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Towards an international environmental law of fisheries in the Year of the Oceans: Oxymoron or paradigm shift?

The Year of the Oceans provides a welcome opportunity to assess the progress which has been made in the international law of fisheries management and conservation since the UNCED Earth Summit in Rio de Janeiro in June of 1992, and to assess the extent to which environmental concerns are now part of the fisheries law agenda. Together with pollution from land-based activities, overfishing is a major threat to the maintenance of marine ecosystems. It will be recalled that Chapter 17 of Agenda 21 called for "new approaches to marine and coastal area management ... that are integrated in content and are precautionary and anticipatory in ambit ... " In the fisheries area, Agenda 21 identified a range of factors contributing to overfishing including unregulated fishing, overcapitalisation, excessive fleet size, vessel reflagging to escape controls, insufficiently selective gear, unreliable data bases and lack of cooperation at the bilateral, regional and international levels.

A great deal has happened in the six years intervening. The issue of reflagging, sometimes at sea, to avoid fishing quotas was quickly addressed by the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. In 1993 FAO also began the negotiation of a Code of Conduct on Responsible Fisheries, which was concluded in November 1995, to reflect the final text of the 1995 UN Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks.

It is the 1995 Straddling Stocks Agreement which represents the major post Rio paradigm shift. It declares an aspiration to improve upon previous fisheries management treaties by recognising the independent need to protect the marine environment through the protection of its biodiversity, maintenance of the integrity of marine ecosystems and the minimisation of the risk of long term or irreversible effects of fishing operations, by the use of the precautionary approach. Article 5, which identifies the framework of general principles, refers to environmental sustainability and ecosystem protection and most significantly makes no reference to the dominant requirement of human consumption, which underpinned previous global fisheries regimes.

To these formal legal instruments can be added other initiatives. Sustainable utilisation of marine living resources is one of the five "issue-areas" of the 1994 Jakarta Mandate identified by the parties to the 1992 Convention on Biological Diversity. Sustainable fishing is also the objective of the Marine Stewardship Council, established in 1996 and the outcome of a unique partnership between Unilever plc, a major multinational fish processing company, and an NGO, WWF-International, which aims to use market forces to increase pressure for sustainable fishing practices, by developing a certification

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Inside

THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA AND THE PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

The International Tribunal for the Law of the Sea is one of the judicial bodies designated by the 1982 UNCLOS as "compulsory procedures entailing binding decisions" in disputes concerning the interpretation or application of the Convention. As such it has an important role in the implementation of the Convention's provisions dealing with the protection and preservation of the marine environment.

An important function of the Tribunal under the Law of the Sea Convention is to deal with disputes between States Parties regarding the provisions of the Convention on environmental protection. One of the disputes which may be submitted to the Tribunal by one State Party against another is when "it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection or preservation of the marine environment which are applicable to the coastal State and which have been established by (or in accordance with) this Convention..."

Disputes relating to the protection and preservation of the marine environment may arise in respect of the articles in Part XII of the Convention. But such disputes can also concern provisions in other parts of the Convention which deal with the rights and obligations of States for the prevention of marine pollution. Examples of such provisions are Article 19 on innocent passage, Article 21 regarding the laws and regulations which a coastal State may adopt for the prevention, control and reduction of pollution of the marine environment, and Article 56 on the jurisdiction of the coastal State in the exclusive economic zone with regard to the protection and preservation of the marine environment.

Other relevant provisions are those in Part XI dealing with protection of the marine environment from activities in the Area and in Part XIII concerning the conduct of marine scientific research.

Possible disputes under Part XII of the Convention include cases where a coastal State is accused of having exceeded its powers in respect of a foreign vessel. For example, when is alleged that it has failed to comply with the applicable "safeguards" specified in the Convention when taking measures against a foreign vessel to prevent pollution of the marine environment (Section 7 of Part XII - Articles 223-233).

The Convention provides that a State "shall be liable for damage or loss attributable to it arising from measures taken (by it) when the measures are unlawful or exceed those reasonably required in the light of available information". Disputes concerning loss or damage resulting from alleged non-compliance could come before the Tribunal.

Under Part XI of the Convention, the Seabed Disputes Chamber has competence in disputes concerning the prevention of pollution of the marine environment from activities undertaken in the Area. Article 187 provides that the Chamber has jurisdiction, *inter alia*, in disputes concerning "acts or omissions of the Authority or a State Party alleged to be in violation of (provisions) or of rules, regulations and procedures of the Authority adopted in accordance thereto" or "acts of the Authority alleged to be in excess of jurisdiction or a misuse of power". The rules and regulations of the Authority include those "to ensure effective protection of the marine environment from harmful effects which may arise from (activities in the Area)".

The Tribunal's role in the protection and preservation of the marine environment is further highlighted by its competence to prescribe provisional measures under Article 290. In addition to provisional measures to preserve the rights of the parties, the Tribunal (or the Seabed Disputes Chamber) has competence to prescribe provisional measures "to prevent serious harm to the marine environment...".

To assist in discharging its mandate for the protection and preservation of the marine environment the Tribunal has established the Chamber for Marine Environment Disputes. This chamber, consisting of seven Judges of the Tribunal, is available to deal with disputes concerning the protection and preservation of the marine environment which the parties may agree to submit to it. The Chamber enables States to settle their disputes by a procedure which does not involve the full bench of the Tribunal, when they consider such an arrangement necessary in particular cases.

Additionally, under paragraph 2 of article 15 of its Statute, the Tribunal is obliged "to form a chamber for dealing with a particular dispute submitted to it if the parties so request". The composition of such a chamber will be determined by the Tribunal "with the approval of the parties". Thus, parties in a dispute may have their dispute dealt with by a small chamber whose composition will be influenced by them. This makes the Tribunal a "user-friendly" forum for dealing with disputes on the protection and preservation of the marine environment.

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This contribution is an abstract of an article to appear in an upcoming issue of Environmental Policy and Law.

Commission on Environmental Law

Letter from the Chairman

Towards IUCN's Centennial

IUCN celebrates its golden jubilee this November. When IUCN was established in 1948, the conservation movement was politically an infant, the science of ecology still was young, and environment had not yet been inscribed on the United Nations' agenda. Recovering from World War II and facing the task of ending the colonial era, old and new nations alike gave little priority to the issues that animated IUCN's founders.

IUCN's first leaders bemoaned the lack of effective laws to protect nature. They established among IUCN's initial goals the task of developing an environmental conservation law for the world. Viewed from 1948, IUCN can derive satisfaction that it anticipated the creation of a new field of law and led the way in defining its tenets. All of the members of IUCN's Commission on Environmental Law celebrate the extraordinary vision and hard work of those, like Wolfgang E. Burhenne, who led the way to IUCN's seminal accomplishments in shaping the foundations of environmental law.

Yet its sesquicentennial affords IUCN little room for self-congratulation. When one measures the challenges that environmental law should address, are we much better off than in 1948? To be sure, we have environmental statutes in most nations, but they tend to be sectoral; the forest code conflicts with the mining code, which in turn conflicts with the parks law and the newer legislation on conserving biological diversity. Ministries of industry do virtually nothing to abate "acid rain," and they are oblivious to how this contamination undermines the missions of the ministries of agriculture and forestry. Local land use authorities promote development of land without regard for the hydrological impacts on downstream communities; watersheds are degraded and polluted, and most nations now lack sufficient potable water for their people. The "stocks" of wild fish in the oceans are being fished to depletion. Vast numbers of species confront extinction.

At least we have Agenda 21*, by which all nations have set a goal to integrate their sectoral environmental governmental programs and promote the strengthening of the environmental laws which provide for sustainable development. IUCN's agenda, on paper anyway, is now that of all nations. Yet few leaders have read* Agenda 21*, and the diplomats who negotiated it and attended the 1992 "Earth Summit" have long been reassigned to other tasks. As the Commission on Sustainable Development has chronicled over the past five years, most threats to the global environment confront us today just as they did when the UN World Commission on Environment and Development issued* Our Common Future*, or when* Agenda 21 *was adopted.*

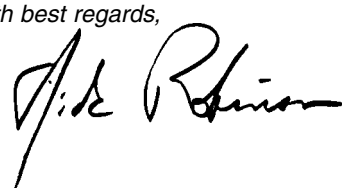
So the next 50 years will not be easy. A callous indifference to environmental degradation infects our societies. IUCN must build new systems of law to engage those societies in -—sometimes quite literally — saving themselves from themselves. Law has a transformative capacity, which IUCN must engage ever more effectively. IUCN's Commission on Environmental Law will further the positive aspects of legal reform to meet these continuing environmental challenges around the world.

Last April the CEL Steering Committee received the Report of CEL's Scientific Legal Committee, co-chaired by Dr. Alexandre Kiss and Ambassador Amado Tolentino, outlining priorities for further law reforms. The Commission has begun to appoint CEL Working Groups to lead these efforts. The Working Group on Ethics and Jurisprudence (Dr. Parvez Hassan, Chair) will refine the IUCN Draft Covenant on Environment and Development, integrate environmental sustainability into the sphere of Human Rights, and seek to clarify the values and ethics in laws affecting nature. The Working Group on Judicial Implementation of Environmental Law (Prof. Charles O. Okidi, Chair) will strengthen the courts' roles in ensuring environmental justice. The Working Group on Information Technology (Prof. Robert Goldstein, Chair) will guide how the Internet, and new tools such as geographic information systems (GIS), facilitate the effectiveness of environmental law globally. The Working Group on Atmosphere (Prof. Adrian Bradbrook, Chair) will design legal strategies to leverage the changes in energy law and related fields in order to stabilize greenhouse gas emissions and curb air pollution. The Working Group of Environmental Legal Educators (Prof. Lye Lin Heng, Chair) will advise on and conduct capacity-building courses on environmental law. The Working Group on Indigenous Peoples, Tribals and Local Communities (Prof. Donna Craig and Prof. M. K. Ramesh, Co-Chairs) will address how these constituencies can further the objectives of environmental laws and how such laws in turn must secure their cultural interests.

Other Working Groups are currently being organized on Environment and Trade, on Biodiversity, on Forest Management, on Land and Water Tenure and Usufruct Rights, and on Intellectual Property Rights. CEL Members with expertise in these subjects are invited to contact me about appointment to one of the Working Groups, or to propose new Working Groups. CEL needs your volunteer time and expertise now as never before.

Activating these Working Groups is obviously but a first step. Their aim will be to shape for IUCN the legal strategies and tools needed for the challenges of the next 50 years.

With best regards,



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Turn to p. 16 for more information on the April meeting of the CEL Steering Committee

Recent Developments at IMO

The International Maritime Organisation (IMO) diplomatic conference in April 1996 adopted the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996. The HNS Convention 1996 may still take 5-10 years to enter into force, but EU states are now discussing the preparatory administrative details.

Even in 1996, it was recognised that there were a number of items of unfinished business. One was the question of liability for bunker pollution from non-tankers. A great deal of pollution is caused by the heavy fuel oil from ordinary cargo ships. The bunkers of oil tankers are dealt with in the CLC and Fund Convention 1992 and those from ships carrying HNS by the HNS Convention 1996. But a last minute compromise kept bunkers out of the HNS Convention 1996, on the basis that the IMO Legal Committee (which normally meets every October and April) would return to the subject. A detailed proposal by five states, led by Australia, was put forward at the 77th Session in April 1998 and included the text of a complete Convention and an alternative text in the form of a Protocol to the CLC 1992. Most delegations were in favour of a free-standing Convention and it was agreed to proceed on that basis, with the Protocol solution being a "reserve" if the Convention alternative was found to be unworkable. It was agreed that the draft should be based on a strict liability regime for pollution damage from bunkers.

An allied issue was the question of wreck raising in international waters, where there might be a threat of significant environmental damage, but where the ships were not covered by the CLC or HNS Convention. One central question is whether the Convention would cover only wrecks and their cargoes which are hazards to navigation, or go beyond that to encompass environmental threats. This is of considerable importance to environmental lawyers. Most delegations supported that idea of including such threats, which might be below the level necessary to justify intervention under the Intervention Convention 1969 ("grave or imminent" threats), but more than mere minor damage. Further work to elaborate any "minimum" level will be necessary. There are still many disagreements on detail and principle.

The underlying concern about both these issues was the fear that any new liabilities would be worthless unless they were backed by the sort of compulsory insurance regimes in the CLC and HNS Convention. Work has been proceeding on this item in the Legal Committee, but there is some disagreement as to whether there should merely be requirements about evidence of financial security, or whether a full blown general Convention is required. For the time being, discussions are concentrating on insurance in the context of passenger liabilities. There was some cautious support for a proposal, short of a Convention, namely to adopt an IMO Code setting out recommended minimum standards for marine insurance liabilities to third parties (including certain pollution claimants). Work on all the Legal Committee items will continue in October 1998.

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system and "eco-label" for fish caught sustainably.

At a conceptual and formal level it can be said that the importance of sustainability in fishing has now been recognised by the international community; here indeed there has been a paradigm shift. However, the challenge for the future is to operationalise these principles. Governments must still ratify these agreements and apply their principles nationally and regionally; consumers need to recognise the principles before market forces can operate in favour of sustainability rather than against it. This may require yet another paradigm shift.

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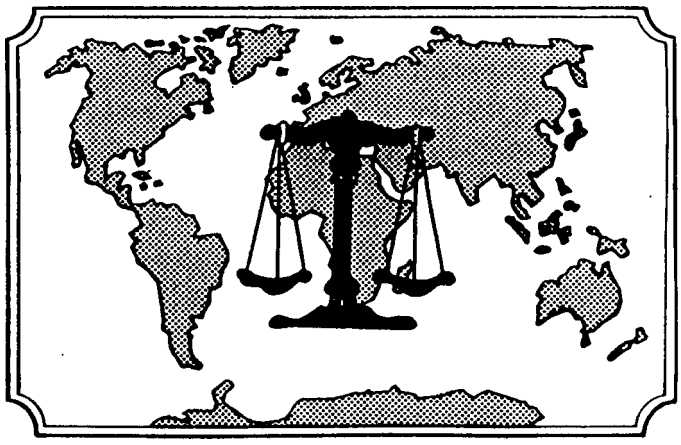

Shrimp: A Taste of the Future of International Environmental Law?

At first blush, most people simply would not believe that the lowly shrimp, a.k.a. prawn, is the focal point of legal and political controversies stretching from Thailand to Tanzania, Ecuador to India, and from remote tropical mangroves to the gilded halls of the World Trade Organization. Many lawyers might also scoff at the notion that the shrimp are in fact an emblem and indicator of the environmental legal challenges the international community faces in the 21st century. The shrimp is the object of all of this attention although it clearly lacks the charisma of whales or birds or forests. It is humans' all but insatiable taste for shrimp which has created a global market and debate.

Over the last two decades, the demand for shrimp in industrialized nations has soared, as has the supply of trawled and farmed shrimp from developing nations. In the last few years, community activists and environmentalists have begun to demand full accounting for the true cost of the globalized shrimp market, and actions by governments and industry to safeguard marine and coastal environments and the rights, property, and livelihoods of coastal peoples against the ravages of the shrimp industry.

Each gravid shrimp produces some 250,000 offspring, so even the soaring catches of wild shrimp pose no real threat to the survival of the species. However, for every pound of shrimp landed, up to 14 pounds of other species, including sea turtles and the young of other commercial fish, are caught, die, and are dumped overboard. Shrimp are the world's most wasteful fishery, accounting for about one-third of the world's bycatch. Since the early 1970s, there has been a legal battle in the United States and more recently internationally over the harm caused by shrimping to sea turtles and means required to stop the slaughter of these extraordinary endangered creatures. At the WTO, the United States has just appealed a Dispute Panel ruling against the U.S. refusal to accept shrimp imports from nations that do not require all of shrimp boats to use turtle excluder devices. The Panel's own scientific experts had found these to be effective in reducing sea turtle mortality.

As the catching of wild stocks finally peaked, the farming of shrimp spread rapidly around the world. Shrimp aquaculture is now a $9 billion industry in some 50 countries. It is estimated that one-half or more of all shrimp consumed in the U.S. is farmed overseas. Shrimp farms are extraordinarily profitable, and investors have rushed to set up farms along the coasts where land was inexpensive, access to shrimp larvae and salt water easy, and local communities poor, unorganized, and unable to resist the invasion. Today, one can fly along the coast of Thailand, Ecuador, and elsewhere and for miles and miles see ponds where mangroves once stood.

Governments and industry organizations recognize that shrimp farms must not be sited in mangroves and have passed laws and regulations to that effect. Soils where mangroves live are not ideal for use as ponds, and loss of mangroves means that shrimp and other farms are more vulnerable to storms, tidal surges and depletion of local wild fisheries. Like industrial livestock operations, shrimp farms produce nutrient-rich wastes which can pollute water supplies. Shrimp farms need saline water which can degrade neighboring agricultural lands. As a result, governments have put into place various regulations requiring environmental zoning, assessments, and permits.

These legal structures are often found wanting. In Thailand, the Prime Minister proposed in July 1998 a very controversial total ban on inland shrimp farms acknowledging a lack of capability to enforce regulations. In Tanzania, public interest lawyers are going to the Supreme Court on behalf of communities in the Rufiji delta over the government's approval of Africa's largest shrimp farm scheme. In Ecuador, the industry recognized that the problem is not a lack of good laws, but rather of adequate monitoring and enforcement. It has proposed supporting environmental groups and communities to improve compliance. In India, millions of villagers have been displaced and their livelihoods undermined by the shrimp culture. In December 1996, the Indian Supreme Court outlawed industrial shrimp farms within the designated coastal zone, which set off a continuing controversy in the legislature and the public. In Honduras, the government has approved a moratorium on shrimp farm expansion pending a study on the "carrying capacity" of its major shrimp farm region.

In April 1996, the debate — and dialogue — came to the UN in New York, where environmental groups convened a "Shrimp Tribunal." Seven governments presented statements on their efforts to assure the sustainability of shrimp production and answered questions from environmentalists and experts. The Tribunal has undergone an electronic evolution into the Shrimp Sentinel Online at www.earthsummitwatch. org/shrimp. It has identified two key challenges:

- How can we reconcile the demands of freer trade with conservation when governmental safeguards in so many countries are inadequate?
- How can we address the apparent inability of many developing countries to implement and enforce the often quite progressive environmental laws and regulations they have enacted?

The Sentinel is a unique Internet forum for trying to answer these questions. The answers are not only important to mangroves, sea turtles, and villagers, but to all our efforts to preserve global ecosystems and assure a more sustainable future. Your participation in this continuing experiment in global environmental democracy is most welcome.

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The Protection of Marine Mammals against Acoustic Pollution

Acoustic pollution of the marine environment originates from a variety of sources. These include propulsion noise from motorized vessels, oil and gas exploration and exploitation, oceanographic research (such as the Acoustic Thermometry of Ocean Climate project), underwater explosions and the use of sonar. There are indications that at least some of this noise has a significant impact on marine species, in particular marine mammals. Two recent examples are the underwater explosions for the Hibernia oil project off the Newfoundland coast that may have affected humpback whales feeding in the area and the stranding of Cuvier's beaked whales in the Kyparissiakos Gulf, Greece, in May 1996 that may have been connected to tests of low frequency active sonar (LFAS) by a NATO research vessel. The potential effects of loud noise on marine mammals can be divided in direct physiological damage and impacts on their behavior. To establish the impact of acoustic pollution on marine mammals more precisely, further scientific research would be required.

The novelty of the problem is illustrated by the absence of detailed rules of international law. This article addresses the question what international rules are relevant for this issue and how this legal framework may evolve. Relevant rules include those dealing with the protection of marine species and those relating to the prevention, reduction and control of marine pollution.

Protection of marine mammals on an international level is regulated mainly through the International Convention on the Regulation of Whaling (ICRW) and the Convention on Migratory Species of Wild Animals (Bonn Convention). These conventions prohibit the direct taking (including harassment) of many (larger) species of whales, but do not contain specific provisions dealing with acoustic pollution. However, some cooperative agreements that were adopted pursuant to the Bonn Convention for specific species refer to the prevention of disturbance resulting from acoustic pollution. The 1992 Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS) deals with this issue in an annexed Conservation and Management Plan. This Plan requests parties to work towards the prevention of significant disturbance, in particular of an acoustic nature, and to conduct investigations to identify present and potential threats of this kind to the species involved. Thus far, the parties to ASCOBANS have primarily considered acoustic disturbance caused by seismic activities. At the 2nd Meeting of Parties to ASCOBANS (17-19 November 1997) this issue was referred to the Advisory Committee and parties were requested to submit relevant information. At the 5th Meeting of this Committee in April 1998 the United Kingdom presented 'Guidelines for Minimizing Acoustic Disturbance to Marine Mammals from Seismic Surveys', which apply to seismic activities on its continental shelf.

The United Nations Convention on the Law of Sea, which provides the basic legal framework for regulating the use of ocean spaces, does not refer explicitly to acoustic pollution. However, the definition of pollution as contained in the Convention in all likelihood includes pollution caused by sound. The Convention establishes general obligations for states to regulate pollution from different sources, including pollution caused by off-shore activities and vessels. The Convention indicates that two types of rules can be adopted in this respect: rules generally applicable to an activity and more stringent rules for areas which require a higher level of protection.

The competent international organization with respect to the regulation of marine pollution caused by vessels and offshore installations is the International Maritime Organization (IMO). Although IMO has indicated that underwater sound generated by vessels may disturb marine mammals, it has not yet addressed this issue.

Future developments in the legal framework applicable to acoustic pollution will most likely occur in the context of nature conservation agreements, such as ASCOBANS. Some of these agreements have already taken a first step by initiating the collection and analysis of data on disturbance by acoustic pollution and identifying potential solutions to the problem.

It seems likely that sound emissions, if found to be harmful to marine mammals, will be confronted in two ways. First, through the adoption of general rules which can be applied either on a mandatory or voluntary basis. Second, through the adoption of rules limiting acoustic pollution in specific areas of particular importance to marine mammals. Global uniform standards would in any case be preferable as far as acoustic pollution originating from vessels is concerned. The IMO could play an important role in this respect.

We do not yet know what the exact effects of acoustic pollution are on marine mammals and the marine environment in general. The present lack of scientific evidence concerning harmful effects of sound should, however, not preclude preventive action to be taken if there are reasonable grounds for concern that such effects may occur. This is in accordance with general principles of international environmental law.

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A New Instrument on Specially Protected Areas in the Mediterranean

The so-called "Barcelona System", consisting of the 1976 Convention on the Protection of the Mediterranean Sea against Pollution and its related protocols, was recently updated by the adoption of new instruments and the amendment of the existing ones. This was also done in order to conform a regional system to the recent evolution of international law in the field of environmental protection, as embodied, on the world scale, in the documents adopted by the United Nations Conference on Environment and Development (Rio de Janiero, 1992).

One of the new texts is the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean, opened for signature in Barcelona on 10 June 1995. When the new protocol enters into force (six ratifications are needed), it will replace the previous Protocol concerning Mediterranean Specially Protected Areas (Geneva, 1982). Substantial differences exist between the two protocols.

The new proposal is applicable to all the marine waters of the Mediterranean, irrespective of their legal states, as well as to the seabed, its subsoil, and to the terrestrial coastal areas designated by each party, including wetlands. In contrast, the application of the previous protocol was limited to the territorial sea of the parties and did not cover the high seas. An extension of the geographical coverage of the protocol was needed in order to also protect those highly migratory marine species (such as marine mammals) which, by definition, do not respect the artificial boundaries drawn by man on the sea.

The purpose of "going into the high seas" posed some difficult problems peculiar of the present political and legal condition of the Mediterranean. Unlike other semi-enclosed areas, the Mediterranean coastal States have not yet established exclusive economic zones (EEZ) or given effect to EEZ claims. Large expanses of Mediterranean waters located beyond the twelve-mile limit still have the status of high seas. Furthermore, many maritime boundaries remain to be agreed upon by the interested countries, including several cases where the delimitation is particularly difficult because of local geographic characteristics.

In order to overcome these difficulties, the new protocol includes two provisions whose precedents are to be found in instruments drafted for a very different region of the world. While the Antarctic and the Mediterranean have hardly any similarity as regards their environment, from the legal point of view the two regions share some common aspects: the presence of large expanses of high seas and the existence of difficult and unsettled issues on sovereignty over coastal zones. This explains why the new protocol includes a very elaborate disclaimer clause, which recalls the legal devices used for the instruments of the Antarctic system. The idea behind such a display of juridical complication is simple. On the one hand, the establishment of intergovernmental cooperation in the field of the marine environment shall not prejudice all the legal questions of different nature; but, on the other hand, the very existence of such legal questions (whose settlement is not likely to be achieved in the short term) should not jeopardize or delay the adoption of measures necessary to preserve the ecological balance of the Mediterranean.

The new protocol provides for the establishment of an *ad hoc* list of specially protected areas of Mediterranean interest (SPAMI List). The SPAMI List may include sites which "are of importance for conserving the components of biological diversity in the Mediterranean; contain ecosystems specific to the Mediterranean area or the habitats of endangered species; are of special interest at the scientific, aesthetic, cultural or educational levels". The procedures for the establishment and listing of SPAMIs are described in detail. For instance, for areas located partly or wholly on the high seas the proposal must be made "by two or more neighbouring parties concerned", and the decision to include the area in the SPAMI List is taken by consensus by the contracting parties during their periodic meetings.

Once areas are included in the SPAMI List, all the parties agree "to recognize the particular importance of these areas for the Mediterranean" and — what is even more important — "to comply with the measures applicable to the SPAMIs and not to authorize nor undertake any activities that might be contrary to the objectives for which the SPAMIs were established". This gives the SPAMIs and the measures adopted for their protection an *erga omnes* effect as far as the parties to the protocol are concerned.

With respect to the relationship with third countries, the parties shall "invite States that are not Parties to the Protocol and international organizations to cooperate in the implementation" of the Protocol. It is also provided that the parties "undertake to adopt appropriate measures, consistent with international law, to ensure that no one engages in any activity contrary to the principles and purposes" of the Protocol. Will this provision — which is also shaped on the precedent of the Antarctic system — be a prelude to a "prime responsibility" of the Mediterranean countries for their common sea, as the Antarctic treaty consultative parties claim to exercise for the Antarctic waters?

The new protocol is complemented by three annexes, which were adopted in Monaco on 24 November 1996. They are the common criteria for the choice of protected marine and coastal areas that could be included in the SPAMI List (Annex I), the List of endangered or threatened species (Annex II), and the List of species whose exploitation is regulated (Annex III).

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Regional

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Africa

Thirty decision-makers from all branches of government as well as from the private sector participated in a seminar on implementing the Convention on Biological Diversity in **Burkina Faso**. The seminar was held in Ouagadougou 22-27 June.

The seminar first concentrated on familiarizing participants with the substantive content of the Convention. Then the focus shifted to discussion of the issues involved in implementing the Convention in Burkina Faso, including the use of economic measures. A case study on access to genetic resources in Burkina explored mechanisms for guaranteeing the rights of burkinabé citizens and institutions which provide such resources to users outside the country.

The Burkina Faso environmental law project, which has been carried out under the auspices of the UNEP/ UNDP Joint Project on Environmental Law and Institutions in Africa, concludes at the end of September. A final round table to discuss issues involved in implementing and enforcing the legal texts adopted as a result of the two-year project will be held in early September.

The first draft of the framework environmental law for **Ethiopia** has been completed. A national workshop to discuss the draft is tentatively scheduled for 16-18 September in Addis Ababa. The draft will be finalized after workshop comments are incorporated.

The project in **Guinea-Bissau** that was to support the Secretary of State for Environment and Natural Resources in developing that country's environmental legal framework has been interrupted due to the conflict that continues since the 7 June attempted coup. The Technical Assistant and some members of the national staff were safely evacuated to Europe. The European Commission, which was co-funding the project with IUCN, is currently in the process of determining whether and how to continue the project, or whether to suspend or close it down.

The European Commission in July approved, pending revisions, the request for the additional funding required to develop a Forest Sector Protocol to the Treaty of the **Southern African Development Community (SADC)**. Further clarification from the EC is expected in late August.

West Asia

After being circulated for comments to more than 100 stakeholders in **Pakistan**, the first draft of the provincial wildlife law is in the process of being revised. The revised draft will be circulated again to a reduced number of commentators and a final draft produced by the end of September.

— PFM

THE CARIBBEAN ENVIRONMENT PROGRAMME AND PROTECTION OF THE CARIBBEAN SEA: THE OILSPILL AND SPAW PROTOCOLS

The environmental problems affecting the Caribbean Sea led the Governments of the region to establish the Caribbean Environment Program (CEP) in 1977 as one of the Regional Seas Programs of the United Nations Environment Program (UNEP).

CEP provides special measures for the protection of the Caribbean Sea. On 24 March 1983, a Conference of Plenipotentiaries adopted the Cartagena Convention for the Protection and Development of the Wider Caribbean Region, and the Protocol Concerning Co-operation in Combating Oil Spills in the Wider Caribbean (OILSPILL). The Convention and Protocol entered into force on 11 October 1986. Another Protocol on Specially Protected Areas and Wildlife (SPAW) was adopted in 1990 and has so far attracted six of the nine ratifications necessary for its entry into force. A third Protocol on Land-Based Sources of Marine Pollution (LBSMP) is currently being negotiated and is expected to be adopted by the end of 1998.

These agreements require that States take appropriate measures to protect the sea against pollution and to conserve and manage marine resources in a sustainable manner.

The Cartagena Convention obliges states to use best practicable means to prevent, reduce and control pollution of the sea. All appropriate measures must be adopted to minimize pollution from ships, dumping, land-based sources, seabed activities, and airborne sources. Contracting parties to the OILSPILL Protocol must take special measures to render mutual assistance in case of emergency caused by major oil spill incidents and they must develop and strengthen operational response capabilities. International assistance in co-ordinating national emergency efforts is provided by the IMO's Regional Marine Pollution Emergency, Information and Training Center for the Wider Caribbean (REMPEITC-Carib) established in Curaçao in 1994. The Cartagena Con-

vention and OILSPILL Protocol provide a proactive and precautionary approach to protecting the pristine marine and coastal areas of the Caribbean.

Conservation of marine and biological resources is undertaken by the SPAW Protocol which is arguably the most comprehensive regional wildlife and protected areas treaty in the world. The Protocol provides for the management, preservation and protection of sensitive and ecologically important habitats. A central concern, expressed particularly by the United States, was the likely impact of establishment of protected areas on navigation rights. SPAW does mandate the establishment of such areas both within and outside the territorial sea and empowers coastal states to regulate "the passage of ships, of any stopping or anchoring or other ship activities, that would have significant adverse environmental effects on the protected area." However, in order to preserve the right of navigation, coastal state regulation is "without prejudice to the rights of innocent passage, transit passage, archipelagic sea lanes passage and freedom of navigation in accordance with international law."

CEP is working with the Caribbean Community (CARICOM) and others to combine pollution prevention and marine and biological resources conservation efforts. At the Caribbean Sea Forum held in Trinidad and Tobago from 3–5 June 1998, it was agreed to seek a general special area status for the Caribbean Sea, of a more all embracing character than is entailed under the MARPOL 73/78 Annexes, within the context of the sustainable development paradigm.

The continued delay of entry into force of the SPAW Protocol cannot but be a source of disappointment considering the absence of any other equivalent international law instrument of the same regional focus on the Caribbean; arguably discussions of the state of progress in the general implementation of CEP are thus premature. Just as developments in the MARPOL 73/78, OPRC, CLC and Fund Conventions have been proceeding in areas addressed by the OILSPILL Protocol, many of the objectives of SPAW are being actively pursued by states within the region in other contexts. These include development of policies of integrated coastal zone management (CZM) under prompting from the Small Island Developing States Program of Action (SIDS-POA) and the process of implementation of the Convention on Biological Diversity (CBD). It seems likely that the coincidence of the objectives of those processes with the objectives of SPAW may have contributed to the delay in its entry into force: although those other processes have been maturing subsequent to that which led to the Protocol, they have attracted greater political prioritization for reasons not all that easily documented.

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The Antarctica Regime: Progress and Non-Progress

The 1959 Antarctic Treaty, which now has 27 Parties, continues still embellished by a variety of additional instruments which aim to protect the land continent and its surrounding seas. Negotiation of these always presented difficulties which still inhibit current progress.

The belated acceptance at Antarctic Treaty Consultative Meetings (ATCMs) of NGO observers, supported by conservationist ATCPs, led to one of the two missing links in the regime — an instrument formally protecting the environment and one establishing liability for environmental damage — being put in place, namely the 1991 Madrid Protocol to the 1959 Treaty. Its scope in part extends beyond the Antarctic Convergence. The first ATCM since its entry into force was held in Tromso, Norway, from 25 May - 5 June 1998. The Committee on Environmental Protection (CEP) to be established to provide advice on the Protocol, was at last created but at once became embroiled in a dispute concerning the means of providing advice on environmental impact assessment for major projects. The long awaited establishment of a Secretariat for what is now regarded as "the Antarctic Treaty System" remained blocked by continued failure to agree on its locus, a long standing problem.

Most serious, from the environmental viewpoint, is the lack of progress on the Annex on Liability. Argument continues over whether it should comprehensively cover all types of damage or whether it would sufficiently meet the purpose to require only prior environmental impact assessment. Formal negotiations have now been postponed to the XXIII ATCM. Concerned governments and NGOs were disappointed by this outcome and by the XXII ATCM's unwillingness to discuss the serious problem of illegal fishing (outside CCAMLR) for Patagonian toothfish.

The ATCM did, however, adopt Resolutions calling on Parties to approve Recommendation XVI-10 (on Protocol Annex V, Protected Areas), agreed to hold a workshop on gaps in this system, and approved a Guide for Preparation of Management Plans. A Recommendation concerning emergency response action was also adopted, calling on Parties to adopt the COMNAP (Council of Man-

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

CALENDAR O

As of 24 A

1998

24 Aug - 4 Sept	Geneva	2nd Session of the Intergovernmental Forum on Forests Contact: IFF Secretariat, Two UN Plaza, 12th Floor, New York, NY 10017, USA; tel: (1 212) 963 6208; fax: (1 212) 963 3463; e-mail: hurtubia@un.org; Internet: http://www.un.org/dpscd/dsd/iff.htm
29-31 Aug	Montreal Canada	Global Biodiversity Forum Contact: The Land and Agriculture Policy Centre; tel: (27 11) 403 7272; fax: (202) 638 0036; email: celias@wri.org
Sept	Rotterdam, The Netherlands	Diplomatic Conference for the Adoption of an International Legally Binding Instrument for the Application of the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade Contact: UNEP-IRPTC, tel: (41 22) 979 9111; fax: (41 22) 797 3460; e-mail: irptc@unep.ch; Internet: http://irptc.unep.ch/pic/
6-8 Oct	Rome	Liaison Group of Experts Meeting on Agrobiodiversity Contact: CBD Secretariat, World Trade Center, 393 St. Jacques Street, Suite 300, Montreal, Quebec, Canada H2Y 1N9; tel: (1 514) 288 2220; fax: (1 514) 288 6588; e-mail: chm@biodiv.org; Internet: http://www.biodiv.org
13 Oct	Washington, DC	NGO Consultation Prior to GEF Council Meeting Contact: GEF Secretariat; 1818 H Street, NW, Washington, DC 20433 USA; tel: (1 202) 473 3202; fax: (1 202) 522 3240/3245; Internet: http://www.gefweb.org
14-16 Oct	Washington, DC	GEF Council Meeting Contact: GEF Secretariat; 1818 H Street, NW, Washington, DC 20433 USA; tel: (1 202) 473 3202; fax: (1 202) 522 3240/3245; Internet: http://www.gefweb.org
21-23 Oct	Bangkok, Thailand	Economic and Social Commission for Asia and the Pacific (ESCAP): 1st session of the Committee on Environment and Natural Resources Development Contact: ESCAP, Rajdamnern Ave., Bangkok 10200, Thailand; e-mail: unisbkk.unescap@un.org; Internet: http://www.unescap.org
2-13 Nov	Buenos Aires, Argentina	4th Conference of the Parties to the UN Convention on Climate Change and Subsidiary Bodies Contact: Secretariat, Martin-Luther-King-Str. 8, 53175 Bonn; tel: (49 228) 815 1000; fax: (49 228) 815 1999; e-mail: secretariat@unfccc.de
3 Nov	Fontainebleau, France	IUCN 50th Anniversary Contact: IUCN Headquarters, Rue Mauverney 28, CH-1196 Gland; tel: (41 22) 999 0001; fax: (41 22) 999 0002
4-6 Nov	Washington, DC	Global Environment Facility Council Meeting Contact: Marie Morgan, GEF Secretariat; 1818 H Street, NW, Washington, DC 20433 US A; tel: (1 202) 473 1128; fax: (1 202) 522 3240; Internet: http://www.gefweb.org
8-14 Nov	Dakar, Senegal	2nd International Conference on Wetlands and Environment Contact: Wetlands International, Droevendaalsesteeg 3A, PO Box 7002, 6700 CA Wageningen, The Netherlands; tel: (31 317) 47 88 84; fax: (31 317) 47 88 85; e-mail: post@wetlands.agro.nl; Internet: http://www.wetlands.agro.nl
17-27 Nov	Cairo, Egypt	10th Meeting of the Parties to the Montreal Protocol Contact: the Secretariat for the Vienna Convention and the Montreal Protocol in Nairobi, Kenya; tel: (254 2) 62 1234 or (254 2) 62 3581; fax: (254 2) 52 1930 or (254 2) 62 3913; Internet: http://www.unep.ch/ozone
Nov	Montreal, Canada	Intergovernmental Negotiating Committee on Persistent Organic Pollutants Contact: Jim Willis, UNEP-IRPTC, tel: (41 22) 979 9111; fax: (41 22) 797 3460; e-mail: irptc@unep.ch
21 Nov-5 Dec (tentative)	Montreal, Canada	6th Meeting of the Open-ended *Ad Hoc* Working Group on a Biosafety Protocol Contact: CBD Secretariat, World Trade Center, 393 St. Jacques Street, Suite 300, Montreal, Quebec, Canada H2Y 1N9; tel: (1 514) 288 2220; fax: (1 514) 288 6588; e-mail: chm@biodiv.org; Internet: http://www.biodiv.org

OF MEETINGS
ugust 1998

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

30 Nov- 11 Dec	Dakar, Senegal	2nd Conference of the Parties to the Convention to Combat Desertification (CCD) Contact: CCD Secretariat, Geneva Executive Center, 11/13 Chemin des Anémones, CH-1219 Châtelaine, Geneva, Switzerland; tel: (41 22) 979 9419; fax: (41 22) 979 9030/31; e-mail: Secretariat@unccd.ch; Internet: http://www.unccd.ch

1999

13-15 Jan	Washington, DC	International Development Conference — Global Meeting of Generations Contact: International Development Conference; (1 202) 884 8580; fax: (1 212) 884 8499; e-mail: idc@idc.org
7-12 Feb (tentative)	Geneva	2nd Session of the Persistent Organic Pollutants (POPs) Intergovernmental Negotiating Committee Contact: UNEP Chemicals (IRPTC); tel: (41 22) 979 9190; fax: (41 22) 797 3460; e-mail: dogden@unep.ch; Internet: http://irptc.unep.ch/pops/
15-19 Feb	Montreal, Canada	6th Meeting of the Open-Ended *Ad Hoc* Working Group on a Biosafety Protocol Contact: CBD Secretariat, World Trade Center, 393 St. Jacques Street, Suite 300, Montreal, Quebec, Canada H2Y 1N9; tel: (1 514) 288 2220; fax: (1 514) 288 6588; e-mail: chm@biodiv.org; Internet: http://www.biodiv.org
25-26 Mar	Leeds, UK	5th Annual International Sustainable Development Research Conference Contact: Conference Manager, ERP Environment, PO Box 75, Shipley, West Yorkshire BD17 6EZ, UK; tel: (44 1274) 530 408; fax: (44 1274) 530 409
April	Rome, Italy	8th Session of the Commission on Genetic Resources for Food and Agriculture Contact: FAO, Viale delle Terme di Caracalla, 00100 Rome, Italy; tel: (39 6) 57051; fax: (39 6) 57052; Internet: http://www.fao.org or http://web.icppgr.fao.org
3-14 May	Geneva	3rd Session of the Intergovernmental Forum on Forests Contact: IFF Secretariat, Two UN Plaza, 12th Floor, New York, NY 10017, USA; tel: (1 212) 963 6208; fax: (1 212) 963 3463; Internet: http://www.un.org/esa/susdev/iff.htm
7-9 May	San José, Costa Rica	Global Biodiversity Forum Contact: Ramsar Bureau, Rue Mauverney 28, CH-1196 Gland, Switzerland; tel: (41 22) 999 0170; fax: (41 22) 999 0169; e-mail: ramsar@hq.iucn.org
10-18 May	San José, Costa Rica	7th Meeting of the Conference of the Parties to the Ramsar Convention Contact: Ramsar Convention Bureau, Rue Mauverney 28, CH-1196 Gland, Switzerland; tel: (41 22) 999 0170; fax: (41 22) 999 0169; e-mail: ramsar@hq.iucn.org
17-28 May	Nairobi, Kenya	20th UNEP Governing Council Session Contact: B. Miller, UNEP; tel: (254 2) 62 34 11; fax: (254 2) 62 37 48; e-mail: millerb@unep.org
20-28 May	Libreville, Gabon	24th Session of the International Tropical Timber Organization Contact: ITTO Secretariat, Yokohama, Japan; tel: (81 45) 223 1110; fax: (81 45) 223 1111; e-mail: itto@mail.ittounet.ocn.ne.jp; Internet: http://www.itto.or.jp/
7-11 Jun	Rome	13th Session of the FAO Group on Registration Requirements Contact: Gerold Wyrwal, FAO, Viale delle Terme di Caracalla 00100 Rome, Italy; tel: (39 6) 5705-2753; fax: (39 6) 5705-6347; e-mail: Gerold.Wyrwal@fao.org
13-18 Jun	Jerusalem, Israel	7th International Conference of the Israel Society for Ecology and Environmental Quality Sciences on Environmental Challenges for the Next Millennium Contact: Conference Secretariat, P.O. Box 50006, Tel Aviv 61500, Israel; tel: (972 3) 514 0000; fax: (972 3) 514 0077 or (972 3) 517 5674; e-mail: ecology99@kenes.com; Internet: www.kenes.com/ecology99
14-17 Jun	Rome	14th Session of the Panel of Experts on Pesticide Specifications, Registration Requirements, Application Standards and Prior Informed Consent Contact: Gerold Wyrwal, FAO, Viale delle Terme di Caracalla 00100 Rome, Italy; tel: (39 6) 5705-2753; fax: (39 6) 5705-6347; e-mail: Gerold.Wyrwal@fao.org

SOUTH AFRICA: REGIONAL AND LOCAL OCEAN ISSUES

Introduction

South Africa is situated at the interface of two of the world's great oceans, the Atlantic and Indian, and has ready access to a third, the Southern Ocean. The country accordingly enjoys ready access to an abundant and diverse source of marine resources. It has a lively and internationally renowned marine science community which has collaborated internationally since the turn of the century. It is also situated on one of the world's major navigation routes but its notorious coastline, known as the Cape of Storms, has resulted in wrecks and pollution incidents since the days of the early explorers.

South Africa's geographical location, coupled with the fact that the transition to democracy has resulted in its re-admission into the international fold, as well as its developing country status, means that it is an important role player in regional and global ocean affairs. In outline, the chief issues concerning South Africa can be summarised under two main headings: the management and conservation of marine resources, and the regulation of pollution incidents.

The management and conservation of marine resources

In the domestic context South Africa has passed the Maritime Zones Act (15 of 1994) which claims the normal maritime zones, including a 200 nautical mile exclusive economic zone. It accordingly has jurisdiction over the marine resources in this area which includes the EEZ generated by the Prince Edward Islands in the Southern Ocean.

A particularly sensitive issue since the advent of the new government has been the question of access to marine resources. The new government has repealed and replaced the 1988 Sea Fishery Act with a new Living Marine Resources Act (18 of 1998) which has as a stated objective of granting wider access to marine resources to previously disadvantaged communities. Conservation issues are continuously on the agenda and recently the government initiated a process to develop a coastal policy addressing all coastal issues.

In the regional context South Africa has played an active role in the Antarctic Treaty System, having been one of the founder members of the 1959 Antarctic Treaty. The role of the 1980 Convention of the Conservation of Antarctic Living Marine Resources (CCAMLR) has been in the spotlight recently due to the alleged over-exploitation of the Patagonian toothfish found in the Southern Ocean. South Africa is a party to all the other major Antarctic treaties including the 1991 Protocol on Environmental Protection of the Antarctic (the "Madrid Protocol") and has been active in the formulation of an Annex on Environmental Liability for Damage in Antarctica.

It also plays an active role with its coastal neighbours and other interested states in marine conservation issues such as the 1946 Whaling Convention. More recently, South Africa has played an active role in the negotiation of the 1995 Agreement relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the "Straddling Stocks Convention") which it is expected to ratify during 1998. In pursuance of this Convention South Africa is currently collaborating with Angola, Namibia and the United Kingdom (by virtue of its St Helena Island dependencies) to prepare a draft agreement regulating the management and conservation of marine fisheries in the south-east Atlantic. This draft treaty anticipates the establishment of the South East Atlantic Fisheries Organisation (SEAFO) to govern the exploitation of fisheries in the region.

Pollution issues

In view of its vulnerability to marine pollution incidents, South Africa has adopted most of the relevant international marine pollution conventions and has recently been re-admitted as a member of the International Maritime Organisation (IMO). Included here is MARPOL, the London Dumping Convention and the Civil Liability Convention. It has domestic legislation in place to give effect to these and is continuously reviewing and streamlining its domestic marine pollution legislation. A recent development has been the promulgation of the South African Maritime Safety Authority Act (5 of 1998) which establishes a statutory authority to carry out maritime safety and pollution functions previously carried out by the Department of Transport.

Apart from government, green NGOs have also played an active and positive role in the management of ocean affairs, for example in strongly resisting the transportation of nuclear shipment off the South African coastline.

General Governance Issues

South Africa's commitment to constructive participation in global ocean matters has also been demonstrated by its recent ratification of the Law of the Sea Convention which appropriately came into force in the country in early 1998, the Year of the Ocean.

More specifically, in this context South Africa has played an active role in the Independent World Commission on the Oceans. It hosted its fifth plenary session in which President Nelson Mandela gave the opening address. Its dynamic Minister of Water Affairs and Forestry, Professor Kader Asmal, has been appointed as a Vice President of the Commission and has played an active role in its deliberations.

It is evident that South Africa has a key role to play in the management of three of the world's great oceans and it is anticipated that it will play an active role in doing so in the future.

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Protecting and Preserving the Marine Environment A Report from Southeast Asia

In the past 25 years an impressive number of global instruments relating to the marine environment have been adopted. The legal framework for the protection and preservation of the marine environment is now set out in two universally accepted conventions -- the 1982 Convention on the Law of the Sea (1982 UNCLOS) and the 1992 Convention on Biological Diversity (1992 CBD). MARPOL 73/78 and other conventions adopted by the International Maritime Organization establish a system for preventing pollution of the marine environment from ocean activities. In addition, three major "soft-law" instruments relating to the marine environment have been adopted: (1) Chapter 17 of Agenda 21, 1992 UNCED; (2) the 1995 Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities; and (3) the 1995 Jakarta Mandate on Marine and Coastal Biodiversity.

Unfortunately, global conventions and action plans are only documents. Unless they are effectively implemented at the regional, national and local levels, they have no impact on the marine environment. From the perspective of Southeast Asia, it is time for the efforts of the international community to move from adopting global instruments to assisting states in effectively implementing the instruments that have been adopted.

During the past five years, there has been a move in Southeast Asia towards greater acceptance of the major global conventions. Eight of the ten Southeast Asian nations are now parties to 1982 UNCLOS, eight are parties to the 1992 CBD and seven are parties to MARPOL 73/78. There is also increasing acceptance of the other IMO conventions, except for the 1972 London Convention, which only one of the ten states has ratified. Unfortunately, ratification has not always been followed by effective implementation at the national level. A major capacity-building effort is required in the next decade to bring the less developed countries in the region up to the level where they will be able to effectively implement the international commitments they have accepted.

No regional treaties to protect the marine environment in Southeast Asia are in force. The only regional environmental treaty is the 1985 Agreement on the Conservation of Nature and Natural Resources, but it is not yet in force. Southeast Asia is one of the few regions without a regional treaty under the UNEP Regional Seas Programme.

Some successful regional programmes relating to the marine environment have been developed. The IMO/UNDP Regional Programme for the Prevention and Management of the East Asian Seas, which is based in the Philippines, has established coastal zone management demonstration sites and has worked to promote ratification and implementation of the IMO conventions. SEAPOL, a regional network of scholars and government officials, has provided a forum for the discussion of issues of ocean policy, and has made efforts to enhance cooperation to deal with marine environment problems in the Gulf of Thailand. Finally, the Canadian-Indonesian Programme for Managing Potential Conflicts in the South China Sea has been working to promote cooperation to protect the marine environment of the South China Sea.

In summary, the general acceptance of the major global conventions means that the framework is finally in place for enhanced cooperation at the regional level in Southeast Asia. However, tremendous efforts are required to ensure that the principles, rules and standards set out in the global instruments are effectively implemented at the national and regional levels.

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... The Antarctica Regime

agers of National Programmes) guidelines, including both fuel handling and contingency planning, and calling on COMNAP itself to assess the risks of emergencies.

Many parties expressed concern at the impact of growth in tourism (from 9604 visitors in 1997 to a projected 11,000 in 1998; double the 1991 number) and visits to new sites. It was agreed that reports should henceforth record the time and duration of visits. Concern had also arisen relating to the Russian Federation's proposal to drill into the subglacial lake under its Vostok Station. It announced, however, that it would present a Comprehensive Environmental Evaluation of the project before the next meeting of the CEP.

Despite this mixed record of progress and non-progress at the ATCM level, the national legislation adopted by many ATCPs for protection of the Antarctic environment is already bridging some of the gaps.

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Cuba: Avances recientes en materia de Derecho Ambiental

Tras la aprobación por la Asamblea Nacional del Poder Popular en el mes de julio de 1997 de la nueva Ley del Medio Ambiente en Cuba, Ley No. 81 de 11 de julio de 1997, se ha desatado un activo proceso de revisión y perfeccionamiento de la legislación ambiental.

La propia Ley ha indicado que en un término de dos años debe hacerse una revisión de todas las principales disposiciones ambientales dictada con anterioridad y que en el plazo de tres años debe estar aprobada toda la legislación necesaria para su mejor implementación. Esto último no descarta por supuesto que más allá de esa fecha se dicten otras regulaciones; de lo que se trata es de dejar establecido el marco básico que permita un trabajo eficiente y eficaz.

De lo dictado con anterioridad a la Ley del Medio Ambiente, se está acometiendo en primer término la revisión de la norma fundamental en materia de flora y fauna silvestre, el Decreto-Ley 136 de 1993 "Del Patrimonio Forestal y la fauna silvestre". Lo que está ocurriendo con esta disposición es un proceso interesante, pues sus regulaciones relativas a bosques están concentradas en una nueva Ley Forestal, aprobada el 21 de julio de este año.

Por otra parte, la materia referida a flora y fauna silvestre en general, parece estar derivando hacia una Ley sobre la Diversidad Biológica. Si bien este parece un buen propósito, en la práctica viene resultando bastante complejo. Esto se entiende si se tiene en cuenta lo abarcador del concepto de diversidad biológica y que de hecho y sin emplear ese término, durante años se han venido dictando disposiciones relativas a ella. Tal vez por eso, algunos de los modelos de legislación sobre el tema que hemos venido revisando, se limitan a reproducir con demasiada generalidad los conceptos ya expresados en el Convenio sobre la Diversidad Biológica y no crean un auténtico marco regulatorio.

El Proyecto de Ley cubana está intentado salvar esta situación, al tiempo que parece que hará énfasis en la definición de un régimen de acceso y por consiguiente en las vías para la participación justa y equitativa en los beneficios derivados de su utilización, aspectos que como es sabido, son los menos regulados en esta esfera.

Al propio tiempo se está acometiendo la revisión de la legislación de aguas – hoy tratada por el Decreto-Ley 138 de 1993, "De las Aguas Terrestres". Los principales esfuerzos en este sentido se dirigen a la integración de la temática sobre la base del concepto de la cuenca hidrográfica. Buscando un mejor diseño de esta legislación, debe tener lugar en La Habana, en el mes de diciembre, un taller nacional que se desarrollará con el apoyo de expertos norteamericanos y en el cual se revisarán y se harán recomendaciones, básicamente sobre la legislación de aguas, pero también respecto a los suelos, los bosques, los asentamientos humanos y otras materias conexas.

Respecto a las nuevas disposiciones que se elaboran, encabeza la lista un Decreto Ley sobre Contravenciones – Sanciones Administrativas – en materia de medio ambiente. Conviene advertir que la Ley de Medio Ambiente confiere un importante papel al uso de instrumentos económicos y las medidas de compromiso y autoregulación, pero no cabe dudas de que es imprescindible contar con un régimen de sanciones severo y efectivo, tanto en lo administrativo, como incluso en la esfera penal, que también será objeto de modificación en un futuro algo más lejano.

Por otra parte, ya concluye su proceso de circulación y discusión preliminar un Proyecto de Decreto-Ley relativo a la Seguridad Biológica, materia que se ha decidido regular de manera separada, para dar respuesta a las exigencias del futuro Protocolo sobre Bioseguridad en el marco del Convenio sobre la Diversidad Biológica.

Sendos Decretos-Leyes, sobre Costas y sobre el Sistema Nacional de Areas Protegidas, completan la nómina de las disposiciones cuya elaboración se encuentra más avanzada. Aquí las prioridades son evidentes, por una parte el carácter insular de Cuba y el desarrollo acelerado del turismo y otras actividades económicas que gravitan sobre las costas, convierte en una urgente necesidad el contar con un régimen de gestión y protección de estos frágiles ecosistemas. En Cuba la mayor parte de los territorios son costeros y el grueso de la población vive en las costas.

Este propio carácter de isla o por mejor decir de archipiélago, hace que el endemismo en Cuba sea sumamente alto, alcanzando aproximadamente un 51% en plantas vasculares e incluso más del 90% en algunos grupos de invertebrados. Si bien las actividades económicas desde los tiempos coloniales han motivado una fuerte antropización destructora de muchos recursos, hay importantes zonas que conservan una significativa naturalidad y otras donde la actividad humana puede y debe llevarse a cabo en condiciones controladas.

El Decreto-Ley sobre el Sistema Nacional de Areas Protegidas, pretende precisamente dar la debida protección a estas áreas, de modo que se establece una diversidad de categorías que abarca desde aquellas de más estricto manejo, hasta las que admiten una determinada antropización.

Muchos aspectos de gran relevancia introducidos por la Ley, esperan aún por su instrumentación, tal es el caso del derecho ciudadano a un

medio ambiente sano — particularmente el perfeccionamiento de los mecanismos para accionar administrativa y judicialmente –, la instrumentación de los mecanismos de participación popular – sobre todo en el proceso de Evaluación de Impacto Ambiental – y la regulación del derecho de acceso a la información sobre el medio ambiente.

El Ministerio de Ciencia, Tecnología y Medio Ambiente – creado en 1994 – es el eje de todo este esfuerzo legislativo. Por otra parte, existe plena conciencia acerca de que no basta con tener buenas leyes y voluntad para aplicarlas, de ahí que el aparato institucional y de recursos humanos de este Ministerio y su interrelación con otros organismos, se refuerza constantemente en la búsqueda de una política y gestión ambiental coherentes.

La aún escasa membresía cubana en la Comisión de Derecho Ambiental de la UICN se encuentra profundamente involucrada en todo este proceso, en el que también participa otro importante grupo de abogados y especialistas. Es de esperar y desear que más abogados cubanos ingresen al CEL y que nuestras relaciones se continuen estrechando.

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Le projet de loi-cadre sur l'environnnement en Mauritanie

Après la première expérimentation visant à envisager les questions environnementales par une approche du cas par cas (les lois et règlements sur la flore, la chasse et la faune en Mauritanie; l'eau, la marine marchande etc.) le gouvernement mauritanien s'est engagé depuis un peu plus d'une année dans un chantier aux dimensions ambitieuses avec la rédaction d'un projet de loi cadre sur l'environnement. Cette démarche, qui aurait normalement dû se situer en amont du processus normatif du droit mauritanien de l'environnement, vient ainsi combler un vide.

Ce projet, conduit avec les appuis financiers et techniques du PNUE et du PNUD, arrive à son terme, et devrait faire l'objet de discussions en atelier dans le courant du mois de juillet 1998.

Parce qu'il entend s'inscrire dans la dynamique d'innovations juridiques, le projet de loi cadre sur l'environnement fait revivre une triptyque désormais incontournable dans l'architecture juridique environnementale en Mauritanie. Il s'agit d'abord de favoriser un cadre de participation active et responsable des populations dans la gestion de leur environnement. Cette démarche est ensuite sous-tendue par l'introduction systématique de l'évaluation du risque, qui commande une implication des administrations actives concernées. C'est ainsi que, le projet de loi cadre fait des études d'impact un préalable nécessaire à toute exploitation ou gestion organisées des ressources naturelles, ou actions sur l'environnement. Enfin, l'arsenal répressif est conçu pour garantir l'effet de persuasion, indispensable dans un contexte où la règle de droit positive est souvent coupée de la réalité.

La loi cadre, qui doit entrer en vigueur après examen du projet par le Parlement au cours de sa session de novembre, sera complétée par un code de l'environnement, couronnement d'un processus législatif et réglementaire tributaire d'une nouvelle manière d'appréhender les phénomènes qui touchent un environnement soumis à des pressions multiples et permanentes.

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Costa Rica's Biodiversity Law - The Process

The Costa Rican Biodiversity Law was passed on 23 April 1998, less than two years after Representative Luis Antonio Martínez Ramírez presented the bill to legislature. The initiative was surrounded by great controversy from the outset, but it managed to overcome individual interests and concerns to reach a place in the center of the country's highest aspirations and become national law.

The original idea that the country should have a legal framework favoring the sustainable use and conservation of biodiversity components went through a deep and transparent debate. Even before the Special Environmental Commission (Comisión Especial del Ambiente) took up its work, Representative Martínez received many suggestions and comments on the law. Public institutions like the University of Costa Rica and the National University created internal fora to analyze the complex framework of the regulations of the initial project and its 125 articles. Organized groups such as indigenous and farmers' associations also studied the Bill and expressed their concerns.

As the debate continued, the Special Environmental Commission chose to create a Technical Subcommission, presided over by the National University, to analyse the project to reach consensus. It was composed of different social sectors, the National Board of Farmers (Mesa Nacional Campesina), the National Board of Indigenous Peoples, the Federation of Conservationist NGOs (FECON), the National Institute of Biodiversity (Instituto Nacional de Biodiversidad), the National Liberatión Party (Partido Liberacion Nacional), the Social Christian Unity Party (Partido Unidad Social Cristiana), the University of Costa Rica, and the Advisory Commission on Biodiversity (COABIO).

All submissions were taken into consideration when the Substitute Bill was presented in December 1996. A consensus Bill was submitted by the end of October 1997, ratified as Substitute Text No. 2 by the Special Environmental Commission and approved after lengthy deliberation.

Under the law, access to genetic resources allows for investments by commercial companies, academic research, community and traditional use, and protects various intellectual property rights. It is based on the following principles:

- Equity in access to and distribution of benefits from the use of biodiversity components;
- Respect for human rights, principally regarding groups neglected due to their culture or economic condition;
- Sustainable use of biodiversity components, respecting the development options of future generations;
- Democratic guarantee of participation by all citizens in decision-making, in an environment of peace and with options for development.

The original conceptual philosophical framework gave the discussion a positive focus. It made it possible to overcome confrontation and to incorporate the interests of all Costa Ricans who participated in the process.

It is important to emphasize this initiative as an example of public participation in the formulation of laws. The office of Representative Martínez was always open to criticism and debate and the arrangements made by the Special Environmental Commission guaranteed participation in the preparation of the bill.

The Law establishes a forward-looking institutional scheme to conserve biodiversity and provides for efficient participation by different social sectors. The country is proud to present the first Law that regulates in an integrated manner the components of biological diversity and its sustainable use.

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Highlights of the CEL Steering Committee Meeting

The CEL Steering Committee met at IUCN Headquarters, Gland, on 21-24 April 1998. The first such meeting to be held at IUCN-HQ, it gave the Steering Committee the opportunity to hold consultations and discussions with other IUCN Commissions and Programmes, HQ Staff, and representatives of UNITAR.

David McDowell, IUCN Director General, welcomed the Steering Committee. He noted that the Law Programme was undergoing a transition phase, and urged the Steering Committee to take hard decisions in setting priorities and establishing a process to continually monitor progress.

The prominent issues addressed during the meeting were the report of the CEL Scientific Panel, the ELP Strategic Plan, CEL regionalization, project proposals for submission to

GEF, and plans for the 50th Anniversary of IUCN.

CEL Scientific Panel

The Chair of the CEL Scientific Panel on Environmental Law Conceptual Development presented the report of the Panel's first meeting, which had addressed the theory of environmental law and its practical application to specific issues. During the Steering Committee's discussion of matters on which the Scientific Panel should focus, the Chair stated that the Panel's mandate is to "open new windows" rather than to review what has already been done or debate issues that have already been extensively discussed. The Steering Committee decided to modify the Scientific Committee's mandate to include ongoing initiatives, and suggested that future meetings of the Panel should include discussions on:

* activities related to the Draft Covenant;
* the conclusions of the UNEP Expert Working Group on International Environmental Law Aiming at Sustainable Development; and
* the work of other IUCN Programmes.

ELP Strategic Plan

In discussing the next steps in developing the Strategic Plan, the Steering Committee decided to define current environmental law needs in their regions.

Among the needs articulated by the attending Vice Chairs are:

* East Asia: training
* West Asia: capacity-building, regional training centres, and environmental law information in Arabic
* Eastern Europe: promotion of the Draft Covenant, regional training centres, and environmental law projects for the region
* North Africa and the Caribbean: international network of environmental law experts
* South America: capacity-building, environmental law information in Spanish, and technical assistance to IUCN members
* Australia and Oceania: capacity-building, examination of integrated approaches to standard-setting and environmental law in the region.

The Steering Committee then discussed the thematic issues in which the ELP should engage in the future. It was suggested that the ELP should focus on closer collaboration with RCOs, re-define the role of CEL vis a vis the Secretariat, and seek to balance its work at the global and regional levels. A small working group was constituted to assist the Deputy Chair, who was absent from the meeting, and the Secretariat in preparing the Strategic Plan.

CEL Regionalization

George Greene, Assistant Director General, attended the meeting to discuss a number of issues including a possible adjustment of the regional framework of IUCN. He reported that IUCN is currently examining a more practical and programmatic framework for the regions that would better facilitate the work of CEL and create liaisons in environmental law.

The Steering Committee highlighted some of the difficulties experienced with the current regional structure. For example, the division of Europe into East and West is no longer practical; language and communications differences have created programmatic barriers in North Africa and the Middle East; it was suggested that East Asia be subdivided into East and West with a focal point for China, Japan and India; and finally, the strategic position of Pakistan should be resolved.

It was recommended that IUCN adopt a more pragmatic approach to re-defining the regions, with consultation of CEL members in each region. This issue will be studied further and discussed at the next Steering Committee meeting.

Project Proposals for Submission to GEF

A number of project concepts have been prepared by the Steering Committee and CEL members in response to the Chair's call for the preparation of project concepts for submission to GEF. George Greene commended the Steering Committee for taking the initiative, and suggested that CEL should coordinate with RCOs in further developing these projects. He stated that since all GEF projects must originate from governments, working with RCOs presents a three-way opportunity for project development — CEL, RCOs and governments — and increases the possibility for funding. The Steering Committee accepted his recommendation and decided to consult with RCOs in submitting the proposals through the IUCN process.

IUCN 50th Anniversary Celebrations

Discussions were held with IUCN HQ staff on the plans to commemorate IUCN's 50th Anniversary. CEL is actively involved in a number of activities planned to mark the occasion. A declaration, the "Appel de Fontainebleau", is being drafted with the assistance of CEL member Alexandre Kiss; a symposium at Fontainebleau will include a number of thematic work sessions; and CEL is organizing a work session on "Appropriate Institutions for the 21st Century". The celebrations will be held on 3-5 November 1998 in Fontainebleau, France.

Other Business

A total of 34 candidates were approved for CEL membership.

The next Steering Committee meeting will be held on 29 and 31 October in Paris, immediately preceding IUCN's 50th Anniversary.

Major Marine Conventions: Developments in 1998

United Nations Convention on the Law of the Sea

Date of adoption	Place of adoption	Date of entry into force	Depositary
10.12.1982	Montego Bay	16.11.1994	United Nations

State	Signature	Instrument/Deposit	Entry into force
EC European Communities	07.12.1984	B/01.04.1998	01.05.1998
Gabon	10.12.1982	R/11.03.1998	11.04.1998
Lao People's Democratic Rep.	10.12.1982	R/05.06.1998	05.07.1998

Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

Date of adoption	Place of adoption	Depositary
04.08.1995	New York	United Nations

State	Signature	Instrument/Deposit
Iran (Islamic Republic of)		A/17.04.1998
Namibia	19.04.1996	R/08.04.1998
Seychelles	04.12.1996	R/20.03.1998

Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982

Date of adoption	Place of adoption	Date of entry into force	Depositary
28.07.1994	New York	28.07.1996	United Nations

State	Signature	Instrument/Deposit
United Republic of Tanzania	07.10.1994	R/25.06.1998

Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972

Date of adoption	Depositary
07.11.1996	International Maritime Organization

State	Signature
Brazil	05.02.1998

R = Ratification A = Accession B = Acceptance, Approval T = Succession

Dates of Entry into Force for Major International Environmental Treaties

Ratification Status as at 10 July 1998

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

Mauritania -11.06.1998

Total number of Parties: 144

Convention on the Conservation of Migratory Species of Wild Animals, 23.06.1979

Mauritania -01.07.98
Romania -01.07.98
Uzbekistan -01.08.98

Total number of Parties: 55

United Nations Convention on the Law of the Sea, 10.12.1982

European Union -01.05.1998
Gabon -11.03.1998
Laos -05.07.1998

Total number of Parties: 126

Convention on Biological Diversity, 05.06.1992

Angola -01.07.1998
Tonga -19.08.1998

Total number of Parties: 174

International Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, 14.10.1994

Liberia -02.06.1998
Comoros -03.06.1998
Saint Vincent -16.06.1998
European Community -26.06.1998
Turkey -29.06.1998
Marshall Islands -02.09.1998
Venezuela -27.09.1998
Sao Tome -08.10.1998

Total number of Parties: 125

— CVC

ELC Staff News

Françoise Burhenne-Guilmin has decided to resign as Head of the Environmental Law Centre and will step down as soon possible after the ELC has completed its move into the new premises — put at its disposal by the German Government — around the end of the year. She is expected to remain associated with the Environmental Law Programme in a new capacity.

Patti Moore, Law Programme Officer, will leave the ELC for personal reasons at the end of September. She will be based in Montevideo, Uruguay. We are exploring ways to ensure that she remains an active member of the IUCN family. We wish her all the best!

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Joy Kochukunju, Office Manager, has decided to move to another job in northern Germany, and will leave the Centre on 9 September 1998. Joy has been a stalwart of the Law Centre for over 20 years. We will miss him very much and wish him a good start in his new position.

Anni Lukács, Documentation Officer in the Legislation Library, is now the proud mother of Nicolas, born on 30 April 1998. She has ended her maternity leave and re-joined the ELC team. Congratulations and welcome back!

Torsten Wäsch, Documentation Officer in the Literature Library, has completed an LLM Degree in Environmental Law from de Montfort University, Leicester/UK, earning a distinction for his thesis.

IUCN's Environmental Law Programme is carried out jointly by the Commission on Environmental Law (CEL) and the Environmental Law Centre (ELC), an outposted unit of IUCN headquarters located in Bonn, Germany. CEL is a network of more than 360 international and environmental law specialists in 95 countries. The ELC administers all Law Programme activities, develops and manages projects, and serves as the Secretariat for CEL.

The IUCN Environmental Law Programme's Newsletter welcomes short articles and news items on international, regional, and national developments in environmental law. We are particularly interested in activities of IUCN members working in the field. Contributions should be no longer than 300-500 words and may be submitted in English, French or Spanish. All contributions will be edited. Please send material to: Newsletter Editor, IUCN Environmental Law Centre, Adenauerallee 214, 53113 Bonn, Germany; telephone (49-228) 2692-231; fax: (49-228) 2692-250; email: IUCN-ELC@wunsch.com.

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