cms/events.htm
25-27 Sept.	Bonn, Germany	2nd Meeting of the Parties to the African-Eurasian Waterbird Agreement (AEWA MOP-2) Contact: CMS Secretariat, Bonn, Germany; tel: (49 228) 815-2401/2; e-mail: cms@unep.de; Internet: http://www.wcmc.org.uk/cms/events.htm
23 Oct. – 1 Nov.	New Delhi, India	8th Conference of the Parties to the United Nations Framework Convention on Climate Change Contact: UNFCCC Secretariat, Haus Carstanjen, Martin-Luther-King-Strasse 8, D-53175 Bonn, Germany; tel: (49 228) 815-1000; fax: (49 228) 815 1999, e-mail: secretariat@unfccc.de; Internet: http://www.unfccc.de
24-26 Oct.	Madrid, Spain	III Simposio Internacional Legislación y Derecho Ambiental Contact: Ilustre Colegio de Abogados de Madrid, Programa Internacional en Derecho Ambiental, Serrano Nº 11 - 4º Planta, 28001 - Madrid, Spain, tel: (34 91) 435 7810 ext.: 814 and 816; fax: (34 91) 559 1595
29 Oct.– 1 Nov.	Bishkek, Kyrgyzstan	Bishkek Global Mountain Summit (BGMS) Contact: Georgina Peard, UNEP Mountain Programme, International Environment House, 15, chemin des Anémones, 1209 Châtelaine-Geneva, Switzerland; tel.: (41 22) 917 8272; fax: (41 22) 917 8024; e-mail: georgina.peard@unep.ch; Internet: www.globalmountainsummit.org
3-15 Nov.	Santiago, Chile	12th Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora Contact: CITES Secretariat, tel: (41 22) 917 8139, e-mail: cites@unep.ch; Internet: http://www.cites.org/eng/news/calendar
17 Nov.	Valencia, Spain	27th meeting of the Ramsar Convention Standing Committee Contact: Ramsar Convention Bureau, Rue Mauverney 28, CH-1196 Gland, Switzerland; tel: (41 22) 999-0170; fax: (41 22) 999 0169; e-mail: ramsar@ramsar.org; Internet: http://www.ramsar.org/meetings.htm
18-26 Nov.	Valencia, Spain	8th Meeting of the Conference of the Contracting Parties of the Ramsar Convention on Wetlands: "Wetlands: Water, Life, and Culture." Contact: Ramsar Secretariat, Gland, Switzerland; tel: (41 22) 999 0170; e-mail: ramsar@ramsar.org; Internet: http://www.ramsar.org/index_cop8.htm
27-29 Nov.	Graz, Austria	3rd Meeting of the Global Forum on Sustainable Energy (GFSE-3) Contact: Irene Freudenschuss-Reichl, UNIDO; tel: (1 212) 963-6890; fax: (1 212) 963-7904; e-mail: freudenschuss-reichl@un.org
date to be determined (2002)	Rome, Italy	9th Session of the Commission on Genetic Resources for Food and Agriculture (CGRFA-9) Contact: FAO; Viale delle Terme di Caracalla 00100 Rome, Italy; tel: (39 06) 5705-2287; Internet: http://www.fao.org/WAICENT/FAOINFO/AGRICULT/cgrfa/meetings.htM

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International Law Evolution

The Aarhus Convention was the first legally binding international instrument for access to information, public participation and access to justice in environmental matters. Dr. Klaus Töpfer, Executive Director of UNEP, underlined the global significance of this achievement and noted that UNEP and UN ECE have joined forces and forged partnerships to implement the Convention through a number of training courses in Central and Eastern Europe for a variety of audiences.

The convention "pushes the envelope" in terms of the breadth and effect of international conventions. As noted by Advisor Anna Golubovskaya-Onisimova, speaking on behalf of the Ministry of the Environment and National Resources of Ukraine, "The Aarhus Convention is the first example of international law which sets up obligations not only between governments, but between governments and public. It is a prominent tool, which guarantees citizens' environmental rights".

NGO Role

One of the most important aspects of this document has been the unprecedented participation of a coalition of nongovernmental organisations (the NGO Coalition) in the negotiations process from the beginning. Ms. Golubovskaya-Onisimova emphasised that the Convention "shapes a new culture of dialogue involving governments, the public and individuals aimed at building the environmental pillar for sustainable development."

John Hontelez, Secretary-General of the European Environmental Bureau, a coalition of European NGOs, said that for the NGO community the "Road to Aarhus" actually started on a boat – the first pan-European conference of independent environmental organizations in March 1990, in which NGOs (including many from still-totalitarian regimes) called for the Ministers' Conference of UN to include an elaboration of a Charter of Environmental Rights in their preparation for the Earth Summit in Rio de Janeiro. The NGOs continued their strong role through the development of the Sofia Guidelines and, later, of the Aarhus Convention. These negotiations were characterised by openness and recognition of the important role of environmental citizen organizations (ECOs) in the preparatory process, as well as in negotiations and ratification. During the negotiations, four "citizen diplomats" from the NGO Coalition were seated during each session. Often the governmental delegates turned to the NGO delegation for solutions and suggestions for wording on difficult points.

NGOs continue to work in all Aarhus Working Groups and Task Forces. Magda Toth Nagy of the Regional Environmental Center for Eastern and Central Europe (REC), one of the pioneers in supporting public participation, noted that the Aarhus Convention is considered as a priority by governments and NGOs of many countries of her region. She stressed the importance of the continuing work of Working Groups and Task Forces addressing issues such as the Compliance Mechanism and Rules of Procedure, Pollutant Release and Transfer Registers, Genetically Modified Organisms, Electronic Tools, and Access to Justice.

Pulling Open the Doors

After the speeches, Jeremy Wates, Secretary of the Aarhus Convention, pointed to the two large "Doors to Democracy" that had been constructed in the middle of the room, hung with signs suggesting that citizens were a bother to government, that they had no role inside of government, and that they should go away. Secretary Wates proposed that the audience do something about this attitude. Given the Convention's particular importance for future generations, he proposed that the children present should open the doors. Two girls came to the front, performed a short dance, and tried to open the doors. They failed.

Mr. Wates next called two boys, who pulled and pulled, but also had no success. Then he called for governmental officials to help, finding that Ministers and officials from Italy, Croatia and Ukraine were willing to add their weight to the effort. Even these governments could not open the Doors to Democracy on their own, it appeared.

Jeremy looked puzzled. "What can we do?" he asked. How could democracy be opened to the citizens? Finally, the assembled meeting called upon NGO representatives. A few NGO representatives – John Hontelez, Fe Sanchis Moreno, and Svitlana Kravchenko – stepped forward and added their efforts. In the end, it was only with the combined efforts of NGOs, governments, and representatives of future generations, that the Doors to Democracy were opened.

Sometimes symbolism can play a role in law that is almost as important as the words of legislation itself. If we look only at the words of the technical legal requirements in the Aarhus Convention, we run the danger of getting lost in the technicalities, as lawyers sometimes do. But if we think about the larger concepts, we will not lose our way on the road to environmental democracy.

Democracy and governance are always in danger of shutting out citizens, without our careful vigilance, we will work to prevent that from happening. We can pull open actual, physical doors at a celebration event, but we also should think of our daily work as pulling open those doors as well, and keeping them open. Then symbolism will become reality.

Prof. Svitlana Kravchenko
Foreign Relations Faculty
Lviv State University
2, Krushelnitskoi str.
Lviv 290000, Ukraine
fax: (38 322) 27 14 46; e-mail: slana@icmp.lviv.ua

The Road to the WSSD

Ten years after the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, Brazil, State delegations at the highest level, as well as NGOs and other major stakeholder groups from all over the world, will reassemble in Johannesburg, South Africa this summer (26 August – 4 September 2002). More than 60,000 participants are expected to take part in this assessment of progress on Agenda 21 and the Rio Declaration. Unlike the Rio Summit, which also launched new multilateral environmental agreements (MEAs), the emphasis of the Johannesburg Summit – entitled World Summit on Sustainable Development (WSSD) – will be to review the progress achieved rather than to launch new processes.

Global Preparations

United Nations Secretary-General Kofi Annan has designated Nitin Desai, UN Under-Secretary-General for Economic and Social Affairs, to be Secretary-General of the WSSD. In a press release, Desai stated that Johannesburg should not be an opportunity to revisit Agenda 21:

> At Rio, we defined an agenda to reduce poverty and disease, improve air and water quality, improve economic and social development, and ensure equity. Now, in Johannesburg, we have to figure out how we are going to make sure that these things get done.

Dutch Minister of Housing and Environment, Jan Pronk, the Secretary-General's designated Special Envoy to WSSD, suggested that the concept of Sustainable Development be refined in order to account for the human security dimension, as well as social and religious values. On behalf of the Dutch Government, he has also promised additional financial backing for the Summit.

In addition, Annan has established a high-level advisory panel of experts to provide advice on issues concerning sustainable development, and to raise awareness of the goals and the issues of the Summit. IUCN will be represented on this panel by its President Yolanda Kakabadse (Ecuador).

The Commission on Sustainable Development (CSD), originally created as a forum for Environment Ministers to discuss issues related to the environment and sustainable development and Agenda 21, is acting as the Preparatory Committee (PrepCom) for the WSSD and is co-ordinating national, regional and international preparations. Since its first PrepCom meeting (30 April-1 May, 2001), it has focused on a process under which governments have prepared national assessments on sustainable development, which they submitted to sub-regional meetings around the world. At the same time, a series of Regional Roundtables of Eminent Persons from politics and science were held.

In autumn 2001, the UN Regional Economic Commissions and UNEP offices organised five Regional Ministerial Meetings (regional PrepComs). The mandate of this entire PrepCom process was to outline key policy issues, priorities and follow-up actions and to provide substantial inputs to the preparatory processes for the Summit. Non-governmental organisations, trade unions and the private sector were invited to these proceedings, although their opportunities for input varied by region. All five Regional PrepComs produced assessment reports on progress achieved since Rio, as well as statements or platforms outlining regional priorities for action.

Setting an Agenda

Across the board, throughout the prep-com process, the regions agreed on the general questions which are to be addressed at Johannesburg, but added points which they view as the most pressing concerns for their region. In view of the fact that most of its Member States are from the developed world, the PrepCom for Europe and North America acknowledged its responsibility to the rest of the world to address the problem of unsustainable production and consumption patterns within their region and seek new measures for poverty alleviation on a global scale.

In a recently released report, the UN Secretary-General outlined the major areas of concentration for the WSSD, in ten steps or "clusters". Their primary collective focus has been on fortifying implementation of Agenda 21 through global partnerships for sustainable development. Noting the need to "strengthen implementation and take account of emerging trends," and to "address the phenomenon of globalisation and the marginalisation of many developing countries," the Secretary-General challenged the Summit to

> "translate Agenda 21 into practical steps focusing on key areas where faster implementation is required and where it will have the greatest impact on sustainable development."

The ten implementation "clusters" are:

1. Making Globalisation work for Sustainable Development
2. Poverty Eradication and Sustainable Livelihoods
3. Changing Unsustainable Patterns of Consumption and Production
4. Promoting Health through Sustainable Development
5. Access to Energy and Energy Efficiency
6. Sustainable Management of Ecosystems and Biodiversity
7. Managing the World's Freshwater Resources

continued next page ...

8. Finance and Technology Transfer
9. Sustainable Development Initiatives for Africa
10. Strengthening the System of International Governance for Sustainable Development

One fundamental issue remains, underlying all these implementation "clusters" – the financial means for fostering sustainable development on a global scale. Despite the their reaffirmation of the accepted UN target of 0.7 per cent of GDP for Official Development Assistance (ODA), developed countries' levels of ODA have been declining over the past decade. Last year, the European Union announced that it and its Member States would renew their efforts to achieve the ODA target, but it remains to be seen whether other developed countries will follow this example.

Moreover, the UN General Assembly's *Millennium Declaration* has already set a highly ambitious target for poverty reduction –

> "to halve, by the year 2015, the proportion of the world's people whose income is less than one dollar a day and the proportion of people who suffer from hunger and, by the same date, to halve the proportion of people who are unable to reach or afford safe drinking water."

The International Conference for Financing Development in Monterrey, Mexico 18-22 March 2002 is seen as the touchstone whether the WSSD will be able to produce decisions which have a chance for effective follow-up. The goal of this meeting will be to develop a strategy for combating poverty and achieving sustained growth in an increasingly interdependent world.

Some States have suggested a broader mandate, under which Summit participants would reaffirm the overall commitment to sustainable development, through an agreement which would promote partnerships between governments and civil society. The South African government has proposed that a "global deal" be struck at Johannesburg to address issues connected to trade, development aid, water supply, food security, habitat and poverty.

This proposal suggests a role for documents such as the Draft Covenant on the Environment and Development (see page 28), and the Earth Charter, both of which were launched in the wake of UNCED. The proposed "global deal" is more ambitious, in that the governments who would sign such an agreement would commit themselves to increased co-operation with civil society and other governments. At the European PrepCom the Danish delegation, which is to hold the EU Presidency during the WSSD, issued a non-paper outlining the central elements of such a "global deal" –

- Strengthened free trade, market access, environmental principles and labour standards for developing countries;
- Better financing for development and increased development assistance, with a view to poverty reduction;
- Strengthened international co-operation on climate and environment, implementation of multilateral environmental agreements and transfer of environmentally sustainable technologies.

After much heated debate, however, the concept of a "global deal" was not mentioned in the final Ministerial Statement by Europe and North America, nor was it discussed in any other Regional PrepCom.

International Environmental Governance

The final "cluster" of the Secretary-General's Report, namely "Strengthening the System of International Environmental Governance" entails a reevaluation of how questions of the environment and sustainable development are handled within the UN system. In all likelihood, this cluster will eventually result in institutional reform of UNEP.

The context in which these issues arise is, at least, controversial. In recent years, several States and organisations, most prominently the European Union, have called for the creation of a specialised UN agency for the environment (possibly a World Environment Organisation (WEO) similar to the World Trade Organisation (WTO).) However, the Group of 77 and China have strongly opposed this idea. In the on-going talks, the Open-Ended Intergovernmental Group on International Environmental Governance (IEG) has agreed that reforms should "evolve" and that the creation of new institutions should be avoided. The most likely scenario is that UNEP will continue to exist in its current form, but with a strengthened mandate.

UNEP's main area of work would continue to center around the pooling of scientific evidence, data and experiences, as support for authoritative assessments, and as the basis for informed, cost-effective decision-making by governments. It would also continue to address its other main function: oversight activities related to the UN system.

Funding is the key: The crux of the matter, however, will be the extent to which UNEP's mandate is extended into environmental governance issues. Here also, the key factor will be adequate, stable and predictable financing for environmental governance.

This problem, of course, is not new. When UNEP was originally set up, the General Assembly passed a resolution in which it was mandated that it should receive funds from the UN regular budget in order to cover its administrative costs. This resolution, however, has never been fully implemented. Throughout its existence UNEP has relied predominantly on voluntary contributions from the Member States on its Governing Council – a flow of funds that has been stagnating over the past decade.

More shocking perhaps, the budget of this world programme for the environment continues to be smaller than, for example, the budget of Sweden's national environment agency. Hence, implementation of the GA resolution, and even the possibility of a voluntary system of assessments, will be major topics under review.

"Treaty fever": Another major issue of concern of the IEG group is the proliferation of MEAs, which some refer to as to the "fragmentation" of the international system of environmental governance. It has been suggested that UNEP should have more authority to co-ordinate activities under the MEAs and to minimise duplication of efforts among the Convention Secretariats. There are, however, severe limitations as to how much UNEP can effect as each agreement is a separate legal institution with varying contracting State Parties. Several critical agreements, including the UNFCCC and UNCCD, are not even formally linked to UNEP.

Co-ordination schemes have been suggested, including issue-based "clustering" of MEAs (and COP meetings). These may be supported by UNEP's recent establishment of pilot projects to link the work of Conventions related to chemicals.

"Building blocks": These and all other issues relating to governance have been divided into following five "building-blocks of governance" on which draft decisions are currently being negotiated:

- Improving coherence in policy-making,
- Strengthening the role, authority, and financial situation of UNEP,
- Improving co-ordination and coherence between multilateral environmental agreements,
- Building capacity (including through technology transfer and country-level co-ordination) for environment and sustainable development, and
- Enhancing co-ordination across the United Nations system.

The results of these negotiations will be incorporated into a final report, to be presented at the Special Session of the UNEP Governing Council/GMEF at Cartagena, Colombia, 13 to 18 February 2002, which will in turn submit its final report at the WSSD.

Promoting the Existing MEAs

While no new international environmental agreements will be launched at the Summit, it has been suggested to launch a treaty event at the WSSD in order to encourage governments to add their signature to or speed up ratification of international legal instruments related to the environment. A similar treaty event, was held from 10 to 16 November 2001 at the UN headquarters in New York where States were encouraged to sign on to multilateral treaties on terrorism who have not done so yet. This initiative was quite successful as governments added over 100 signatures to numerous international agreements.

Michael A. Buenker
Administrative Officer
International Council of Environmental Law

For more on CSD preparations for the WSSD, see http://www.un.org/esa/sustdev/csd.htm, Other relevant sites include http://www.johannesburgsummit.org/, the IEG website at http://www.unep.org/IEG, and the documents for the International Conference for Financing Development, at http://www.un.org/esa/ffd/.

Website News

www.iucn.org/themes/law

One of the first statements our new Head, John Scanlon, made to the ELC staff concerning our work and objectives was that the website must be among our highest priorities. He then quickly turned to the task of reviewing ongoing plans for revision of the ELP website, and for building the needed internal capability to handle our website system directly, rather than, as previously, relaying all postings and changes to Headquarters.

In record time, we have built a website team, and obtained initial training for its focal points (Anni Lukács and Alexandra Fante) in all elements of the Union's new "e-IUCN" programme. Every member of the staff, and several CEL members were given assignments to develop the site's contents.

By the time this newsletter reaches its readers, our "new-look" website will be on the Net, filled with initial summaries and outlines of all aspects of the ELP and of the web materials and services it will provide. Over the coming months, these summaries will be "fleshed out" and a vast array of information, data, pictures and links will become available. Thereafter, we intend to update the most changeable portions of the website on a monthly or bi-monthly basis, and to undertake more exhaustive revisions at least 3-4 times annually.

Plans for the future envision a high level of participation by CEL members, including especially the working groups, in developing and posting critical content on the site. Although the site that will be available to you now is only a "sapling," we believe that it will develop into a full forest of resources and information.

– ALU

IUCN Draft International Covenant on Environment and Development

Note: In its June 2000 meeting, the CEL Steering Committee agreed that CEL should focus its efforts at the WSSD on two primary issues – Principle 10 of the Rio Declaration, and promotion of the IUCN Draft Covenant on the Environment and Development (in conjunction with the Earth Charter.) Dr. Parvez Hassan is spearheading the latter portion of this effort. He has provided a substantial article on the creation and importance of the Draft Covenant, which appears in the IUCN-ELP website. The following is an excerpt of several portions of that article most relevant to the use of the Covenant at the WSSD. Ed.

The Stockholm Declaration on Human Environment, 1972, the World Charter for Nature, 1982, and the Rio Declaration on Environment and Development, 1992 introduced norms of national and international behaviour in respect of the management of natural resources and sustainable development. Each of these visionary documents, however, remains "soft" law, not binding on States until they are adopted through a treaty, or in the national law.

In our Foreword to the Draft Covenant, Wolfgang E. Burhenne, founder and former-Chairman of the IUCN Commission on Environmental law (CEL), and I (then-Chair of the Commission) provide an overview of the provisions of the Draft Covenant, followed by a summary the three basic types of provisions in the Draft Covenant:

(a) those which consolidate existing principles of international law, including those "soft-law" principles which were considered ripe for "hardening";
(b) those which contain very modest progressive developments; and
(c) a few which, although perhaps even more progressive, were included because we felt they were absolutely necessary.

In addition, the value of the Draft Covenant is considerably enhanced particularly for the academic community by its comprehensive commentary on all its provisions, developed in detail by the tireless work of a team of CEL members and experts. The Commentary identifies major issues under each Article and provides a discussion of relevant developments including national and international decisions by courts and tribunals.

In brief, the coverage of the Draft Covenant is as follows:

- The Preamble articulates the scientific realities underlying the Covenant, as well as relevant social, economic and ethical rationales.
- Part I states the objective of the Covenant in a single Article.
- Part II contains the most widely accepted and established concepts and principles of international environmental law, as they have been proclaimed by numerous international texts. The remaining parts of the Covenant are founded on these "Fundamental Principles".
- Part III creates the broad framework of the obligations of Parties in respect of the environment, towards each other, the international community collectively, and all persons individually. It integrates environmental and development and couples rights with duties.
- Part IV provides the specific obligations of Parties respecting the conservation of the biosphere and its various components, including cultural and natural heritage.
- Part V concerns substances, technologies and activities that produce adverse effects on the environment. It articulates the duties of Parties to prevent, control and mitigate harm to the environment caused by such substances, technologies and activities.
- Part VI sets forth the obligations of Parties regarding broad structural issues and aspects of international relations that impact on both environmental protection and sustainable development: demography, armed conflict, patterns of international trade and resource utilization.
- Part VII contains and develops the traditional rules concerning problems of transboundary pollution and shared natural resources.
- Part VIII seeks to develop the national and international procedures necessary to assess, monitor and control environmental impact. It establishes duties to share environmental information and technology, provide international financing, and foster public awareness through training and education.
- Part IX deals with the legal consequences of environmental harm, especially responsibility, liability and the provision of remedies.
- Part X places the Draft Covenant in the broader context of international law, by speaking to potential conflicts with existing treaties and concurrent jurisdiction. It also provides for dispute avoidance and settlement mechanisms.
- Part XI creates the formal mechanisms available to change the Covenant, details the means to adhere

to it, its entry into force and other procedural matters.

The Draft Covenant was updated in May 1999 to reflect new developments in international law but this updating was limited to a few Articles whose provisions were overwhelmed by events after 1995.

Following completion of the IUCN Draft Covenant, the Earth Charter Commission contacted CEL in 1995, to discuss the development of the Earth Charter and the hope that the Earth Charter and the IUCN Draft Covenant could support each other. With this objective, we participated in the mainstream work of the drafting of the Earth Charter and, happily, we were able to ensure that the final Earth Charter is in substantial harmony with the IUCN Draft Covenant.

The penultimate paragraph of the Earth Charter reads:

> In order to build a sustainable global community, the nations of the world must renew their commitment to the United Nations, fulfil their obligations under existing international agreements, *and support the implementation of Earth Charter principles with an international legally binding instrument on environment and development* (emphasis added).

During the drafting sessions, there were proposals to specifically reference the IUCN Draft Covenant in the above paragraph; indeed several earlier drafts did so but, in the end, we thought it best to make a general reference to "an internationally legally binding instrument on environment and development". The *travaux preparatoires* of the Earth Charter will abundantly clarify that the IUCN Draft Covenant was the basis of this language.

It has been the vision of the IUCN Commission on Environmental Law and the International Council of Environmental Law that the Draft Covenant will, one day soon, become a negotiating document for a global treaty on environmental conservation and sustainable development. I believe that IUCN and ICEL lit a candle whose glow is recognised internationally. The Draft Covenant is already acknowledged as an important contribution to international environment law in the law schools and environmental law centres all over the world. At the national level, it is frequently used as a check list for the drafting of environmental legislation.

The international community now prepares for the World Summit on Sustainable Development (see page 25). Many regional fora and bodies, at both governmental and non-governmental levels, are working to orchestrate a common united vision for this meeting. At least two regional preparatory fora identified a regional or international treaty on sustainable development as an important building block in sustainable development.

Thus, paragraph 74 of the U.N. Regional Roundtable for Central and South Asia held in Bishkek, Kyrgyzstan on 30 July – 1 August 2001 notes:

> Governments need to give serious consideration to launching a process leading to elaboration of an overarching international treaty on sustainable development that will provide an "umbrella" to more specialized treaties and instruments dealing with specific environmental, social and economic issues. This work could build on IUCN's Draft International Covenant on Environment and Development, and the Earth Charter elaborated by the Earth Council. The treaty could also encompass the use of sustainability criteria and indicators and the use of market based instruments.

(See also the U.N. Regional Roundtable for East Asia and the Pacific Region held in Kuala Lumpur, Malaysia in July 2001.)

Other important meetings have also raised the flag on this issue. UNEP's Montevideo III Programme for the Development and Periodic Review of Environmental Law for the First Decade of the 21st Century discussed the need for an over-arching global instrument on sustainable development. Likewise, the Asia Pacific Forum on Environment and Development (APFED) discussed the IUCN Draft Covenant at its inaugural meeting held in Tokyo, Japan in September 2001 and its relevance for a proposed regional treaty for sustainable development for the Asian and Pacific Region.

Since the late 1980s, when Wolfgang first became convinced that the international community needed to move beyond declaratory norms to binding obligations for sustainable development, many of our hopes have been guided by the parallel developments in the field of human rights. There, the international community began from the (non-binding) 1948 Universal Declaration of Human Rights, but in 1966 was able to move to the adoption of two binding instruments – the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights.

We sincerely hope that the IUCN Draft International Covenant on Environment and Development may be used as the negotiating text in the inter-governmental process of developing a binding instrument on sustainable development. If this text reduces length of the negotiating process to less than eighteen (18) years, the efforts and vision of CEL and ICEL will have served the international community well.

Dr. Parvez Hassan
Former Chair, 1990-1996
IUCN Commission on Environmental Law

The text of the Draft Covenant may be obtained in electronic form by e-mailing your request to the ELC at Secretariat@elc.iucn.org, with the words "text of the Draft Covenant" in the subject line. Dr. Hassan's more detailed article on the process by which it was prepared is available on the IUCN website, at http://iucn.org/themes/law/cel07.html. The Earth Charter can be found at http://www.earthcharter.org.

The "Urgent National Interest" Clause in the Ramsar Convention on Wetlands

Without prejudice to their sovereign rights, each Contracting Party to the Ramsar Convention on Wetlands is required to designate at least one wetland site for inclusion in the List of Wetlands of International Importance, maintained by the Ramsar Bureau. Under the Convention, a Contracting Party may, under exceptional circumstances, delete or restrict the boundaries of a site included in the list where necessary in its "urgent national interest" (Article 2.5). Furthermore, Article 4.2 specifically provides that "where a Contracting Party, in its urgent national interest, deletes or restricts the boundaries of a listed wetland, it should as far as possible compensate for any loss of wetlands resources, and in particular it should create additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original habitat".

The Seventh Ramsar Conference of the Parties (COP-VII, Costa Rica, May 1999) adopted two important Resolutions related to this issue. Resolution VII.23, requested that the Standing Committee develop and propose to the COP VIII a procedure for the review of the Ramsar site boundaries for reasons other than urgent national interest, and guidance for the Contracting Parties on the interpretation of Articles 2.5 and 4.2 of the Convention. Resolution VII. 24 invited the Standing Committee to define criteria and guidelines for the compensation of wetland habitats in case of inevitable loss.

Following these Resolutions, the Standing Committee adopted Decision SC 24-10, requesting the Ramsar Bureau to contact the IUCN-ELC to "initially take the lead in developing legal advice for the Standing Committee on the issues raised in Resolutions VII. 23 and VII 24…".

After first determining that the Ramsar Convention itself does provide particular guidance on the interpretation of the "urgent national interest" clause, the ELC prepared a detailed evaluation of relevant legal principles of national and international law. On the basis of that evaluation, the ELC prepared a set of draft guidelines for determining (i) when a proposed change of site boundaries would be consistent with the "urgent national interest" clause, and (ii) how to evaluate compensation for wetlands lost as a result of that change.

The ELC research paper was translated into French and Spanish, and circulated to all of Ramsar's Contracting Parties for comments. Comments received ranged from minor observations, to major substantive papers regarding these issues. Some directly argued against the adoption of guidelines on these matters.

Based on the Contracting Parties' comments, the ELC then revised the draft guidelines and prepared a draft resolution, which was tabled at the 26th Meeting of the Ramsar Standing Committee (Gland, 3-7 December 2001.) The proposed text of the draft resolution as revised by the Standing Committee, can be found at www.ramsar.org/key_sc26_docs_cop8_01rev2.htm.

The Standing Committees revisions, to some extent, dilute the draft guidelines, which are now to be styled a "General Guidance," but maintain many critical elements. Following a preamble and an operational section that encourages the Contracting Parties to take the Guidance into consideration, the most important provisions of the resolution are set forth in an Annex, divided into four sections (purpose, urgent national interest, compensation and procedural matters.) These provisions have been drafted and revised with the primary objective of avoiding conflicts and striking a balance between the different Contracting Parties' views.

If this Resolution is adopted at Ramsar COP VIII (18 to 26 November 2002), it will serve as a basis for further research and discussion of the issues relating to the "urgent national interest" in the context of wetlands protection.

– AOI

[The ELC lawyers would like to recognise and commend the work of former legal intern Witold Tymowski, whose assistance in the inception stage of the "urgent national interest" activity was invaluable throughout the ELC's work on this issue.]

The Seventh Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change

From 29 October until the early hours of 10 November 2001, more than 1,500 persons gathered at the Palais des Congrès in Marrakesh, Morocco to attend the Seventh Conference of the Parties to the UNFCCC. In many ways, this meeting was the culmination of several years' work by the UNFCCC Parties, addressing critical issues of implementation of the UNFCCC's Kyoto Protocol (adopted UNFCCC-COP 3, Kyoto, 1997.)

This work is critically important. When the Protocol enters into force (upon ratification by 55 parties (including developed countries responsible for at least 55% of developed-country emissions)), the session of the Conference of the Parties to the UNFCCC serving as the first Meeting of the Parties to the Kyoto Protocol (COP/MOP) will be expected to adopt an overwhelming number of decisions, thought to be necessary for proper implementation of the Protocol. (The Protocol refers to its MOP as a "COP/MOP," because it is the UNFCCC-COP that will serve as the meeting of the Parties to the Protocol; however, the body will operate as a "MOP," in that Parties to the UNFCCC who are not Parties to the Protocol will not be able to vote.) Many substantive preparations will be needed to meet this demand. To this end, parties to the UNFCCC have been attempting to spell out the details for implementing the Protocol, developing a series of draft COP/MOP ("draft CMP") decisions, to be considered at the first COP/MOP.

As reported in the Sept.-Dec. 2000 issue of this newsletter, the necessary agreement was expected, but could not be achieved at COP 6 (The Hague, November 2000), necessitating a resumed session (COP 6bis, Bonn, Germany, 2001). COP 6bis agreed on a program identifying the core elements for the implementation the Protocol and related decisions (Decision 5/CP.6, found in FCCC/CP/2001/5, the "Bonn Agreements").

COP 6bis forwarded two groups of decisions to COP 7. The first group – addressing capacity-building, development and transfer of technology, and guidance to the financial mechanism – were agreed on at COP 6bis and forwarded to COP 7, for adoption. (FCCC/CP/2001/5/Add.1). The second group – relating to issues such as the mechanisms, compliance and reporting requirements – could not be completed by COP 6bis, so they were forwarded to COP 7 for elaboration before their adoption (FCCC/CP/2001/5/Add.2). The core elements contained in the Bonn Agreements were intended, among others, to guide the Parties in agreeing on the texts of this second package of decisions.

Marrakesh was a crucial point for climate change negotiations, bringing two years of intense negotiations on the Protocol to a close. The Parties could not afford another stalemate. Momentum built at COP 6bis, added to calls for entry into force in time for the Rio-plus-10 summit in 2002 (WSSD), created a strong incentive for adopting these decisions. In addition, it was expected that agreement on these details would aid countries in deciding whether to ratify the Kyoto Protocol. The importance of ratification, especially by developed country Parties (the so-called "Annex I Parties") of the Protocol, could not be ignored, and was often used by negotiating blocs to obtain concessions from other groups that did not agree with their positions.

On the morning of 10 November, many delegates were already at the airport when they learned with relief that the final evening's closed-door negotiations had resulted in a set of draft CMP decisions, the Marrakesh Accords (found in FCCC/CP/2001/13 Add.1 to 4), accompanied by a "Marrakesh Declaration". These Accords address many topics including three of particular importance to the IUCN program – "Land Use, Land-Use Change and Forestry," "Compliance," and "Synergies with other Rio Conventions."

The "Mechanisms"

Many elements of the key decisions focused, at least in part, on the three "mechanisms" by which the Parties can achieve their required levels of greenhouse gas (GHG) emissions through a combination of activities, in addition to reductions of their domestic emissions. The three mechanisms – joint implementation, clean development mechanism, and emissions trading – offer important avenues by which Parties (usually developed countries) can provide technology and other support for actions in other countries, and receive credit for some of the reductions thereby achieved.

Land Use, Land Use Change and Forestry

Decision 11/CP.7 on "land use, land use change and forestry" (LULUCF) constitutes an important milestone for the conservation of biodiversity and sustainable use of natural resources. Through this the COP has elevated biodiversity objectives to the level of a principle that should govern the Parties' LULUCF activities.

The LULUCF decision relates to article 3.3 of the Protocol, which allows developed countries to obtain credit for net changes in greenhouse gas emissions caused by the creation of "carbon sinks" (agricultural and

forested areas, which have the ability to remove carbon gasses from the atmosphere). Creation of certain types of carbon sinks (by "direct human-induced land-use change and forestry activities") is an activity for which countries may receive GHG-emission-reduction credit. IUCN has long been committed to ensuring that the creation of carbon sinks serves both biodiversity and emission-reduction objectives – a goal that was furthered, in part, by this decision.

Until COP 7, LULUCF credit was available only for afforestation, reforestation and deforestation. Another important provision of the COP 7 Decision was its recognition of forest management, cropland management, grazing land management and revegetation as additional LULUCF activities, eligible for credit as "carbon sinks."

The basic LULUCF documents should be read in conjunction with the decision on the principles, nature and scope of the "mechanisms." This decision emphasises that environmental integrity must be achieved, *inter alia*, through "sound and strong principles governing land-use, land use change and forestry activities." (Decision 15/CP.7)

The COP's decision requests the Subsidiary Body for Scientific and Technological Advice (SBSTA) to develop definitions and modalities for certain afforestation and reforestation projects in the first commitment period (2008 to 2012). This important work will address, among other things, the critical issue of socio-economic and environmental impacts, offering additional opportunities for IUCN to work at the international level in the UNFCCC arena, including –

– the role of conservation of biodiversity and sustainable use of natural resources, and
– the parameters to be used for measuring that contribution.

This element of future work will be a rich area for discussion. One such discussion has already begun – relating to information requirements under the Protocol. The annex to Decision 22/CP.7 on the guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol requires each Annex I Party to submit a description of its national legislative and administrative arrangements for implementation of LULUCF activities, and to discuss how they "contribute to the conservation of biodiversity and sustainable use of natural resources."

Compliance

Undoubtedly one of the greatest achievements of COP 7 is the agreement on the rules governing the compliance system (Decision 24/CP.7). The COP agreed to a system overseen by a Compliance Committee, consisting of a facilitative "branch" and an enforcement "branch." The enforcement branch may adopt a decision only with the assent of a majority of at least three fourths of the members present and voting, including a majority of Annex I Parties and a majority of non-Annex I Parties.

The COP also adopted general procedures for cases brought before the Committee, including an expedited procedure for addressing questions of eligibility to utilise the Protocol's "mechanisms." One issue, the Parties' rights to initiate inquiries regarding another country's implementation or eligibility, was among the most difficult points in the compliance negotiations. The COP ultimately decided that implementation-related claims may be raised either by the expert review process or by any Party, in certain circumstances.

Among other important issues, the Parties also agreed on –

– the "consequences" (sanctions) to be applied under the compliance process (for instance, a deduction of 1.3 times the amount by which an Annex I Party's emissions exceed its assigned amount);

– an appeal process by which an aggrieved Party may challenge a final decision against it on the basis of denial of due process. Appeal will be to the COP/MOP, which may reverse the decision by a ¾ vote of the Parties present and voting; and

– rules for eligibility to participate in the mechanisms, which will depend on compliance with the Protocol's methodological and reporting requirements, overseen by the enforcement branch of the Compliance Committee. More difficult eligibility questions, relating to eligibility prior to the final adoption of rules by the COP/MOP, were not finally resolved.

Strong disagreements arose during negotiations regarding the binding nature of the compliance system, based on Article 18 of the Protocol, requiring that "[a]ny procedures and mechanisms under this Article entailing binding consequences shall be adopted by means of an amendment to the Protocol." The Compliance Decision (in its preamble) dismissed this issue for the present, by stating that "it is the prerogative of the Conference of the Parties, serving as the meeting of the Parties to the Kyoto Protocol, to decide on the legal form of the procedures and mechanisms relating to compliance."

The compliance Decision links closely with both the multilateral consultative process (MCP) (UNFCCC. Art. 13, and KP, Art. 16), and the dispute settlement procedure (UNFCCC, Art. 14, and KP, Art. 19). Discussions of the MCP have been relegated to the background as negotiations on the compliance mechanism intensified, so that no rules have yet been adopted, and it is unclear whether work on this issue will resume in the near future. The relationship among these procedures, as well as the expert review and national communications

provisions, offers an interesting and timely area for legal exploration.

Synergies Among the Rio Conventions

The Marrakesh Ministerial Declaration, which will be forwarded to the WSSD, calls for the continued exploration of the synergies between the UNFCCC, the Biodiversity Convention, and the Desertification Convention. It recommends creation of a liaison group to allow the three conventions "to assess linkages across conventions and to promote cooperation and coherence," to analyse legal and institutional arrangements and promote complementarity of approach. (*See,* INPUT TO THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT: Secretariat Note, FCCC/CP/2001/10.) The ELC has been involved in the synergies issue, which offers many fascinating challenges for the ELP.

Conclusion

There are mixed reactions about what was achieved in Marrakesh – from relief that impasse was avoided and a set of rules agreed, to dissatisfaction with the actual rules adopted and the compromises that may have eroded the Bonn Agreement. Regardless of how one sees the results, however, the fact is that the players in the climate change arena now have a set of binding decisions with which to proceed to map out their work for future years, and a concrete basis for engagement in the climate change process.

– MSM

The COP 7 Decisions may be found in FCCC/CP/2001/13, Add.1 (http://unfccc.int/resource/docs/cop7/13a01.pdf), Add.2 (http://unfccc.int/resource/docs/cop7/13a02.pdf), Add.3 (http://unfccc.int/resource/docs/cop7/13a03.pdf), and Add.4 (http://unfccc.int/resource/docs/cop7/13a04.pdf.)

Regional Work on CITES in Europe

The last two years have witnessed a high level of attention to the future of one of the oldest of the modern international agreements on conservation – the Convention on International Trade in Endangered Species of Fauna and Flora (CITES). Increasingly, preliminary meetings, at the regional and national levels, are the mechanism by which delegations increase their impact on the Convention processes. Within the European region, IUCN-ELP has participated in new innovations by which regional work addressing CITES issues can increase and improve the global impact of the Convention.

First European Regional Meeting of the CITES Animal Committee

In a recent development, the European Region has taken its processes a step further, holding a regional pre-meeting to prepare for a CITES intersessional meeting. In its first Regional Meeting of the CITES Animals Committee (Bonn, October, 2001), delegates from 33 countries, as well as from the CITES Secretariat, the European Commission and NGOs (TRAFFIC Europe, IUCN, WCMC) gathered to address the work of the most important component of CITES after the COP.

Parties presented and discussed the issues of interest at the pan-European level, which remain outstanding on the agenda of the CITES Animals Committee, including:

– *Trade in sturgeons:* Recent policy initiatives by the Russian Federation, as well as an intergovernmental agreement between Range States of the Caspian sea and the Black-Azov sea basin on the rational management of sturgeon population, were examined in detail. The universal labelling of caviar boxes (an ongoing issue to be presented at the CITES Animals Committee by a working group that has studied it since the last CITES COP) and the status of TRAFFIC's inter-session a dialogue with caviar importers, were among the most critical matters addressed. Illegal trade remains a major threat for sturgeon population.

– *The need to review CITES source codes:* Concerns were addressed that current codes may not adequately reflect the variety of management regimes currently practised, to manage the use of wild fauna. Most of the Parties agreed, in particular, on the need to differentiate between W code (specimens taken from the wild for export) and sub-W codes (specimens born from a wild-caught female,specimens taken from the wild but in an artificially modified or enhanced habitat, or specimens taken from the wild as a result of a programme to control pest species) as this distinction would enable Management and Scientific Authorities to reflect more accurately the different impacts that these management systems may have on conservation of species.

– *CITES-listed animal species, which are native in Europe:* Trade

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in birds of prey is a major concern in several Eastern European countries. This demand (arising primarily from the Arab region) leads Europeans to seek to cash in by poaching, smuggling, and illegally collecting eggs, while it also increases legal activities such as the captive breeding of birds for export. In order to maintain better awareness and control of captive breeding program, and to distinguish them from illegal trade, some countries called for the use of DNA tests on a regular basis, and microchip marking instead of foot-rings.

– Oriental medicine: Several CITES species, especially musk deer, cobra, saiga antelope are used in oriental medicinal products that seem to have "conquered" European markets. Unfortunately, it is very difficult for customs officials to determine whether particular products constitute "parts or derivatives" of CITES species, at the time of import, export or re-export. Currently, the uplisting of musk deer is under review, and a TRAFFIC publication on the trade in musk deer is due shortly.

This meeting was an opportunity for countries to gain insight into the administrative and legal systems relating to CITES of each country, especially among EU

countries and Eastern European countries, but also among Eastern European countries themselves. The main problems that parties encountered in implementing CITES related to lack of (qualified) staff, lack of finance, bad definition of each authorities' role, illegal trade, black market and a lack of disposal facilities for confiscated specimens.

Workshop for Public Prosecutors and Wildlife Trade Regulation Officials on CITES enforcement in the EU

These issues had also been raised during the *"International expert workshop on the enforcement of wildlife trade controls in the EU"* that took place in Frankfurt on 5-6 November, supported in part by the European Commission, and the Zoological Garden Frankfurt. The Federal Agency for Nature Conservation of Germany (BfN) was kind enough to host the event, which was presided over by CEL member Lothar Gündling (Germany.)

The workshop was the climax of a year-long project in which IUCN-ELC joined forces with TRAFFIC-Europe to examine CITES implementation in the EU, and determine how current programmes and co-operation can be improved, and how the lessons learned by the EU countries can become a model for work in other countries and regions. It constituted the first meeting at which representatives of nearly all EU wildlife trade regulatory agencies and public prosecutors had come together to address enforcement issues, since the EU adopted Wildlife Trade Regulation 338/97.

The ELP's participation in this project provided a crucial foundation for determining the basis on which current national enforcement activities operate. This amalgamation of critical data provided a footing for review and examination the relationship between specific enforcement problems and the legislative/institutional underpinnings of the enforcement activities. In this connection, the ELP recognises the excellent contributions of CEL members and other colleagues, including Clare Shine, Alexander Koning, Teresa Amador, Ana Barreira, Erkki Hollo, Gabriel Michanek, Robert Seelig, Poul Hvilsted, Maria-Teresa Cirelli, and Eleftherios Levantis.

Even before the meeting began, it was clear that nearly all EU Member States have adopted more than adequate laws, which meet their basic CITES enforcement obligations. The challenge now is to move beyond this baseline level, toward improving the effectiveness of wildlife trade regulations – to find better ways of using national legal systems to achieve CITES world-wide conservation objectives.

The meeting considered a variety of kinds of documents, problems and potential specific solutions, including some very groundbreaking sentencing guidelines (whose nearly "mechanical" approach would make their use by judges illegal in many countries), most of which seemed to be directed at "forcing" the imposition of higher penalties. In the end, however, the prevailing notion was that such mandatory approaches to penalty often result in fewer convictions, thereby *decreasing* deterrence.

Ultimately, the workshop's conclusions were directed at critical mechanisms for increasing co-operation to maximise the percentage of offenders (at least with regard to serious and "criminal" offenders) apprehended; development of evidentiary provisions and subpoena systems to increase the effectiveness of prosecution against nationals and non-nationals, and re-focusing awareness-raising efforts to ensure that both judges and the public are better aware of the nature of wildlife crimes, and the potential that it has to cause enormous and irreparable damage to biodiversity.

– Caroline Strulik
ELC Lawyer Intern

Developments at the CBD: The Challenging Road to COP-6

In addition to being the year of "Rio +10," 2002 marks the 10th anniversary of the adoption of the CBD, one of the most important and groundbreaking legal developments in the history of international conservation. As CBD COP-6 (scheduled for April 7-26, 2002) approaches, many preparatory processes and meetings have been completed. Their collective outputs, and the proposed agenda for the COP meeting demonstrate that the Convention is moving past its developmental years, and is facing the more intense challenges of a mature convention – addressing a broad range of substantive issues concurrently and multi-laterally. Beyond merely "fleshing out" the provisions and operations of the convention, the CBD now seeks greater focus on specific issues and sub-issues, to provide a basis not only for common understanding, but also for bringing about more advances. Many of these issues present interesting opportunities for the ELP –

Access and Benefit-sharing (A/BS)

Least developed of the major CBD issues, A/BS was a "focus issue" of COP-5 and is so scheduled for COP-6 as well. It achieved this double coverage by being added to COP-5 as "Access to Genetic Resources," and to COP-6 under the heading "Benefit-sharing." The CBD Secretariat, however, has made no attempt to distinguish between the two, referring in both cases to "Access and Benefit-sharing." This approach may signal the Secretariat's tacit acceptance of the idea that, despite the use of the word "equitable," the phrase "equitable sharing of the benefits" is simply a more sophisticated way of saying "contractual payments for access." Given the enormous implications of equity concepts in the CBD, their conceptual dismissal must be viewed as a significant diminution of the potential legal and environmental impact of the Convention.

The CBD has sponsored several intersessional activities addressing the A/BS issue, including the second meeting of the Expert Panel on A/BS (March 2001), and the *Ad-hoc* Open-ended Working Group on Access and Benefit-sharing (October 2001). The majority of this work has focused on the commercial aspect of access. One commenter noted that

> The entire [2d Expert Panel] meeting was remarkable among CBD meetings, in that the terms 'conservation,' 'sustainable use,' 'biodiversity,' 'habitat,' etc., were used rarely, if at all.

Many are concerned that the objectives of the CBD – conservation, sustainable use, and the equitable component of the benefit-sharing issue – are not being served by these developments. IUCN seeks to ensure that conservation, sustainable use and equity objectives are not forgotten in the minutiae of working out another set of "voluntary" commercial guidelines in this area.

At the heart of the A/BS issue are two additional issues of great import to the ELP – intellectual property rights in genetic resources; and capacity building. Despite its strong guideline focus, the CBD's *Ad-hoc* Working Group devoted significant time and resources to preparing detailed recommendations on both of these issues. The ELP is part of an IUCN team that will be developing IUCN's policy statements and informational documents on the A/BS issue for COP-6, and interested CEL members may contact the ELC, for more information.

Traditional Knowledge and Community Rights

For COP-6, as in most of the intersessional work, "article 8(j)" issues have generally been integrated into A/BS discussions. Even more than A/BS, however, the lack of progress in the development of meaningful legal protections is critical here.

Sustainable Use

Sustainable use is another area singled for close attention in coming CBD meetings. While COP-6 will directly consider only a SBSTTA recommendation on tourism, other work within the COP venue will address a much more significant development in sustainable-use work that will be ongoing throughout 2002 and 2003. In particular, IUCN has taken a rather prominent role in initiating the development of principles, (or an "approach" – similar to the CBD's "ecosystem approach") for evaluating the sustainability of uses. Legislation and administrative structural issues will be a major component of this work.

Three potentially important legal issues have been raised in these initial discussions:

- The utilisation of insurance-type systems (some of which are being operated as test programs) to protect resource users who agree to submit to sustainable-use-based restrictions, if required.

- Examination of the commonality among the various guidelines, approaches and principles that exist in various programmes of the CBD, and utilisation of the sustainable use process as a mechanism for ex-

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amining these commonalities and the manner in which the various guidance documents can contribute to synergistic approach to CBD implementation.

- Addressing the oft-overlooked issue of "compliance" (both the impact of non-compliance, and the need for a realistic compliance legislation component) in any systematic or analytical approach to sustainable use.

Incentives

IUCN was a prominent and frequently mentioned participant in the dialogues initiating the CBD's current deliberations on incentives. SBSTTA has forwarded a recommendation to the COP, which suffers from the traditional problems that arise when scientists negotiate legal documents, and will pose an interesting challenge for COP negotiators.

One interesting note: SBSTTA participants, even economists, often used the term "activities on incentives" to mean either "market development" or "financial mechanism development". One IUCN objective must be to build awareness that neither financial mechanisms nor market development are incentives, *per se,* although either may become a tool by which incentives are created.

Liability

Following COP-5's initial recommendation on liability (Decision V/18), little has happened apart from a workshop sponsored by the Government of France. COP-6, however, is scheduled to establish an *ad-hoc* technical expert group to address this issue. Although part of a very long-standing and controversial international debate, liability issues can be expected to find a new expression in COP-6, whose goal will be to develop a package of objectives for the *ad-hoc* TEG which will include (i) those areas on which some international decision is needed in connection with the Biosafety Protocol as well as more general CBD provisions; and (ii) other areas on which it appears that some useful consensus is possible.

The particular expertise of many CEL members could be of great value to the CBD's work on liability. IUCN's delegation to COP-6 will be called on to investigate possible roles for IUCN and the ELP within the *ad-hoc* TEG on liability, and the manner in which the organisation, as well as individual CEL members can be designated to participate. (To aid us in this inquiry, any CEL members who are interested in possibly working on this issue are encouraged to contact the ELC.)

"New" and Developing Issues

Beyond these well developed issues and expected outputs, COP-6 is expected to be a crucible forging decisions on many other issues. The legal components of these, although not actually new, will develop based on the COP's choices –

- *Impact and Other Assessments*: CBD work on indicators, impact assessment (and the integration of biodiversity assessment within EIA/SEA processes) and other assessment processes is reaching the point where discussion will necessarily turn to questions of how these tools can be utilised in national implementation of the Convention. The ELP has been asked to assume a leading role in IUCN with regard to this critical body of issues, which form the foundation underlying most of the Convention's provisions.

  SBSTTA's recommendations to COP-6 reflect an expectation that the Convention will participate in many of the "global environmental assessments" including the Millennium Ecosystem Assessment (MA), the Global International Waters Assessment, the FAO State of the World's Plants and Animal Resources, and the World Water Assessment Programme. While the legal effect of this participation by the Convention is not yet clear, another legal component is obvious – at a minimum, each of these programmes must assess legal/legislative provisions.

- *Plant protection:* A very recent initiative, the "global plant conservation strategy" built significant momentum in SBSTTA-7 and subsequent liaison-group work, creating an "overarching framework," identifying 16 specific targets (still being negotiated) to be achieved by the year 2010.

- *Agrobiodiversity:* These issues cut a very broad swath across IUCN's most critical concerns. SBSTTA-7's recommendation on this topic addresses water and wetlands (irrigation), climate change (agricultural sinks and the use of ecological safe practices), biosafety issues (genetically use-restricted technologies (GURTs)), A/BS (agricultural plant and animal genetic resources), species and habitats protection, and the study of pollinators.

- *Soils:* SBSTTA-7 discussed and recommended further investigation of FAO's current work in considering the possible need for an international instrument on soils. CEL's Working Group on Soils will be well placed to contribute effectively to this inquiry.

- *Forest biodiversity:* SBSTTA-7's most important achievement was its draft proposed workplan on Forest Biodiversity. Addressing several issues which have been contentious in the past, such as illegal logging, forest-trade issues, this document also gives priority to key IUCN concerns, including forest restoration; forest protected areas; anthropogenic forest fires; climate change; and bushmeat.

- *Alien invasive species:* The ELP's long involvement in the international development of this issue has resulted in a long list of published and electronically published documents, which have had a very signifi-

cant impact on the CBD's process of addressing this critical issue. Although aliens will be a focus issue for COP-6, the nature of inputs and expected outputs is still unknown. The proposed Phase II of the Global Invasive Species Program would focus on national and regional implementation of the Global Strategy on Invasive Species.

- *Global Taxonomy Initiative*: The GTI is in a "transitional" stage, as a result of funding issues. This situation has been misconstrued by some parties and observers, who imply that the GTI is at an end, and its mission completed. Nothing, however, can be farther from the truth. Its task, development of a sound taxonomic base for the Convention, is in its infancy. Some of its work might raise interesting and difficult legal issues. For example, calls to make taxonomic collections accessible to quarantine officials for CBD implementation purposes; and proposals to include "local and folk taxonomy" are rife with virtually unique and unconsidered IPR issues. In addition, the new GTI workplan specifically includes a business training component designed to ensure that national and regional taxonomic programs have the business and operational skills and ideas needed so that they can remain functional after their initial (limited project-based) funding expires.

Preparation for the ICCP-3 of the Biosafety Protocol

The CBD Secretariat continued to express the hope and belief that the Cartagena Protocol on Biosafety would have received enough ratifications to enter into force, prior to COP-6. In that event, the first Meeting of Parties to the Protocol will be held in conjunction with the COP. The ELP's involvement in this issue continues to grow following the Protocol's adoption, and the process is underway to assemble a team of legal and other experts to address the multitude of critical needs in this area.

IUCN's role in National and Regional Preparation for International Meetings

Over the past several years, IUCN has been working to develop a program by which RCOs can hold preparatory national and regional sessions, to aid national delegations in participating effectively in international meetings and negotiations. Well developed preparation programmes are found in the Asia and East Africa Regions, but the program continues to grow. CEL members, particularly those with experience in this unique type of work, may be able contribute their advice and experience to this process in their region, as national delegations prepare for COP-6. Interested members are invited to contact the ELC, or the IUCN Regional or Country office.

– TRY

More information and documents relating to these issues can be found at the CBD website at http://www.biodiv.org .

CEL members interested in working on issues and activities described above should contact the ELC at Secretariat@elc.iucn.org, identifying your request by writing "Newsletter – CBD interest" as the subject line.

Interpreting the Aarhus Convention Internally? CEL Members' (and Others') "Rights to Information"

Although the ELC libraries are sometimes not at the forefront of attention, we have been a major part of the ELP, virtually since its beginning. An in-depth article on our legal information services is being saved for a coming issue; but in the meantime, we offer the following to introduce (or re-introduce) the newsletter readership to the ELC libraries. (Don't expect us to be grey haired women with hair in knots – our team is quite young…) The ELC houses one of the world's largest collections on environmental law information – a collection that is available to CEL members and other members of the public, for a variety of services. In recent months, many have taken advantage of these services, including

- Numerous post-graduate fellows come to the ELC each year each spending several months researching critical current issues, relying on the ELC library services for most of their data, and for referrals to additional sources. Some of their meaningful contributions to the field of environmental law will soon be published in a new Environmental Policy and Law Paper.

- A Norwegian government delegation recently came for a short stay during which they reviewed and copied a large volume of literature and legislation compiled for them by the library team, to aid them in the review and development of critical national biodiversity legislation.

- Students, professors, scientists from all over the world regularly send us emails requesting bibliographies, photocopies and IUCN publications.

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Of course, we cannot claim to have a "complete" collection, either in the national legislation section or in the literature library. But few libraries anywhere can really make that claim. Our collection houses more than 67.000 documents (books, articles, grey literature, soft law) and over 50.000 national, supranational and international legal instruments obtained over the last 30 years. ELC visitors, staffers and other library users generally agree that we have more multi-national and international environmental law information in one place than any other institution.

Have you ever tried ECOLEX?

Several years ago, in furtherance of our basic mandate to build capacity, IUCN in conjunction with UNEP (and later, with FAO) began the process of developing an internet-based environmental law information system called ECOLEX, to make our huge information collection available to the wider public. The process is a long and difficult one, which must constantly be reviewed, even while it is being developed. Still, however, we continue to make progress. We are confident that further developments will lead us to a unique information source with cross-references through international treaties, national legislation and related comments in literature.

Some of the ECOLEX material is available online. Have you tried it? If not, try now at http://www.ecolex.org Remember, feedback is essential for this development, so please do not hesitate to send us comments on the contents of ECOLEX, its retrieval possibilities, and its design.

You can help!

The best news of all is that our library will continue to improve! It is envisaged that, as our next steps in developing the collection, we will enlarge our periodical's section with additional journals from regions that are currently not represented in our library. The best method of finding these, however, is to call on CEL members, since we cannot know or evaluate all of the available periodicals.

So we need your help: **Can you recommend an environmental law related journal** which reflects the environmental law situation in your country, your region? Don't hesitate to tell us, a survey would also give us an overview of the importance and reputation of a publication. We hope that this will be another way that we can continue to improve our ability to better meet your information needs.

By the way, although the ELC libraries are situated on ground and first floor rather than in the basement, it is still (perennially) true that we have a small budget. So if you have publications, articles, interesting papers related to environmental law that may be of general interest to environmental lawyers around the world, please consider sending us a copy. We would very much appreciate your contributions to our collection.

Are you member of the editorial or advisory board of an environmental law related periodical? Perhaps you could suggest us for a complimentary subscription. In the words of a wise man, information is useful when it is spread around. Don't let yours stay hidden in a dark archive.

If you would like more information about our collection and information service please contact:

Alexandra Fante (Literature)
(AFante@elc.iucn.org)
or
Anni Lukács (Legislation, Treaties)
(ALukacs@elc.iucn.org)

– AZI

IUCN Launches Arab Regional Centre for Environmental Law

On 14 November 2001, history was made. IUCN's Commission on Environmental Law, in cooperation with the Faculty of Law of Kuwait University, launched the Arab Regional Centre for Environmental Law (ARCEL).

In a ceremony, Dr. Fazia M. Al-Koavafi, the Rector of Kuwait University, and Prof. Nicholas A. Robinson, the Chair of the IUCN Commission on Environmental Law (CEL), raised IUCN's flag on the campus of the Faculty of Law of Kuwait University outside ARCEL's new suite of offices. The launch was attended by the Deans of 26 law schools drawn from Egypt, Jordan, Kuwait, Lebanon, Oman, and Syria, as well as the Director-General of the Environment Public Authority of the State of Kuwait, Dr. Mohammad A. Al-Sarawi.

Dr. Badria Al-Awadi, CEL Vice Chair for West Asia, presented ARCEL's first lecture, on the origins and scope of work of ARCEL, and invited the participation of legal experts throughout the Arab world in building the re-

gion's capacity in environmental law. She highlighted the establishment of the first environmental law library in Arabic at ARCEL. She thanked CEL Member, Dr. Alexandre Kiss, who had sent an enscribed edition of his scholarly work to the new library. Her power point lecture is available electronically in Arabic through ARCEL (www.kuniv.edu.kw\ARCEL.com).

The importance of ARCEL's work had been highlighted by two presentations the day before at the second meeting of the Scientific Committee of Arab Law Faculties. The Speaker of the Parliament of Egypt called for enhancing legal education in the Arab world, and in particular called for the teaching of environmental law in the region's law schools. Professor Robinson also made a formal presentation, inviting greater participation in CEL from legal experts of West Asia and North Africa. He noted that establishment of ARCEL is an excellent example of the kind of cooperative effort envisioned in Agenda 21, which calls upon "competent intergovernmental and non-governmental organizations to cooperate to provide … an integrated programme of environment and development law (sustainable development law) services." (Agenda 21, § 8.19). He noted that this goal can be achieved by "establishing a cooperative training network" enabling international and academic institutions to "cooperate to provide, especially for trainees from developing countries, postgraduate programmes and in-service training facilities in environment and development law," (*Id.*, § 8.20) and to develop, "regional centres of excellence … to build up specialized databases and training facilities for linguistic/cultural groups of legal systems." (*Id.,* § 8.26)

Dr. Robinson noted that "IUCN has been impressed by the interest in environmental law throughout the Arab World." He pointed to IUCN's study on the *Islamic Principles of Environmental Protection,* which has been published in Arabic, French and English, and is widely read internationally. He committed to continuing this process noting that "IUCN seeks to encourage the preparation of further such studies, and will assist with their international dissemination." Dr. Robinson congratulated the University of Kuwait Law Faculty, and Dean Fadhel Nasserallah, and Dr. Badria Al-Awadi for their dedicated leadership over the three year period leading up to the establishment of ARCEL.

ARCEL's first project is focused on developing curriculum for environmental law courses in Arab law schools, through a meeting to be funded by the United Nations Environment Programme.

In other projects, ARCEL will –

- host a meeting of IUCN's Members from the region (early 2002).
- prepare a course on environmental law and management for protection of the Gulf and its marine resources from on-shore and off-shore pollution.
- publish the environmental legislation of Arab nations on the Internet in Arabic, with appropriate translations in English and other languages.
- develop additional inter-regional comparative and international environmental law study projects.
- publish the papers from an international conference on "Environmental Law In The Arab Region" convened by CEL and Kuwait University's Law Faculty in Kuwait, and from the CEL Meetings in Amman, Jordan in October of 2000.
- Undertake projects on legal research and on capacity building in environmental law, with UNESCO, with UNEP, and with the Regional Organization for the Protection of the Marine Environment in The Gulf (ROPME).

Prof. Nicholas A. Robinson, Chair of the IUCN Commission on Environmental Law (CEL) and Dr. Badria Al-Awadi, first Director of ARCEL

CEL has participated in the establishment of other regional centres of excellence in environmental law. The first opened five years ago as the Asia-Pacific Center for Environmental Law at the National University of Singapore's Law Faculty. Last June, IUCN and the Institute of Lawyers for a Green Planet launched the Brazilian centre for environmental law at the Instituto Biológico in São Paulo, Brazil. ARCEL will work with these other regional centres and will coordinate globally with the IUCN Environmental Law Centre in Bonn, Germany.

ARCEL can be reached at The Faculty of Law, Kuwait University, P.O. Box 5476, 13055 Safat, Kuwait. The email contact is <ARCEL@kuco1.kuniv.edu.kw>.

– ELP

Regional and Country News

Mesoamerica

Continuing with the collaboration process between the ELP and MARENA (Ministry for the Environment of Nicaragua), the ELP organised a three-day training course for MARENA staff, held in **Managua, Nicaragua**, 11-13 October. The course was co-ordinated by the CEL Regional Vice-chair for Mesoamerica, Grethel Aguilar. Its curricula included Nicaraguan environmental law, environmental law principles, administrative processes, legal framework on wildlife conservation, and intellectual property and biological diversity.

Progress in Mesoamerica under the BMZ 98 Project (Regionalization of the IUCN-ELP) has taken the form of collaboration between the ELC and IUCN-ORMA in the development of a regional environmental law programme for Mesoamerica. Following a meeting convened by the UNEP-ROLAC in **Mexico City** examining the development of the Latin American environmental law ten years after the Rio Conference, the IUCN-ELP organised a meeting with various CEL members in the region to develop an IUCN environmental law programme for Mesoamerica. Based on this work, ORMA participated in the Latin America programme, as described below. The ELP intends to publish the contribution of the Mesoamerican CEL Members later this year. The ELP under BMZ 98 has supported ORMA's participation in the process of developing a Mesoamerican regional policy on wetlands. A draft of this policy is ready to be submitted to the CCAD (Central American Commission on Environment and Development). CCAD will then forward the draft policy to the Central American Ministers responsible for the Environment and Foreign Relations for their consideration and approval.

South America

A meeting sponsored by BMZ 98 and focused on the regionalisation of the ELP in Latin America took place in **Quito, Ecuador**, from 17-19 September. The regional representatives of IUCN-ORMA and IUCN-SUR, the CEL Regional Vice-chairs for Mesoamerica and South America, staff members of IUCN-SUR and a Legal Officer from the ELC attended the meeting. The objective of this meeting was to discuss the content of a regional environmental law programme for Latin America and update an existing project proposal which aims at implementing the said programme. This project will complement other efforts under the BMZ 98 Project to regionalise the IUCN-ELP and strengthen the capacity of the IUCN regions to deliver legal services.

The ELC was invited to participate as an observer in the South American Regional Meeting of the Ramsar Convention on Wetlands, which took place in **Buenos Aires** last September. The ELC presentation on "Draft Guidance on the role of 'urgent national interest' and compensation in wetland protection" can be obtained from the Ramsar website (http.//ramsar.org/key_elc_draft_e.htm).

IUCN-ELP and Fundación Proteger, an IUCN Member from South America, entered into a Memorandum of Understanding under which the ELP will contribute to a better understanding of the legal issues relating to fisheries and wetlands, and provide input to the development of the legal component of an important project being undertaken by Fundación Proteger. That project began in April and is supported by IUCN-SUR, the Ramsar Convention Bureau and the Universidad Nacional del Litoral. This project seeks to address critical needs of traditional and commercial fishermen and riverside inhabitants, through the design and participatory implementation of an integrated conservation strategy for sustainable use of fishing resources in the riverine wetlands of the middle stretch of the Paraná River. This project is particularly noteworthy in that it specifically addresses critical issues highlighted as important to IUCN's membership in Jordan, when they adopted WCC Recommendation 2.85. (Conservation of the Middle and Lower Paraná River, reprinted at http://iucn.org/amman/content/resolutions/rec85.pdf.)

The Brazil Centre for Rural and Sustainable Development (Brazil Centre) was officially launched on 4-7 June in **São Paulo**, during the International Conference on Environmental Law. The ELC, CEL, IUCN-SUR, and Lawyers for a Green Planet are working to convene a planning meeting in São Paulo to identify sources of financial support for the Brazil Centre and discuss its co-ordination with the ELP. The Brazil Centre will be hosting a one-week 1st Course on Latin American Biodiversity Law, which will take place in São Paulo in August 2002. For further details, please contact Antonio Hermann Benjamin (planet-ben@uol.com.br).

Africa

Two Internal Agreements were signed with IUCN-EARO. One of them concerned the co-operation between the ELC and IUCN-EARO in the development of a regional environmental law programme for Eastern Africa. The other relates to the legal aspects on participatory management of wetlands in East Africa, and specifically on the collaboration for updating and finalising Uganda's wetlands legislation.

The IUCN Regional Office for West Africa (IUCN-BRAO) began collaboration for the development of a regional environmental law programme for the West African Region. An Internal Agreement was signed last November. Given the particular concern of the region, it was decided that the best way to streamline law into the activities of IUCN-BRAO in a programmatic way was to focus on the development of a network, and relevant

working relationships in the context of work in the area of water resources management.

SADC Forestry Protocol

In one of the culminating events in a very long project, sponsored by the European Union, IUCN-ELP co-convened a meeting of forest administrative officials and lawyers from 12 SADC countries, to review and revise the "discussion draft" of a new forest protocol for the SADC region. In the midst of concern over other recently proposed conservation-focused protocols, which have failed to receive support and/or ratification from the SADC member countries, many felt that the real value of this meeting was in developing among the attendees, a feeling that they were a unified "team" of experts, who would (i) continue to be involved with the Protocol and its finalization, and (ii) think of themselves as informal national advocates for the Protocol, once it is completed. In this, it was completely successful. In addition, it also achieved its more ostensible purpose of collecting comments and achieving consensus on the provisions that should be included in the semi-final draft of the Protocol that will be produced this month. In considering the success of the meeting, the ELC notes especially the significant and valuable participation from the Regional Office for Southern Africa, including Gracian Banda, Excellent Hachileka and Freddie Kachote, in both logistical and substantive areas.

East Asia

As part of a collaboration process initiated in 1999 between the Research Institute of Environmental Law (RIEL) and the IUCN-ELP to develop the programme Promoting Environmental Law in China (PELC), IUCN Patti Moore, Head of the IUCN Regional Environmental Law Programme Asia (RELPA), and Dr. Alejandro Iza, Legal Officer at the ELC visited the Research Institute of Environmental Law (RIEL) in **Wuhan, China**, in October 2001. In addition to meeting RIEL's faculty, students and staff, this trip provided an opportunity to make progress in developing the PELC; and to attend two important meetings – one with donors and partners, and the other with the IUCN Members – in Beijing, convened by the IUCN-China Programme, and attended by IUCN's Director General, Achim Steiner. Several international partners expressed considerable interest in potential work with IUCN on environmental law in China.

West Asia

(*See* page 38 of this newsletter for a description of the launch of the Arab Regional Centre for Environmental Law.

A strategic workshop organised by the WESCANA Programme, and co-sponsored under the BMZ 98 project, took place in **Kuwait**, 11-12 September. The objective of this workshop was to review the current law programme in North Africa-West Asia; identify priorities based on the Quadrennial Programme; start developing the priorities and a fundraising strategy; and discuss ways to strengthen the collaboration between the ELP, WESCANA and ARCEL. During 2002 other meetings will take place to further develop and expand the ELP activities in the region.

Europe

In October 2001, in **Madrid**, the ELP collaborated with the Ilustre Colegio de Abogados de Madrid (ICAM) in the organisation of the II Simposio de Legislación y Derecho Ambiental, addressing the legal aspects of biological diversity conservation. Dr. Alejandro Iza of the ELC presented a paper on legal issues relating to biological diversity and the world water crisis. The III Simposio, which will focus on Environmental Liability. Legislation and Case-law, is planned for 24-26 October 2002.

Dr. Alejandro Iza, Patti Moore, Head, RELPA and Wang Xi, Vice Director, RIEL, at Wuhan University

In **Berlin** last November, IUCN-ELP took part in an international workshop on Strategic Environmental Assessment (SEA) in the Co-operation with Developing and Transition Countries, sponsored by the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU). Examining several aspects of the SEA vis á vis EIA as a tool for environmental management, this meeting opened an important debate in this important area. IUCN was represented in that meeting by Mr. Parvaiz Naim from IUCN-Nepal, and Dr. Alejandro Iza.

– AOI

New Parties to Major International Environmental Treaties

Ratification Status received as of February 2002*

Convention on Biological Diversity, 05.06.1992:

Libya	- 07.12.01
Saudi Arabia	- 03.10.01

Total number of Parties: 182

Convention on the Law of Non-Navigational Uses of International Watercourses, 21.05.1997:

Côte d'Ivoire	- 25/09/1998
Finland	- **23/01/1998**
Germany	- 13/08/1998
Hungary	- **26/01/2000**
Iraq	- **09/07/2001**
Jordan	- **22/06/1999**
Lebanon	- **25/05/1999**
Luxembourg	- 14/10/1997
Namibia	- **29/08/2001**
Nether-lands	- **09/01/2001**
Norway	- **30/09/1998**
Paraguay	- 25/08/1998
Portugal	- 11/11/1997
South Africa	- **26/101998**
Sweden	- **15/06/2000**
Syrian Arab Republic	- **02/04/1998**
Tunisia	- 09/05/2000
Venezuela	- 22/09/1997
Yemen	- 17/05/2000

(consent to be bound shown in boldface, other dates are signature only.)

Total number of Signatories: 16
Total number of Ratifications: 11

Kyoto Protocol to the United Nations Framework Convention on Climate Change, 11.12.1997:

Argentina	- 28/09/2001
Bangladesh	- 22/10/2001
Burundi	- 18/10/2001
Colombia	- 30/11/2001
Cook Islands	- 27/08/2001
Czech Republic	- 15/11/2001
Dominican Republic	- 12/02/2002
Malawi	- 26/10/2001
Malta	- 11/11/2001
Morocco	- 25/01/2002
Nauru	- 16/08/2001
Senegal	- 20/07/2001
Vanuatu	- 17/07/2001

Total number of Signatories: 84
Total number of Ratifications/Accessions: 48

Convention on the Conservation of European Wildlife and Natural Habitats, 19.09.79:

Morocco	- 25/04/2001

Total number of Ratifications/Accessions: 45

Cartagena Protocol on Biosafety to the Convention on Biological Diversity, 29.01.2000:

Czech Republic	- 08/10/2001
Kenya	- 24/01/2002
Lesotho	- 20/09/2001
Nauru	- 12/11/2001
Netherlands	- 08/01/2002
Uganda	- 30/11/2001

Total number of Signatories: 107
Total number of Ratifications/Accessions: 12

Convention on International Trade in Endangered Species of Fauna and Flora, 03.03.1973:

Lithuania	- 10/12/2001
Sao Tome and Principe	- 09/08/2001
Ireland	- 08/01/2002

Total number of Parties: 157

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters: 21.04.1998:

Armenia	- 01/08/2001
Estonia	- 02/08/2001
Hungary	- 03/07/2001
Lithuania	- 28/01/2002
Tajikistan	- 17/07/2001

Total number of Parties: 18

Convention on the Conservation of Migratory Species of Wild Animals: 01.02.2002:

Albania	- 09/2001
Cyprus	- 01/11/2001
The Gambia	- 01/08/2001
Lithuania	- 01/02/2002
Sao Tome and Principe	- 01/12/2001

Total number of Parties: 79

– TOW

* *Dates shown are dates of deposit of instruments of consent to be bound*

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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 –

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- ENVIRONMENTAL LAW CENTRE – a professional international office established in Bonn, Germany in 1970 with 20 highly skilled legal and information specialists, and
- IUCN LAWYERS based in regional and country offices around the world.

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Head, IUCN Environmental Law Programme:
John Scanlon

Text Editor:
Tomme Young (TRY)

Managing Editor:
Ann DeVoy

ELC Staff Contributors:
AOI - Alejandro Iza
FBG - Françoise Burhenne-Guilmin
ALU - Anni Lukács
AZI - Alexandra Fante
TOW - Theophile Owona
MSM - Maria Socorro Z. Manguiat

Typesetting and Layout:
Barbara Weiner

Cover Design:
IUCN PSU, Cambridge

Button Design:
L´IV Com Sarl

IUCN Environmental Law Programme
Environmental Law Centre
Godesberger Allee 108-112
53175 Bonn, Germany
E-mail: Secretariat@elc.iucn.org
Tel: +49 (228) 269-2231; Fax: +49 (228) 269-2250

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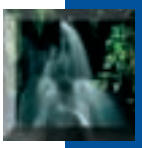

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